

MINUTES

PLANNING COMMISSION
CITY AND BOROUGH OF JUNEAU
Maria Gladziszewski, Chair

REGULAR MEETING
May 10, 2011

I. CALLED TO ORDER

Chair Gladziszewski 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: Nathan Bishop, Marsha Bennett, Dennis Watson, Nicole Grewe, Benjamin Haight, Frank Rue, Dan Miller, Michael Satre, Maria Gladziszewski

A quorum was present.

Staff present: Dale Pernula, CDD Director; Greg Chaney, Nicole Jones, CDD Planners

Chair Gladziszewski announced that AME2011 0001 for a rezone of land in the Wildmeadow Lane area was removed from the Agenda, and that case will be rescheduled to a subsequent PC meeting.

II. APPROVAL OF MINUTES

April 26, 2011 – Regular Meeting

MOTION: *By Mr. Satre, to approve the April 26, 2011 regular PC minutes, with corrections.*

There being no objection, it was so ordered.

III. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS - None

IV. PLANNING COMMISSION LIAISON REPORT - None

V. RECONSIDERATION OF THE FOLLOWING ITEMS - None

VI. CONSENT AGENDA

Chair Gladziszewski announced that there are two items on the Consent Agenda, and inquired if there is public comment on them. No one from the public had comments, and no one from the Commission had questions.

MOTION: *By Mr. Satre, to approve the Consent Agenda, as presented.*

There being no objection, it was so ordered and the two cases below were approved by the PC, as presented.

USE2011 0005

A Conditional Use permit application for grooming services inside proposed Petco store.

Applicant: Keith Glassman
Location: 2092 Jordan Ave.

Staff recommendation: That the Planning Commission adopt the Director's analysis and findings and grant the requested Conditional Use permit. The permit would allow the development of grooming services to be provided inside the Nugget Mall, subject to the following condition:

1. The applicant shall install a filter to the public sewer drains within the grooming area. This filter must be approved by the Director of Public Works prior to issuance of a building permit.

VAR2011 0009

A variance to allow development within 330' of three eagle nests on public property.

Applicant: State of Alaska
Location: Full Length of Thane Road

Staff recommendation: That the Board of Adjustment adopt the Director's analysis and findings and grant the requested Variance, VAR2011 0009. The Variance would allow for rehabilitation and repair of Thane Road within the 330-foot eagle nest setback of four eagle nests.

VII. CONSIDERATION OF ORDINANCES AND RESOLUTIONS - None

VIII. UNFINISHED BUSINESS - None

IX. REGULAR AGENDA

CSP2011 0002

State of Alaska Department of Transportation-Public Facilities (DOT) is proposing to rehabilitate pavement on Thane Road from Mt. Roberts St. to the end of the road. Activities would include grinding and paving, culvert work, guardrail work, new sidewalks, shoulder widening, new signage, and road striping.

Applicant: DOT
Location: Thane Road

Staff report

Mr. Chaney said a response from Keith Karpstein of DOT was provided via email, dated May 9, 2011, in the Blue Folder responding to the recommendations in the staff report. In response to that, he revised pages 9 and 10 of the recommendations in the initial staff report, which he provided to the PC just prior to this meeting. Furthermore, he said the shared-road-markings (aka Sharrows) were only supposed to be for the portions of the roadway without a shoulder, and instead, he inadvertently stated that this was supposed to be for the entire length of the project, which is not the intent of DOT.

He wished to clarify for the PC that they are empowered to approve or deny the CSP project. He said the PC is able to review the project for compliance with adopted CBJ plans and policies. Mr. Pernula stated AS 35.30.010 essentially states that the review and approval has to be provided by local planning authorities with exceptions provided in section B. He said this basically states that before commencing construction of a public project located in the municipality, DOT is required to submit project plans to the PC or the municipality for review. He said it states that if it is a case of final disapproval it must be provided via resolution of the caring body (the Assembly) of the effectiveness of a review within 90 days from the date the project was submitted to the PC or the Assembly, and only then may DOT proceed with the project. Mr. Chaney added that if the PC decides against approval and denies the project, it will be forwarded to the Assembly for final action, which is different than a typical permit review process.

He said DOT proposes to rehabilitate approximately 4 miles of pavement to varying degrees on Thane Road between the intersection of Mt. Roberts Street at the Rock Dump area to the end of the Thane Road (attachment A), with a couple of other areas that are not part of this project, which the applicant might choose to elaborate upon. He explained that the intention is for DOT to add 6" of crushed-rock, and then place pavement over the top, including a sidewalk at the beginning of the project for pedestrians. He stated that further out Thane Road in two more sections is a 2-lane road with an unimproved shoulder where DOT will add a 4' wide shoulder with a 2' wide gravel strip, and the opposite side a 1' wide gravel strip, which will take place over a majority of the project. He noted that further along the roadway has a steep slope with rocks where DOT proposes to cut into the hillside to install a shoulder instead of shifting the entire prism of the roadway, including adding a shoulder on one side. In the next section of roadway, he said DOT will pour 6" of crushed-rock, and then place a paved layer over the top, but with no shoulder improvements on either side. In the final residential section, DOT plans to top the asphalt over the existing roadway, i.e., "asphalt patched where directed," so DOT does not intend to recondition the roadway in this section, which is a fairly substantial portion of the project.

He said staff discovered statistics in the US DOT, Federal highway Administration Guidance Memo on *Consideration and Implementation of Proven Safety Countermeasures* when they started looking into this project. He said it states that the presence of a sidewalk or pathway on both sides of the street corresponds to approximately an 88% reduction in "walking along road" pedestrian crashes. He noted that providing 4' side shoulders on roadways that do not have sidewalks corresponds to about a 71% reduction in "walking along the road" pedestrian crashes. In addition, over 80% of pedestrians die when hit by vehicles traveling at 40 mph or faster, while less than 20% die when hit at 20 mph, so adding shoulders are a big safety improvement. He noted in the final residential section, in which DOT does not plan to add shoulders, that the area has extremely steep drop-offs. He showed the PC pictures he captured when he rode his bike out to the area. He said he did not feel very safe, so he ended up biking at North Douglas. He said that area currently has a 35 mph limit, with no shoulder, and he showed the PC a photograph of where he stood on the white line at the edge of the roadway, and he did not realize how close he was to the vehicle that drove by until he viewed this photograph.

He said 15 CBJ adopted policies are listed in the staff report per the plans, which are relevant to the proposal from the 2008 Comprehensive Plan (Comp Plan), the Area Wide Transportation Plan (AWTP), and the 2009 Non-Motorized Transportation Plan (NMTP). To mention a few of

the most pertinent, he noted that the AWTP for the Downtown/Thane Priority Solution List, page 14, has two policies that directly apply, which he cited, as follows:

“27 Thane Road Improvement: Reconstruct Thane Road as a two-lane roadway with pedestrian and bicycle facilities for improved connection to residential and recreation areas. (Medium-term)” and;

“28 Seawalk-Sheep Creek to Norway Point: Develop a pedestrian and bicycle path from Sheep Creek through downtown waterfront activity centers to Norway point. Provide signage and connections between pathway and activity areas. (Near-term)”

He noted that the AWTP was completed in conjunction with DOT.

He said the Comp Plan has a specific Implementing Action, which he cited, as follows:

“8.3.1A20. Encourage DOT to upgrade Thane Road from the CBJ Sewage Treatment Plant to Sheep Creek. All reconstruction of Thane Road should include separated pedestrian and bike lanes which, because of terrain, may need to be located outside of the existing right-of-way and/or along the shoreline. [Emphasis added]”

He explained that this provides a general statement of where the improvements should take place, including that specific attention should be given to this issue.

He said the NMTP provides recommendations for Thane Road, which he cited, as follows:

- *“Minimum of five feet on both sides.*
- *If there are segments where this is not possible, then develop a side travel lane and share-the-road signs.*
- *A context sensitive street design should be used to ensure that safe design and appropriate traffic speeds. (Staff note: This is the exact wording in the Plan)*
- *Signed as part of a cross-Juneau bikeway.”*

He said this is not a new idea because when this Plan was provided to DOT they responded to it and other issues, via a discussion stating that they do not have a record of many crashes in this area. He stated that it is staff policy to adhere to the adopted CBJ plans and policies, not crash data for this site.

He said staff developed a series of recommendations, which he revised and provided to the PC (page 9 and 10 of the staff report).

Mr. Rue confirmed that the current speed limit is 45 mph all along Thane Road. Mr. Chaney clarified that it is instead lower speed limits in the curved areas, 45 mph on the straight away and in non-residential areas, and 35 mph from Sheep Creek through the residential area.

Mr. Watson stated that for many years the PC has requested that Thane Road be improved, so he asked if staff ever met with DOT to discuss this. Mr. Chaney said yes, explaining that the AWTP was developed with DOT, which specifically addresses the Thane Road area. He added that staff and DOT should perhaps meet more often, noting that the NMTP provides a section stating so.

Mr. Bishop asked what will be the proposed length of the typical curb, gutter, and sidewalk where it will be adjacent to development in the commercial area. Mr. Chaney said it is just over 645 linear feet between the Rock Dump and Mt. Roberts Street.

Public testimony

Pat Carroll the Design Group Chief and Keith Karpstein the Project Manager representing DOT. Mr. Carroll said DOT is proposing this pavement rehabilitation project on Thane Road, as DOT was provided \$4 million by the Alaska State Legislature funded with the State of Alaska cruise ship passenger fee revenues (attachment 1), and their thrust was to take this money as far as they can. They offered to answer questions of the PC.

Mr. Rue referred to DOT's response to the staff recommendations on the project, and requested that they highlight specific issues they have with them. Chair Gladziszewski added that the PC is requesting that the DOT representatives do so only regarding the staff's recommendations that DOT does not agree with. Mr. Carroll noted that a written response was previously provided by the DOT Regional Traffic Engineer to the PC, and DOT does not agree with the following:

1. Wherever DOT has enough money to install shoulders they will do so, including installing 4' shoulders on one side of the roadway just before the Thane Ore House area.
2. He does not agree with installing new gravel shoulders in the residential portion of the project because the cost is going to be just about as much as paved shoulders. He explained that it would require construction on an embankment, which involves cutting a great amount of rock on the uphill side and filling in the downhill slopes to the beach. This would be very expensive.

Mr. Rue asked if this is the first phase of the project. Mr. Carroll said there are no plans for any future improvements on Thane Road, although he is not saying there never will be.

Chair Gladziszewski asked how DOT prioritized the \$4 million for this project, i.e., whether it was in terms of safety concerns, project ease of access areas, etc. Mr. Carroll said DOT recognizes the need for some type of improvement for pedestrians and bicyclists, so they intend to provide shoulders where possible. He said the primary thrust of the project is to rehabilitate the pavement, so it is smoother than it is now. He explained that in 2004, they repaved a .75-mile stretch of Thane Road in the worst area at that time; this project is an extension of that to try to improve the rest of the roadway. Chair Gladziszewski said she is attempting to find out how the safety factor played into DOT's decision-making process for this project. Mr. Carroll said another project planned for next year specifically addresses safety concerns identified as being the curved roadway area at Sheep Creek, so a separate Highway Safety Improvement Project (HSIP) is planned after DOT reviews a history of accidents on that particular corner.

Mr. Carroll continued with the response to staff's recommendations, stating that:

3. The intent is to install some signage. Mr. Karpstein added that Mr. Chaney corrected this recommendation by stating that the Sharrows would be required only along the portion of the road where shoulders will not be installed, although the written DOT response did not address this correction because Mr. Chaney's revision was not available at that time, but DOT agrees to reasonable signage and striping. He said they intend to work with the Regional Traffic Engineer of DOT to decide on the most appropriate locations to do so.
4. Mr. Carroll said they are not in agreement with changing the speed limit to 20 mph in the residential area of Thane Road, as they do not believe it will be complied with or enforced.
5. They are not in agreement with changing the speed limit to 35 mph in non-residential areas, so they would like to retain the speed limits in both the residential and non-residential areas as is.
6. They are fine with this recommendation, noting that if areas of Thane Road are improved, signs will be removed.

Mr. Watson referred to recommendation 4, asking what harm there might be in reducing the speed limit to 20 mph in the residential area of Thane Road, other than possibly having a slight budget impact. He said he gets the point that a slower speed limit might not be complied with, although they would have a greater chance of enforcing the speed limit if it was lowered, but if the speed limit remains at 35 mph then the motorists will drive at 40 or 45 mph. He said most people do not read older posted speed limit signs, so a newly posted lower speed limit sign would probably be read, and then it could be enforced and get some attention, which he believes the neighbors would appreciate. He said later on if this area of Thane Road is widened, they could possibly make speed limit adjustments at that time. Mr. Carroll said he does not think it is a matter of cost in terms of signage, but DOT has a policy in setting speed limits, which is usually based upon the 85th percentile of speed that vehicles are traveling on a route. In this particular area, they will not be traveling at 20 miles per hour, so recommendation 4 does not fit in with how DOT determined what the speed limit is supposed to be on a highway. He stressed that Thane Road is still classified as a highway. Mr. Pernula stated that if they set the speed limit at 20 mph and many people are going to drive at 35 or 40 mph, he asked if this might cause people to want to pass vehicles in front of them, which might cause safety issues by setting a lower speed limit than people normally drive. Mr. Carroll said it's a possibility, including if a driver who is going fast comes up behind a vehicle being driven very slowly; this is when a higher differential speed is generally not a safe situation, and therefore the objective is to maintain all vehicle traffic at the same speed.

Mr. Miller said DOT designed the project to increase the size of the roadway, sidewalks, and shoulders on Thane Road in areas where it is possible, although they might reach the end of the project and run out of money so they would be unable to install adequate signage and road improvements in that area, which is where most of the energy is being focused by staff. Mr. Carroll said this might be a consideration, although the funding is from cruise ship passenger fee revenue and they probably have more pedestrian-related tourists walking between downtown to where they are ending the main improvements along Thane Road. Mr. Karpstein added that the residential area of the project presents more challenges because of the steep ditches off of the edge of the asphalt, so work to add shoulders in those areas would not be easy. Doing so would involve pursuing right-of-way acquisitions for grading and ditch reconstruction, so these are other aspects to consider. He noted that the area of the project closest to town is where DOT was provided the opportunity to improve an area that already has a gravel shoulder, so they can easily pave over that. Mr. Miller said in that case, rather than remove speed bumps so vehicles are unable to drive too fast, DOT could instead add a few more feet of shoulder work at the residential end of the project. Mr. Carroll said Thane Road is in fairly poor condition in the residential area, and the legislature intends DOT to improve the roadway from Mt. Roberts Street to the end of Thane Road to the best of their ability with the finding they have, which DOT is attempting to do.

Ms. Bennett asked if the road improvements are contingent upon making the entire Thane Road more of a sightseeing location for tourists on buses, or whether they will mainly travel from the Rock Dump to town. Mr. Carroll said he does not know of any sightseeing plans, although the source of funding for the project is cruise passenger fee revenues, so somehow somebody in the legislature made a link to the tourism industry and they were able to allocate this funding towards Thane Road improvements.

Ms. Grewe stated that the PC and City previously discussed plans that they envision for residents of Thane Road regarding its improvements as DOT has, although DOT seems to be strongly focused on meeting the funding of cruise ship dollars. As an option, she asked if there is any flexibility to possibly carrying the cruise ship passenger fee revenues of \$4 million forward because it appears that what DOT is proposing is the best they can do with these funds, but that is not what the PC and City envisions. In addition, regarding stating that there have been no accidents on Thane Road, she wonders if the legislature might have provided more than \$4 million if there were because she is a bicyclist and it is dangerous riding on Thane Road. Therefore, she asked who decided the specific \$4 million amount, and whether it is possible to wait on this project, and then think about it later on because Mr. Chaney's picture of how close the vehicle was to him when a person drove by on the roadway is not an anomaly. She said she would hate to wait for an accident to happen on a road that they know needs more room for pedestrians and bicyclists, so this does not seem like good DOT planning at this point, noting that the accident issue should probably be formulated into the amount of money the legislature allocates from cruise ship funds for this project. Mr. Carroll said he is not completely clear on exactly where the \$4 million estimate came from, which may have been generated by DOT, and then provided to the legislature, as at times in the past the legislature has found funds and allocated them to other DOT projects. He said it may be the case that the rate of accidents on Thane Road resulted in the legislative allocating additional funds to this project. He noted that in the case of the Sheep Creek corner area, which has been identified by DOT as a safety problem area, an additional \$700,000 of federal funds were separately allocated for that specific portion that was programmed is in relation to a history of accidents, which includes motorists attempting to pass in that area. He noted that most accidents are generated in a confined area, and in this case that particular curved area is too sharp and narrow, which DOT will make improvements to fix. He noted that DOT generally does not view an HSIP for a stretch of road that is only 4 miles long such as Thane Road.

Mr. Rue said his experience with Thane Road is that most of its traffic is generally between the Rock Dump and Sheep Creek area mainly in regards to tourist activity, so DOT intends to institute more improvements in this particular portion of the roadway. He said he does not have an objection in doing so as many local residents walk and jog in that area during lunch hours, that eventually the entire Thane Road has to be improved, and that it is unfortunate there is not enough funding to do so at this time. However, he does not want to jeopardize improving the residential section by overly improving the first portion of Thane Road; making overall major improvements to the entire Thane Road should be a higher priority. The Assembly should probably allocate funds towards this project as well.

Mr. Miller asked if it might be more likely to obtain additional funding in the future if DOT postpones the residential portion of the project at this time. Mr. Carroll said he does not know how DOT programs its funds.

Mr. Bishop said he does a lot of biking, and has found that many times sidewalks with curbs next to the roadway in certain rural areas tend to be problematic, so this might pose issues in the beginning of the project where there are more bicyclist than pedestrian traffic. Therefore, he is wondering if it might be best not to install sidewalks with curbs in this area, and instead, extend the shoulder so they could use the remaining funds for more improvements in the residential portion of the project. Mr. Karpstein stated that the area at the beginning of the project is where there will be more of a continuation of what exists now. They intend to continue in this manner. He noted that they will widen the traffic lane, but they will not be installing a specific shoulder

designated for bicycles. Chair Gladziszewski confirmed that the bicycle extension of the roadway is from Mt. Roberts Street, noting that this area experiences foot traffic as well; Mr. Karpstein concurred, specifying that people walk to/from the camp ground.

Mr. Chaney cited the attachment 1 “Project Description/Justification: Thane Road is narrow and deteriorating. Cruise buses use this road to access the Mining Museum, dog sled rides, hatchery and historic mine sites,” which he noted was provided by the legislature to DOT.

Mr. Satre asked if a deadline was imposed as to when the project funding must be expended. Mr. Chaney said DOT was provided estimated project dates, although he has not viewed a specific funding deadline date.

Steven Wright, 5405 Thane Road, said he has been a resident of Thane for the past 20 years. He said he does not believe the DOT representatives made the PC aware of a number of elements in their presentation. He said the first item is the quality of reconstruction, as the .5-mile of Thane Road previously reconstructed in late 2007 has deteriorated, including a number of areas within it that essentially fell apart because DOT provided very minimal reconstruction to it. He said that particular project was designed to not last more than five years, which is the same for this proposed project of \$4 million of Thane Road improvements, although from Sheep Creek to the end of the road will only consist of an overlay of pavement. He said he met with a number of folks at DOT, including Mr. Carroll who confirmed that this is the case, and the quality of this project is very minimal with the lifespan estimated to be the same as the prior .5-mile section. He stated that DOT will in essence be throwing \$4 million of improvements into Thane Road that will be severely compromised in 5 years. He said comments were provided by the PC about locating more funding, noting that whoever wrote such intent language by the legislature was simply not aware that \$4 million is not adequate to cover the entire length from Mt. Roberts Street to the end of Thane Road. Instead, he said they should provide shoulders and a higher quality project that should last longer than 5 years, so he previously asked DOT representatives if it would be possible to procure additional funds if the proposed project was postponed for a year, including asking how long it might take to redesign the project to incorporate additional funds to do it right. He said he was told by DOT that if they were to do so it would take an additional 3 years to redesign the proposed project, although he does not agree with that argument because it should not take that long. He explained that even with all the aspects that might have to be surmounted to adjust the design of the proposed project so it is more viable and longer lasting than what is being proposed, as it should not take 3 years to design. As a citizen of Thane, he feels he has quite a bit at stake because he uses Thane Road to drive back/forth 7 days/week, so he depends on this resource every day. He hopes serious thought is provided to modify the proposed project with additional funding so higher quality improvements are provided, which includes installing at least one shoulder on one side of the entire length of Thane road, and not throw money away on a project that will not last very long. He appreciates Ms. Grewe’s comments in this respect. Furthermore, he explained that those who reside in Thane are not the people driving over the speed limit, and instead, it is people from other parts of town, including local teenagers that drive on Thane Road late at night. He stated that if a 20 mph speed limit was instituted between the end of Thane Road to Sheep Creek for nearly 2 miles, plus lowering the remainder of the roadway to 35 mph would add an additional daily commute time for the residents living in this area. He is against doing so, explaining that it may be desirable to slow down traffic in regards to pedestrian use in this area, but in reality, Thane Road is depended upon by its residents as a primary resource for vehicle use. He stressed that work has to be done to procure more funding in addition to the \$4 million that DOT has been allocated for the proposed

project next spring that he understands the bid will not go out for several weeks, but that he does not believe there will be very much work completed this fall. He favors DOT doing the job right.

Chair Gladziszewski said Mr. Wright is proposing more time to try to locate additional funding over the \$4 million allocation, and if this is possible, she asked what he might propose to do instead in terms of the Thane Road improvement project. Mr. Wright said he favors taking the \$4 million to complete the reconstruction project as far as the funds would allow to do it right, which might only last, e.g., for 2.5 miles, and then perhaps additional funding might be acquired in the future to supplement reconstructing additional sections. He noted that a fairly substantial section of roadway will be separately reconstructed by the Thane Ore House with \$700,000 in federal funding, which will augment whatever portion of Thane Road that might later be accomplished with \$4 million, including possibly locating additional funds. He said another aspect to consider is the section from Mt. Roberts Street to Sheep Creek, which is the worst section now, but from there to the end of Thane Road is not in as bad of shape, so he is not opposed to deferring the reconstruction of the residential portion, except for some culvert replacement work.

Bill Heumann, 6000 Thane Road, said he agrees with most of Mr. Wright's testimony, in that he is also opposed to reducing speed limits along Thane Road. He explained that he averages about 2 trips on Thane Road per day, and if they were to reduce the speed limits this would add about 40 hours per year to his commute time. In addition, when he multiplies this by the number of residents in Thane, it equates about 20 hours annually if some of them only make one trip per day. He said he resides in the last house on Thane Road, and the residents have worked out traffic issues with this area. He explained that when they see pedestrians on the roadside they veer away from them, and how far depends on whether another car is coming from the other direction, which is when they might have to slow down at times; he does not feel the residents have a problem with traffic. He noted that he previously mentioned to DOT representatives that there are many sections along Thane Road without shoulder areas, and since he is a contractor he does not believe it would be a lot of expense to construct turnoffs along the roadside in certain areas. He is defensive against giving up improvements between Sheep Creek and the end of Thane Road because he has to drive it everyday and is not in great condition. In addition, a lot of junk is continually dumped at the end of Thane Road. He noted that 2 or 3 places in this area are particularly unsightly in the right-of-way, although nobody will enforce litter laws because they do not want to take responsibility for this problem. He said it was indicated to him by DOT that when this project takes place they are going to enforce the right-of-way issues, so he does not want this to be a missed opportunity for improvements beyond Sheep Creek to the end of Thane Road. He said the City should keep in mind that he has lived at Thane for 15 years, and he and the other residents do not have City water, sewer, streetlights, parks, etc., although they do have fire and police protection, so minimal city revenues have been provided to Thane relative to what the City provides elsewhere in the community, so it is about time that the City should provide funding towards this Thane Road improvement project. He said the City is not contributing to the Thane resident's fair share, as they have paid 20 to 30 years in taxes, although they have not received City services for doing so. He said he and Mr. Wright spoke to DOT representatives yesterday who basically stated that this project is a "Band-Aid." After that meeting, he said he and Mr. Wright basically felt that there was not much they could do about it, so they thought that they would just have to accept the proposal. However, to essentially throw away \$4 million because the proposed project is a "Band-Aid," is not a long-term solution, it is not right, and instead, they have to "look at this through a larger scope" in today's world. He said DOT

probably thinks that \$4 million is not to very much money, so they can afford to spend it on this “Band-Aid” type of project.

Chair Gladziszewski asked Mr. Heumann what he would do with \$4 million in terms of this Thane Road improvement project, e.g., as Mr. Wright is suggesting to complete as many improvements from the beginning of the project, and then continue to try to locate additional funding for the remainder. Mr. Heumann said the problem with that scenario is he does not know what they could get for \$4 million, and instead, the road has to be excavated 3’ to 4’, and then they need to install a sub-base because the grade off of the white line on the waterside of Thane Road is very steep, so to correct that situation would be very expensive. Therefore, he does not know how far DOT would be able to get on the proposed project with \$4 million, although without knowing more specific information it is fairly difficult for him to make such a decision.

Mr. Carroll and *Mr. Karpstein* offered to answer questions of the PC. Chair Gladziszewski asked them to respond to the question that it seems like the proposed project by DOT is a “Band-Aid.” Mr. Carroll said the intention is to rehabilitate the pavement on Thane Road, which is not a full-on reconstruction project. He said this involves repairing the sub-grade stabilization of the side slopes type of improvements, and it will consist of a fairly minimal improvement on the overall length of Thane Road. He said the roadway has many steep slopes and obvious sub-grade problems that will be recurrent. He said the plans are to replace most of the culverts along Thane Road, so the bedding of the culverts that appear to be problematic now will probably be repaired.

Chair Gladziszewski asked if DOT representatives spoke to the neighborhood when they were planning the proposed project, prior to deciding upon which proposal to institute. Mr. Carroll said DOT representatives spoke to the Thane Neighborhood Association (TNA), including Larry Spangler who is a member, along with Mr. Wright and Mr. Heumann.

Ms. Grewe referred to the .5-mile of Thane Road that was previously repaired, stating that it appears as though that was a fairly large project when it was taking place, but it has quickly fallen into disrepair within 2 years. She stated that the DOT representatives stated that they agree that the quality of work performed earlier on Thane Road will be equivalent to this proposed project, which warrants more discussion by the PC. Mr. Carroll said the amount of improvements DOT intends to perform will be about the same as what they performed on the previous .5-mile section, i.e., milling up the existing pavement, treating it, putting that back in place, and then they will install a new layer of pavement over the top of it. He noted that the sub-base causing the bumps and cracks in the roadway are probably due to the settling of the outside shoulder areas from the former construction that was done, including the general instability of the outside edge of the roadway. He said DOT is probably not going to fix those types of issues further out the road, but they are going to fix the culverts. He said they have to meet the intention of the legislature. Ms. Grewe asked if a specific deadline was imposed in which DOT has to to expend the \$4 million. Mr. Carroll said the estimated project date is April 19, 2009 to June 30, 2014, and DOT received the \$4 million in July 2009.

Mr. Watson said the improvements to the Thane Road project have been on the City Capital Improvement Program (CIP) list for a long time, although he does not know how the PC is able to recommend that the Assembly move it up to the level of importance to garner support from DOT since this particular project is on a State highway. Mr. Carroll said he is not involved in

the DOT project ranking, although when he spoke to Randy Hughes, who is on the DOT Project Evaluation Board, he echoed basically what Mr. Watson just said, which is that this Thane Road improvement project is constantly nominated, and then it tends not to score very well with the Board.

Mr. Chaney referred to the DOT plans, stating that they show 6” of sub-grade improvement, although it will mostly consist of 2” of asphalt being overlaid, whereas the rest of the project further out the road will basically consist of patchwork. He asked if this was done on the previous .5-mile project; Mr. Carrol said yes.

Mr. Haight stated that the previous .5-mile section that DOT repaired in 2007 has always been problematic, and it is the worst area along Thane Road. Therefore, he asked what other sections DOT believes are similar, including how they rate them against that particular section in terms of throwing away more money. Mr. Carroll said DOT completed that project at the request of the Maintenance Dept. because they were having a hard time maintaining that area with snowplows, so they requested that it be repaired using maintenance funds along that stretch of roadway. He noted that there are a lot of areas where they are going to experience shoulder subsidence. He explained that just past that area was where the shoulder previously failed a few years ago, and when DOT repaired that section it extended all the way to the beach. He said there are unstable areas on the uphill side of Thane Road where it is not rock, but consists of soil sliding downhill, so Thane Road is going to be a tough road to fix.

Public testimony was closed.

Commission discussion - None

Staff recommendation: That the PC adopt the Director’s findings and analysis and approve the proposed City-State Project review, which would allow DOT-PF to rehabilitate 4.5 miles of Thane Road in accordance with the Project Description with the following recommendations.

1. CBJ strongly encourages DOT to develop shoulder improvements throughout the length of the road and on both sides of the road whenever possible. Shoulder improvements should be a top priority in the residential area at the end of the road where road re-surfacing may increase driving speeds.
2. As a less expensive alternative to constructing shoulders that comply with vehicular standards, evaluate the possibility of constructing gravel shoulders in residential areas. These areas would provide a refuge for pedestrians but would not be as expensive as shoulders paved and graded for use by vehicles.
3. Where a shoulder cannot be provided due to budget constraints, signage should be installed to alert drivers, bicyclists, and pedestrians that all users must share the road. These signs should be posted as necessary where no shoulder is provided, on one or both sides of the road as needed. Shared-road markings (aka Sharrows), should be painted on the road surface for the length of the project, with appropriate companion signage.
4. In residential areas without shoulders or sidewalks provided, post a maximum speed limit of 20 mph.
5. In non-residential areas without shoulders or sidewalks provided, post a maximum speed limit of 35 mph.
6. Remove “Shared Road” signs and pavement markings (as described in Recommendation 3) and higher speed limits (as described in Recommendations 4 and 5) only after completion of separate pedestrian path(s) and shoulders on both sides of the road as

called for in Area Wide Transportation Plan, CBJ Comprehensive Plan, and the Non-Motorized Transportation Plan.

Commission action

MOTION: By Mr. Watson, that the PC adopt the Director's findings and analysis and approve the proposed City-State Project review, CSP2011 0002, which would allow DOT to rehabilitate 4.5 miles of Thane Road in accordance with the Project Description, subject to the recommendations outlined by staff per their revised recommendation, dated May 10, 2011.

FRIENDLY AMENDMENT: By Mr. Rue, that the PC revises the motion to omit the following recommendations, and renumber 6 to 4:

- ~~4. In residential areas without shoulders or sidewalks provided, post a maximum speed limit of 20 mph.~~
- ~~5. In non-residential areas without shoulders or sidewalks provided, post a maximum speed limit of 35 mph.~~

Mr. Rue stated that he understands why staff included recommendations 4 and 5, although he agrees with some of the comments that doing so would impede Thane residents by increasing their commute time to/from town. He said the main reason is that Thane Road provides the sole access for these residents, and two previously provided comments on this, so he feels it is a reasonable position for the PC to take. He said it would be nice if the residential stretch of roadway had shoulders, although it primarily experiences vehicular use, so the speed limits should be retained as is, with pedestrian amenities provided where possible by DOT. Mr. Watson accepted Mr. Rue's friendly amendment.

Chair Gladziszewski confirmed that recommendations 1, 2, 3, and 6 still remain as is in the initial motion; to which Mr. Watson agreed.

Mr. Satre spoke in favor of the motion, stating that this project is a "Band-Aid" and the proposal does not get them close to where the PC wants such a project to be, although he hopes that this action by the PC is taken as a sign that this body wishes for this project to remain in the future as priority on the City CIP list, and that the PC also looks forward to this remaining as a priority by the legislative delegation. However, DOT was able to obtain \$4 million of cruise ship passenger fee revenues, which is obviously not going to go very far. He said this funding will allow DOT to rehabilitate some of Thane Road, and will put some people in this town/region to work. He said the PC will do whatever is possible in terms of this improving this situation in the future.

Mr. Haight said this "Band-Aid" project would provide another 5 years until the PC has to review it again, so the PC has the opportunity to look stronger and harder on how they might improve this situation in order to provide for a better project 5 years from now. In addition, he said there might be other avenues to seek out that might provide alternate methods in which to supplement this roadway, other than solely looking for DOT to provide for that.

Mr. Bishop commented that he prefers DOT to provide as much safety consideration while they are instituting Thane Road improvements in regards to bicyclist, which should be just as much as they intend for pedestrians in terms of making Thane Road improvements.

There being no objection, it was so ordered and CSP2011 0002 was recommended by the PC for approval to the Assembly, subject to the revisions made to staff's recommendations by the PC.

BREAK: 8:17 – 8:25 p.m.

Chair Gladziszewski adjourned the PC, and convened the Board of Adjustment.

X. BOARD OF ADJUSTMENT

VAR2010 0037

A Variance request to reduce the side yard setback from 3' to 0' for an existing deck.

Location: 2806 Peters Lane

Applicant: Miriha Scalf

Staff report

Ms. Jones said the subject property is located in Douglas, and is zoned D-18. She noted that generally the side yard setback is 5' for a grade-level deck, including an exception that a deck can be constructed within 3' of the property line. Regarding the background surrounding this case, she explained that the deck was constructed last summer, and CDD staff found out about it via a neighbor's complaint, and an enforcement case was initiated in the fall in 2010. She noted that the Building Dept. determined that this particular deck did not require a building permit because of its height, and the requirement is higher than 4' off the ground, which this deck is not. She said another aspect of this project is a private 6' ingress/egress and drainage easement along a portion of the property. She referred to the plat showing the square deck, noting that the blue line represents the property line, and the red line is where the deck was built 2" from it. She said if the deck was built to meet the setback it would be where the dotted line is represented on the plat where the 6' easement is, within this particular set of 6 town homes. She noted that per a Blue Folder item, the owner of the property stated that he spoke to other property owners within the development to inform them that they are able to access the easement through his gates. She noted another photograph where a tape measure was placed, explaining that 2.5' was mentioned in a Blue Folder item, although she is not sure if it is 3' because the deck is actually 2" from the property line. Even so, she said the deck would have to be cut back to 3' if the Board of Adjustment does not approve this variance. She said the fence is less than 6' and is permitted where it was constructed, so the owner would not have had to apply for a building permit in that regard. She said the public concerns surround parking, soil erosion, and the adjacent neighbor's failing retaining wall. She said the deck does not impact any on-site parking, which consists of a 1-car garage and a parking space behind it, so the parking requirement is met.

She stated that the erosion and retaining wall were concerns of the adjacent neighbor, which are provided in the staff report. She said staff solicited comments from General Engineering about repairing the retaining wall, and they informed her that a grading permit will be required for such work, and that the Building Dept. would likely not require a building permit unless the height of the retaining wall was over 4', measured from the foundation to the top. She said this same neighbor mentioned that they would have challenges accessing the retaining wall area to work due to the adjacent neighbor's newly constructed deck and fence, and she noted that the legal right does not extend to the adjacent neighbor to access the subject property easement area, so the adjacent neighbors would be required to reconstruct the retaining wall on their own property. She said there is also a concern regarding soil erosion and drainage being impacted, so she conducted a site visit with Autumn Lowrey of General Engineering who stated that drainage is

not impeded by this grade-level deck. She said no hard evidence was provided in regards to soil erosion, and the neighbor submitted a photograph showing that the neighbor's retaining wall started failing a few years before the subject deck was constructed.

She said staff recommends denial of the variance, as they found that criteria 1, 5 and 6 are not met.

Mr. Rue said the fence is legally conforming in its current location, and if the Board of Adjustment denies the variance, the applicant will have to remove 3' of deck so it is inside of the fence. Ms. Jones clarified that it is permissible to have a fence constructed on the property line. Mr. Rue stated that if the applicant were to do so, he asked if they would be able to install planters within the 3' setback open space where that section of deck was removed; Ms. Jones said yes.

Mr. Satre asked who enforces the common easement area between these two residences, and if the subject fence blocks it. Ms. Jones said the City does not enforce this common easement, and instead, it is through the homeowner's association, although she does believe it is not active at this time.

Mr. Pernula said a comment provided by Judy McDonald/Brogan states, "If this is granted, it would mean more parking directly in the street right-of way." Ms. Jones said she does not believe that granting the variance would impact on-street parking.

Mr. Bishop referred to the utilities and drainage within the easement area and asked if staff is certain that the City initially installed them during development of the subdivision. Ms. Jones said that was a recommendation by the City for this subdivision in the 1980s, although not a lot of information was documented regarding this particular easement, but it was discussed at that time. The discussion was in favor of the property owners providing adequate drainage and access to this area.

Ms. Grewe referred to the neighbor's failing retaining wall in terms of reconstruction limitation issues in relation to the subject deck. She explained that the subject fence is legally conforming, although the deck is not, so she questions what impacts the deck structure might impose on the adjacent neighbors who want to reconstruct their retaining wall. Ms. Jones said the deck faces the street towards the top of the hill and the retaining wall is located on the other side of the property line, and the adjacent area is where the neighbor's property has a retaining wall on a steep slope.

Public testimony

Miriha D. Scalf, 2806 Peters Lane, said she is representing the property owners George E. Kauzlarich (her father) and Ryan R. Dean, 2806 Peters Lane, and she applied for a variance to reduce the side yard setback from 3' to 0'. She said she submitted a statement in the Board of Adjustment packet. She noted that the fence resides just shy of the property line by a couple of inches, noting that the as-built survey shows it is being 0.12' at one point, and 2.29' at another, so the fence is very near the property line. She noted that the deck was constructed within the fence. Therefore, if the fence was not in place, the deck would be technically 2.5' from the property line, so this is where she determined the 2.5' versus the 3' side yard setback that staff mentioned.

Chair Gladziszewski informed Ms. Scalf that the Board of Adjustment has very specific criteria that has to be met in order to grant variances, and three of them are not met per staff's analysis and findings, so it would be most helpful if Ms. Scalf addresses her response specifically to those criteria.

Ms. Scalf offered to answer questions of the Board of Adjustment, noting that her father addressed the criteria not agreed upon by staff in his written statement provided in the packet. Mr. Satre commented that Mr. Kauzlarich's response addresses these specific criteria as being met per his response on pages 5 through 8.

Ms. Scalf said the fence and deck are within the easement area, and she and her father informed every neighbor in the Treadwell Townhouses that they have permission to enter/exit their deck gates to cross to the other side. She said the topography of the retaining wall area within the easement is very steep, and in the 7+ years during the time that her father has owned the property nobody accessed that area because of this. She said the intention while designing the deck with two gates was to provide the opportunity to construct steps down that steep area, so it is not so treacherous. She noted that at the far end of the Treadwell Townhouse is a nice stairway within an easement, including access through back doors to the backyards of residences. She said they did not intentionally encroach into the setback with these structures, noting that they hired a contractor, so they thought all the rules and regulations were followed. She explained that it was not until they received a notice from CDD that this was not the case. She said the fence is going to stay, and cutting 2.5' off of the deck is going to make it difficult to create steps down the steep slope area of the hill in the easement area, which would provide a benefit to the Treadwell Townhouse residents consisting of 6 units to be able to access their backyard areas.

Lawrence and Laura Rorem, 2800-D Peters Lane. Mr. Rorem stated that they provided written testimony to the Board of Adjustment, including photographs. He said when they came home last summer on June 10, 2010, they were surprised to find an imposing new deck and fence along their property line. He said the neighbor's old deck was similar to the one they have, which is quite small in size, so the new deck is not a replacement in size or scope as to what was there as its predecessor, which he believes is about 3 times larger. He said the new deck encroaches into the egress/ingress and drainage easement, which will have an adverse impact on their ability to access and maintain their property. He said his son in law is a civil engineer who has many friends in the same profession who provided them suggestions to share with the Board of Adjustment. He said the wall on his property retains soil that supports the additional weight of the adjacent neighbor's deck, so it is this weight on the soil that is putting a strain on his retaining wall. He said the wall provides a stairway access to his property located off of the side door area of his house. He said the townhouses from 2806 to 2816 Peters Lane use 3' along the property line of 2806 for access, and as long as he can remember his stairway was the access for units on both sides of this area, which was never a problem. He said he is concerned that repairing his retaining wall might compromise the neighbor's new deck. He said there is only 29" of soil between the neighbor's concrete deck support and his 3-1/2' retaining wall. He noted that beyond 20" on his property is a 76" wide path of soil from the property line to the neighbor's foundation, which his retaining wall plays a significant role in holding up. He said the new deck has impacted drainage and erosion, and the previous garden was installed as a cooperative effort between them to deal with drainage and erosion issues. He said the previous garden and the landscaping absorbed more water than bare soil under the new deck does. He said the retaining wall has slowly deteriorated over the past few years, so 2 years ago he approached Mr. Kauzlarich about cooperatively working on repairs, which is when they both

decided to deal with it last year, but he and his wife came home from being out of town and found that his neighbor had a new deck constructed. He contacted the CDD Building Permit Dept. about repairing his retaining wall, and at that time he was informed that his neighbor did not need a building permit for the deck if it was less than 4' in height. Even so, he said a temporary support beam is now holding up his failed retaining wall, and it's facing the danger of collapsing and pressing into his foundation and side door. He explained that he and his wife are retired and on a limited income, so they are unsure as to how to proceed. He said their health issues limit them from solving this on their own in terms of "manual labor," and equipment access is no longer feasible. He said the bottom line is that they wish there had been cooperation so that they all could have benefited from working together to address the retaining wall, soil, and deck issues, prior to the deck being built. He stated that a variance obtained before proceeding would have saved a lot of stress for all concerned. He said the contractor should have known that a variance was required beforehand, including that it was his responsibility to follow CBJ procedure. He said they feel bad for the neighbors that the contractor did not carry out his ethical duty, which has left both parties in a dilemma. He said their intention is not to bring financial hardship to the neighbors, but in reality they are not responsible for this problem, but they are concerned about their failing retaining wall and their impacts due to the new deck. He stated that if they had been informed prior to the construction of the new deck, then the failing wall could have been addressed at a minimal cost. Furthermore, he said the stress and impending financial hardship has been significant. He said they do not know what to do, as they are now faced with the unavoidable possibility of damage to the neighbor's deck. He said they would like written assurance that they will not be held liable for any damage that could occur to the neighbor's deck and structural supports if it is decided to leave the new deck as is. He said they respect the neighbor's right to privacy and desire to keep their children safe.

Mr. Rue asked if the Rorems developed specific plans for repairing the retaining wall. Mrs. Rorem said they have not, explaining that part of their plan before the deck was constructed was to complete terrace landscaping because that would have been the most cost-effective method in which to deal with repairing the retaining wall area, but that is no longer possible. She said their son in law informed and other professionals informed them of this.

Ms. Grewe said it appears that the reconstruction of the retaining wall should have taken place before the deck and fence were rebuilt; Mr. Rorem agreed.

Mr. Miller stated that if the Board of Adjustment denies the variance the fence could remain, and a section of deck encroaching into the setback would have to be removed, although he is not sure that doing so would help the situation. Mr. Rorem said a concrete section supporting the deck is 29" from his property, so if he removes dirt in this area it might impact the corner of the neighbor's deck, which concerns him very much. Mr. Miller stated that perhaps if a cooperative effort takes place, then some of the money it might take to deconstruct the deck to bring into compliance with the setback could be used to assist with paying for some of the manual labor to reconstruct the retaining wall. Mr. Rorem said he would certainly entertain that possibility.

Chair Gladziszewski asked the Rorems to explain the relation of the retaining wall to the deck area. Mrs. Rorem explained that before they moved into their residence in 1998, a cooperative effort was previously provided by the neighbors to address some erosion issues in this area that were taking place back then, which is why the constructed their small deck and the garden was installed without the retaining wall in conjunction with the neighbors to address erosion. Chair Gladziszewski stated that the photographs are provided from different angles, so it is difficult to

understand the actual location of the retaining wall in relation to the deck. Mr. Rue referred to exhibit 6 of Mr. Kauzlarich's photographs, stating that the flagged stick in the center of the photograph denotes the common property line between these properties, and the corner of the deck is now located where the rocks are in the photograph closest to the road, which allows 29" between the corner of the deck to the neighbor's working area. He asked how far a piece of equipment would have to reach in to access the retaining wall area. Mrs. Rorem said her son in law knows the answer to that question, and he understands what is possible, although she and her husband do not. She added that they could also draw plans up with his help, although they are unable to do so on their own.

Mr. Pernula cautioned the PC that they should not mix up private versus access and utility easement regulations in terms of this case. Chair Gladziszewski agreed, stating that she appreciates some of the Commissioners comments, although many pertain to a different matter not germane to this particular case. Mr. Miller explained that the easement is not for the neighbor, and instead, it is for the Treadwell Townhouse Subdivision in which they belong. Therefore, the adjacent property owner is not allowed to crossover the property line with a piece of equipment anyway, so it is likely that reconstruction of the retaining wall on the adjacent property within the easement would likely consist of manual labor in any event. He noted that it might be easier to find positive findings for the criteria that are not met if the Board of Adjustment knows that the money would allow a portion of the deck that encroaches into the setback to be used in a cooperative effort with the adjacent design of reconstructing the neighbor's retaining wall.

Mr. Pernula said the easement is between both these properties and the applicant's fence is located in the middle, so he believes there is more room than just 29" between that and the neighbor's residence. Mr. Rorem said there is more space if they take into account his existing stairway.

Chair Gladziszewski stressed that the Board of Adjustment is entering areas that are not germane to this particular variance request when they are following the neighbor's problems, which this body is not allowed to do. She stressed that the Board of Adjustment can continue this case so the neighbors might have time to work out a compromise, which might require the applicant to re-appear before this body.

Mr. Watson said he is contemplating continuing this item, noting that what he is able to read in terms of the covenants and easement for the Treadwell Townhouses Subdivision (attachment B) addresses issues the neighbors brought up, although he believes the association is inactive.

MOTION TO CONTINUE: By Mr. Watson, that the Board of Adjustment continues VAR2010 0037 to allow the neighbors an opportunity to come to a compromise, and then re-appear at a subsequent PC meeting to be heard by the Board of Adjustment.

Mr. Rue stated that if the Board of Adjustment denies this variance request the fence will still remain, so he imagines if they cut the encroaching portion of the deck off and retain its bracing and the cross beams supporting the fence, this would allow them to install planters in the setback area. Therefore, he does not see what benefit would be gained by continuing this variance request, as the neighbors still have to come to a compromise regarding the reconstruction of the adjacent retaining wall.

Mr. Miller requested that the Board of Adjustment wait on making a motion until public testimony has been closed; to which Chair Gladziszewski agreed.

MOTION TO CONTINUE WITHDRAWN: *By Mr. Watson.*

Chair Gladziszewski apologized to the testifiers about this Board of Adjustment process issue.

Ms. Schafer said in response to the comment that the reconstructed deck is 3 times its original size, she explained that the initial two-level deck was rotting away, which had a garden in the 2.5" setback area, so they reconstructed the portion of deck to expand it into that same setback area. She said concerns regarding drainage were brought up, although the staff report states that drainage is not an issue with the existing deck and fence in place. She noted that it has not yet been pointed out that the adjacent neighbor's deck encroaches 3' into the setback as well, and to cut off 2.5' of her deck would cost about \$3,200, which were quotes she recently received from a couple of contractors. She said with a previous case reviewed by the PC, they were discussing a huge \$4 million amount, so \$3,200 might now seem trivial, but it is not in this case. She offered to answer questions of the Board of Adjustment.

Mr. Miller asked Ms. Scalf if photographs were provided from the neighbor's view of the subject site; Ms. Scalf said none are from that direction. Mr. Miller asked which direction the photograph was taken of Mr. Kauzlarich's exhibit 5; Ms. Scalf said it is of the back gate from her deck. Mr. Miller noted that it also shows the 2.5' area of deck in question, so he believes exhibits 3 and 4 are of the other side of the structure; Ms. Scalf said that is correct.

Ms. Grewe said it is unfortunate that these neighbors have had to appear before the Board of Adjustment tonight, noting that Mr. Kauzlarich offered to work with the Rorems on their retaining wall, although when the Rorems were out of town their neighbors reconstructed a deck claiming that they did not know that the contractor didn't follow the Land Use Code, so this is a tough spot the Board of Adjustment is in now. Ms. Scalf said it is her understanding with the neighbors that it has been 3 years since their retaining wall failed, and she had no idea that they were on vacation, as construction of the deck and fence basically entailed scheduling when the contractor was available, not intentionally doing so when the neighbors were out of town. She said she had no knowledge of any previous agreement with them, and the reason she had a fence installed was because the neighbors acquired a pit bull and she has two small children, so she wanted a safe area for them to play. She said very small children take the pit bull for walks, but the pit bull does not appear to be very friendly, and she is not okay with that. She noted that when the fence was being installed the deck was rotting away, so she attempted to maximize the space, which was an aspect that she proposed to the contractor. She said she checked references and thought she was going through all the proper channels, although she now knows a lot about the City and Treadwell Townhouses Subdivision rules and regulations. She said it was not her intention to cause a rift with the neighbors, and instead, it was strictly out of a safety concern for her children.

Public testimony was closed.

Board discussion - None

Staff recommendation: That the Board of Adjustment adopt the Director's analysis and findings and deny the requested Variance, VAR2010 0037. The Variance permit would allow for an existing grade level deck to remain in the 3' side yard setback up to the property line.

Board action

Mr. Rue confirmed that if this case is denied by the Board of Adjustment, he asked if the applicant could literally cut out the decking encroaching into the setback while leaving the substructure of it in place, and place planters in the that area, including if doing so would be legal, and if so, this should not cost \$3,200. Ms. Jones said she wishes to make it clear that the as-built-survey shows that the deck is 0.12" from the property line, so it would be closer to 3' that would be required to be removed. Mr. Rue clarified that Ms. Scalf said the fence takes up 6" of the deck, so 2.5" of deck would still have to be removed, and he asked if it would be legal to install planters in that area without a permit; Ms. Jones said yes.

MOTION: *By Mr. Rue, that the Board of Adjustment adopts the Director's analysis and findings and denies the requested Variance, VAR2010 0037. The Variance permit would allow for an existing grade level deck to remain in the 3' side yard setback up to the property line.*

FRIENDLY AMENDMENT: *By Mr. Miller to revise the Board of Adjustment's response to the following findings in the staff report, as follows:*

- 1. The applicant pointed out that the adjacent neighbor's deck is within 3' of the side yard setback, and the subject property owner states "The Treadwell Townhouse Subdivision Unit 6 has a deck structure in the same character as my deck. Treadwell Townhouse Subdivision Unites 5, 4, 3, and 2 each have ground level decks that extend to their property lines; each of the ground level decks are at different elevations." Based on this, the subject deck is consistent with other property owners.*

Yes. Criterion 1 is met.

Mr. Bishop said he is speaking against the motion, stating that there are enough unresolved issues that have to be taken care to protect the adjacent neighbor's property, as some alternatives mentioned earlier might be a possibility that once the portion of the deck is removed, i.e., the applicant is able to place planters in the same area, which would not solve a whole lot, but this is an alternative, so he instead prefers staff's analysis and findings to deny the variance as proposed.

Mr. Watson interjected, stating that as a point of order Mr. Miller is in the midst of making a motion, and he has not yet finished doing so. Chair Gladziszewski asked if Mr. Miller intends to revise all of the criteria that are not met regarding this case; Mr. Miller said yes, and he continued, by stating:

- 5(B). Many of the decks in the neighborhood were built to the side property line boundaries and encroach into the 3' side yard setback area.*

Yes. Sub-criterion 5(B) is met.

- 6. By denying this variance would require the property owner to remove a the portion of deck within the side yard setback, which would require additional excavation to support the remaining portion of the deck, and doing so would hinder the bank by making it more unstable, although it could all be put back and it would be fine. Even*

so, this is contrary to what the neighbors desire, and instead, they are seeking help with reconstructing their retaining wall.

Yes. Criterion 6 is met.

Chair Gladziszewski said this motion somewhat depends on the goodwill of the applicant. She explained that if the Board of Adjustment continued this variance instead, it might provide more incentive to the applicant. She commented that she wonders whether it might help the situation for anyone by cutting off 2.5' of the deck.

Mr. Watson stated that if the Board of Adjustment votes in favor of this motion they are going to require the owner to remove 2.5' of their deck because it encroaches within the side yard setback, so with the existing fence the property owner can lock their gate now, so he is trying to figure how much benefit it would be to enforce this particular requirement because they would no longer be able to do so.

Chair Gladziszewski clarified that the current motion is for the Board of Adjustment to adopt staff's recommendation with the friendly amendment provided by Mr. Miller, which is on the floor to change 3 responses to the criteria as being met.

Mr. Rue accepted Mr. Miller's friendly amendment, although he appreciates staff providing their rationale in response to the criteria as well.

Ms. Bennett said she is able to see both sides of the issue, although she does not believe the inconvenience of removing 2.5' of decking is going to amount to very much, and she does not believe the Board of Adjustment can make them cooperate to do so, as that is the function of an association of the subdivision. She said unfortunately they do not have an active association, which is too bad, but appearing before the Board of Adjustment and expecting them to mediate these circumstances is inappropriate.

Ms. Grewe said she wonders what happens if the retaining wall recedes and ends up damaging the new fence or deck, noting that she sympathizes with both parties to try to find some sort of compromise.

Mr. Miller spoke in favor of the motion and his friendly amendment, stating that in his experience in reviewing the drawings, the likelihood of the deck failing or subsiding because of work to reconstruct the retaining wall should be very minimal.

Roll call vote

Ayes: Haight, Bennett, Watson, Miller, Rue, Satre, Gladziszewski
Nays: Bishop, Grewe,

Motion passes: 7:2 and VAR2010 0037 was approved by the Board of Adjustment with revised staff's findings to criteria 1, 5(B), and 6 as being met.

Chair Gladziszewski adjourned the Board of Adjustment, and reconvened the PC.

XI. OTHER BUSINESS - None

XII. DIRECTOR'S REPORT

Comp Plan review

Mr. Pernula referred to a Comp Plan Policy 18.2, which he cited, as follows:

“POLICY 18.2 IT IS THE POLICY OF THE CBJ FOR THE PLANNING COMMISSION TO UNDERTAKE A GENERAL REVIEW OF THE COMPREHENSIVE PLAN ONCE EVERY TWO YEARS, AND TO MAKE RECOMMENDATIONS TO THE ASSEMBLY TO AMEND IT AS NECESSARY TO REFLECT CHANGING CONDITIONS AND NEEDS AND TO CONSIDER AND ENACT AMENDMENTS TO THE PLAN AND LAND USE MAPS, INCLUDING AMENDMENTS TO THE URBAN SERVICE AREA BOUNDARY, AT ANY TIME THE PLANNING COMMISSION AND ASSEMBLY DETERMINE THAT AMENDMENTS ARE NEEDED.”

He explained that this verbiage was purposely changed so the PC could provide a review every 2 years, and it has currently been 2 years and 7 months since the PC last did so. He noted that when the PC last updated the Comp Plan it took 3 years to complete, including nearly an additional year to adopt it in 2008, so updating the Comp Plan every 2 years is “out of the question,” although this review does make sense at this time. He explained that most of the senior planners who worked on the previous update of the Comp Plan are all very busy, so he is contemplating assigning a chapter of the plan to several of those individuals to spread out the review among them, and then staff will present status reports on each of the chapters of the Comp Plan to the PC, as portions of the plan may be out of date at this time. He asked if the PC wishes to review these reports from staff directly, or provide them for a committee to review beforehand. Chair Gladziszewski stated that it seems fine for staff to report directly to the PC. Mr. Watson asked how long Mr. Pernula expects it to take staff to conduct their review. Mr. Pernula said it will probably be around 6 months before staff’s review is presented to the PC. Mr. Watson said certain portions of the Comp Plan are weaker than others, so staff should probably prioritize their review based on this.

Upcoming meetings

Mr. Pernula said a Subdivision Review Committee meeting will be held on May 13, 2011, and staff will provide notice of that meeting to the committee members fairly soon.

Unexpected passing of a staff member

He stated that staff member Jim Peters, the CBJ Electrical Inspector, unexpectedly passed away last Friday (May 6, 2011).

VAR2010 0037 comments

He said this variance review was interesting, noting that two areas where he worked before allowed for decks that were less than 30” off the ground, and the set backs were not considered, as they were able to construct them to the property line. He said this is the same as what the current Building Code states for Juneau. He said if a deck is less than 30”, the property owner is not required to obtain a permit. He said the problem with the existing code is that someone could have called, e.g., stating that they intend to construct a deck less than 30” off of the ground, and they would have probably been told that they did not need a permit. Therefore, he explained that it is difficult in such situations to enforce those types of zoning codes, so the PC might contemplate revising the Building Code and Zoning Regulations with respect to where a property owner measures the setback in these types of instances. Chair Gladziszewski said cases

such as this often take up a lot of review time by the PC, and the property owners tend to be very passionate when the PC is faced with choosing between a couple of bad scenarios. Mr. Pernula stated that generally what is taken into account with this type of zoning pertains to light, air, and open space impacts, although with this case the deck and fence are low enough where these aspects are typically not considered.

XIII. REPORT OF REGULAR AND SPECIAL COMMITTEES - None

XIV. PLANNING COMMISSION COMMENTS AND QUESTIONS

Ms. Bennett asked when the exterior of the Marine Park Parking Garage is going to be power washed because it is dirty, as the Seawalk has now been extended nearby it. Mr. Watson said he asked this question last year at a Public Works & Facilities Committee meeting, and he was told that there were no funds available to do so. Mr. Pernula said the exterior of this building has a lot of black moss growing on it, so it looks pretty ugly.

Mr. Watson said he has shared his frustration with Mr. Doll for as long as he has served on the PC about the need for Thane Road improvements, and until better communications are provided between the City and DOT in a positive way, he does not see this happening. He said he does not know the reason for this, and maybe it is not a priority, although this is very frustrating. Mr. Chaney said they are more than willing to work with DOT, although DOT dropped this particular project on the CDD staff, and then when staff provided comments on it, DOT acted as though staff was “talking out of turn” and they should not be questioning their benevolence. Mr. Bishop said there has to be a method in which the communication barrier might be broken down. Ms. Bennett said DOT does not have a public process such as the PC and Assembly have. Mr. Doll said it is entirely likely, e.g., that somebody who resides at Thane went to the legislature who allocated funds, and they did not even know how much they were going to get, although it ended up being \$4 million, so that was the planning that went into that project, which he would bet on otherwise that funding would not have been made available to DOT for this project. He said there is only one way to get money for Thane Road improvements, which is through politics because Thane does not have enough people who reside in that area, including that it does not have a safety record.

XV. ADJOURNMENT

MOTION: *By Mr. Rue, to adjourn the PC meeting.*

There being no objection, it was so ordered and the PC meeting adjourned at 9:45 p.m.