

**Roll Call Vote:**

Yeas: Hickok, Miller, Voelckers, LeVine, Greene, Dye, Haight

Nays:

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

**AME2017 0008:** Text amendment to revise Title 49 to create a temporary zoning overlay district for downtown Juneau neighborhoods.

**Applicant:** City and Borough of Juneau

**Location:** Downtown Juneau

*Commission Member Disclosures*

Mr. Miller said there was a variance request before the Commission a few weeks ago in which he needed to recuse himself since he may be constructing the house for the applicant for that variance. The location of that home is in the downtown neighborhood covered by this text amendment, he noted. He discussed this situation with the City Attorney because if the text amendments were to pass that his clients could feasibly benefit from that action. The City Attorney said that since this is for an entire neighborhood where all would receive the same benefits, that his remaining on the Commission for these text amendments would not be in conflict, he said.

Mr. LeVine noted that he owns a home which would potentially be affected by these text amendments, and for all the reasons listed by Mr. Miller, Mr. LeVine said he felt satisfied that he did not have a conflict either.

**Staff Recommendation**

Staff recommends that the Planning Commission forward the draft text amendments and Alternative Development Overlay District map to the Assembly with a recommendation for approval.

**AME2017 0009:** Text amendment to revise Title 49 to create a temporary zoning overlay district for downtown Douglas neighborhoods.

**Applicant:** City and Borough of Juneau

**Location:** Downtown Douglas

**Staff Recommendation**

Staff recommends that the Planning Commission forward the draft text amendments and Alternative Development Overlay District map to the Assembly with a recommendation for approval.

Ms. Maclean told the Commission that the downtown Juneau and Douglas areas were predominantly built by miners and fishermen in dense villages. Current zoning does not appropriately reflect this history, she said, nor does it ensure the preservation of the character of these historic neighborhoods.

The current zoning districts do not support the community's vision for downtown Juneau and Douglas as walkable, compact neighborhoods, as described in the 2013 Comprehensive Plan, said Ms. Maclean. The current zoning does not provide sufficient standards for new residential development, or the expansion, rehabilitation, or restoration of existing residential dwellings, she said. The variance process has changed, noted Ms. Maclean, and it is no longer as flexible as it used to be. A new tool has become necessary, she said. The Planning Commission created an ad hoc committee to address these issues, and the committee with CDD staff and representatives from the Law Department met on May 3, and May 8, (2017) said Ms. Maclean.

The committee chose to develop an Alternative Development Overlay District for downtown Juneau and the town of Douglas, said Ms. Maclean. These overlay districts are temporary, providing specific zoning controls in a defined area of the City where the existing zoning does not provide sufficient standards for the area's current activities, said Ms. Maclean. An overlay district may supplement or supersede an area's zoning, and may include guidelines, she noted.

By using the descriptive word "supplement", that means the underlying zoning stays in effect and is always an option. The Alternative Development Overlay District is simply adding more options for the Commission to review. It does not mean that the more restrictive of the two would apply, she said. This is only for residential uses, noted Ms. Maclean. The purpose of this is to provide time to implement new zoning regulations, providing the development of housing while the permanent zoning is developed, said Ms. Maclean.

The Alternative Development Overlay Districts are to provide the Planning Commission with three items, said Ms. Maclean:

1. Setbacks
2. Lot coverage
3. Vegetative coverage

This will not speak to height, use, density, or any other regulations within Title 49, said Ms. Maclean.

There is one distinguishing difference between the two overlay districts, noted Ms. Maclean. That is the Sunset Clause, providing Juneau with a Sunset Clause of 24 months, and downtown Douglas with the Sunset Clause of 36 months. Other than boundaries, the Sunset Clause is the only difference between the two overlay districts, said Ms. Maclean.

Ms. Maclean indicated on a map the boundaries for the Alternative Development Overlay Districts. Downtown Juneau's boundary encompasses the historic neighborhoods of the High lands, Telephone Hill, Chicken Ridge, Casey Shattuck, Star Hill, and Gastineau Avenue, noted Ms. Maclean. The commercial district on South Franklin is not included since that is primarily commercial, said Ms. Maclean. The Alternative Development Overlay District for downtown Douglas encompasses the historic neighborhood of downtown Douglas, excluding the newer home development which begins past Savikko Park, she said.

The Commission needs to make some decisions on these text amendments, said Ms. Maclean. The first item is to decide where this article would be placed if approved within Title 49. There is discussion that it could be in variances and appeals or if it belonged in specified use areas, she said. The staff recommends that it be placed within the specified use areas of the Title, she noted. The staff felt it would be best to keep this separate and distinct from variances, said Ms. Maclean.

#### *Commission Comments and Questions*

Mr. Miller asked if a property owner did not fall within the boundaries and yet met the distinction of being a historical home if there would be a mechanism to include it at a later time.

The boundaries can be modified, said Ms. Maclean, but that would have to be approved by first the Commission and then the Assembly.

Chairman Haight asked if the process would be the same as for zone changes.

Mr. LeVine asked for a brief summation as to how the boundaries were formulated.

Ms. Maclean explained that the historic district maps were used as the base and that the cartographer within the department assisted with formulating those boundaries, including any historical residences that he noted.

Mr. Voelckers stated he noticed that the homes on Telephone Hill were not included within the boundary. He noted there are several historical properties on that ridge which probably have very similar setback issues to other properties within the boundary. There are also three or four older homes behind the Andrew Hope building adjacent to the Willoughby District, he noted, which are not included within the Juneau boundary.

Ms. Maclean stated they may not have thought of including Telephone Hill.

Regarding the older homes behind the Andrew Hope building, Ms. McKibben said there are

two types of land status within the Village; there are restricted deed properties which the City does not permit, and there is the property which is owned out right which she understands may be created in a trust by the Tlingit and Haida Central Council. In that case, it would probably not be eligible to be permitted by the City, she added.

Mr. Voelckers stated that it appeared not to be a problem to include Telephone Hill within the boundary.

An alternative development permit does not exempt the builder from obtaining all of the other required permits, said Ms. Maclean. Obtaining an alternative development permit would go before the Board of Adjustment, said Ms. Maclean. The term “residential buildings” includes an accessory structure for any parking space, said Ms. Maclean. They would appreciate feedback from the Commission on what buildings could be included under accessory structures, said Ms. Maclean. They felt garages would fall under accessory structure as well as greenhouses and sheds and other types of structures which may fall under these guidelines, explained Ms. Maclean.

Four A of the proposed amendment speaks to the setbacks, said Ms. Maclean. “No part of any residential building may be erected closer to the property line than (i) the average setback of residential buildings with any 150-foot radius as determined by the Director, or (ii) the footprint of the existing residential building. No encroachment into the right-of-way or an adjacent property shall be permitted.”

Ms. Maclean repeated that the applicant would always be able to comply with the underlying zoning, or to seek a variance rather than pursue the Alternative Development Overlay District option.

Four B (incorrectly written as ‘4F’) speaks to the lot coverage, said Ms. Maclean; “Residential lots within the overlay shall not exceed 75 percent lot coverage.”

Four C (incorrectly written as ‘4G’) addresses vegetative coverage; “Residential lots within the overlay shall maintain 15 percent vegetative coverage.”

The average lot coverage is 34 percent, said Ms. Maclean. The median is 32 percent, she noted, and the outliers consisted of one lot having 10 percent coverage and another lot having 89 percent coverage, she noted.

Encroachment on other properties would not be allowed, she said.

Mr. Dye asked what would happen if an existing lot footprint was 80 percent of the lot coverage. He asked if the 75 percent lot maximum would still apply.

Ms. Maclean said if they wanted to rebuild on the exact existing footprint than it could be whatever that existing footprint was, and if it was 80 percent they could build up to 80 percent upon an existing footprint.

The staff proposes that the alternative development fee be \$400, which is the same as for a variance, noted Ms. Maclean.

The Alternative Development Overlay District complies with the Comprehensive Plan, said Ms. Maclean, specifically Chapter 3 on creating mixed use communities. It speaks to creating compact, pedestrian friendly communities, she said. It addresses a variety of houses, styles and sizes, she noted. This amendment speaks specifically to Chapter 4 of the Title under "housing" to facilitate the preservation and rehabilitation of existing housing, said Ms. Maclean.

The Comprehensive Plan addresses Sub – Area Six, which is Juneau, said Ms. Maclean. It calls for preserving the scale and the density of the older single-family neighborhoods in the downtown area, she read. It also states its purpose is to preserve the existing dwelling units in or near the older residential neighborhoods, she said.

Ms. Maclean repeated that the Commission needs to decide where this Alternative Development Overlay District should reside within Title 49, the maximum lot coverage, which the staff now recommends at 60 percent, and the minimum vegetative coverage is proposed at 15 percent, as recommended by both the staff and the ad hoc committee, said Ms. Maclean. The Commission also needs to decide if accessory structures would be included, she said.

The staff finds that the proposed text amendment to Title 49 is consistent with the goals and policies in the Comprehensive Plan, said Ms. Maclean. Also this change would not create any internal inconsistencies with any plans or codes, providing the amendments stated above are approved.

Mr. LeVine asked why the word "supplement" was used, stating that he found it confusing. He stated, "This article provides an alternative development process that may be used as an alternative to the underlying zoning regulations." Mr. LeVine stated that to him this was an unambiguous statement whereas when read with the word supplement it sounded like "in addition to" rather than as an "alternative to..."

Ms. Maclean said she saw no problem with that change to the verbiage.

The zoning overlay district for downtown would still be subject to public hearings, noted Ms. Maclean.

Referring to 4A, Setbacks, Mr. LeVine noted that it should perhaps be more clear that not all of the setbacks together would be averaged, but that front would be averaged with front, side to side, and rear to rear yard setbacks.

*Public Comment*

Thea Howard, a resident of the historic district in Juneau, said that her property would be affected by this decision, as would the property of many of her neighbors. She said she wondered what the real reason was for enacting these text amendments. Ms. Howard said it seemed to her that there is already an existing set of rules in which the Commission may function.

Ms. Howard noted that when someone came before the Commission and wants to do something outside of the rules, that the Commission just decides to change the rules to accommodate the applicant.

Maintaining the historical neighborhood is extremely important for the community, and it is what attracts visitors to Juneau every year, noted Ms. Howard. Ms. Howard asked how many properties would be affected by these proposed text amendments. She said she bet they could be counted upon one hand. Ms. Howard said she did not want to discourage people from fixing up their property within the historical district, but that she was not sure that changing the rules was the answer. There are already rules in place which enable the Planning Commission or the Board of Adjustment to look at requests on a case-by-case basis, said Ms. Howard.

Mr. Voelckers explained to Ms. Howard that the ability of historical home owners to fix up their property has been based upon aspects of the variance in the past which are no longer open to them. He said that is why they are considering the Alternative Development Overlay District while they consider further zoning changes to better represent the district. He said the text amendments are to accomplish exactly what Ms. Howard is supporting, so he was surprised to hear from her that this is not constructive.

Ms. Howard responded by saying that these text amendments would enable people to construct "McMansions". She said that is what the variance the Commission denied a few weeks ago was about; a big home, on a small lot. She said that is what these text amendments would allow. She said when larger properties were constructed to tower over smaller properties, that changes the flavor of the neighborhood. She said she did not feel it was the Commission's role to change the rules of for a few individuals. She said she felt the Commission's role was to review and analyze requests on a case-by-case basis. She said the variance already provides the process to do that.

Mr. Miller said that he agrees completely that the variance process is what has been used in the past, and very successfully. However, said Mr. Miller, recently the variance has been hamstrung by some rulings coming out of an Assembly appeal decision with guidance from the

Law Department. Now, said Mr. Miller, there is not a process for Commission review on certain variance requests which in the past was a good process. This is the fix, said Mr. Miller, so that variances aren't required anymore.

Mr. Dye said the Alternative Development Overlay District process is based upon the Conditional Use Permit process. An applicant choosing this process would still have to demonstrate why, still come before the Commission, and public notice would still be given, said Mr. Dye.

Ms. Howard said the historic character of the neighborhood will not be promulgated if the Commission allowed huge houses to be erected.

Dennis Harris, a resident of the Juneau historical district, said he did not see why this issue would be going before the Board of Adjustment, which he thought dealt with tax issues, instead of the Planning Commission. (*"...a strict application of the zoning standards may produce an especially difficult and unreasonable burden for a property owner. **In those cases the Planning Commission, sitting as the Board of Adjustment, may grant a variance to dimensional or design standards so that an individual lot owner can enjoy the same granted rights as others.**"*)<sup>1</sup>

Mr. Harris said the proposed text amendments do not solve one of the problems of those who live in the original townsite. The original surveying for the area was one degree off, said Mr. Harris. For those who want to buy or sell one of those properties extensive title searching is necessary, and lengthy explanations must be given to banks, especially if they are not located in Juneau, said Mr. Harris. He said the original townsite plat needs to be replatted. That would solve some of the issues, he said.

Mr. Fanning said he was before the Commission this evening representing his wife and several other residents within the area. He said he has a home on Sixth Street which is a triplex. They are having trouble selling the triplex, said Mr. Fanning. He said it is zoned D-5, for a single family dwelling with an apartment. The appraiser will not appraise the dwelling because it is within a single family D-5 zone, he said. He cannot appraise it as a single family dwelling because it has three stoves, said Mr. Fanning. Therefore, they are stuck, and they cannot sell this piece of property, he said.

They are generally in favor of the overlay district, said Mr. Fanning. He said he does take note of homes on certain streets which are right next to each other which are not 60 percent of the lot size. Having 15 percent vegetative coverage for some property within the star Hill area would be very difficult, he said. He said it is his understanding that if a house were to burn down, in order to reconstruct, it would have to meet all of the provisions within the code for a new dwelling. If the residence was constructed on a nonconforming lot then in order to meet

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<sup>1</sup> Community Development Department: Web site: [www.juneau.org/permits](http://www.juneau.org/permits)

the code it would have to be reconstructed to a size smaller than its original size, said Mr. Fanning.

Chairman Haight noted that he has been hearing a reoccurring question during public testimony. The purpose of these text amendments is to use an intermediary measure while they review how well this supplemental regulation works, and to give the staff and Commission the opportunity and the time to build a new zoning regulation that better fits these areas.

Ms. Maclean stated that if a home had to be rebuilt due to a fire, the text amendments as they stand today would allow the home to be rebuilt within its existing footprint, if it is an allowed residential use. In this instance, with the residence being a triplex, the owner would have to prove an allowed, legal use for the third unit, she said. Otherwise, she said, the home could be rebuilt as a duplex with a Conditional Use Permit utilizing the same footprint as the original structure.

If the house were to burn down, the footprint would not be affected, but the structure would need to be in alignment with the existing use, said Mr. LeVine.

Mr. Miller said that issues such as what Mr. Fanning is experiencing with his lot are very important and that perhaps it could be incorporated into the new zoning overlay which in two years would replace the temporary Alternative Development Overlay District.

Juneau resident Sean Eisele said this was not planned but that he is the individual who is trying to buy Mr. Fanning's dwelling. He said as far as they can tell, the Fanning triplex was built as such before there were any zoning laws. Across the street, still in D-5 zoning, is a four plex, said Mr. Eisele. To purchase the house, he needs a multi-family loan, said Mr. Eisele. However, the bank will not lend because the dwelling is not zoned for a multi-family residence, he said. Mr. Eisele said the City said that it would not be allowable to rebuild as a duplex. The City's logic is if the house was changed during this temporary Alternative Development Overlay District, it would mean the house may not be rebuilt if something happened to it, he said. Therefore, it may not qualify for a loan under this temporary amendment, he said.

The Triplex should be able to be constructed if it burned down as the duplex, since that is a permissible use, said Mr. Eisele. However, he said, were it to be rebuilt since it is a nonconforming dwelling, it would not be able to be in conformance with the existing code, he said. By definition, he said, it is a nonconforming dwelling. That seems like a bad reading, said Mr. Eisele. This sale has been stalled, perhaps, because of that reading, he said. Homes that were approved during the Sunset Clause that needed to be rebuilt, would not necessarily meet the setback requirements, he said, under new rules.

Mr. LeVine said this is an issue which the ad hoc committee discussed. The problem in Mr. Eisele's circumstance is that he would be changing the use, said Mr. LeVine.



Ms. Maclean said the other issue is that this lot in question is a substandard lot. Therefore, she said, it would not meet the requirements for a duplex. They could possibly construct for single family home with perhaps a Conditional Use Permit for an accessory apartment on a substandard lot.

Mr. Eisele said code says nothing about lot size when rebuilding. There are things such as lot size and setbacks which should not have to be complied with since the lot is already noncompliant, he said.

Ms. Maclean clarified that the Board of Adjustment is the Planning Commission. As they look at zoning they would also be possibly exploring other items such as density, which they decided to leave out of the temporary overlay district. They felt that needed further analysis and public input, said Ms. Maclean. She said she did not think requiring 15 percent vegetative lot coverage would be too burdensome in most cases.

Greg Chaney, speaking as a resident within the historical district, said he feels this is a good start and that the current zoning does not fit the development pattern of the area. He said he calculated that the density on Kennedy Street is over 30 units per acre, and it is zoned single family residential. If the setbacks were averaged from certain homes within his residential area it would be about 40 feet, said Mr. Chaney. Therefore, he said, he was a little concerned that if they try to do the math they may come up with some unsatisfactory answers.

Mr. Chaney said he felt the portion of the existing code which dealt with substandard setbacks within the neighborhood may be the best avenue to follow. Mr. Chaney said he felt the Alternative Development Overlay District was an interesting concept. The area could definitely use a rezoning, he said. It does not fit the D-5 zone, he said.

Mr. LeVine clarified with Mr. Chaney that when averaging setbacks that anything more than the minimum would count as the minimum setback.

Mr. Chaney concurred with the feedback from Mr. LeVine.

Mr. LeVine asked if they could add the provision just brought up by Mr. Chaney.

LOCATION IN TITLE 49

***The Commission concurred that the text amendment be located in the specified use area of Title 49.70.***

MAXIMUM LOT COVERAGE

Mr. Dye said he was fine going with the lower number of 60 percent instead of 75 percent since the pre-existing dwelling clause is already within the language.

Mr. Voelckers said he is leaning towards the 60 percent lot coverage as well. He said it is no one's intent to create a McMansion syndrome.

***The Commission concurred that the text amendment for lot coverage be set at 60 percent.***

#### MINIMUM VEGETATIVE COVERAGE

***The Commission concurred that the minimum vegetative coverage be set at 15 percent.***

#### INCLUSION OF ACCESSORY STRUCTURES SUCH AS GARAGES, CARPORTS, GREENHOUSES AND SHEDS

Mr. Voelckers clarified that every one of the accessory structures would factor into the total lot coverage of 60 percent.

The staff concurred.

Mr. LeVine said that he felt the accessory structures should be included considering the character of the neighborhood.

Mr. Voelckers asked how a deck is defined in terms of lot coverage. He asked if it needed to be a certain amount above grade to be included in the lot coverage.

Ms. Maclean said decks are not included.

***The Commission concurred that accessory structures are included in the total lot coverage.***

#### FEE FOR AN ALTERNATE DEVELOPMENT PERMIT

***The Commission concurred that the fee for an alternative development permit be set at \$400.***

#### SETBACKS

Mr. LeVine said as he mentioned earlier, he has concerns that the existing language is not clear regarding the computation of setbacks.

Ms. Maclean suggested that it read: "...the average corresponding setback of residential buildings within a 150-foot radius..."

Mr. LeVine said he felt that was clear language.

Mr. LeVine said he did think it made sense to create minimum and maximum setbacks as they are averaging the setbacks. He said it made sense to him to average anything that was above the minimum to count as the minimum and to ascertain that anything that is encroaching count as a zero.

***The Commission concurred that line (i) of 4 A read; “the average corresponding setback of residential buildings within a 150-foot radius as determined by the director, or...”***

***The Commission concurred that setbacks be averaged so that anything that was above the minimum counts as the minimum, and to ascertain that anything that is encroaching count as a zero.***

TELEPHONE HILL AND SMALL RESIDENTIAL AREA LOCATED BEHIND THE ANDREW HOPE BUILDING  
Mr. Voelckers said that he would recommend that they add Telephone Hill to the alternate development overlay district and he also recommended that they add the strip of residential area located behind the Andrew Hope Building with the thought that it is better to be inclusive rather than exclusive. It does provide that recourse should a property in that area have need of it, he said.

***The Commission concurred that Telephone Hill be added to the Alternative Development Overlay District as well as the small residential area located behind the Andrew Hope Building.***

Mr. Voelckers asked the staff to look again at certain small lots which were excluded from the Douglas overlay district.

Ms. Maclean said that she would reevaluate those lots for inclusion.

Mr. Voelckers asked why certain of the larger lots in the new development past Savikko Park were included since they were not historical.

Ms. Maclean said she believed they were included because there are some historical structures on those lots.

#### LANGUAGE ADJUSTMENTS

Mr. LeVine had several non-substantive edits. He said they could change the last sentence very slightly to read that, “This article is intended to provide for the development of housing, preserve the character of the neighborhoods, and promote the restoration of blighted buildings.”

***The Commission concurred with the above language.***

Mr. LeVine said he had a language adjustment for Section 2., Relationship to Existing Zoning. He suggested the second sentence read; “This article provides an alternative development process that exists in addition to the underlying zoning regulations.” He said this is to clarify that there are two separate processes.

**MOTION:** *by Mr. Miller, that the meeting be continued until 10:30 p.m.*

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

***The Commission concurred with the language adjustment for the second sentence in section 2 as stated by Mr. LeVine.***

Mr. LeVine rectified a typo in the first sentence under 3D, as did Mr. Voelckers.

***The Commission voiced no objection to the language being corrected.***

Mr. Voelckers said the word “lots” in 4F (4B) should be changed to “construction” and that the word “district” be added after “overlay”.

***The Commission concurred with no objection.***

**MOTION:** *by Mr. Voelckers, to move the approval of AME2017 0008 with the staff’s findings, analysis and recommendations with the changes approved by the Commission.*

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

**MOTION:** *by Mr. Miller, to move the approval of AME2017 0009 with the staff’s findings, analysis and recommendations with the changes approved by the Commission.*

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

**X. BOARD OF ADJUSTMENT** - None

**XI. OTHER BUSINESS**

Chairman Haight asked if the item brought up earlier in the evening regarding small wireless companies could be placed on the agenda for review.

Mr. Steedle said he would plan on filling in the Commission on this at the next Planning Commission meeting during the Director’s report.

**XII. DIRECTOR’S REPORT**

Mr. Steedle said he wanted to commend the Commission and the ad hoc committee for their work on these text amendments. He said it was very impressive. Mr. Steedle said he wanted to single out Mr. Dye for his effort.

Mr. Steedle said he also wanted to thank Ms. Maclean for her innovative approach on this project.

### **XIII. REPORT OF REGULAR AND SPECIAL COMMITTEES**

#### *Lemon Creek Steering Committee*

Mr. Voelckers reported that the Lemon Creek Plan is making excellent progress and that it should be before the Commission in late July or August. He said a final draft of the plan will be presented to the Lemon Creek Steering Committee on June 19, (2017).

### **XIV. PLANNING COMMISSION COMMENTS AND QUESTIONS**

Mr. Voelckers said he wanted to thank the staff and Ms. Maclean. He said he felt the staff report was particularly good. He felt the good work on these amendments will help their passage through the Assembly.

Mr. Miller said he felt what was accomplished tonight was amazing. He said the Wetlands Review Board is currently working on an ordinance change that will limit the need for variances. In the meantime, said Mr. Miller, what is the public to use to accomplish its goals. The code still remains the same, said Mr. Miller. If the variance needs to be different then it needs to be changed, said Mr. Miller. Mr. Miller said he has grave concerns that the issue has not yet been fully addressed.

Chairman Haight said that he agreed. He said variances do not go away. They still have to maintain and use the code, he said. It needs to be streamlined, said Chairman Haight. Mr. Voelckers said there have been at least three meetings held by the Title 49 Committee to clarify the language.

Mr. Steedle requested that they hold a COW (Committee of the Whole) on June 13, (2017). He said there are new members on the Title 49 Committee and that it would benefit the Commission as a whole to discuss where they are with variances. At that time the whole body can decide if it is ready to go to the Commission, back to Title 49, or make some other decision. Variances are taking longer than anyone in this room would like, said Mr. Steedle, and it is important that it be right. He said he does not think they are far off from this.

Ms. McKibben said they would also like to bring an overview of where the streamside buffer process is to the COW. It is going back to the Wetlands Review Board for one more view, she said. They would also like to discuss changes to the eagle nesting buffer, she said, bringing it to the Commission rather than remanding it back to the Title 49 Committee.

Mr. Steedle pointed out that both of those changes are related directly to variances.