

Agenda
Planning Commission
Regular Meeting
CITY AND BOROUGH OF JUNEAU
Ben Haight, Chairman
September 17, 2019

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 7:00 p.m.

Commissioners present: Ben Haight, Chairman; Paul Voelckers, Vice Chairman; Michael LeVine (by phone), Nathaniel Dye, Ken Alper, Dan Hickok, Travis Arndt, Weston Eiler

Commissioners absent: Shannon Crossley

Staff present: Jill Maclean, CDD Director; Beth McKibben, CDD Senior Planner; Alex Pierce, CDD Planning Manager; Jane Mores, Law Department Assistant Municipal Attorney

Assembly members: None

Before continuing with the meeting, new Commissioner Weston Eiler was introduced, sworn in and welcomed to the Commission.

II. REQUEST FOR AGENDA CHANGES AND APPROVAL OF AGENDA – None

III. APPROVAL OF MINUTES

A. August 13, 2019 DRAFT Minutes – Planning Commission Regular Meeting

MOTION: *by Mr. LeVine to approve the August 13, 2019, Planning Commission Regular Meeting minutes noting any staff corrections or commissioner comments.*

The motion passed with no objection.

B. August 30, 2019 DRAFT Minutes – Ad Hoc Nonconforming Committee Meeting

Ad Hoc meeting minutes were acknowledged, but it was noted that approval is not necessary.

C. September 3, 2019 DRAFT Minutes – Ad Hoc Nonconforming Committee Meeting

Ad Hoc meeting minutes were acknowledged, but it was noted that approval is not necessary.

D. September 10, 2019 DRAFT Minutes – Ad Hoc Nonconforming Committee Meeting

Ad Hoc meeting minutes were acknowledged, but it was noted that approval is not necessary.

IV. **PUBLIC PARTICIPATION ON NON-AGENDA ITEMS** – None

V. **ITEMS FOR RECONSIDERATION** - None

VI. **CONSENT AGENDA** - None

VII. **UNFINISHED BUSINESS** - None

VIII. **REGULAR AGENDA**

AME2018 0009: A text amendment to revise Title 49 to repeal and replace 49.30 – Nonconforming Development – Continued from August 27, 2019

Applicant: City & Borough of Juneau

Location: Borough-wide

Staff Recommendation

Staff recommends that the Planning Commission review and consider the proposed ordinance and forward a recommendation to adopt this ordinance to the Assembly.

Ms. McKibben presented the highlights of the results of the three Ad Hoc Committee meetings that were held since the August 27 regular Planning Commission meeting.

Specific topics from the August 27th meeting that were discussed at the Ad Hoc Committee meetings included ¹⁾ nonconforming residential uses in industrial waterfront industrial zoning districts and ²⁾ takings. She clarified that residential uses are not permissible in industrial and waterfront industrial zoning districts with the exception of caretaker units when they are an accessory to the primary use. Title 49 distinguishes between residential uses in industrial zoning and residential/commercial zoning districts and property owners in these districts are able to redevelop the property for other, permissible, uses with the proper permits. There is no concern with takings.

The ad hoc committee addressed a variety of general nonconforming situations for refinement and clarification. The revised ordinance clarifies:

1. a “certificate of nonconforming status” is not required before any work can take place; only work that affects or is affected by the nonconforming situation
2. the Building Official makes the official determination of extent and cause of damage or destruction
3. when a situation fails to be certified or cannot be certified it is noncompliant and subject to enforcement
4. there are two statuses of abandonment, one of which can be overcome
5. how the Director determines abandonment
6. process for rebutting the Director’s abandonment determination is refined.

The revised ordinance clarifies what is considered an acceptable modification of nonconforming uses and reconstruction of nonconforming residential uses in industrial and waterfront industrial districts.

The definition of nonconforming residential density is revised to differentiate better residential density from use. The ad hoc committee discussed adding a subscript to the Table of Permissible Uses. Staff, however, recommends adding a subparagraph 5 to 49.25.300 that states nonconforming uses are subject to chapter 49.30.

Nonconforming structures can be modified, enlarged, or altered so long as it does not aggravate the nonconformity. A reference has been added to 49.25.430(4). All nonconforming structures can be modified in compliance with existing code.

Figure 1. has been revised to better illustrate modifications that would be allowed and what would be considered aggravating the nonconformity.

Nonconforming parking is expanded to address allowing nonconforming backout parking to continue if the governmental entity controlling the right of way access finds it does not endanger the public health, safety and welfare. This section now includes the number of off-street parking spaces as well as back out parking and clarifies what happens when a nonconforming parking situation becomes more conforming.

The revised ordinance provides a distinction between the Nonconforming Status Review and the Certification. The review is the process undergone by the Director and the Certification is the piece of paper authorizing the situation.

The Nonconforming Situation Review process is revised and now includes a required review procedure by the Director which includes soliciting input from other agencies.

Definitions of “nonconforming residential density” and “nonconforming parking” have been refined and expanded. If the Commission decides it is necessary, a new definition of “nonconforming rights” will be added. Ms. McKibben explained that it is up to the Commission to decide if a definition is needed, and if so, which they prefer of two options included in the presentation.

Fees are set at \$400 for a Nonconforming Situation Review and \$150 for Certification of Nonconforming Situations. The \$150 Certification fee is waived when in conjunction with a permit.

Additional amendments to Title 49 include:

- CBJ 49.25.430(4)(M) – the section now includes the term “lawfully nonconforming”. The word “lawfully” will be deleted.
- CBJ 49.25.430(5) and CBJ 49.25.510(f) – will be amended to refer to 49.30 rather than 49.30.500(b)

Commission Questions for Staff

Regarding the Fees described in the slides, Mr. Voelckers asked how the \$150 fee for certificate of nonconforming status would apply to something like a multi-unit condominium building where each unit is separately owned. Ms. McKibben answered that the condominium homeowner association could apply for certificate of nonconforming status for the entire building and pay a single fee and the certification would cover all of the units rather than forcing the owners each unit to pay individually.

Mr. Voelckers asked about the definitions slide regarding the definition of “Rights”. Specifically, he asked Ms. Mores if it would actually help or hinder to ‘define’ it. Ms. Mores answered that more definition could always be better than none so long as it is a good definition and that it would be a good discussion for the Commission.

Mr. Haight opened for Public Testimony- NONE

Commission Discussion – It was decided to go through the ordinance page by page.

Page 1

Mr. Dye proposed, and Mr. LeVine agreed with, striking the phrase “*and minimize unreasonable impacts to property impacted by zoning changes*” from 49.30.110 stating that this unintentionally implies zoning might negatively impact property.

Page 2

Ms. Maclean noted 49.30.120(a)(2) is missing verbiage and it should read “Nonconforming residential densities in residential zoning districts that allow residential development” as that is actually the title in the ordinance 49.30.240 being referenced.

Page 3

Mr. LeVine noted the missing word “a” between “nonconforming situation” and “nonconforming status” at 49.30.210(f).

Page 4

Mr. LeVine suggested replacing “The nonconforming rights provided for in this chapter are retained...” with “Except as otherwise provided in this chapter, nonconforming rights are retained...” at 49.30.210(j).

There was extensive discussion regarding 49.30.210(l) and (m). Mr. LeVine found them to be confusing and recommended they be combined. Mr. Voelckers disagreed stating they are addressing different conditions. There was discussion regarding whether the mention of ‘enforcement action’ might discourage a resident from coming forward to seek certification. Ms. McKibben spoke up to clarify the terms ‘noncompliant’, ‘nonconforming’ and ‘nonconforming that has been certified’ and added that getting a review and certification does not change whether a situation is noncompliant or nonconforming. Mr. Alper suggested if the remedies for the situations are the same, (result is noncompliance and enforcement) then maybe (l) and (m) can be merged. After discussion and several suggestions to verbiage changes, it was agreed upon to change 49.30.210(l) by striking the words ‘remains’ and ‘enforcement’ and replacing them with ‘is’ and ‘compliance’, respectively.

The final version of 49.30.210(l) will read: “...If a situation does not qualify for, or is denied, nonconforming status certification it *is* noncompliant and subject to applicable *compliance* action.”

Mr. Alper suggested making a similar change to 49.30.210(m) and it was decided the final verbiage of 49.30.210(m) will read: “...The loss or abandonment of a nonconforming situation or of nonconforming situation rights under this chapter means *the situation is subject to applicable compliance action.*”

There were no changes to pages 5 through 8.

Page 9

Mr. Dye noted that everything is labeled in the diagram at Figure 1 except for the dark outline. It was decided to add the label to show this represents the property line.

Page 10

Mr. Voelckers asked for clarification of 49.30.250(d) for the benefit of members who were not part of the ad hoc committee discussion. Ms. McKibben explained 49.25.430(4) applies to projections. 49.30.250(d) clarifies that the exceptions allowed in 49.25.430(4) are allowed when they apply.

Mr. LeVine had a question with 49.30.250(f) stating if he was reading this correctly, it seems that it would be allowing reconstruction of nonconforming residential density but not of a single-family dwelling and asked if that was the intention. Ms. McKibben confirmed that was not the intention and that in the iterations of the ordinance, some of the verbiage may have been dropped. The commissioners and staff discussed verbiage and intent and when they thought there was consensus, Mr. Haight called a short recess to give staff time to type up new verbiage for further discussion and possible approval.

8:12 – 8:30 Recess

At 8:30 the meeting was called back to order and Ms. McKibben presented the new verbiage. After further discussion, the section was rewritten to read as shown below and Staff was given permission to work with Law to make minor changes so long as they are in keeping with the intent of the Commission and the ordinance:

49.30.250(f) *Reconstruction*. A nonconforming structure, or portion of a structure, which the building official has deemed destroyed, shall not be reconstructed except:

- 1) If the primary use is residential, the structure may be reconstructed in the existing footprint, except for encroachment into rights-of-way or adjacent property, providing the structure is in a zoning district that allows residential development.
- 2) The primary use of which is non-residential may be reconstructed in conformity with the provisions of this chapter.

Page 11

Mr. LeVine noted that the purpose statement and title at 49.30.310 seemed no longer necessary and asked if it belonged in this section. Ms. Maclean explained the section and that they actually do belong there. Mr. Levine agreed and retracted his comment.

There were no changes to pages 12 and 13.

Page 14

Mr. Arndt noted at 49.30.321(b)(1) the word ‘nonconforming’ appears twice in this section and is spelled once with and once without a hyphen and suggested removing the hyphen to be consistent.

Mr. Dye had questions regarding the verbiage of ‘nonconforming status review’ and ‘nonconforming situation review’ and asked if one could be changed so as to avoid any confusion between the two. Staff explained that as this is put into practice it will become a commonly understood. Mr. Arndt suggested that if it needed to be clarified, a definition could be added.

There were no changes to pages 15 through 18.

Page 19

Nonconforming Parking – Maclean explained the second line of the definition is missing the phrase “type of” and it should be added back.

Mr. Arndt asked the purpose of the phrase ‘by law’ in this section. Staff explained this is consistent and the phrase ‘by law’ is used throughout the definitions section.

Ms. Mores suggested the verbiage “*Nonconforming parking means off-street parking that was allowed or not prohibited by law when provided or when the use was established but which subsequently due to adoption, revision or amendment of a zoning ordinance now has less than the required number of off-street parking spaces or is of a type, such as backout parking, that is no longer permitted.*”

Members agreed to allow staff the leeway to ‘massage’ the verbiage to make it readable so long as the intent remains clear.

Nonconforming Rights – Staff proposed two definitions for members to select from or to omit both. Members chose the second option.

There were no changes to pages 20 or 21. The page by page review concluded.

In further discussion, Mr. Dye asked for clarification regarding the \$150 fee that is waived when in conjunction with a development permit. Specifically, he asked if people would have to specifically ask for the certificate or if it would be automatically issued when applicable. Ms. Maclean explained the certificate would be automatically issued and applicants would not have to request it separately.

Maclean asked the commission to allow Staff and Law leeway to make minor verbiage corrections in the definitions. This request was granted with no objection.

Mr. Arndt commented that he thought if the Planning Commission makes a change in zoning to an area, then they should be automatically issuing the certificates to the effected property owners who would be made nonconforming by the actions of the Commission. Ms. Maclean said that her concern with that suggestion is that if they miss even one property that has become nonconforming then they are exposed to legal liabilities. Ms. Maclean explained the public outreach that is done to inform property owners of possible zoning changes and added that realtors make their selling clients aware that they need to check with CDD prior to selling to make sure their property will qualify for a mortgage. Ms. Pierce added that the certificate is applicable when a property owner is applying for a development permit or when they are trying to sell or purchase a property. In the situation of a development permit, the fee is waived. When it is part of a property sale, the fee would be included in the closing costs.

Ms. Mores advised that Assembly does not have this on their schedule to go before the Committee of the Whole until Dec 2nd. If the members wanted to see this one more time, there is time for that.

Mr. Voelckers moved approval with minor adjustments as discussed and not bring it before the Commission again.

Mr. Dye objected that while he has assurance that Staff is capable but not comfortable with not seeing it again for review with the approved changes.

Mr. Voelckers withdrew his motion.

Mr. Dye moved to table the Title 49 rewrite to the October 15 meeting

Passed with no objection

IX. BOARD OF ADJUSTMENT – None

X. OTHER BUSINESS – None

XI. STAFF REPORTS

Director's report: Ms. Maclean reported the next meetings will be held October 15 and October 29. The topics will include transition rezones and a large crowd is expected for at least one of those meetings. December meeting dates include a regular meeting currently scheduled for Christmas Eve. Ms. Maclean asked the Commission to consider cancelling that meeting and tentatively scheduling it for the week prior on December 17.

Law report: Ms. Mores reported that a settlement was reached with Mountainside Estates. The Harris appeal decision is being appealed to the Superior Court. Ms. Maclean reminded the commission they should not discuss the cases with each other or others. On October 29, there will be a 5 pm Special meeting to hear the appeal for the Dougherty Case.

XII. COMMITTEE REPORTS

Downtown Blueprint: Mr. Dye will not be able to attend the upcoming meeting and asked if someone could fill his seat. Mr. Eiler volunteered.

Lands Committee: Mr. Voelckers gave an update on the issue regarding District heat crossing the Centennial Hall property.

Title 49 Committee: the next meeting will be held October 2

XIII. LIAISON REPORTS - None

XIV. CONTINUATION OF PUBLIC PARTICIPATION ON NON-AGENDA ITEMS - None

XV. PLANNING COMMISSION COMMENTS AND QUESTIONS - None

XVI. EXECUTIVE SESSION - None

XVII. ADJOURNMENT 9:27pm