

Agenda
Planning Commission
Regular Meeting
CITY AND BOROUGH OF JUNEAU
Paul Voelckers, Clerk; Acting Chairman
May 24, 2022

I. LAND ACKNOWLEDGEMENT – Read by Commissioner Voelckers

II. ROLL CALL

Paul Voelckers, Acting Chair, called the Regular Meeting of the City and Borough of Juneau (CBJ) Planning Commission (PC), held in Assembly Chambers of the Municipal Building, virtually via Zoom Webinar, and telephonically, to order at 7:03 p.m.

Commissioners present: Commissioners present in Chambers – Paul Voelckers, Clerk;
Travis Arndt, Deputy Clerk; Ken Alper; Dan Hickok; Mandy Cole;
Joshua Winchell; Erik Pedersen

Commissioners Present via video conferencing – Nathaniel Dye,
Vice Chairman

Commissioners absent: Michael LeVine, Chairman

Staff present: Jill Maclean, CDD Director; Irene Gallion, CDD Senior Planner;
Breckan Hendricks, CDD Administrative Officer; Ryan Roguska,
CDD Administrative Assistant I; Sherri Layne, Law Assistant
Municipal Attorney; Adam Gottschalk, Law Assistant Municipal
Attorney

Assembly members: Alicia Hughes-Skandijs

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

IV. APPROVAL OF MINUTES

A. Draft Minutes for April 26, 2022, Planning Commission Regular Meeting

MOTION: *by Mr. Arndt to approve the April 26, 2022 Planning Commission Regular Meeting minutes.*

V. **BRIEF REVIEW OF THE RULES FOR PUBLIC PARTICIPATION** – Acting Chairman Voelckers explained the rules and procedures for participating via Zoom and in person

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

VII. **ITEMS FOR RECONSIDERATION** – None

VIII. **CONSENT AGENDA** – None

IX. **UNFINISHED BUSINESS** – None

X. **REGULAR AGENDA**

AME2018 0004: Revision to the Alternative Development Overlay District (ADOD)

Applicant: City & Borough of Juneau

Location: Downtown Juneau

Staff Recommendation

Staff recommends the Planning Commission adopt the Director's analysis and findings and make a recommendation to the Assembly to **APPROVE** the proposed text amendment to revise the Alternative Development Overlay District.

STAFF PRESENTATION – By Irene Gallion

PUBLIC COMMENT

Ke Mell – spoke in support of the ADOD saying this is a big step forward in dealing with the unique topography downtown and she is in favor of the proposed revisions.

Rob Roys 215 W 11th Street –spoke to say he supports the ADOD saying it is needed and is a huge step forward.

MOTION: *by Mr. Winchell to accept staff's findings, analysis and recommendations and approve AME2018 0004.*

The motion passed with no objection.

APL2021 0006: Juneau Cooperative Christian Ministry, dba The Glory Hall v. CDD
Applicant: Juneau Cooperative Christian Ministry, dba The Glory Hall
Location: 247 South Franklin Street

Prior to hearing APL2021 0006, Mr. Voelckers turned the gavel over to Commissioner Arndt. Mr. Dye recused himself as this is his last PC meeting and he would not be available if the appeal decision was brought back or contested. Ms. Cole declared a conflict stating she has served as a board member with Housing First but she had gone out of her way to remain impartial on this topic but had to recuse herself based on the CDD and Law request that she be disqualified from the case. Mr. Voelckers disclosed a potential for conflict as his firm was involved in the construction of Housing First. The involvement had nothing to do with the case currently before them and he could remain impartial. He was allowed to remain and participate.

Mr. Winchell said for the record that he would like to ask Ms. Cole if she had ever received remuneration for her services. His question was disallowed.

Mr. Arndt explained the appeal process and cautioned the audience members in attendance that there would be no public testimony and if there were disruptions, they commission would stop the meeting and reschedule the hearing.

APPELLANT PRESENTATION

Mary Alice McKeen, representing the Glory Hall, began by stating the ordinance at issue is CBJ 49.70.300(b)(1). She explained under that ordinance a development may not occur on a parcel in a severe avalanche area as designated on 1987 CBJ hazard maps if the development would *"...increase the density of that parcel..."* She said the key issue is how each party defines 'density'.

Ms. McKeen explained the Glory Hall, when operating as a homeless shelter, housed up to fifty-three people. They are proposing converting the building to seven small apartments which would house a maximum of fourteen residents.

It is their position that this will not increase density. The number of structures is not changing and the number of people housed will not increase. In fact, the number housed will decrease. Ms. McKeen said the CDD has interpreted 'density' to mean the number of dwelling units. Ms. McKeen conceded that the number of dwelling units is relevant, but added it is not the only relevant factor. Dwelling unit is defined in Title 49 as *"a residential use consisting of a building or portion thereof, providing independent and complete cooking, living, sleeping, and toilet facilities for one family."* When the Glory Hall was a homeless shelter, CDD treated it as zero dwelling units. By this definition, the proposed development will create seven dwelling units where previously there were none.

Ms. McKeen said CDD is interpreting density in the Ordinance to mean no development can increase the number of dwelling units. However, she noted the Ordinance does not contain the phrase 'dwelling unit' in it. Rather, it has the term 'density'. Density is not defined in Title 49. The Glory Hall defines density by considering all factors while CDD is defining it simply by the number

of dwelling units. The purpose of the ordinance is to limit the number people at risk of avalanche damage. She said their interpretation of the code puts less people at risk and CDD's interpretation will prevent that. For this reason, Ms. McKeen called the CDD interpretation arbitrary.

Ms. McKeen said the proposed project implements the Comprehensive Plan by adding needed rental units.

COMMISSIONER QUESTIONS FOR APPELLANT

Mr. Voelckers asked for some background on the R&M survey conducted in 1989 or 1990 which addressed CBJ 49.70.300(a)(3) and whether they consider it to be relevant.

Ms. McKeen explained that at the time of issuing its decision, CDD had not seen the R&M study. The Glory Hall commissioned R&M Engineering to conduct the study at a time when the Glory Hall was rebuilding and enlarging the shelter. The study evaluated the potential for hazards on the parcel and concluded the potential for damage from mass wasting was minimal.

Mr. Winchell asked Ms. McKeen if her position is that the independence of each dwelling unit is not a factor in determining density.

Ms. McKeen answered that it is only one factor. The CDD should look at whether dwelling units are increasing and often that will suggest more people might be subject to avalanche danger. They should look at it but it is not the only factor.

The appellant reserved fourteen minutes for rebuttal.

CDD PRESENTATION

CBJ Attorney Adam Gottschalk, presenting on behalf of CDD, opened by explaining CBJ 49.70.300 and its purpose to minimize the loss of life and property are at the core of the appeal hearing. In this case, he said, the CDD was limited as to whether it could grant the building permit because the Glory Hall parcel is located with an area designated under the adopted maps as a severe landslide/avalanche area. CDD is required to use the adopted maps and there is no dispute that the Glory Hall is within the severe landslide/avalanche area under these maps. CDD is required to follow the Code and it did so.

Mr. Gottschalk said the Glory Hall may still be approved for a permit if it obtains a site-specific report showing the parcel is safe, the Assembly may adopt new maps showing the parcel is not within a severe landslide/avalanche area, or 49.70.300 may be amended. None of this has happened. Therefore, CDD rejected the Glory Hall's permit.

The PC should uphold CDD's decision because CBJ 49.20.110(b) reads *"...the decision of the department shall be upheld if there is substantial evidence in support thereof and no policy error or abuse or discretion therein."*

There is no dispute the parcel is within the severe avalanche/landslide area on the 1987 maps which are the maps CDD is required to use under CBJ 49.70.30 (a)(2). According to CBJ

49.70.300(b)(1) *“...no development ...which is within a severe avalanche area shall, by the addition of bedrooms, conversions of buildings, or otherwise, increase the density of that parcel...”*. There are currently zero dwelling units at that location and this conversion would make seven dwelling units.

CDD used dwelling units in density because Title 49 does. Throughout Title 49, dwelling units per acre is the measure of density. It would be inconsistent to use a unique definition of density for one provision in Title 49.

Mr. Gottschalk pointed out that the appellant claimed CDD’s interpretation of density conflicts with the Comprehensive plan. According to CBJ 49.5.200(b) *“...Where there is a conflict between the comprehensive plan and any ordinance adopted under or pursuant to this title, such ordinance shall take precedence over the comprehensive plan...”*

Mr. Gottschalk reminded the PC the issues to be decided in an appeal are whether CDD had substantial evidence supporting their decision, or there was any abuse in that discretion or policy error. He said there is not because CDD decided in accordance with Title 49.

He stated affordable housing is important to the assembly and to CDD. However, CDD also has a responsibility to ensure development complies with city code. This is especially true regarding safety-based code provisions such as CBJ 49.70.300.

COMMISSIONER QUESTIONS FOR CDD

Mr. Voelckers asked how the CBJ interpreted the R&M survey conducted in 1989 or 1990 and whether they consider it to be relevant. Mr. Gottschalk answered this would involve speculation as it is a more than thirty-year-old study and nobody with the department has personal experience with it. He added that this is a shelter with zero dwelling units and therefore did not increase density as CDD defines density as dwelling units. This report does not discuss avalanche risk but only mentions mass wasting. Adding to the challenge with this study is that there has been development since that time and Gastineau Avenue has been substantially altered. CDD’s position is that they would still need the site-specific report from an engineer with avalanche experience to evaluate the site. They could use information from the R&M report as well as from the Tetra Tech maps that were not adopted in the required site-specific report.

Mr. Winchell asked if they removed the kitchens from the apartments and had a communal kitchen, would this reduce the dwelling units to zero. Mr. Gottschalk answered that would essentially turn it back into a shelter as it was before and would create zero dwelling units.

Mr. Alper asked is it the City’s position that any residential use of the Glory Hall would be rejected as an increase in dwelling units? Mr. Gottschalk said a single-family dwelling unit would be allowed.

Mr. Pedersen noted that it seems the addition of the kitchen units is what is driving the increase in dwelling unit count and asked if that is accurate. Mr. Gottschalk said that is based on the code definition of dwelling unit as having independent cooking, sleeping and sanitation area.

Mr. Arndt asked if a restaurant with seating occupancy for fifteen hundred people would be allowed since that is 'occupancy' and not 'density.' Mr. Gottschalk answered that under this specific provision, that would be allowed.

Mr. Alper referenced the appellant's viewpoint that because density is not defined in Title 49, it should not be applied in this case. Mr. Gottschalk answered that there are a lot of words not defined in the definition section of Title 49. However, 'density' is used consistently throughout Title 49 to refer to dwelling units per an area.

Mr. Winchell asked Mr. Gottschalk for his opinion on the policy if the location has resided fifty-three persons for decades and is now reducing it to a maximum of fourteen. Notwithstanding the density, does he see policy concerns about the viability of fifty-three with a communal kitchen versus fourteen under the housing crunch? Mr. Gottschalk answered of course it is preferable to have fewer people in a high hazard area. In this case, though, the shelter housing fifty or more people may have involved other risk factors related being unhoused or housed in a shelter. However, CDD is still concerned with the lives of the up to fourteen people that would be living in the proposed housing in a high hazard area. CDD followed CBJ 49.73.300 to protect those up to fourteen people.

Mr. Voelckers mentioned the appellant had stated they had tried to do a site-specific mass wasting study with Tetra Tech, but Tetra Tech was concerned that their responsibility was to the CBJ because they had already done the mapping for CBJ and asked for the CBJ stance on this. Mr. Gottschalk said this had been determined to be outside of the scope. CDD is not authorized to grant or deny permission to Tetra Tech regarding entering into contracts with the appellant.

Mr. Alper said the more recent Tetra Tech maps seem to show less risk than prior maps and asked if there is value to using the newer maps. Mr. Gottschalk said until or unless the Assembly adopts those maps, CDD is not authorized to use them. CDD is limited to the adopted 1987 maps.

APPELLANT REBUTTAL

Ms. McKeen said CDD is supposed to interpret provisions in Title 7 to promote the comprehensive plan and the statute is ambiguous in that 'density' is not clearly defined. If there are two possible interpretations, they are supposed to interpret their actions in a way that *further*s the plan. Specifically, the Comprehensive Plan contains the policies that guide and direct public and private land use activities in the borough. She said the record shows CDD did not consider the benefits of the project in terms of affordable housing. The PC should take affordable housing into account.

She said CDD stated this is a question of safety but they did not deny the permit because the project is unsafe. The denial was based on the increase in density. Ms. McKeen said they are decreasing the number of people potentially exposed to an avalanche. The Glory Hall obtained an engineering hazard study in 1989 and the Gastineau project increased the retaining wall since then. Ms. McKeen took exception with Mr. Gottschalk's assertion that density is determined by dwelling units throughout Code. However, he only cited CBJ 49.25.500 to support his stance. CBJ

49.25 is the zoning district section of the Code. The relevant portion of Code, she said, is CBJ 49.70.

She said CDD denied the applicant the ability to house seven to fourteen people with independent apartments, but they would allow a shelter with up to fifty-three people. Why? Is it because they are homeless people? Or is it because the fifty-three did not have independent facilities, that now the fourteen also cannot? She felt this is arbitrary and unreasonable.

She urged the PC to remove the zero (dwelling units determination) and to recognize that the building had housed and would go down to up to fourteen. Ms. McKeen added that the parcel is located within a Mixed Use (MU) district. MU districts have no maximum density limitations. Her position is that CDD did commit error and does not have evidence to support its position that the development will increase density. It does not increase structures and it lessens the number of persons.

ADDITIONAL COMMISSIONER QUESTIONS FOR APPELLANT

Mr. Alper said the CDD brief claims the Glory Hall had tried to circumvent the process, saying they could have just obtained an engineering study to prove it is not hazardous.

Ms. McKeen replied that a study is not necessary as they are not increasing density. They did obtain a study in 1989 and they have attempted to get an updated study. She also felt if it were required, it would place an undue burden on a small nonprofit organization.

Mr. Hickok asked how many people are currently in the avalanche area. Ms. McKeen did not know but there are several.

At this point, the appellant time expired. CDD allowed some of their remaining time for additional commissioner questions for the appellant.

Mr. Winchell asked, for clarity, if the Glory Hall argument is there are two ordinances each with a potential difference of definition of the term 'density'. Ms. McKeen replied their stance is that the ordinance which prescribes the maximum number of dwelling units per acre in CBJ 49.25 does not apply to whether there is an increase in density in CBJ 49.70.

ADDITIONAL COMMISSIONER QUESTIONS FOR CDD

Mr. Winchell asked whether CBJ 49.70.300(b) is vague as to the definition of density. Mr. Gottschalk answered that CDD has never considered it to be vague as density is understood as composed of dwelling units throughout CBJ 49 including other sections such as CBJ 49.60.140. He added it seems notable that the appellant's definition of density would incorporate the comprehensive plan's goal of increasing housing just for this one code provision which is specifically about decreasing the people at risk in a severe landslide and avalanche area.

Mr. Arndt closed arguments and explained the PC will take this under advisement in accordance with CBJ 01.51.40 and their written draft decision will be circulated within forty-five days. At that point, the appellant will have five days to file written objections.

Mr. Arndt returned the gavel to Mr. Voelckers.

****AT EASE 8:24 p.m. – 8:28 p.m.****

XI. OTHER BUSINESS – None

XII. STAFF REPORTS

Ms. Maclean thanked Mr. Dye for his service and wished his family safe travels. She will be on leave traveling for a bit and Mr. Ciambor will be acting director.

- Seawalk was repealed over a year ago, but the Assembly directed them to look at whether it should be in code in some format. The Title 49 committee and staff determined this really is infrastructure and should be under 49.35. It will be coming back June 14.
- Title 49 projects include looking at code and updating sections of code that she described as 'quick fixes.'

Mr. Voelckers asked if there was any new information regarding the Assembly joint meeting. Jill said it is still looking like August but no date has been confirmed

XIII. COMMITTEE REPORTS

Mr. Arndt reported Title 49 is meeting on Thursday via Zoom.

XIV. LIAISON REPORTS

Assembly member Hughes-Skandijs reported the maps are not calendared as of yet. She reported recent assembly activities include:

- Adoption of the street vending ordinance.
- They have mostly concluded the budget and have set the Mill Rate.
- Introduction of removal of sales tax on food. This will be addressed at the next Committee of the Whole.

Said she will miss Mr. Dye on the Commission and thanked him for his work on the PC.

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

XVI. PLANNING COMMISSION COMMENTS AND QUESTIONS

Mr. Pedersen said he and Mr. Voelckers attended a Chamber of Commerce luncheon regarding the current PEL study for the North Crossing to North Douglas crossing. There is a website and this is the time for public comment.

MOTION: *by Mr. Winchell to enter Executive Session for Juneau Cooperative Christian Ministry, dba The Glory Hall v. CDD.*

The motion passed with no objection.

****AT EASE 8:43 p.m. – 8:51 p.m. preceding Executive Session****

XVII. EXECUTIVE SESSION

- A.** Executive Session for Juneau Cooperative Christian Ministry, dba The Glory Hall v. CDD, if needed

Executive Session 8:51 p.m. – 10:16 p.m.

MOTION: *by Mr. Alper to remand APL2021 0006 to CDD for decision within 30 days with the following findings:*

- 1. CDD acted in error by not incorporating previous engineering work in their analysis under CBJ 49.70.300(a)(5). CBJ Engineering accepted the site specific 1989 R&M geophysical hazard assessment. The assessment established that the Glory Hall property was not in a severe hazard zone. The assessment amends the 1987 CBJ hazard maps for this property.*
- 2. The Planning Commission has determined the intent of CBJ 49.70.300 is to provide for the safety of occupants within a structure regardless of use. As density is not specifically defined in Title 49, according to CBJ 49.20.300, the PC hereby provides the following interpretation. For the purposes of CBJ 49.70.300(b)(1), the phrase 'shall not increase density' shall be interpreted to mean 'shall not increase the total quantity of people in a structure.'*

The motion passed with no objection on roll call vote.

XVIII. ADJOURNMENT – 10:18 p.m.

Next regular meeting June 14, 2022 7:00 p.m.