MINUTES
Planning Commission
COMMITTEE OF THE WHOLE
CITY AND BOROUGH OF JUNEAU
Ben Haight, Chairman
August 8, 2017

I. ROLL CALL

Ben Haight, Chairman, called the Committee of the Whole meeting of the City and Borough of Juneau (CBJ) Planning Commission (PC), held in the Assembly Chambers of the Municipal Building, to order at 5:08 p.m.

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

Commissioners absent: Dan Hickok, Michael LeVine

Staff present: Rob Steedle, CDD Director; Beth McKibben, Planning Manager; Laura Boyce, Senior Planner; Jill Maclean, Senior Planner, Chrissy McNally, Planner II

II. APPROVAL OF MINUTES - None

III. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS - None

IV. PLANNING COMMISSION LIAISON REPORT - None

V. RECONSIDERATION OF THE FOLLOWING ITEMS - None

VI. CONSENT AGENDA - None

VII. CONSIDERATION OF ORDINANCES AND RESOLUTIONS - None

VIII. UNFINISHED BUSINESS - None

IX. REGULAR AGENDA

AME2016 0002 – Amend Title 49 regarding variances.

Ms. Boyce told the Commission the staff would dive into the data of downtown Juneau and downtown Douglas first, focusing specifically on where the boundaries of the new Alternative Development Overlay District (ADOD) will apply, and ascertain how this would affect the variances in these areas. They would then next address revised criteria, said Ms. Boyce.

Showing the Commission a map of downtown Juneau, Ms. Boyce indicated the properties which have been granted variances since the current code was adopted in 1987. One hundred forty-three variances have occurred in this ADOD area, she noted. One hundred fourteen of those variances are setbacks, she noted. Most of these setback variances could most likely benefit from the newly approved ADOD, said Ms. Boyce.

The ADOD applies to residential properties that can provide relief for setbacks, vegetative cover, and lot coverage, explained Ms. Boyce. This applies to accessory structures such as garages as well, she noted. Roughly 10 percent of these 143 setbacks in the Juneau downtown area are for parking and roughly half of those could also find relief with the new parking waiver, said Ms. Boyce. Another small portion of those variances are for vegetative cover which could also be helped by the ADOD, said Ms. Boyce.

In downtown Douglas the majority of the variances granted are for setbacks, said Ms. Boyce. Roughly 80 percent of the 47 properties granted variances are setbacks which could find relief under ADOD, she noted. Five of those variances are for parking, and three of those could potentially find relief under the new parking standard, she said. Five properties are for other types of variances, she said.

They have amended the criteria from the last version viewed by the Commission, said Ms. Boyce. What they call the "threshold" in the current code has been moved and combined into variance criterion number one, she said. All of the criteria must be met in order for a variance to be granted, she said. Ms. Boyce said she is also proposing a sixth criterion exhibiting a clear finding that the granting of a variance would not result a variance for density, lot coverage, construction standards, or use.

Commission Comments and Questions

Referring to the last sentence of criterion one in the new draft, Mr. Dye said that developers do have some control over the division of their lots. He asked how this would be interpreted according to the new criterion. He mentioned a scenario where a property owner could claim that an irregularity of their property was something of which they were not aware when they purchased the property.

Ms. Boyce said it would need to be determined if the property owner had knowledge of the irregularities when they purchased the property.

Mr. Greene added that he felt this was a good point. If the property owner had knowledge of the irregularities of the property when purchased, then why would they be eligible for relief in the form of a variance?

This would also pertain to the reasonable use of the property, said Ms. Boyce.

Ms. McKibben stated a few years ago a variance was requested to reduce the number of parking spaces for back-out parking. The building had a very large footprint, she said. If it was designed a little differently they would not need to request a variance, she explained. By denying the variance, they were not eliminating the reasonable use of the property by the owner, she said. The property owner just needed to make some modifications in their building design, she added.

Mr. Dye asked if the second sentence in criterion one was necessary. (*These conditions result from the lot size or shape, topography, or other conditions that the property owners cannot control.)*

That sentence would not be crucial, said Ms. Boyce. She said it was added to clarify the meaning of the criterion.

Mr. Voelckers commented that overall he was pleased with the amendment to Title 49 regarding variances, but that he felt it was time to delve into the particulars of the verbiage. He said he felt it was good to have a purpose statement, but that he felt some changes in the wording were warranted.

A variance may be granted to provide property owners ~~from~~ relief from Code requirements when, due to the strict application of standards and to unusual circumstances regarding the subject property or structure, the property owners are deprived of privileges commonly enjoyed by other properties in the same vicinity, ~~and~~ zone and under the same land use regulations.

Mr. Voelckers said he felt the first "from" in the first sentence was just a typo and should not be there. He said in the last sentence he felt the word "and" should be eliminated and supplanted with the word "or".

Referring to the Purpose sentences, Mr. Dye asked if the word "strict" needed to be applied to modify the word "application". He said he felt that may infer that at other times the Commission was not being diligent in its application of the code.

Mr. Miller said that the code is black and white. If the staff cannot give an absolute answer "yes" to someone's question about code application, then it was incumbent upon them to say "no". However, said Mr. Miller, there can be gray areas that are not black and white. He said he felt that is why there are nine members of the Planning Commission. It is their job to delve into those gray areas, explained Mr. Miller.

Chairman Haight said he felt the word "strict" was a point of reference. It was referencing the black and white aspects of the code, he said.

Review of Criterion One
Special conditions or circumstances exist that are peculiar to the property in the same zone or vicinity. (These conditions result from the lot size or shape, topography, or other conditions that the property owners cannot control ;)

Mr. Voelckers said he felt that philosophically it was useful to reference "structure" as well as property. There are circumstances when all aspects of the property are not disclosed at the time of its purchase to the new owner. He said he felt that referencing structure would at times become germane to interpretation of this criterion. He said he would like to insert the words "or structure relative to other properties or structures" after the word "property" in the first sentence of criterion one. The word "or" should also be added after the word "vicinity", said Mr. Voelckers.

Mr. Miller said the first person obtaining a variance on their property may qualify because the "circumstances that exist are peculiar to the property". However, he said, a subsequent property owner would not be able to claim the peculiarity of the property, he said. The analysis of the proposed criterion one states that if there are similar requests in the neighborhood, then the zoning or standard that applies for that area might need to be corrected. Mr. Miller said he would not want the new variance criteria to be quite so short-lived. He added that he felt that criterion one and two could quite possibly cancel each other out in some circumstances.

Ms. Boyce said the current language says "unique". She said the words "peculiar" and "unusual" step down from that. If they do see a trend in an area, then maybe the zoning needs changing or some type of setback exception can be added to the code that best fits that neighborhood's character, she added.

Mr. Miller said he wasn't quite sure how rigid the standard the word "peculiar" would be interpreted.

Ms. Shelton said she viewed the interpretation a bit differently. She said she liked the existence of criterion two as it supported the notion that the property did not have to be unique. Ms. Shelton suggested supplanting the first sentence in criterion one with: "Special conditions or circumstances exist that the property owners cannot control".

Mr. Voelckers said he felt the word "unique" in existing language was a killer term and that the new verbiage proposed by the staff was a good compromise. There has to be something about the circumstance that sets it aside, he said.

Mr. Dye said he liked the suggestion of Ms. Shelton, and that he would also like to recommend that the second sentence in criterion one be eliminated. He said he felt the intent of that language was duplicated in criterion number four. In answer to Mr. Voelckers question about his meaning, Mr. Dye said criterion four states that "The hardship is not self-imposed…" He said he felt that criterion one should be less explicit and that criterion four could cover what was in the second sentence in criterion one.

Mr. Miller said he really liked the phraseology "that the property owners cannot control" in criterion one. He said criterion four referenced the things that were within the property owner's control. He said he felt the statements referenced by Mr. Dye in criterion number one and criterion number four referenced two completely different things.

Mr. Dye said he did not see how the Commission would be able to define what was or was not within a property owner's control.

For example, said Mr. Miller, after a person purchased a lot that had a house upon it, and they wanted to rebuild and they thought that they would be able to rebuild. The new property owners had performed their due diligence and subsequently found out that the foundation was inadequate. Mr. Miller said he felt this would be a circumstance in which he could understand that the situation was not under the property owner's control.

Mr. Dye agreed with Mr. Miller, and added that he did not feel the second sentence in criterion one detracted from that meaning. The argument can be made that the new property owners could have hired an engineer ahead of time and found out there were problems with the foundation, and therefore it would not be outside of their control. He said if the second sentence in criterion one was removed, that they avoided the whole difficulty of whether it was within or not within the property owner's control. He said the control level would lie within criterion four which stipulates that the hardship is not self-imposed.

Mr. Steedle said he felt that Ms. Shelton best captured the meaning with her proposed language for criterion one: "Special conditions or circumstances exist that property owners cannot control…"

Mr. Voelckers added they also needed to see how this language plays out when referencing structures as well as land. He said he liked the idea of simplifying the language and putting some of the language within the parentheses within the body of the first sentence.

Mr. Dye said if an individual owns a structure that theoretically it is within that person's control. He said he would like to have the first criterion a little more general and that specificity became more pronounced with the application of criterion four.

Chairman Haight said that many Commission members have witnessed a situation where an individual buys a property or structure and there are existing conditions unknown to the buyer. They subsequently find out the problems with their property when they begin a remodel for example, he said.

Ms. Shelton said she felt that language in criterion one and four was different. For example, she said, in number four, to be extreme, it could be said that the condition was self-imposed because the individual purchased the property.

Ms. Boyce said with criterion number one they are trying to get to the hardship factor pertaining to the property. Criterion four is more about the plight of the land owner, she said, where criterion one referenced the property itself.

Mr. Frisby said that every landowner has different land use intents. There are issues that arise when there is a new purchaser of property who may have different ideas about how that property should be used, said Mr. Frisby. He said to him criterion one and four did seem to be repetitive, but after listening to the discussion he could see how they were not repetitive.

Mr. Voelckers said since the criteria are related, that perhaps Mr. Palmer and Ms. Boyce could rework the phrasing in those two criteria while the Commission progressed through the other criteria.

Criterion Number Two
The variance is necessary so that the applicant can enjoy a property right that other owners of properties in the same zone or vicinity have;

Mr. Voelckers suggested that instead of having the sentence end with the word "have", that it be amended to read: "The variance Is necessary so that the applicant can enjoy a property right that (is consistent with) other owners of properties in the same zone or vicinity;"

Criterion Number Three
The grant of the variance will not be detrimental to public health, safety, or welfare, or is injurious to nearby property;

Ms. Shelton said what the second half of this sentence says to her is that the granting of the variance is injurious to property. She said she felt the words "not be" be used instead of the word "is" prior to the word "property".

The Commission agreed to the above change for criterion number three.

Edited Criterion Number Three
The grant of the variance will not be detrimental to public health, safety, or welfare, and not be injurious to nearby property;

Criterion Number Four
The hardship is not self-imposed and the variance is the minimum that will alleviate the hardship;

Mr. Voelckers said he felt that criterion four may be the most difficult of all. He said it could be argued that all hardship to some degree is self-imposed. He said it he felt it was important to remember that the goal was to give the Planning Commission a common-sense tool to try to parse out what makes the most sense. He said he did not like the words within the criterion that stated, "…the minimum that will alleviate the hardship;"

Mr. Voelckers recommended that the criterion read: "The hardship is not self-imposed and the variance is proportional to the needed relief that will alleviate the hardship;" He said he felt the word "proportional" was better than the word "minimum". The word "minimum" was not very descriptive, he said. The word "proportional" provided some value judgment, he said.

Mr. Palmer responded he felt there were two concepts at work. The whole reason for these criteria is to provide some "objective standards" to deviate from the code, he explained. The purpose of the variance is to provide that unique tool when there is something so special about that property that they cannot comply with the standards that apply to everybody else, he said.

The addition to a building would generally be considered a self-imposed hardship, said Mr. Palmer. The topography of a very steep hillside next to a restricted right-of-way probably would not be a self-imposed hardship, for example, said Mr. Palmer.

Ms. Shelton commented that the steep hillside would have always been present, and would only become a self-imposed hardship when the property owner decided to act.

Mr. Palmer said it may be a good idea for the staff to take the recommendations on this ordinance amendment and work through the language corrections, providing explanations on the intent to accompany each of the criteria.

Mr. Voelckers asked Mr. Palmer what the consequences would be if they struck the words "self-imposed". He said it could be interpreted that any action would be self-imposed. He said those words actually made him a little uncomfortable.

Mr. Palmer said the Commission needed to decide if the "self-imposed" term used in number four was different or duplicative of the language used in criterion one.

Mr. Voelckers asked if the term "self-imposed" needed to be used to meet some legal litmus test.

Mr. Palmer said that specific term did not need to be used, but that the concept needed to be embodied within the variance. It follows a state statute which provides a good general guidance for the variance, said Mr. Palmer.

Mr. Miller said he felt that Mr. Voelckers had an excellent point in that anything that is brought forward could be construed as self-imposed. Then they would not have a mechanism for providing relief from the strict application of the code, he added. The term "self-imposed" could be interpreted very strictly, and then once again they are in a position where variances may not be issued, noted Mr. Miller.

Mr. Dye said he had problems with the terms "cannot control" in criterion one and "self-imposed" in criterion four.

Mr. Voelckers noted that a project he was involved with several years ago received a couple of critical variances so that it could be built. He said it could be argued that the project was completely self-imposed, and there were no unique features about the property. The Commission thought the height variance was useful for the project, so they could proceed with construction, said Mr. Voelckers.

Chairman Haight said he felt they needed more definition of what "self-imposed" really means.

Mr. Palmer said the state statute provides a slightly different standard, but that he felt it arrived at the same concept which the Commission was discussing. "Special conditions that require a variance are not caused by the person seeking the variance," said Mr. Palmer.

Mr. Steedle said he was curious how this got around the quandary raised by Ms. Shelton, that the property was purchased, therefore the condition is self-imposed.

Providing an example for the discussion, Ms. McKibben said there was a property several years ago out the road on a very steep hill, where the highway has a 100-foot right-of-way. The lot was platted before the highway was 100 feet wide, said Ms. McKibben. Subsequently the property owners were left with a 20-foot portion of property to build upon. They did not create that situation, noted Ms. McKibben.

Criterion Number Five
Literal enforcement of the ordinance would result in unnecessary hardship. Unnecessary

hardship means that, because of special conditions of the property that distinguish it from others in the area, the property cannot be reasonably used in strict conformance with the ordinance.

Ms. Shelton said she did not think "that distinguish it from others in the area" needed to be in this criterion. She said she felt it took away from the meaning of this criterion, rather than clarified it.

Mr. Voelckers said he agreed with Ms. Shelton in that there was some redundancy. He said it made him wonder if they should not remove the words within the parentheses. He said perhaps they should just put; "Literal enforcement of the ordinance would result in unnecessary hardship."

Ms. Shelton said she did not think they wanted to lose the concept of "reasonable use" in criterion five.

Mr. Dye suggested they just eliminate the language within parenthesis.

Criterion Number Six
This variance if approved would not result in lot coverage, construction standards, etc.

They may want to add the words "maximum density" prior to "lot coverage", said Mr. Voelckers. Someone may want to add a kitchen to their home which would not result in maximum density to the neighborhood, said Mr. Voelckers.

The Commission agreed that they approved the general concept of criterion number six, which will undergo further wordsmithing by the staff.

Review Incorporating Commission Comments
Purpose Statement
A variance may be granted to provide property owners ~~from~~ relief from Code requirements when, due to the strict application of standards and to unusual circumstances regarding the subject property or structure, the property owners are deprived of privileges commonly enjoyed by other properties {or structures} in the same vicinity ~~and~~ {or} zone and under the same land use regulations.

Criterion One
Special conditions or circumstances exist {that the property owners cannot control} that are peculiar to the property {or structures} in the same zone vicinity. ~~(These conditions result from the lot size or shape, topography, or other conditions that the property owners cannot control);~~

Mr. Palmer suggested that criterion one be changed to state, "Special conditions or circumstances that require the variance are not caused by the person seeking the variance."

Mr. Dye said he liked the phrase suggested by Mr. Palmer because it did away with the "cannot control" verbiage. He said it did not bother him that the conditions were not listed. He said if they were listed then there could always be something that was left out.

Mr. Miller commented that the ADOD in theory should help a lot of people. However, he said, there may be some lots which would not be helped by the ADOD. There could be a nonconforming situation that may be a special condition or circumstance, not caused by the person seeking the variance, he noted.

The Commission approved of the phrase suggested by Mr. Palmer as criterion one.

Criterion Two
The variance is necessary so that the applicant can enjoy a property right that {is consistent with} other owners of properties in the same zone or vicinity ~~have~~;

Criterion Three
The grant of the variance will not be detrimental to public health, safety, or welfare, ~~or~~ {and} is {not} injurious to nearby property;

Criterion Four
The ~~hardship is not self-imposed and~~ variance is ~~the minimum~~ {proportional to the needed relief} that will alleviate the hardship;

Criterion Five
Literal enforcement of the ordinance would result in unnecessary hardship. Unnecessary hardship means that ~~because of special conditions of the property that distinguish it from others in the area,~~ the property cannot be reasonably used in strict conformance with the ordinance.

Criterion Six
The variance would not result in exceeding allowed maximum density, maximum lot coverage, construction standards or use.

The Commission agreed with criterion six.

This amendment to Title 49 will next be presented to the Commission at a regular meeting with a formal hearing.

AME2017 0006 – Text Amendment related to Essential Public Facilities

Mr. Steedle told the Commission this is Ordinance 2017-23 for Essential Public Facilities. He explained this is to develop a process for permitting facilities that the government ought to be providing. This could be via contract rather than directly provided by the government, noted Mr. Steedle. These are facilities that typically individuals are not happy to have adjacent to their residences, said Mr. Steedle. An example would be a winter campground which has been proposed, he noted. There is no provision for that in a downtown location under Mixed Use, he said.

The idea is to come up with another permitting process in which a facility could be deemed by the CBJ Manager to be a candidate to be an essential public facility, said Mr. Steedle. This would be brought to the Commission through the Community Development Department for the Commission's own analysis, he explained. This streamlines the process, said Mr. Steedle. However, he said, currently under the best case scenario permitting could be accomplished within five months. Much of that time is taken up by staff analysis and research, he said. It would then come to the Commission and to the Assembly, he explained.

If the essential public facility process was in effect, said Mr. Steedle, it would come before the Commission and look very much like a Conditional Use Permit, but it would sidestep the Table of Permissible Uses.

Commission Comments and Questions
Mr. Miller asked if this sort of process could have been used for the facility within the Tall Timbers area. He said he recalled that facility did not have a use within the Table of Permissible Uses.

Mr. Steedle said it is correct that facility did not have a use within the Table of Permissible Uses, but that it would probably not have been deemed an essential public facility. The pivotal question would be, "is this an essential function that the CBJ should be providing", he said. The answer in that case is probably "no", he said. That facility was sponsored by a nonprofit organization not under the control of the CBJ, he added. If the CBJ was the source of the grant funding for that operation, then the Commission might make a finding, said Mr. Steedle, that it was an essential public facility and eligible to be placed in the neighborhood in which it resides.

Referring to number one under Determination of Applicability, Mr. Dye asked if the facility within the Tall Timbers neighborhood was completely privately funded.

The funding for that facility does not come via the CBJ, answered Ms. McKibben.

Mr. Dye asked if a warming shelter which was considered by the Salvation Army this winter would come under this essential public facility ordinance.

He was told that it would not, because the City was not involved in that proposal.

Mr. Palmer said the concept is that these are essential public facilities. If there is a strong public need for a facility, it can be expedited for a very good reason, he said. However, it is either a public facility or it is a private facility funded by or under contract by the CBJ.

Mr. Dye distinguished that the way the ordinance is written the essential public facility must have substantial public funding or be under contract by the CBJ, which he noted could entail minimal funding by the CBJ.

Mr. Palmer noted that most contracts have to go through the Procurement Code. That is another check and balance, he noted. And would have to be approved by the Assembly, he added.

Mr. Voelckers asked if there is the assumption that a unique site boundary would be created for the facility. He said he was curious how those limits would be defined to gauge the impacts for this conditional use process.

The ordinance is almost indistinguishable from a Conditional Use Permit. What this really accomplishes is the bypass of the TPU process, noted Mr. Steedle. The Commission is free to impose whatever conditions it thinks would be necessary, he added. Mr. Voelckers asked how the Commission would deal with this if the boundaries were not clearly defined.

Mr. Palmer said the proposed ordinance is deliberately left imprecise to allow for a small area, within a much larger defined parcel, for example, or to allow for trailers to be hauled onto a site, he said.

Mr. Voelckers suggested that on (10) (A) of the ordinance that "impacts on wildlife" be stated instead of specifying an eagle's nest only. Under (11) Sound, instead of specific decibels, just limit "adverse impacts to adjoining properties", he suggested.

Mr. Steedle noted that this language is lifted from Conditional Use Permits. He asked if the Commission would like to see the distinction between a traditional CUP and this ordinance proposal.

Mr. Voelckers said the specificity regarding eagles seemed a little odd in this draft ordinance. There are many other types of wildlife and habitat impacts which should be generally referenced besides just eagles, he said. Past practice has indicated that decibels are difficult to qualify, he said. It may be highly dependent upon where the property is located in comparison to how close it is to a residence, said Mr. Voelckers.

Ms. Shelton said that lines 10, 11, and 12 under Determination of Applicability seemed excessive in their words. She suggested that those lines just state, "Delivered under contract or with substantial funding under a government agency".

Mr. Miller asked if performance bonds were a part of a Conditional Use Permit.

Mr. Steedle said that they were a part of a Conditional Use Permit. He added that there is a facility currently under development under a Conditional Use Permit and there is a vegetation requirement. He said the developers are currently requesting a performance bond so they could do that work in the spring rather than now. Before the CDD can issue a Certificate of Occupancy they need that performance bond in place, said Mr. Steedle.

Under Purpose Mr. Voelckers asked if the word "and" should supplant the word "or" on line 20.

This draft ordinance will next appear before the Commission during a regular meeting for public input and formal action.

AME2017 0003 – Proposed amendments to 49.15.423

Ms. McKibben told the Commission that this proposed ordinance will allow for the creation of smaller panhandle lots. She stated they are not yet at the point to be editing the language. There have been two Title 49 committee meetings on this proposal, she said.

Currently, the minimum lot size for a lot created by a panhandle subdivision is 20,000 square feet when served by City water and sewer, and 36,000 square feet when sewer is not available, said Ms. McKibben. By allowing smaller lots to be subdivided through the panhandle provisions, more lots could be created in the zoning districts that have smaller minimum lot size requirements, she stated. These lots would have frontage on a public right-of-way. They have a minimum width of the stem to be 30 feet wide with the maximum grade of the driveway to be no more than 15 percent, said Ms. McKibben. The code requires one shared access and that it be shown on the plat, she added, with an easement or a plat note. It also requires a maintenance agreement for the shared driveway, said Ms. McKibben.
It is limited to two lots, and the front yard setback is measured from the access easement, she said.

The concept is to allow any lot to be subdivided through the panhandle provisions if the lots created can meet the minimum dimensional standards of the underlying zoning district, said Ms. McKibben. The stem would not be included in the calculation of the lot sizes, she said. This provides another development option and creates infill development, she said. They have a few requests every year from property owners for individuals wanting to buy property looking to subdivide, said Ms. McKibben. The panhandle subdivision might be a good design option for

them, she noted, but the resulting lots would not meet the minimum square footage of 20,000 square feet.

Originally the panhandle subdivision was intended for larger lots, and it is usually used in more rural environments, said Ms. McKibben. There are a number of lots where this panhandle proposal could be used, said Ms. McKibben, including some that are already developed. These are instances where the shared private access would not work, she said. This provides an alternative when shared access is not an option, she noted.

They do preserve the opportunity for lots within the D-1 zone district to use up to 30 feet of the width of the panhandle to calculate the width of the front lot, said Ms. McKibben. For example, there are a number of very long, narrow lots along North Douglas Highway, she said. With each lot being required to meet the minimum lot size, said Ms. McKibben, the integrity of the density of the zoning district is preserved.

The proposed language would remove the maximum grade for the driveway of 15 percent, and instead stipulate that it meet the fire code requirements for that particular lot. It also specifies that access to the rear lot is required to be through the stem, she noted. If there is a shared driveway it still has to be shown in the plat and a maintenance agreement has to be recorded, she said. The front lot can have access through its own driveway, but the panhandle access would still be required, said Ms. McKibben. Some of these larger lots already have two approved driveways, said Ms. McKibben. Lots that are on DOT maintained rights-of-way are still limited to one access, she said.

The proposed ordinance adds language that requires the portion of the driveway in the right-of-way or the first 20 feet from the edge of the public roadway to be paved, said Ms. McKibben. This is consistent with the recently adopted private shared access provisions, she pointed out. It removes the prohibition to limit panhandle subdivisions to two lots, said Ms. McKibben. This intent is that panhandle subdivisions will only include pairs of lots, she noted. It would prohibit three or more lots from being a panhandle and sharing a driveway, she said. This is to provide consistency with the new private shared access, she noted.

Lots with right-of-way frontage on DOT streets will continue to be limited to one shared driveway, said Ms. McKibben. The intent is that one pair of panhandle lots is created and the access to the rear lots will be shared within the stem of the two lots, she said. If the lots do not receive CBJ driveway permits for direct access to CBJ streets, then they will also use the stem for access, she noted. A maintenance agreement would be required for the shared driveway.

The new private shared access section of code requires the front yard setback to be measured from the access easement, said Ms. McKibben. The ordinance requires that the front lot of the panhandle subdivision be treated as a corner lot and choose the front setback and the street

side setback from either the right-of-way or the stem of the panhandle lot, she explained. They advise that shared access regulations be amended to allow lots fronting both the easement and a public right-of-way be able to be treated as a corner lot, and choose the front yard setback and the street yard setback, she noted. This provides consistency with corner lots and the recommendations for panhandle lots, and creates some flexibility for the front lot in the shared private access subdivision, said Ms. McKibben.

This proposed ordinance also removes the lot size requirements for lots not on public sewer, and specific dimensional requirements for lots using marine outfall for wastewater disposal, she noted. The State Department of Environmental Conservation used to have minimum lot sizes for residences on septic and well, and those requirements have been removed, said Ms. McKibben.

Commission Comments and Questions
Mr. Voelckers commented that the only thing he noticed to be missing from this draft ordinance is that the draft does not include the pairing and sharing of all four lots. (1) (E) which should be "up" to 30 feet. Mr. Voelckers said he felt this looked like a solid proposal.

Mr. Miller said he really liked this proposal. He said he liked the reduction of the panhandle to 20 feet if necessary. Mr. Miller said he did have a bit of an argument with the taking issue which could arise. For example, for a lot that is on a DOT right-of-way that fits every criterion, with the owner willing to put the driveway in the panhandle, which could then not be approved by DOT, he said. That person could then put a driveway in a location that would be legal for the DOT but that would then not be within the panhandle, said Mr. Miller. He said that may be a taking because the City would not be allowing the subdivision to happen.

Mr. Palmer noted that there is the shared access provision available in these circumstances. He added that he is not aware that the City could allow someone to create a panhandle, require that panhandle and not to require that access to be in that panhandle.

Ms. McKibben said the shared private access was created for certain circumstances in which a panhandle may not be an available option.

Mr. Miller asked if there has to be road frontage for a shared access when it is subdivided.

Mr. Palmer said that road frontage was not necessary for that circumstance.

Mr. Steedle said that from what they understand now about takings, the CDD would not approve a panhandle subdivision if a driveway permit could not be obtained.

Ms. McKibben said they would like to schedule this proposed ordinance for a hearing before the Commission in September.

X. **REPORT OF REGULAR AND SPECIAL COMMITTEES** - None

XI. **PLANNING COMMISSION COMMENTS AND QUESTIONS** - None

XII. **ADJOURNMENT**

The meeting was adjourned at 6:46 p.m.