

# **APPROVED MINUTES**

Agenda

**Planning Commission**

***Regular Meeting***

CITY AND BOROUGH OF JUNEAU

*Mandy Cole, Chair*

January 9, 2024

## **I. LAND ACKNOWLEDGEMENT – Read by Mr. Epstein**

We would like to acknowledge that the City and Borough of Juneau is on Tlingit land, and wish to honor the indigenous people of this land. For more than ten thousand years, Alaska Native people have been and continue to be integral to the well-being of our community. We are grateful to be in this place, a part of this community, and to honor the culture, traditions, and resilience of the Tlingit people. Gunalchéesh!

## **II. ROLL CALL**

Mandy Cole, Acting Chair, called the Regular Meeting of the City and Borough of Juneau (CBJ) Planning Commission (PC), held in Assembly Chambers of the Municipal Building, virtually via Zoom Webinar, and telephonically, to order at 7:00 p.m.

**Commissioners present:** Commissioners present in Chambers – Mandy Cole, Chair; Erik Pedersen, Vice Chair; Matthew Bell, Assistant Clerk; Adam Brown; Nina Keller; David Epstein, Lacey Derr

Commissioners present via video conferencing – Jessalynn Rintala

**Commissioners absent:** Travis Arndt; Clerk

**Staff present:** Jill Lawhorne, CDD Director; Irene Gallion, Senior Planner; Minta Montalbo, Senior Planner; Ilsa Lund, Planner I; Lily Hagerup, CDD Administrative Assistant; Sherri Layne, Law Assistant Municipal Attorney

**Assembly members:** Paul Kelly

## **III. SWERING IN OF COMMISSIONERS- Commissioner Cole was sworn in after being reappointed for her second term. Commissioners Derr and Rintala were sworn in as new members.**

IV. **REQUEST FOR AGENDA CHANGES AND APPROVAL OF AGENDA** –\_Acting Chair Cole requested to vote in officers next.

V. **REORGANIZATION OF OFFICERS-**

**MOTION:** *by Mr. Brown asking unanimous consent to elect the following officers.*

- Mandy Cole, Chair;
- Erik Pedersen, Vice Chair;
- Travis Arndt, Clerk;
- Matthew Bell, Assistant Clerk

*The motion passed with no objection.*

VI. **APPROVAL OF MINUTES**- None.

VII. **BRIEF REVIEW OF THE RULES FOR PUBLIC PARTICIPATION**- Chair Cole.

VIII. **PUBLIC PARTICIPATION ON NON-AGENDA ITEMS**- None.

IX. **ITEMS FOR RECONSIDERATION** -None.

X. **CONSENT AGENDA**- None.

XI. **UNFINISHED BUSINESS**- None.

XII. **REGULAR AGENDA**

**VAR2023 0003:** Applicant requests a Non-Administrative Variance for rear yard setback reduction from 25 feet to 20.77 feet.

**Applicant:** Dan Miller

**Location:** Powers Street

### **Director's Report**

The Applicant requests a variance for a newly-constructed structure, which was built without the required setback verification from a surveyor, a building permit for the final structure, or permits for utility connection. The property has no unusual conditions that would create hardship, so there is no hardship to tailor a variance to.

### **Staff Recommendation**

Staff recommends that the Planning Commission adopt the Director's analysis and findings and DENY the requested Non-Administrative Variance.

### **Presentation by the Applicant**

Dan Miller assisted the contractor, Joony Muñoz, in the subdivision process and designing of the bungalow structure that is now the subject of this Variance. A surveyor was hired to take measurements and stake the property. Mr. Miller said he remembers making sure the stake was lined up to the water shot off valve on the structure on the neighboring lot since the valves are typically on the property line. An inspector came out and checked off the setback verification form and the foundation was poured. The contractor never sought to obtain a setback verification from a surveyor, which was a condition of the building permit. Only when the structure was completed and a surveyor came out to produce the mandatory as-built survey was the setback encroachment discovered. Mr. Miller requested the Commission approve the Variance and adopt new findings.

Mr. Miller went on to explain how this particular situation applies to the variance code. The code requires undue hardship to exist to qualify for a variance, but Mr. Miller pointed out that there is no definition of “hardship” in the Land Use Code. It’s unknown if the stake was possibly moved without the knowledge of the construction team. The variance, also, cannot be caused by the individual seeking the hardship. Mr. Miller said Mr. Muñoz and the team performed their duties by the book, and the possibility that the stake could have been moved without the knowledge of the applicant could satisfy this requirement.

### **Commissioner Questions**

Mr. Pedersen asked the applicant to elaborate on the findings he would recommend to the Commission. Mr. Miller explained that this situation does constitute a hardship because the contractor would likely go bankrupt—ending his career— if this issue was not resolved.

Mr. Bell and Ms. Cole asked questions regarding the surveyor’s actions after the setback encroachment was brought to their attention. Mr. Miller explained that the surveyor was adamant that the foundation was staked properly.

Mr. Brown pointed out that the contractor was issued a foundation only permit and asked the applicant to explain. Mr. Miller explained that there was a delay in the building permit being issued after submission because of the subdivision process and the contracting team was feeling pressure about the oncoming cold season and decided to proceed. Through the inspection process, at no point was the foundation setback verification mentioned.

There was a lengthy discussion about the order of operations regarding setback verification.

Mr. Pedersen asked the applicant to speak to the concurrent processes of the lot subdivision and the building of the bungalow structure. Mr. Miller said the subdivision process took about a year and a half. At first, the lot did not meet code for subdivision because of substandard depth; however, in 2021, lot depth was repealed as a dimensional standard for land use. After the newly subdivided lot was officially recorded, the contracting team moved forward with the building process.

**Public Participation regarding VAR2023 0003- None.**

*At ease 7:46- 7:48 p.m.*

**Commission Questions for the Applicant**

Mr. Miller said he believes there is hardship and the unusual and special conditions of what happened was not caused by any one individual. The applicant explained that he did not cause the hardship and the variance can be narrowly tailored to a hundredth of an inch.

Mr. Pedersen asked for clarification regarding when the problem was realized. Mr. Miller said the error was discovered during the final building inspection when the as-built survey was required. At that point, the applicant brought the issue to the attention of Director Lawhorne. Director Lawhorne requested that a second surveyor be brought in to resurvey the property.

Ms. Cole asked the applicant how the variance could be narrowly tailored enough to not set precedent and open the doors for more variance requests regarding construction errors. Mr. Miller said that was a valid concern, but in his 45 years of experience, he has never seen an encroachment of this magnitude. He went on to explain that there is a process for an Administrative Variance, approved on the Director level, to address minor construction errors.

**Commission Questions for Staff**

Mr. Epstein asked clarification from CDD staff for the process of setback verification in the field. Senior Planner, Irene Gallion walked the Commission through the process.

Mr. Pedersen asked Director Lawhorne if the variance was denied, is there anything else in the Land Use Code that could provide a fix for this situation. Mrs. Lawhorne said that, as part of the review process, the code was scoured and no other path forward was uncovered.

Ms. Cole asked Mrs. Lawhorne if a Certificate of Occupancy (CO) was not issued, would there be a code enforcement case against the property owner and would the dwelling be deemed unlivable? Director Lawhorne explained that the property owner would not be evicted and an enforcement case would not be pursued. The property owner would be able to remain in the dwelling as long as it could be deemed safe by City Inspectors. Mr. Epstein pointed out that, without a CO, financial institutions would not be willing to finance the property, but the property could be bought by a cash buyer.

Ms. Rintala ask the reasoning behind the 25 foot setback requirements. Director Lawhorne explained that bungalow lot structures do not have different setback requirements than what is required by the zoning district they are in. Code for bungalow lots is relatively new, so there are still some kinks that may need to be worked out. Ms. Cole informed Ms. Rintala that bungalow lot setbacks have been discussed in Title 49 Committee, but no official changes have been made; however, if setbacks were allowed to be significantly reduced for bungalow lots—meant for infill development—it could significantly change the character of the neighborhood.

Attorney Layne was asked about financial hardship not being grounds to approve a variance. Ms. Layne explained that case law has made the determination that financial hardship cannot be the only qualification for a variance, unless the situation creating the need for the variance makes the property value zero (\$0.00). She went on to caution the Commission to be very clear and specific in tailoring their motion because this case is precedent-setting.

Each Commissioner spoke in turn regarding their thoughts on granting the variance. Multiple Commissioners raised concern about setting precedent, but all agreed that more housing in Juneau is critical.

*At ease 8:38-8:44 p.m.*

**MOTION:** *by Mr. Pedersen and amended by Ms. Cole to approve VAR2023 0003 and propose the following alternate findings:*

**A. Enforcement of the ordinance would create an undue hardship resulting from the unusual or special conditions of the property.**

**Analysis:** Unusual or special conditions were improper staking carried through survey, construction, and inspection. The unfortunate events that lead to incorrect placing of the bungalow building are completely unusual such that special considerations are necessary to alleviate undue hardship. The situation that the CBJ and the builder are in is due to circumstances that are so unusual that they are unexplainable, completely inadvertent, and wholly accidental. There is no benefit the owner would gain by purposefully encroaching into the setback; only hardship, uncertainty, and financial duress. Therefore, the condition of this requirement is met.

**Finding:** This criterion has been met.

**B. The unusual or special conditions of the property are not caused by the person seeking the Variance.**

**Analysis:** The need for the variance was not caused by the owner or applicant.

**Finding:** This criterion has not been met.

**D. The grant of the Variance is narrowly tailored to relieve the hardship.**

**Analysis:** No further analysis required.

**Finding:** This criterion has been met.

## **AMENDMENT**

**Yes:** Cole, Rintala, Pedersen, Keller, Brown, Bell

**No:** Epstein, Derr

***Amendment passes 6-2.***

## **ROLL CALL VOTE ON THE MOTION:**

**Yes:** Pedersen, Keller, Brown, Bell, Cole

**No:** Epstein, Rintala, Derr

***Motion passes 5-3.***

**XIII. OTHER BUSINESS**- None.

**XIV. STAFF REPORTS**- Director Lawhorne informed the Commission that the February 13, 2024, meeting would likely be cancelled. She will be out of town for a few weeks and Planning Manager Ciambor will be covering CDD in her absence. She asked the Commissioners to inform her of any of their upcoming travel because a joint meeting with the Assembly will be scheduled when the most members are able to attend.

**XV. COMMITTEE REPORTS**- None.

**XVI. LIAISON REPORTS**- Assemblymember Kelly informed the Commission that the Assembly Lands, Housing, and Economic Development Committee have accepted two projects for the Affordable Housing Fund (AHF). An Ordinance was passed the day before this meeting to move money from the General Fund to the AHF. At the Assembly retreat, a total rewrite of Title 49, the Land Use Code, was discussed. More details will follow and will likely follow along with the process of the Comprehensive Plan update.

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

**XVIII. PLANNING COMMISSION COMMENTS AND QUESTIONS**- Commissioner Rintala thanked the other members for being part of an engaging and informative meeting. Ms. Cole let the members know that committee assignments would be forthcoming.

**XIX. EXECUTIVE SESSION**- None.

**XX. ADJOURNMENT**- 9:09 p.m.