

MINUTES

PLANNING COMMISSION
CITY AND BOROUGH OF JUNEAU
Maria Gladziszewski, Chair

REGULAR MEETING
November 22, 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: Jerry Medina, Dennis Watson, Benjamin Haight, Dan Miller, Michael Satre, Maria Gladziszewski

Commissioners absent: Nathan Bishop, Marsha Bennett, Nicole Grewe

A quorum was present.

Staff present: Dale Pernula, CBJ Community Development Department (CDD) Director; Greg Chaney, Beth McKibben, Nicole Jones, CDD Planners

Swear in new PC member: Jerry Medina

Chair Gladziszewski swore in Mr. Medina, and she and her fellow Commissioners welcomed him to the PC.

II. APPROVAL OF MINUTES - None

III. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS - None

IV. PLANNING COMMISSION LIAISON REPORT

Mr. Smith stated that although the Assembly does not have affordable housing on their list as being one of their top ten goals, it continues to be an ongoing priority. Chair Gladziszewski thanked Mr. Smith, stating that the Commissioners have been discussing priorities of the PC as well.

V. RECONSIDERATION OF THE FOLLOWING ITEMS - None

VI. CONSENT AGENDA

Chair Gladziszewski announced that there were two items on the Consent Agenda, and inquired if there was 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, as presented by the PC.

AAP20110012

A Conditional Use permit (CUP) request to establish an accessory apartment within an existing home on a 10,018 sq ft lot.

Applicant: Nick & Kathleen Goddard

Location: 5160 N. Douglas Hwy.

Staff recommendation: That the PC adopt the Director's analysis and findings and grant the requested CUP, AAP20110012. The permit would allow the development of an accessory apartment within an existing home on a 10,018 square foot lot. Staff recommends the following conditions of approval:

1. The applicant must obtain a building permit and a Certificate of Occupancy prior to utilizing the proposed accessory apartment.
2. Prior to issuance of any occupancy permits, a release of the deed restriction recorded October 9, 2003, on the subject property must be recorded.

SGE20110002

A CUP to extract, process, stockpile, and export 110,000 cubic yards of rock at Cascade Point.

Applicant: Goldbelt, Inc.

Location: 44000 Glacier Hwy.

Staff recommendation: That the PC adopt the Director's analysis and findings and grant the requested Extraction permit, SGE20110002. The permit would allow extraction, processing, stockpiling, and export of 110,000 cubic yards of material from the Cascade Point quarry site. The approval is subject to the following conditions:

1. The quarry permit shall expire ten years from the date of PC approval.
2. All project conditions from USE2008-00016, the Cascade Point Barge Ramp, carry forward with this permit.
3. Employee housing at project site is prohibited, because housing has not been reviewed with this application.
4. Per CBJ §49.70.310(a)(3), development is prohibited within 50 feet of an eagle nest on private land, provided that there shall be no construction within 330 feet of such nest between March 1 and August 31 if it contains actively nesting eagles. If eagle nests are discovered within 330-feet of the project site at any time in the operational life of the quarry, the applicant shall cease development with 330-feet of the nest until such time as an approved Variance to the standard has been obtained from the CBJ PC.
5. All equipment and supplies shall be removed from the site after each operational evolution.
6. Explosives shall not be stored onsite, except that which is immediately necessary for the next blast.
7. The applicant shall secure the quarry site with a locked, impenetrable gate.
8. The applicant shall reclaim the quarry site with finished faces and established benches, and remove loose rock during the period between projects, even if the entire quantity of rock has not been removed.

9. The area marked on the site plan, Attachment 6, as “overburden storage area” shall be revegetated with native species to 80 percent coverage by August 2013, to allow two growing seasons for coverage. If a seed mix is used, the applicant shall ensure that the seed mix is free of non-native, noxious weeds.
10. The quarry shelves shall be revegetated with native species to 80 percent coverage within two growing seasons following the close of quarry operations. If seed mix is used, the applicant shall ensure that the seed mix is free of non-native, noxious weeds.
11. A strip of land at the existing topographic level, and not less than 15 feet in width, shall be retained at the periphery of the site wherever the site abuts a public way. This periphery strip shall not be altered except as authorized for access points. This section does not alter the applicant's duty to maintain subjacent support.
12. If the bank of any extraction area within the permit area is above the high water line or water table, it shall be left upon termination of associated extraction operations with a slope no greater than the angle of repose for unconsolidated material of the kind composing it, or such other angle as the Commission may prescribe. If extraction operations cause ponding or retained water in the excavated area, the slope of the submerged working face shall not exceed a slope of 3:1 from the edge of the usual water line to a water depth of seven feet. This slope ratio may not be exceeded during extraction operations unless casual or easy access to the site is prevented by a fence, natural barriers, or both.

VII. CONSIDERATION OF ORDINANCES AND RESOLUTIONS - None

VIII. UNFINISHED BUSINESS - None

IX. REGULAR AGENDA - None

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

X. BOARD OF ADJUSTMENT

VAR20110024

A Variance to the minimum lot size for lots fronting on minor arterial and to the requirement for a common access point for a future proposal of a four-lot subdivision.

Applicant: Square Knot Development, LLC.

Location: 3915 N. Douglas Hwy.

Staff report

Ms. McKibben said the applicant would like to subdivide the 4.23-acre site into four lots (attachment A), located less than one mile from the Juneau-Douglas Bridge. This parcel is somewhat irregular, and they have been calling it a “jack-o-lantern lot.” A smaller portion of the parcel fronts on Douglas Highway, and the larger portion is set back by a row of lots. The parcel is currently zoned D-18. She provided an aerial photograph showing an existing building on the parcel. In square feet in area Lot 1 would be 5,434.5, Lot 2 would be 5,371, and Lot 3 would be 6,359. Lot 4 would be the remainder of the parcel, consisting of approximately four acres.

The applicant has received a permit from the State of Alaska Department of Transportation (DOT) for a driveway that would access proposed Lots 2 and 3.

The topographic map when overlaid on the aerial photograph of the site has 10' contours, which show some slope to the site (attachment E). Since the aerial photograph was taken, a small cabin was constructed on proposed Lot 3. If the proposed subdivision is approved, the location of the cabin would have to be addressed through separate action so it complies with the setbacks.

The CBJ Roadway Classification Map D (attachment B) was adopted per Title 49, and shows a portion of Douglas Highway as being a minor arterial. The code requires certain standards for lots fronting a minor arterial. DOT's functional classification update project map for Downtown Juneau (Attachment D), shows the same area as an urban collector. The applicant is seeking a variance to CBJ §49.40.130(b)(1)-(5). When land fronts a minor arterial it can be subdivided, but it has to meet the lot size requirements of D-1 zoning, which is 36,000 square feet, 150' wide, and 150' deep. The proposed Lots 1, 2, and 3 are smaller than those dimensions and meet the underlying zoning requirement for the D-18 lot size, but they do not comply with CBJ §49.40.130. The applicant wishes to add a shared driveway for proposed Lots 2 and 3, and for Lot 1 to use the existing access through Lot 4. When the PC considers this application DOT recently updated their functional classification maps, so it is important to remember that currently DOT and CBJ have classified North Douglas Highway differently. Many sites in the area were recently rezoned to D-18, and then further down in the area a lot was rezoned from D-3 to Light Commercial. Mr. Watson stated that in regards to DOT's urban collector designation, that study was started in 2007 and recently completed in June 2010. Therefore, he asked if it reasonable to conclude that DOT might conduct another study in such short order to change that area from urban collector to arterial. Ms. McKibben said she is not aware of what type of schedule DOT operates under when they reclassify roads. Mr. Watson said the study is 184 pages long, and he assumes that DOT probably would not be in a hurry to provide an updated study. Ms. McKibben said the lots she mentioned that were rezoned about 1.5 to 2 years ago, and so far the only development this applicant has previously provided is the one small cabin, and further development would not happen in the immediate future. She explained that the CBJ minor arterial map was adopted per Title 49, and staff has to abide by those standards when reviewing this case. Mr. Watson asked who trumps who in terms of the CBJ versus the state in a situation such as this, as DOT wishes it to be a collector street, and the CBJ wants it to remain an arterial. Mr. Pernula said the CBJ maps currently designate the roadway as an arterial, but staff has not reviewed this topic in depth to determine whether the roadway should be downgraded to an urban collector.

Ms. McKibben continued with the report, stating that staff found that the variance does not meet the criteria, and recommends that the Board adopt the analysis and findings and deny the permit, subject to the conditions outlined.

Mr. Miller referred to attachment E, and asked how the four adjacent lots to the subject parcel came into existence. Ms. McKibben said she does not fully know the specifics because she did not conduct that research.

Public testimony

Linda Orr, the applicant of Square Knot Development, said she held many conversations with DOT and they have not indicated that they intend to reclassify that roadway to a minor arterial anytime soon, so it will remain a collector street as far as DOT is concerned. The planners pointed out that a permanent easement could be granted for the existing driveway, but they believe doing so would create a situation of increased traffic on the driveway. Even if the driveway is not necessarily burdened with increased traffic now, it is a very steep so when there are snow and icy conditions it is pointless to sand it. The other safe and permitted driveway

DOT already approved is nearly flat adjacent to Douglas Highway, which would provide for a much safer driveway than the steeper one. Another burden is if they have to grant an easement from above, elderly or infirm people are going to be immediately discounted from owning those upper properties. It would be more expensive to do as the planners are suggesting, especially when taking into account that they are trying to be in the forefront of being able to provide some affordable housing in an area that is located five minutes from Downtown Juneau. She stated that Ron King of CBJ Engineering pointed out in an email, dated November 3, 2011, that he fears their motivation for this application is purely financial (attachment G). However, it is fairly simple that if they do not watch every penny they put into this project, then they surely would be unable to sell the properties affordably. She thanked the PC for their consideration.

Mr. Miller stated that a comment was provided in the report about a covered stairway, and he asked the applicant to expound on that. Ms. Orr said an existing driveway runs between the properties, and if they were required to move the driveway to the above area, then they would have to construct a covered stairway for access at about a 40' to 50' incline, which would require constant maintenance in the future.

Ms. McKibben referred to a Blue Folder item (attachment I) that was erroneously excluded from the staff report, which contains a letter from the applicant to the Commissioners. She explained that no written comments on this case were received, but she spoke to one of the neighbors who stated that if the variance is granted that it be limited to the two driveways that are shown. In addition, another person called with concerns about drainage from the site, and the driveways onto the road that would go across to their property.

Ms. Orr stated that several years ago before Square Knot Development owned the property an old abandoned water collection system was located at the top of the hill above this property. At that time Juneau experienced 68 days of torrential rain, and that system failed and flooded the property below. This was due to the lower portion of the dam not being properly decommissioned before that torrential rain event occurred. The above property currently has two bodies of water, which flow onto their property where they installed a culvert to redirect the flow downward. This will all be taken into consideration, including the possible need for more culverts when future grading plans are actually developed. Mr. Watson recalls when that event took place the City took corrective action with the property owner who was required to take care of it; Ms. Orr said it was corrected at that time.

Public testimony was closed.

Board discussion

Mr. Medina said he is newly serving on the PC, but he understands that the Board may not find a reasonable hardship if it is self-imposed or economic. Ms. McKibben said the six criteria per the code are listed in the report on pages 4 through 7, which are used to evaluate variance applications. In this case, economic hardship is referenced on page 6 under the following criterion:

- 5(C) Be unnecessarily burdensome because unique physical features of the property render compliance with the standards unreasonably expensive.

Mr. Satre clarified for Mr. Medina that under criterion 5 there are four sub-criteria of which only one has to be met.

Staff recommendation: That the requested variance does not meet the variance criteria; therefore, staff recommends the Board adopt the Director's analysis and findings and deny the requested variance permit. Should the Board decide to amend the findings and grant the variance, staff recommends the following conditions:

1. The plat shall contain a note limiting access to the subdivision to two driveways as shown in the applicant's proposal.
2. The driveway shared by Lots 2 and 3 shall be designed with sufficient area to provide the required minimum parking, and to provide sufficient maneuvering so as to prevent back out parking.
3. Prior to recording the subdivision, the residence on proposed Lot 3 shall be relocated to comply with minimum setback requirements, or receive a variance.

Board action

Mr. Satre stated that with this case where there are differing opinions between DOT and the City staff regarding public safety and access onto the roads. DOT is stating that the subject site has a safe driveway that they can permit, but the City states that by adding any driveway onto North Douglas Highway they would be contributing to eroding public safety in that area. This is an aspect that will have ramifications for the PC later on as various higher density areas in North and West Douglas are developed, with a developer being caught at some point in time as being the last one in. However, in this case he can see finding in the affirmative criteria 2 and 6, which are the only ones the PC has to meet by placing a single driveway in two properties, and therefore would be minimizing the driveways that could potentially be placed in this area. He explained that if the PC were to do so they would be adding a driveway, but not as many driveways as could potentially be installed, which would be deemed as a safe and appropriate driveway by DOT. In terms of criterion 6, the PC would have to talk about the benefits to the neighborhood by encouraging additional safe development in the area, which would provide a slight benefit, not a detriment.

Mr. Miller said this is a complicated issue with the fact that DOT and the City staff do not agree with the classification of the roadway. Even so, he believes staff somewhat provided a contradiction by stating that in meeting criterion 3, they have stated that DOT evaluated the safety of allowing a new driveway to be shared by two lots, and the authorization of the variance will not injure nearby property, so he believes DOT deemed it as being safe. He referred to criterion 2, stating that he believes the public safety and welfare can be preserved. He referred to criterion 6, stating that the benefits to the neighborhood is that there would be no detriment, but he is not so sure he could think of more benefits other than the fact that doing so might provide for affordable housing or smaller lots, which in theory would lead to potentially more affordably built homes. He believes that the PC could find that criteria 2 and 6 are met.

Mr. Haight stated that in considering the contradiction in DOT's view of the road versus the City's view, it comes down to the fact that the PC is tied to the CBJ classification of the Douglas Highway in terms of this case. On the other hand, when the PC views the safety aspect of this case, it is true that by entering the road from a flat condition it would provide for a safer route. However, if drivers were required to maneuver vehicles by backing out onto North Douglas Highway, it would pose a huge hazard, particular in that area, including additional nearby vehicles entering that same section of highway. However, if the PC were to consolidate the road to one steep driveway, that area is already experiencing those same problems throughout North and West Douglas, so at some point in time those issues will have to be resolved.

Mr. Miller referred to the Traffic Impact Analysis (TIA) of (attachment F) on page 3-27 that states, "...access roads should be spaced at least one quarter mile from adjacent access roads." He explained that there is a newly permitted hammerhead driveway that could possibly access Lots 2 and 3, and the existing driveway more than likely would end up being an access road for future development, or he wonders whether the driveway for Lots 2 and 3 would also be considered as an access road. Ms. McKibben said the new hammerhead driveway was permitted as a driveway, not an access road. In regards to the existing driveway, it depends on the development plans for the rest of the property, which she believes would be for access to the remainder of the property which will later function to serve at D-18 density.

Chair Gladziszewski asked if the new driveway could be made to be less steep, and then they might not need the other driveway. Ms. McKibben said she does not believe doing so would work because the area has a fairly steep drop off from the edge of the existing driveway, and she does not know what type of engineering would have to take place to provide for a grade that would meet code requirements.

Mr. Watson stated that according to the DOT Study for the Reclassification overview document, including a 184-page document that provides background information on that, they sent out 354 letters to organizations and communities, followed with 84 other letters, another 139 letters, then they sent out form letters and maps, and a link to the final map. Therefore, it appears as though the City staff did not receive such information, but that is hard for him to believe. However, he is considering this to be an oversight on the behalf of City staff so it seems that they might be burdening the applicant because of that, which he does not believe to be satisfactory. Mr. Pernula said that assumption could be correct, although he does not know for sure. Mr. Watson explained that he found this information while preparing for this PC meeting, but it was not provided in the PC packet so he offered to give a copy to Mr. Pernula post this meeting.

Mr. Satre said he will provide a motion, including addressing changes to the criteria in such a manner so as hopefully to avoid the DOT versus City conflict, with the exception to criteria 1, 3, 4, and 5, which staff found as being met.

MOTION: *By Mr. Satre, that the Board accepts the conditions outlined by staff for the requested variance permit, VAR20110024, as follows:*

- 1. The plat shall contain a note limiting access to the subdivision to two driveways as shown in the applicant's proposal.*
- 2. The driveway shared by Lots 2 and 3 shall be designed with sufficient area to provide the required minimum parking, and to provide sufficient maneuvering so as to prevent back out parking.*
- 3. Prior to recording the subdivision, the residence on proposed Lot 3 shall be relocated to comply with minimum setback requirements, or receive a variance.*

The Board revises the Director's analysis and findings and approves the requested variance permit, with the revisions to the criteria as follows:

- 2. That relief can be granted in such a fashion that the intent of this title will be observed and the public safety and welfare be preserved.*

The intent of Title 49 is to ensure that growth and development is in accord with the values of Juneau residents; to identify and secure the beneficial impacts of growth while minimizing

negative impacts; to ensure that future growth is of appropriate type, design, and location; to provide adequate open space for light and air; and to recognize the economic value of land and encourage its proper and beneficial use.

Based on the recommendations of the 2009 Traffic Impact Analysis (attachment F) and the discussion in the 2008 Comprehensive Plan about North Douglas Highway, adding new driveways to the North Douglas Highway will have a negative impact on the public health and safety. ~~Furthermore, the approval of the variance as requested would violate~~ However, the approval of this variance as requested would preserve the intent of CBJ §49.05.100(4) to promote public health, safety and welfare, as implemented by CBJ §49.40.130(b) to limit access driveways on arterial roads; as one driveway is proposed to serve multiple properties and minimizes the total number of driveways potentially using the subdivision therefore, the intent of this title would not be observed.

~~No~~Yes. This criterion is ~~not~~ met.

6. That a grant of the Variance would result in more benefits than detriments to the neighborhood.

~~No evidence has been presented showing that the granting of this variance will result in benefits to the neighborhood. Another access driveway to North Douglas Highway will reduce public safety in the neighborhood; therefore, granting of the variance will create detriments to the neighborhood. Adding driveways to the North Douglas Highway is addressed in the 2008 Comprehensive Plan, and recommended against in the TIA commissioned to evaluate rezoning North Douglas.~~

The Board recognizes that they have these facts in front of them; however, in this case the applicant proposes to construct one driveway to service multiple properties and to minimize the total amount of driveways in the area in terms of this subdivision.

~~No~~Yes. This criterion is ~~not~~ met.

FRIENDLY AMENDMENT: By Mr. Miller, that the Board revises Condition 1, as follows:

1. The plat shall contain a note limiting access to the subdivision to two driveways, or one driveway and one access road as shown in the applicant's proposal.

He explained that the applicant has future development plans for Lot 4, and the only method in which they would be able to subdivide it further is to actually build an access road to CBJ standards. Mr. Satre accepted Mr. Miller's friendly amendment to the motion, stating that it is good forethought.

Mr. Medina stated he fails to see how the applicant is unable to develop the property in the D-18 zone because they could have 18 units per acre, so he questions why they would want to subdivide it and have three lots in a zone that does not call for that. Mr. Satre said he views this proposal as the start of developing the entire property, including as a way to provide for a couple of lots on the market relatively quickly, as well as allowing the applicant the opportunity to address the full built-out at higher densities that would be involved on Lot 4, which would be larger. The smaller lots the applicant has proposed are to the higher D-18 density that is allowed. He looks forward the full development of this area, as he believes the Board will eventually

rezone this area to D-18 over time. Mr. Medina said the applicant is requesting a variance to an existing zone that does not allow for lots smaller than 36,000 square feet. Mr. Chaney clarified that the reason the variance exception is set up in the code is to allow for larger lots to be subdivided, and to have access onto minor arterials. In this case, the property is zoned D-18 and the lots comply with the underlying zoning, but the only real issue is that they are not using a frontage road to access the site. In his discussion with the applicant, they are hoping to sell the lots with frontage on the right-of-way to help fund development of the upland lots. He explained that the applicant could do so via many other options, but that is just the method in which the applicant has proposed to move forward with. This is quite okay with the exception of the access issue, which is primarily what staff is considering as being a public safety concern, and obviously there is some debate with DOT so this is where they are agreeing to disagree. However, as far as the variance request not being in compliance with the underlying zoning, this proposal is in compliance with it, but it is just the method of accessing the roadway that is under question.

Chair Gladziszewski said the applicant is not requesting a variance to zoning, and instead it is simply about the driveway access onto North Douglas Highway and whether it's allowed under code. She said she will reluctantly support the motion because she believes the method in which Mr. Satre crafted it is okay. She does see safety concerns with any steep driveway onto North Douglas Highway because they are dangerous. However, because this application shows that the second driveway is better than the first, including for all the reasons mentioned by Mr. Satre she is able to support the motion, but that does not mean that this is a signal that other property owners are able to install as many driveways as they want in North or West Douglas.

Mr. Miller spoke in favor of the motion, stating that application reduces the number of driveways that could potentially be installed in half, but the flatter driveway would provide for a safer situation. In the future, the likelihood that the existing driveway will be improved to become an access road will also make it safer. He believes the row of smaller lots have individual access points; this proposal will conform with the neighborhood, and it provides a good financial approach to developing the entire parcel.

Roll call vote

Ayes: Haight, Watson, Miller, Satre, Gladziszewski
Nays: Medina

Motion passes: 5:1; and VAR20110024 was approved as revised by the Board.

VAR20110025

A Variance Request to exceed the 10' maximum height standard for a canopy projecting into a city owned right-of-way.

Applicant: Rich Conneen, Architect
Location: 276 S. Franklin Street

Staff report

Ms. Jones stated that the applicant is seeking this variance to the 10' maximum canopy height. The overall project was previously presented to the Board for a variance, and a CUP case. The proposed canopy height for this project is 12' from the finished grade to the bottom of the canopy (attachment A). The canopy will extend in the city owned Admiral Way right-of-way by about 18", and all support structures will be located on the private property. Because the

proposed encroachment and location of the parcel would be within the Mixed Use (MU) zoning district, the canopy must conform to CBJ §49.15.830(a-b) as listed in the report on page 2. This variance proposal does not meet CBJ §49.15.830(b)(1-2), as the height of the canopy would be 12' from finished grade to the bottom of the canopy, and the canopy would not span the entire frontage of the building or match the existing canopy height of adjacent structures. Subsection (3) does not apply because no clerestories are proposed.

The subject property is not required to comply with specific standards outlined in the Canopy and Awning section related to the Downtown Historic District in MU zoning because it straddles that border. However, the only reason this canopy has to comply with the Canopy and Awning section of the code is because the applicant is proposing to extend it approximately 18" into the city owned right-of-way. If the canopy were to be allowed to extend into the right-of-way, the height is limited to 8' -10', and the applicant is asking for 12'. She referred to the orange section of the site plan that denotes the addition, the red dashes are the property line, and the blue line shows the proposed canopy area, with the proposed canopy being in the location between the red and blue lines.

Staff found that the variance request does not meet the criteria, specifically 1, 2, 5, and 6. If the Board wishes to approve the variance request, they would have to find these criteria in the affirmative.

Mr. Miller said the report states that under criteria 6, "The granting of this variance would offer a canopy that would be 18 inches wider than what could be permitted outright. A wider canopy would offer more protection from wind and rain." Mr. Pernula said the theory is that taller canopies offer less protection to pedestrians from the environment than lower canopies, but it is not clear whether or not the added width of the canopy would compensate for the added height of this particular canopy. He explained that the Canopy and Awning standard was adopted into the code several years ago for the broader downtown area with stricter standards, but it was from a Downtown Historic District design standard that has a lot more leeway.

Chair Gladziszewski commented that there are taller existing canopies on South Franklin, and those offer less pedestrian protection from the environment.

Mr. Watson referred to the first drawing relating to the elevation of the structure, stating that it appears that if the canopy were to be lower it would bisect proposed windows. Ms. Jones said it appears that might be the case, although she deferred to the architect. Mr. Watson stated that if a longer drop was allowed on the canvas portion, he wonders if doing so might meet code requirements. In addition, he asked if the measurements were taken to the hard frame, or to the canvas portion of the canopy that hangs over. Mr. Chaney said the code requires that the tape measure be placed from the pavement to the awning, and it is supposed to be between 8' to 10', and no provision is provided in the code for canopy edges of the canvas to hang over into a city owned right-of-way.

Public testimony

Rich Conneen, of Rich Conneen Architects LLC representing the applicant, welcomed the new Commissioner. He said he previously appeared before the Board to request that they waive the vegetative requirement in lieu of completing other aspects of the project. With this variance, they are attempting to replicate an old west, flat front Italianate architectural style facade for the retail storefront portion of the structure. It is out of the Downtown Historic District, although

they want to create a historic effort with this project. In doing so, the facade would have to be set back, which would require eliminating square footage of the retail store. Raising the canopy for the larger windows, as Mr. Watson noticed, was to obtain the older look for the facade. Staff is reviewing the current ordinance, but it is currently forcing them to have a “cookie cutter” type of repetitive facade such as those existing along South Franklin. A larger window height is one of the features that would be the success of the new facade, including having the canopy raised a few feet higher than the existing one. He explained that they have already ordered round wooden posts out of British Columbia that will be installed in the front of the facade where plants will hang from. They would be matching the trim of the lower adjacent awning, noting that there are several entrances to the Red Dog establishment and retail shop, so during inclement weather when the new canopy is not working the pedestrians would be able to use several different entrances. In terms of canopies encroaching into either city or state owned rights-of-way, there are existing awnings that extend over the sidewalk in many cases. He referred to the site plan, stating that when the proposed canopy is installed there is still going to be 14’6” of sidewalk left. He explained that Admiral Way is no longer used as a traditional access area, and instead tends to be used as more of a parking lot for taxicabs and buses. Therefore, the proposal is to encroach the new canopy 18” into the 15’ wide sidewalk area, and raise it 24” so they can achieve their desired architectural style to serve as having an old western period type of facade for photo ops by Red Dog visitors and tourists.

Staff is required to review this case for conformance with six criteria, and because some of them are not met staff is recommending denial to the PC. Even so, the discussion provided prior to staff’s recommendation in the report supports approval of this proposal. He explained that a variance was previously granted for the Downtown Transportation Center, including that there are other canopies in the downtown corridor that are higher than 12’, i.e., the Baranof, and some of the state buildings, and so on. When the canopy ordinance was created they listed 8’ to 10’ as being the preferred height, but it also notes that there are other existing canopies that are higher and variances were granted for those, and this would just be another one. Therefore, he believes this is the reason staff has been contemplating raising the canopy height in the ordinance higher than 10’ in the future. Ms. Jones said she and another staff member measured several downtown canopies, and found a few that are over 10’, 12’, and 15’. However, none of those particular canopies were permitted since this specific section of code was implemented per the canopy ordinance, and the only variance that was approved since then was for the Downtown Transportation Center.

Mr. Conneen said the applicant is requesting that the PC approve the 18” encroachment into the 15’ sidewalk, which will allow them to raise the canopy 24” to obtain the look of the older western style facade they are attempting to achieve. He said this is a minor side street that only has one other business on it, and there are several other canopies in close vicinity that are higher than what they are requesting.

Mr. Miller said the PC also has to review this case per the listed six criteria in the report, so he asked if Mr. Conneen intends to respond to those that staff found as not being met, which would have to be answered in the affirmative. Mr. Conneen said this is a very small project on a side street with minimal encroachment, and if this case is denied they would be required to cut 18” off of the canopy because he is not going to lower it, as they already ordered the windows and it would provide less rain cover. He does not believe any goals would be met if they are required to cut 18” off, which will not appear to be authentic and nice. This is in an area that has a rather large sidewalk where tourists generally do not hang out. He explained that for the most part the

Red Dog structure meets the canopy criteria, with the exception of this retail area where they are attempting to incorporate a special type of facade. He believes that if the PC approves the variance, they would be able to provide an excellent looking end product, and they would not be making the proposal any better by denying the variance. Chair Gladziszewski stated that the PC is a technical body that has to abide by the criteria as well as staff. Therefore, the PC requests Mr. Conneen to respond to those criteria that staff states are not met specifically criteria 1, 2, 5, and 6.

BREAK: 8:07 to 8:18 p.m.

Mr. Conneen addressed the criteria in the affirmative that were not met per staff's findings, as follows:

1. That the relaxation applied for or a lesser relaxation specified by the Board of Adjustment would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

If they do not have to redesign the facade, it would provide substantial relief to the owner of the property. The proposal would be consistent with justice to other property owners because adjacent properties within a couple of hundred feet of the subject site do not meet the criteria, which include: Marine View that has a sloped glass canopy and clearly exceeds 10' in height for a majority of it; the Brewery Depot has a peaked canopy at the doorway that exceeds the 10' height; the Alaska Fur Company has a covering over a bay window above the sidewalk that exceeds 10'; and the Senate Building has large glass storefront windows with a canopy that exceeds 10'. Therefore, there exists a significant amount of examples so their proposal for an extended canopy would fall into the criteria that those other canopies were constructed under so their proposal would not pose a unique situation.

2. That relief can be granted in such a fashion that the intent of this title will be observed and the public safety and welfare be preserved.

They are adding to the coverage by installing an extended canopy width, so they would be increasing the covered pedestrian area in Downtown Juneau, which assists to ensure the public safety and welfare would be preserved because pedestrians would be able to have protection from the elements.

5. That compliance with the existing standards would:
 - (B) Unreasonably prevent the owner from using the property in a manner which is consistent as to scale, amenities, appearance or features, with existing development in the neighborhood of the subject property.

He already provided four examples under criterion 1 in relation to existing taller canopies on buildings in the immediate neighborhood area. They are attempting to enhance the existing facade of the Red Dog to make it more interesting in appearance, which would be consistent as to scale, amenities, and appearance or features matching higher canopy heights on adjacent buildings in the area.

6. That a grant of the Variance would result in more benefits than detriments to the neighborhood, but it would provide for a less interesting amenity.

The only realistic option would be to cut 18” off the proposed canopy because they are not required to lower it. If they were required to do so, the canopy would be less effective and functional because it would end up being a 5’6” canopy that is 12’ high, and therefore it would be a detriment to have to remove 18” from the canopy.

Board discussion:

Mr. Haight asked what the width of the sidewalk is in the subject area below where the proposed canopy would be installed. Mr. Conneen said that sidewalk is 15’ wide, and the proposed canopy would only encroach 5% into it. Mr. Haight said by removing 18” of the canopy they would effectively be removing the coverage from the elements for pedestrians by that same amount, which would end up being 5’6” in width.

Public testimony was closed.

Mr. Watson referred to criterion 6, stating that the first paragraph, last sentence states, “It is not clear whether or not the added width of the canopy would compensate for the added height of the canopy.” He stressed that either it is or is not, but staff states that this is not clear so in essence they are stating that they do not know. Ms. Jones nodded indicating that Mr. Watson is correct.

Staff recommendation: That the Board adopt the Director’s analysis and findings and deny the requested Variance, VAR20110025. The Variance, if approved, would allow for a new canopy to exceed the canopy height limit by 2’ for a canopy that projects into a city owned right-of-way.

Board action

Mr. Miller said when he read this case he believed it would be hard for the PC to approve the Variance even though it probably makes sense to do so. He has no doubt that the drawings look great, including the elevation of the building and the idea of having a picturesque storefront for tourist. However, it is going to be difficult for the PC to approve this Variance per the criteria, although he believes Mr. Conneen’s response to them was very good, so he intends to address the criteria, as follows:

1. That the relaxation applied for or a lesser relaxation specified by the Board of Adjustment would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

There are a number of different sizes and types of existing canopies on buildings in close vicinity to the subject site. He believes the canopies on the new Parking Garage as they step up the hillside might be 12’ in height on certain sections, and 8’ on another end, but he is not sure if that structure is in the same zoning district as the subject site, but there are many other examples where the Board is able to determine that this criterion is met.

Yes. Criterion 1 is met.

2. That relief can be granted in such a fashion that the intent of this title will be observed and the public safety and welfare be preserved.

Rising the canopy 2' higher and 18" wider with a 60-degree slope would provide a sufficient angle and coverage for pedestrian protection from the elements in most cases, which improves the situation for the public in terms of safety and welfare.

Yes. Criterion 2 is met.

5. That compliance with the existing standards would:

(B) Unreasonably prevent the owner from using the property in a manner which is consistent as to scale, amenities, appearance or features, with existing development in the neighborhood of the subject property.

The existing development in the neighborhood is similar to what the applicant is proposing.

Yes. Criterion 5(B) is met.

6. That a grant of the Variance would result in more benefits than detriments to the neighborhood, but it would provide for a less interesting amenity.

The extra height and width would result in more benefits than detriments to the neighborhood, and if the applicant were required to shorten the canopy width it would not.

Yes. Criterion 6 is met.

Mr. Chaney clarified for Mr. Miller that the new Parking Garage canopy did not comply with the canopy ordinance, and therefore the City was required to obtain a variance.

Mr. Watson said in terms of criterion 6, Mr. Conneen pointed out that there is an additional 5' of sidewalk on the subject site that provides for a total width of 20'. This is a benefit because that portion is on the subject property, but it will look like its part of the sidewalk, as they could have proposed to construct that building all the way to their property line in that same area.

MOTION: *By Mr. Miller, that the Board adopts the Director's analysis and findings and approves the requested Variance, VAR20110025. The Variance allows for a new canopy to exceed the height limit by 2' for a canopy that projects into a city owned right-of-way, with the revisions to criteria 1, 2, 5B, and 6 as previously stated, subject to the following conditions:*

- 1. An As-Built Survey showing the encroachment into the right-of-way and the height of the canopy shall be required prior to Certificate of Occupancy.*
- 2. An Indemnity and Hold Harmless agreement shall be signed by the property owner in accordance with CBJ 49.15.850 prior to Certificate of Occupancy.*

Mr. Watson spoke in favor of the motion, although he was somewhat "caught off-guard" by Mr. Conneen's comment when he stated that materials were already ordered. It bothers him when developers assume that the Board is going to approve a permit because orders were already placed for project materials, so he would have felt better about voting in favor of this motion had that comment not been made as it nearly turned his opinion the other way.

Roll call vote

Ayes: Watson, Miller, Satre, Haight, Gladziszewski
Nays: Medina

Motion passes: 5:1; and VAR20110025 was approved as modified by the Board.

Chair Gladziszewski adjourned the Board, and reconvened the PC.

XI. OTHER BUSINESS - None

XII. DIRECTOR'S REPORT

Upcoming meetings

Mr. Pernula said the two regularly scheduled PC meetings are for December 13 and 27, 2011, and historically it has been difficult to obtain a quorum for the second meeting, or the Commissioners have chosen not to hold it. However, there is a case that CBJ Engineering wants presented to install a pipeline near Duck Creek, which he is able to delay to a subsequent meeting if the PC chooses to do so. Chair Gladziszewski said another alternative would be to only hold one meeting on December 20, 2011, and it's possible that the CBJ Engineering case could be heard at that time. Mr. Miller asked if the Duck Creek pipeline installation is a weather-sensitive project. Mr. Chaney said the airport and CBJ Engineering are interested in moving on that project fairly soon, which is why they wanted that case to be heard on December 27, 2011, but hearing it on December 20, 2011 would be better than delaying it until January 2012. Mr. Pernula added that the case would normally be presented to the Wetland Review Board (WRB) first, which meets on December 15, 2011, so if the PC held a meeting on December 20, 2011 that would not allow much time between those two meetings. Mr. Miller said it is possible the WRB meeting could be rescheduled a week ahead of time. Chair Gladziszewski stated that she prefers to hold one meeting on December 20, 2011, to which the other Commissioners agreed. Mr. Medina commented that he would be out of town from December 16, 2011 through January 3, 2012. Mr. Pernula offered to poll the remaining Commissioners who are not in attendance tonight for a December 20, 2011 meeting, and if he is not able to obtain a quorum he'll try for December 13, 2011 instead.

Canopies

Mr. Pernula said most every time when canopies are proposed to be installed in the future they are probably going to require obtaining a variance. He explained that the 8' to 10' height was initially taken from the Historic District Design Standard when they placed it into code and they expanded canopies outside the Historic District. Before that, a couple of years ago, canopies were not allowed outside the Historic District. Therefore, when they did so, they provided for a flexible standard height that was made into law for the outside areas, versus just being a design standard within the Historic District. Even so, he does not want to continue to have to present variances for canopies to the Board in the future if there is a way to make the standards a bit more flexible. Mr. Chaney clarified that it is only within the MU district for canopies that project into the city owned right-of-way. Therefore, before this took place, a person was allowed to install a canopy on his or her own property. Chair Gladziszewski stated that when Mr. Pernula mentioned that they have made this into law "in the outside areas," she asked if this encompasses anywhere in Juneau in the MU district. Mr. Pernula said probably, but he would not state that it's that firm because they have allowed a lot of design leeway when cases are presented through the Historic District Design Standard review process. Mr. Chaney explained that through the Historic District Design Standard they have more specific standards, but outside

that in the MU district they have this standard. Chair Gladziszewski asked if the Historic District Design Standard calls for more specificity than an 8' to 10' height of canopies. Mr. Pernula said in the Historic District the canopies do not have to be solid, e.g., they are allowed to consist of canvas material per those design standards, which are reviewed not as actual requirements. In the Historic District of the existing canopies that were installed 80% to 90% of them are 8' to 10' high, but some are not because those canopies were reviewed as being part of the design of the structure. Chair Gladziszewski said Mr. Pernula has now mentioned this twice that in the Historic District that it is not a requirement. Mr. Pernula said he believes there is a bit of a conflict between the two because the cases go through a review process with lots of standards. Chair Gladziszewski said it would be good for staff to review these canopy conflict issues. Mr. Pernula stated that since many of the existing buildings have canopies that are in conflict with the canopy ordinance height requirement, he would like to research whether there might be a method in which to resolve the issues by possibly providing more flexibility, as it would be better to have a law that's correct, rather than having one where people are having to apply for variances all the time. Chair Gladziszewski agreed, stating that the Board tends to have to "shoe-horn in" affirmative responses to variance criteria, which doesn't seem to fit. Mr. Haight said it appears that an assessment has to take place of existing canopies beforehand to better define the boundaries. Mr. Pernula said Ms. Jones has been taking measurements of existing canopies around town. Mr. Haight said he knows more installation of canopies are in the works because he is working on projects where they plan to install them in the near future. He said staff also has to review the problems that arise when canopy installations take place when they are planned to be installed on buildings that slope uphill and they have to try to maintain elevations, which tends to be very difficult. Mr. Pernula agreed, adding that canopies do provide a benefit, especially here in Juneau. Chair Gladziszewski commented that more canopies are better.

North Douglas Highway: A collector or arterial

Mr. Pernula said the state downgraded North Douglas Highway from an arterial to a collector, but he is not sure that was the best thing to do. He explained that on arterials the City limits access points, although they recently rezoned many areas in North Douglas, including quite a bit of more development that would eventually be proposed for West Douglas, which the PC should take into consideration in the near future. Mr. Satre requested that the CDD staff work with CBJ Engineering for possible conceptual routes to present as preferred rough draft access options to the PC for those areas, which might assist them in reviewing upcoming proposed projects and how those areas might be built out over time. He explained that he does not want staff to provide too much detail in doing so, although some type of draft of access options would be nice.

Mr. Watson said he does not like it when applicants go to the state, and then they find that the City has conflict issues in terms of roadway classifications because typically in the eye of the citizens the state trumps the City. In addition, when the PC previously reviewed rezoning cases for the North Douglas area, they discussed traffic congestion issues. Therefore, eventually the traffic is going to reach the critical mass level, which is when the state would ultimately have the right to prevent more development from taking place.

Mr. Haight said the criteria used to establish roadway classifications differ between the state and City. The state reviews current usage and traffic patterns. However, the PC reviews cases in terms of zoning and potential traffic patterns, which this body should continue to do. In addition, the discussion of who trumps whom, in his experience in regards to construction tends to be whatever the most restrictive rule is being applied to specific projects. However, in this case the

City law is the most restrictive, which should be applied. Because of this, he believes the PC is going to have to collectively deal with these issues fairly soon.

Mr. Miller stated that at a recent Committee of the Whole (COW) meeting Chair Gladziszewski mentioned that the Second Crossing was mishandled, and the true goals of the idea were not properly conveyed to the people, which is why that project did not move forward. He agrees with this, so maybe what it's going to take is getting North and West Douglas built out to where it reaches the traffic capacity limit before it is understood why the Second Crossing is truly desirable and needed. In terms of Mr. Haight's comment regarding whose rule is most restrictive between the state and City for roadway classifications is correct, and the City has to be prepared for what that roadway classification actually is going to end up being in the future, which the PC should adhere to as well.

XIII. REPORT OF REGULAR AND SPECIAL COMMITTEES

Mr. Satre said the Public Works & Facilities Committee (PWFC) met yesterday, and discussed the realization of when the library grant proposal is approved, which will cause additional development taking place at Dimond Park. This means that the landscaping facility would have to be relocated, and the increased use in that entire area is where the PC has hopes for it to become a community center when they permitted past cases. However this will involve developing a master plan, and the PWFC is just now looking at such a process. He explained that Ms. Danner on the Assembly mentioned that she heard the PC wanted to be involved in the earlier stages of such planning processes, and he confirmed with her that this is the wish of the Commission. He is not sure what specific communications have been made in regards to this with the CDD staff, although he informed the committee that he did not only want to look at the uses within Dimond Park, but to also review the old transportation study for that entire area when the PC had to deal with issues in terms of the four-way stop on Stephen Richards/Riverside Drive. He explained that there are current traffic congestions issues in the area where there is a dual entrance near Riverbend Elementary School, and the other main entrance to Dimond Park. Mr. Miller asked if issues were discussed regarding the school zone because it is not working to slow people down from driving too fast. Mr. Satre said he wanted to bring this up at the PWFC, but he did not because they were mainly discussed planning. He explained that the idea is that there is an especially long school zone in that area where people tend to speed because they think they've gone past it, but later realize they have not. Therefore, additional signage and/or lighting have to be installed, which has to be dealt with when the committee reviews the transportation study. Chair Gladziszewski said it is the CDD that is tasked with 'planning', but CBJ Engineering is taking the planning on of the Dimond Park area. Therefore, she asked if there has been discussions among the CDD and CBJ Engineering staff regarding this, as the CBJ Engineering has particular expertise for part of the planning, but not all of it. Mr. Satre said it was really more of an idea that Mr. Watt brought up that some planning in that area has to take place fairly soon, which was precipitated by the application for the library grant, including discussing thoughts on what other developments might take place next. He explained that some land is available in the rear of that area where City facilities would have to be moved, so they have to involve CBJ Engineering in terms of what they are envisioning for that area in the future. Chair Gladziszewski said they recently spoke about area planning as being a goal of the PC, which Mr. Pernula should add to the priority list of goals, with the Dimond Park area being a higher priority in terms of area planning as compared to the others. Mr. Satre said he just located the memorandum regarding the Dimond Park area, and it states that there was a preliminary meeting between CBJ Engineering, Parks & Rec, the School District, the Thunder Mountain

High School, and Library on this, so the process has started and the CDD staff and PC have to become involved with that process.

Mr. Watson said he represented Mr. Bishop in his absence at the recent Lands Committee. They discussed the affordable housing fund, which the Juneau Arts and Cultural Center is involved in. They also discussed that the AWARE Shelter is looking at developing six units, so there is forward motion taking place. REACH is looking at some programs, but they are going to have to implement more work on their plans. Another company has been looking at developing low income units, but they do not have enough information yet, although Ms. Marlow of the CBJ Lands and Resources is working with them. He said Ms. Marlow also provided a brief report on habitat mapping that Ms. Camery will be involved in, and a few questions were asked regarding that. The committee also discussed purchasing an easement of the Archipelago property, which he asked Mr. Pernula to expound upon. Mr. Pernula said the City plans to purchase the easement area on Archipelago property to ensure they will maintain the rights of that right-of-way in the future along a section of South Franklin.

Mr. Miller said the WRB met last week, and discussed a recent site visit to view the airport expansion project. A few concerns were in regards to an installation of a trash rack across Duck Creek, which can be viewed when walking across the bridge in an area of the Dike Trail. He said the trash rack consists of a fairly extravagant steel structure, which is a type of guard that was installed across the creek to prevent terrorists from gaining access to the airport grounds in that area. However, fish biologist on the WRB are very concerned because sometime ago a weir was installed further up Duck Creek to count fish to determine how well that habitat is doing, but that weir tends to become blocked by debris so someone is designated to clean it out, which happens quite often. The concern in the trash rack area is that there are very high tides, which are going to clog it up enough to where the trash rack will actually obstruct fish passage. Part of the deal of approving re-routing Duck Creek for the airport expansion project was to make it more accessible for fish habitat and to improve the creek, but later on that trash rack that was installed. Therefore, the WRB intends to draft a letter to the Airport Board to see if they can get from the Board on down to the maintenance personnel involved to ensure that they maintain that trash rack on an ongoing basis. Even so, he explained that another member of the WRB mentioned that if they were to go the end of the walkway wearing hip waders with a bag of duck decoys, they could walk right onto the airport grounds with a shotgun.

Mr. Watson said the Subdivision Review Committee met earlier this evening and wrapped up their work on the 5-year revision of the Subdivision Ordinance. The committee will review the ordinance one last time at the next meeting, and then the ordinance will be presented to the PC for review.

[The October 10, 2011 PWFC minutes were provided by staff to the PC for their perusal.]

XIV. PLANNING COMMISSION COMMENTS AND QUESTIONS

Chair Gladziszewski requested Mr. Pernula to provide the Commissioners an email regarding the list of goals and priorities prior to the December 20, 2011 COW meeting. She reminded Commissioners not to it 'reply all', just 'reply' if they wish to respond to Mr. Pernula's email, or else it will be considered as holding a meeting via email. Mr. Pernula offered to do so. In addition, he noted that the PC has not completed legal training on the requirements of public hearings with the Department of Law in a couple of years, which he intends to schedule after an

additional new Commissioner joins the PC in January 2012. Chair Gladyszewski informed Mr. Medina that there are committees of the PC that he has not yet been appointed a member of, but such committee appointments will take place sometime in January 2012 as well.

XV. ADJOURNMENT

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

There being no objection, it was so ordered and the PC meeting adjourned at 9:15 p.m.