

Minutes
Planning Commission
Regular Meeting
CITY AND BOROUGH OF JUNEAU
Michael LeVine, Chairman
April 13, 2021

I. ROLL CALL

Michael LeVine, Chairman, called the Regular Meeting of the City and Borough of Juneau (CBJ) Planning Commission (PC), held virtually via Zoom Webinar and telephonically, to order at 7:05 p.m.

Commissioners present: All Commissioners present via video conferencing – Michael LeVine, Chairman; Nathaniel Dye, Vice Chairman; Paul Voelckers, Clerk; Travis Arndt, Deputy Clerk; Ken Alper; Dan Hickok; Mandy Cole; Josh Winchell; Erik Pedersen

Commissioners absent: None

Staff present: Jill Maclean, CDD Director; Alexandra Pierce, Planning Manager; Allison Eddins, Planner; Sherri Layne, Law; Teresa Bowen, Law

Assembly members: Loren Jones

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

III. APPROVAL OF MINUTES

A. Draft Minutes March 9, 2021 Planning Commission Regular Meeting

MOTION: *by Mr. Voelckers to approve the Planning Commission Regular Meeting March 9, 2021 minutes.*

The motion passed with no objection.

IV. BRIEF REVIEW OF THE RULES FOR PUBLIC PARTICIPATION – Chairman LeVine briefly explained the rules for public participating via Zoom format

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

VI. **ITEMS FOR RECONSIDERATION** – None

VII. **CONSENT AGENDA**

SMP2016 0001: An 18-month timeline extension for a previously approved preliminary plat for 24 common wall lots

Applicant: Richard Harris

Location: 7400 Glacier Highway

Staff Recommendation

Staff recommends the Planning Commission adopt the Director's analysis and findings and **APPROVE** an 18-month extension of the Ridgeview Subdivision preliminary plat. This extension allows the applicant to submit for the final plat. This extension expires on October 13, 2023.

MOTION: *by Mr. Dye to accept staff's findings, analysis and recommendations and approve SMP2016 0001.*

The motion passed with no objection.

VIII. **UNFINISHED BUSINESS** – None

IX. **REGULAR AGENDA**

USE2021 0002: Conditional Use Permit for the addition of 11 new condo units

Applicant: R&S Construction LLC

Location: 3005 Clinton Drive

Staff Recommendation

Staff recommends the Planning Commission adopt the Director's analysis and findings and **APPROVE** the requested Conditional Use Permit. The permit would allow the modification of USE2018-0007 for the development of 11 new boat condo units at 3011 Clinton Drive in a Light Commercial zoning district.

The approval is subject to the following conditions:

Condition #1: Prior to the issuance of a building permit, the applicants shall submit a revised site plan that shows the location of trash receptacles.

Condition #2: Prior to the issuance of a temporary certificate of occupancy (TCO) for the first dwelling unit, a homeowners' association agreement shall be submitted to CDD. The agreement shall specify how the HOA will address snow removal and snow storage in common areas.

Condition #3: Prior to the issuance of a temporary certificate of occupancy for the first dwelling unit, the applicant must submit to CDD a homeowners' association agreement that addresses the on-going maintenance of parking spaces, ADA spaces, loading zone and circulation aisles that comply with the requirements of CBJ 49.40.

Condition #4: Prior to the issuance of a building permit, the applicant shall submit a revised site plan that shows one off-street loading zone that complies with the requirements of CBJ 49.40.

Condition #5: The Mendenhall River walking/bike path must remain open to the public at all times during the construction phase for this project.

Condition #6: Prior to the issuance of a temporary certificate of occupancy for the first dwelling unit, a homeowners' association agreement shall be submitted to CDD. The agreement shall address the on-going maintenance of the Mendenhall River walking/bike path on the subject lot. Maintenance includes snow removal from the path may include provisions to work with the Vintage Park Association.

Condition #7: Prior to the issuance of a temporary certificate of occupancy for the first dwelling unit, a 5-foot-wide paved sidewalk must be installed providing safe public access from the Clinton Drive sidewalk to the Mendenhall River walking/bike path, per CBJ 49.35.630. The HOA agreement must address the ongoing maintenance of the sidewalk including snow removal.

Condition #8: Prior to the issuance of a temporary certificate of occupancy for the first dwelling unit, trash receptacles must be bear-proof.

Prior to presentation, Commissioner Dye disclosed he lives near the subject properties but can be fair and impartial and has consulted with Law. Commissioner Hickok disclosed he is an acquaintance with the applicants but can be fair and impartial. Both were allowed to remain.

STAFF PRESENTATION

Planner Eddins presented **USE2021 0002**.

QUESTIONS FOR STAFF

Mr. Arndt asked how the proposed centralized loading zone would work as opposed to residents using their marked parking space for loading by each entrance. Ms. Eddins explained she had applied the code requirements and she would leave it to the commission to decide whether it is an appropriate condition in this case.

Mr. Arndt noted the Vintage Park Business Association is maintaining the trail currently. However, the proposed conditions require for an approximately 60-foot portion of the trail to be maintained by the HOA. He asked whether this would be appropriate and if it would result in disjointed maintenance situations (for example, if one portion would be plowed and the other section not). Ms. Eddins answered that the applicant owns the property in question and it would be inappropriate to require Vintage Park Business Association to maintain property they do not own.

Discussion continued regarding the proposed requirement for a centralized loading zone area in the parking lot. There was concern that the loading zone would reduce overall available parking area but would be used only by those units conducting business within them.

Mr. Winchell asked if there is a way to require for those units with businesses rather than requiring a portion of the shared residential lot to be set aside as a loading zone when not all residents would use it. Ms. Eddins explained the parking requirements as written are not designed for this type of mixed-use development. She added that if a space is marked as a loading zone, then it is required to be left open at all times except when being used for that purpose and setting aside 11 spaces in an 11-unit development would not be feasible. Ms. Maclean added that loading zones in the downtown area are shared among several businesses. Often, there is one loading zone area per block.

Mr. Dye asked why the loading zone is listed as a condition since it is already required by Code. He also asked if the commission has the authority to waive the requirement. Ms. Eddins said she added it as a condition because she did not see it included in the site plan. Ms. Maclean added she believes the loading zone is required unless the commission finds the development to be all residential and not mixed-use with businesses.

Ms. Cole asked if the Vintage Condos were required to put in sidewalk for public access or if it was already there. Ms. Eddins answered there was already a sidewalk. For this development, it needs to be added.

APPLICANT PRESENTATION

Scott Jenkins, 17070 Island View Dr. representing R&S construction spoke to the project. Mr. Jenkins started by stating the development is not “boat condos.” These have been permitted as single-family residences with a garage. Some residents may have businesses and some may own boats but these are not boat condos. Mr. Jenkins added this development will be separate from the Vintage Park condos.

Mr. Jenkins explained Condition 3, setting aside a specified loading zone, is not necessary. It is required to be 12 feet wide and 30 feet long and would block out several spots needed for overflow or visitor parking.

Mr. Jenkins added he feels Condition 6 is not an appropriate requirement and should be the responsibility of the State or CBJ maintenance and Condition 7 is also not needed as there are already public points of access.

QUESTIONS FOR APPLICANT

Mr. Winchell asked if there would be a need for snow storage areas. Mr. Jenkins said the snow storage would be in the area of the proposed required loading zone.

Mr. Winchell asked if an owner were to operate a business or warehouse, would a unit loading zone be more appropriate than a centralized spot away from the units. Mr. Jenkins explained every unit comes with 2 parking spaces and every other unit has an overflow/guest space for visitors. He felt loading/unloading should be up to the unit owners in their specified spaces.

Mr. Voelckers asked for the width of the parking spaces. Mr. Jenkins answered from building to building, there is just over or under 70 feet depending on which end of the building. Spaces are 8 ½ feet wide and 18 feet deep. The proposed spaces are wider than normally required.

Mr. Dye asked if there is anything that would preclude a commercial use from operating out of the garage. Mr. Jenkins answered these are residential unit over garages but could be small businesses. Warehousing has never been an issue and the HOA has limits on the kinds of businesses allowed.

Mr. Voelckers asked about the river walk and whether the property is bound by the Vintage Park covenants and asked how residents would get to the river walk without the required sidewalk. Mr. Jenkins answered the parking lot was originally part of their property but was sold as overflow parking for the Rejuvenation building. It was not included in the site plan and Mr. Jenkins felt it would be up to the homeowners to decide how they wanted to access the river by putting in a rock path or using the bike path or some other method that they could choose.

Mr. LeVine asked about the request for bear proof garbage receptacles. Mr. Jenkins said they would abide by that.

PUBLIC COMMENT

Marina Lindsey, Vintage Park condominiums resident, spoke to say she is on the committee to address issues with the river path and said there has been no snow maintenance on the paths. Ms. Lindsey said she supports a bike path and she strongly supports requiring bear proof garbage containers as there has been a bear problem in the area. She mentioned the estimate her HOA had received to upgrade their existing garbage cans to bear proof ones was about \$5,000.

ADDITIONAL APPLICANT COMMENTS

Mr. Jenkins commented the bear proofing alone was not \$5,000 and added the residents had made other requests that had caused the price to increase. He agreed with Ms. Lindsey that snow removal was a problem.

COMMISSIONER QUESTIONS

Mr. Voelckers asked if there is an opportunity for access on the western side and how the residents of the project would access the sidewalk. Mr. Jenkins said he would totally support a designated spot at that end of the project for the HOA to use.

Mr. Dye followed up asking if there would be a concern if a condition required them to provide access over a DOT right of way to the bike path. Mr. Jenkins did not think that would be a problem.

Mr. Dye asked if there would be any concern or issue with people who are not residents walking through the parking lot to reach Clinton Drive. Mr. Jenkins felt the small amount of traffic that comes through the project area would not be a problem at all.

COMMISSIONER QUESTIONS FOR STAFF

Mr. Arndt asked about possibly locating the sidewalk on the other side, and if the requirements would change. Ms. Eddins replied that the reason staff was proposing a 5-foot-wide sidewalk was to provide a safe route to the existing path rather than having pedestrians crossing a parking lot designed to accommodate boats and large vehicles.

Mr. Dye asked if it would be appropriate to amend Condition 6 to add a phrase at the end to read “may include provisions to work with the Vintage Park association” to allow for the maintenance to be shared. Ms. Eddins thought that was an acceptable amendment to the Condition.

Mr. Dye asked if the condition was only for the portion of the path on the project site. Ms. Eddins said that is correct.

Ms. Maclean added if the amendment was made then it should also state that if there is an agreement with the homeowners' association, then CDD will be provided documentation of the agreement stating who will be responsible for maintaining the path.

Mr. Voelckers asked regarding Condition 7 if it MUST be a sidewalk or if it could be more general so they developer could install a sidewalk, pathway, or bike path and could use some other material for that. Ms. Eddins said it could be more general so long as what is installed is clearly differentiated from the parking lot pavement and clear to pedestrians that it is available for public use.

MOTION: *by Mr. Dye to accept staff's findings, analysis and recommendations and approve USE2021 0002 amending Condition 6 and adding Condition 8.*

MOTION: *by Mr. Winchell to amend the original motion changing Condition 4 to remove requirement for one designated loading space and require homeowners to provide specific loading spaces.*

Mr. Dye spoke in objection to Mr. Winchell's motion to amend stating they had not heard testimony stating the development would not have any commercial use so they could not consider it for solely residential uses. He felt the Code requires the loading zone in this case.

Mr. Winchell spoke to Mr. Dye's objection saying the applicant had said these would be primarily residential. There is a small likelihood they will be used for businesses. While there *could* be businesses there, these are primarily for residential uses.

Mr. Arndt spoke in support of Mr. Winchell's amendment saying the HOA should include the requirement in their documents.

Mr. Voelckers is opposed to changing Condition 4 saying he has concerns of unintended consequences of having too many dedicated loading zones encroaching on the number of available parking spaces.

Mr. LeVine said given the tendency for commercial uses, he does not see how this would not be considered mixed-use and because of that, he does not support the amendment.

Roll Call Vote to amend the original motion:

YES: Winchell, Hickok, Arndt

NO: Voelckers, Alper, Pederson, Cole, Dye, LeVine

The motion to amend failed with 3 YES and 6 NO Votes

Roll Call Vote on the original motion:

YES: Hickok, Pederson, Cole, Arndt, Alper, Winchell, Voelckers, Dye, LeVine

NO: --

The original motion passed with no objection.

AT EASE 8:46 p.m. – 9:00 p.m.

X. BOARD OF ADJUSTMENT

VAR2021 0001: Variance to D18 lot depth from 80 to 78.2 feet for the purposes of a common wall subdivision
Applicant: Natalia Golovatiuk
Location: Peters Lane

Staff Recommendation

Staff recommends that the Board of Adjustment adopt the Director’s analysis and findings and DENY requested non-administrative variance.

STAFF PRESENTATION

Ms. Pierce presented **VAR2021 0001**.

QUESTIONS FOR STAFF

Mr. Voelckers asked Ms. Pierce to elaborate on the mistake by CBJ. Ms. Pierce answered the lot depth was noted in the pre-application report but the concern with the lot depth was not raised so the applicant went forward thinking they would be able to subdivide.

Mr. Pedersen noted the applicant had received a nonconforming certification. He also asked if subdivision would be considered development. Ms. Pierce said it would. Mr. Pedersen cited, ‘the owner of a nonconforming lot has the rights of a conforming lot’. So why would they even need the variance. Ms. Maclean explained the nonconforming certification applies to the lot ‘as it exists’. By subdividing, they create different lots and lose the nonconforming allowance.

Mr. Dye asked if the nonconforming situation was created because it was platted prior to the current zoning standards. Ms. Pierce confirmed that is correct. Mr. Dye asked if this property was platted simultaneously with the other surrounding lots. Ms. Pierce said it was platted in conjunction with the adjoining uplands parcels but she did not know when the waterside parcels were platted.

Mr. Alper asked if the CBJ was taking any responsibility for the mistake after they had made a mistake. Ms. Pierce reiterated financial hardship is not an allowable reason for a variance. Additionally, the lot can be developed similarly without subdividing.

Ms. Maclean noted that while the lot depth requirements may not have been specifically discussed at the preliminary meeting, it was stated in the paperwork provided to the applicant.

APPLICANT PRESENTATION

Natalia Golovatiuk spoke explaining she came to own the lot in May 2020 and met with CDD to apply for subdivision of the lot. She went through several steps toward the subdivision before being notified that the subdivision would not be allowed.

QUESTIONS FOR APPLICANT

Mr. Winchell asked if the primary factor was the outlay cost of bringing sewer service to the lot. Ms. Golovatiuk said price was a factor stating without subdivision, it would not be cost effective to develop. She added prior owners have sold the property for that reason.

Mr. Winchell asked what cost outlays the applicant has incurred already. Ms. Golovatiuk said she has spent over \$20,000 on surveying, civil engineer and architect fees so far. If she had been given the full information at the original meeting, she would have pursued a triplex from the outset but now it is cost prohibitive to change course by starting over and changing to a triplex.

Mr. Pedersen asked at what point in the process did CBJ CDD inform her the request was not allowable. Ms. Golovatiuk said the pre-application conference was in July and the notification of noncompliance was December.

PUBLIC COMMENT

Julie Costello, 2812 Peters Lane, expressed she has concerns regarding how it will be monitored if the site prep is allowed to continue. There are concerns with drainage of the property damaging surrounding properties.

Mr. Dye asked if Ms. Costello had any problem with the lot being developed besides the drainage concerns. She agreed the drainage is her main concern.

Eric Niewoehner, also lives in the area and expressed concerns with the drainage for any development in the area.

ADDITIONAL APPLICANT COMMENTS

Ms. Golovatiuk spoke to the neighbor comments saying the engineering professionals she has hired would mitigate their concerns.

COMMISSIONER QUESTIONS FOR STAFF

Ms. Maclean spoke to clarify that the pre-application report did state the minimum required lot depth is 80 feet. While it may not have been highlighted during the meeting, it was clearly stated in the report. Ms. Maclean added the CDD does not commonly require nonconforming certification. That requirement usually comes from lending institutions. It is required by CDD only in situations when the applicant applies for a permit directly related to the potential nonconforming situation. When it became clear to CDD that the lot depth did not meet standards, the certification was required. It was not required prior to that because it was not relevant until the lot depth became an issue. She added that the lot is developable up to a triplex as it exists today.

Mr. Dye asked if the applicant had applied to develop the lot as a duplex or triplex and the lender did not require a nonconforming certification, then would CDD have required it.

Ms. Pierce said if the lot had been developed as a duplex or triplex and the lender had not

required the nonconforming certification, then it would have not been required by CDD. The requirement came about due to the subdivision request.

~~**MOTION:** by Mr. Pedersen to recommend that staff not require a variance as part of the proposed subdivision application process. Non conforming certificate **NCC2021 0017** allows the existing and proposed non conforming lot depths per 49.30.260. [WITHDRAWN BY Mr. Pedersen]~~

Mr. Pedersen spoke to his motion saying the variance is not required because the conditions of the subdivision process were already met by the nonconforming certificate.

Mr. Pedersen withdrew his motion.

~~**MOTION:** by Mr. Pedersen to dismiss **VAR2021 0001** on the grounds that it is not necessary and recommend that staff not require a variance as part of the proposed subdivision application process. Non conforming certificate **NCC2021 0017** allows the existing and proposed non conforming lot depths per 49.30.260. [WITHDRAWN BY Mr. Pedersen]~~

Ms. Cole said she understands the intention of the motion but she has reservations about dismissing the variance and making a recommendation that it is not needed. She expressed concerns that if the recommendation were then denied, the applicant would end up right back in the same situation.

Mr. Alper said if the motion is approved, the commission will avoid the issue of denying or accepting the variance and will simply dismiss the variance as not needed. However, it is not up to the PC to approve or deny the subdivision, it would go back to CDD and would be up to the CDD Director to approve or deny the subdivision.

Mr. Voelckers asked Ms. Maclean what she has to say to the notion that a variance is not required. Ms. Maclean said she does believe a variance is required. If the motion goes forward, it will come back to the CDD and the decision will be up to the Director and not come back to the Commission.

Mr. Pedersen confirmed Mr. LeVine's understanding that the intent of the motion was that the PC espouse an interpretation that the non-conforming certification satisfies the lot depth obligation.

Mr. Voelckers asked Ms. Maclean for her comment on the notion that a variance is not required.

Ms. Maclean spoke to say that she does believe the variance is required. Ms. Maclean disagreed with Mr. Pedersen's interpretation of the non-conforming certification saying that the nonconforming certification allows a property owner to continue with the property as it was when legally created but does not allow for it to be changed. Subdividing this property would result in a change and the nonconforming certification would no longer be valid. Ms. Maclean reminded the PC of **VAR2020 0002** which was a very similar situation to this one and the PC denied that variance. She added if this is the direction the Commission is heading, they should

maybe consider continuing the hearing to a later date to give time to obtain a legal opinion before this item moves forward.

Mr. Dye spoke against the motion saying when they rewrote the nonconforming code recently, it was not the intent to allow subdivisions in situations like this.

Mr. Arndt reiterated Ms. Maclean's suggestion to continue the discussion to a later meeting.

Mr. Winchell agreed with the opinion that a variance is not necessary.

Mr. Pedersen withdrew his motion.

MOTION: *by Mr. Dye to continue the matter to the meeting on May 25 to allow staff time to provide research and evaluation of the extent nonconforming certification and whether it obviates the need for a variance here.*

Ms. Cole suggested approving this variance and then doing the research to address future requests.

Mr. Alper and Mr. Winchell had concerns with moving the matter out as far as May 25.

Roll Call Vote:

YES: *Dye, Pederson, Arndt, Voelckers, LeVine*

NO: *Winchell, Alper, Hickok, Cole,*

The motion to continue the item to May 25 passed with 5 YES and 4 NO Votes

Adjourned Board of Adjustment and Reconvened as PC at 10:17 p.m.

XI. OTHER BUSINESS

APL2021 0001: An appeal of Director's determination regarding ENF2021 0015 – consideration whether to hear appeal per CBJ 49.20.110
Applicant: A & S Rentals
Location: 1506 2nd Street, 1510 2nd Street, 1508 3rd Street

Prior to hearing **APL2021 0001**, Mr. Arndt disclosed the attorneys for the appellant also represent him on other matters. Mr. Voelckers disclosed an attorney for the appellant is a tenant in one of his buildings. Both commissioners felt they could be fair and impartial and were allowed to remain.

Ms. Bowen briefly presented the status of the appeal and the responsibilities of the commission in this matter.

MOTION: *by Mr. Dye to instruct Ms. Bowen to issue an order to require the appeal parties to submit suggested procedures to CDD for the appeal hearing for Mr. LeVine to sign and distribute to both parties.*

The motion passed with no objection.

Prior to presentation of APL2021 0002, Mr. Arndt disclosed he has a conflict as he is the appellant. Mr. Arndt was recused.

APL2021 0002: An appeal of Director’s determination regarding a Stop Work Notice – consideration whether to hear appeal per CBJ 49.20.110
Applicant: TDLH LLC
Location: 3101 Mendenhall Loop Road

Attorney Bowen, CBJ Law, recommended the PC recuse themselves based on their relationship to the appellant (Mr. Arndt) and refer the issue directly to the assembly.

MOTION: *by Mr. Dye to certify APL2021 0002 directly to the Assembly without further review, hearing, or recommendation.*

The motion passed with no objection.

XII. **STAFF REPORTS** – None

XIII. **COMMITTEE REPORTS**

Mr. Voelckers reported PWFC met and discussed Calhoun and supported the PC recommendation.

XIV. **LIAISON REPORTS**

Mr. Jones reported Willie Weldon vs Planning Commission and Central Council will be on the Assembly agenda on April 26 and other topics of interest to the assembly and the commission.

XV. **CONTINUATION OF PUBLIC PARTICIPATION ON NON-AGENDA ITEMS** – None

XVI. **PLANNING COMMISSION COMMENTS AND QUESTIONS** – None

XVII. **EXECUTIVE SESSION** – None

XVIII. **ADJOURNMENT** – 10:31 p.m.