



CITY AND BOROUGH OF SITKA

Minutes - Final

Planning Commission

Wednesday, September 21, 2022

7:00 PM

Harrigan Centennial Hall

I. CALL TO ORDER AND ROLL CALL

Present: Chris Spivey (Chair), Darrell Windsor, Stacy Mudry, Wendy Alderson, Katie Riley (telephonic), Thor Christianson (Assembly liaison), Crystal Duncan (Assembly liaison)
Staff: Amy Ainslie, Kim Davis
Public: Michelle Mahoney, Todd Fleming, Dana Pitts, Michael Tisher, Michael Harmon (Public Works Director), Mike Schmetzer (Municipal Engineer), Brian Hanson (Municipal Attorney), John Leach (Municipal Administrator), Dave Miller, Ariadne Will (Sentinel)

II. CONSIDERATION OF THE AGENDA

III. CONSIDERATION OF THE MINUTES

A [PM 22-16](#) Approve the August 17, 2022 meeting minutes.

M/Windsor–S/Mudry moved to approve the August 17, 2022 meeting minutes.
Motion passed 5-0 by voice vote.

IV. PERSONS TO BE HEARD

V. PLANNING DIRECTOR'S REPORT

Ainslie reported the last Lincoln Street closure day was on September 15th. The last scheduled cruise ship was for October 2nd. The portable restroom on Lincoln Street had been removed and the units on Maksoutoff Street would be removed on October 3rd. October 27th the Planning Commission and the Assembly would be meeting for a joint work session on tourism. A community tourism survey was open on the planning department website. Ainslie would be posting it to the main CBS webpage and to social media. New iPads would be distributed to commissioners and staff would be contacting commissioners to get them set-up.

VI. REPORTS

Christianson reported the community would be electing new assembly members and this might be his last meeting. He had enjoyed working with all of the commissioners.

VII. THE EVENING BUSINESS**B** [VAR 22-16](#)

Ainslie introduced a variance request for side setback from 9' to 2.5' for a 60 sq. ft. covered shed for bikes and strollers at 207 Seward Street, Sitkans Against Family Violence (SAFV) shelter. The shed would be built by students at Sitka High School. The setback variance was needed to place the shed near the front entrance. There was minimal impact to property and surrounding area. There was a fence dividing the lot from the neighboring property, along with a vegetative buffer. The proposal is consistent with the character of the neighborhood and would provide a secure and dry storage space for bikes and strollers necessary for resident transportation. Staff recommend approval. The applicant agreed with the staff report and stated this shed would be used by residents of SAFV. There was no commissioner discussion.

M/Mudry-S/Alderson moved to approve the zoning variance for a reduction to the side setback at 207 Seward Street in the R-2 Multifamily Residential District subject to the attached conditions of approval. The property was also known as Portions of Lots 4 and 5, Block 7, U.S. Survey 1474, Tract A, Sitka Townsite. The request was filed by Michelle Mahoney. The owner of record was Sitkans Against Family Violence. Motion passed 5-0 by voice vote.

M/Mudry-S/Alderson moved to adopt and approve the required findings for variances involving minor structures or expansions as listed in the staff report. Motion passed 5-0 by voice vote.

C [VAR 22-15](#)

Public hearing and consideration of a platting variance to serve more than four lots (eleven lots) via private utility easement for a subdivision of 300 Kramer Avenue in the R-1 single family and duplex residential district. The property is also known as Lot 3, West Woodbury Subdivision. The request is filed by Todd Fleming. The owner of record is Sound Development, LLC.

Ainslie introduced a platting variance to subdivide Lot 3 of the West Woodbury Subdivision located at 300 Kramer Avenue into four lots. The resulting Lots 1-3 would be connected via the private sewer system that was installed for the neighboring Tisher and JPJL Subdivisions. The Sitka General Code 21.40.030 stated "no more than four lots shall be served by a private utility easement." The platting history of the Tisher & JPJL subdivisions already approved 8 lots to connect to the private utility easement. Staff was recommending denial based on five considerations. 1) Operational and Service: Access to the system for maintenance and repairs was challenging due to the topography, there would be increased risk of inflow and infiltration which could impact the operation of gravity mains, force mains, and treatment plant operations. Further, a capacity analysis of the potential impacts on existing owners and users of the system was not provided. Ainslie also clarified that the letter from CBS to the State of Alaska Department of Environmental Conservation (DEC) from June 2021 that had been provided by the applicant at the last meeting and stated CBS' support for the sewer connection for all Lot 3, West Woodbury Subdivision (not the proposed subdivision which was the subject of this platting variance) was a standard review request that asks the wastewater division of Public Works to provide assurance that the public main would be able to handle additional capacity. On that basis, the wastewater division did not object to the connection. However, that review approval did not supersede subsequent reviews of the connections that would be necessary, nor did it negate the

Commission's role in determining whether additional connections were allowable. The staff recommendation from Planning and Public Works on the platting variance was still unanimously denial. 2) Management: The maintenance of the private system was the responsibility of Mr. Tisher and the property owners who have purchased lots in the Tisher Subdivision. Maintenance of private systems can be complex, contentious and additional connections increased the complexity of management. Staff felt the current and future resident quality of life and cost of living impacts needed to be considered. Ainslie explained that risks to current and future property owners could include inadequate maintenance due to dispersed responsibility and lack of consensus, unequal financial contributions towards repairs, and neighborhood disharmony. While maintenance agreements created property-owner responsibilities, there may still be problems managing maintenance particularly in a time-sensitive situation, and enforcement of maintenance agreements could be time-intensive, costly, and stressful for property owners given that the only enforcement mechanism is private legal action. If a maintenance/break was severe enough, both CBS and state agencies would have mandatory regulatory roles to protect the public and would have to respond in an emergency manner. 3) Future Growth: The resultant Lot 3 of the proposed subdivision is 40,375 square feet and with a minimum lot of 6,000 sq. ft. in the R-1 district, the lot could be subdivided again. Lot 4 was even larger at 219,991 square feet. Therefore, the future growth potential for the whole area should be a consideration in this decision, and the commission should consider whether this approach best serves an important, stated purpose of the subdivision code, "to facilitate the orderly and efficient layout and use of the land in light of the constantly changing conditions." 4) Precedent: This decision would set a worrying precedent that allowed for the circumvention of the major subdivision process. Ainslie stated that in an effort to be pro-development and business friendly, it was important to find where the code could bend (still meet the intent of the code), but not break; this request represented a break of the code. This action would extend the platting variance beyond the bounds of the original development which was under the control of a single developer and an area specifically identified as unsuitable for a major subdivision. This decision would open the door to circumvention of the major subdivision process, allowing minor subdivisions on top of minor subdivision, and never result in "properly, adequately placed" public utility infrastructure from which more development could grow, another express, stated purpose of the subdivision code. 5) Burden of Proof: The applicant had not met their burden of proof that the variance was warranted. Variances may not be granted solely to relieve financial hardship or inconvenience, and the justification provided in the applicant materials stated that the variance would allow future property owners to have gravity sewer and eliminate the need for a sanitary sewer pump. This did not demonstrate a need, special circumstance, or hardship warranting a variance. Staff recommend denial.

The applicant, Todd Fleming, stated a major subdivision was in process with CBS on the Jacob Circle side for 20 lots and drainage studies had been provided to CBS for the major subdivision. Fleming described the middle of Lot 3 as steep with difficult topography, and it would be difficult to place a road in for access. The Lots 1-3 on the north end of the parcel would connect to the gravity flow sewer in the Tisher development, and property owners wouldn't have to purchase/install a sanitary sewer pump to install at time of development which would be required if the properties were to connect into the sewer main in Kramer Avenue. Fleming stated that he would be connecting the properties to Tisher's gravity system if approved, but the owners would be responsible for the pumps if the connection to Tisher's system was not approved.

Under public comment, Dana Pitts stated she did not believe the land was suitable for development and also did not believe enough planning had gone into this project.

Michael Harmon, Public Works Director, and Mike Schmetzer, Municipal Engineer, were called forward by the Commission to answer questions. Harmon stated that the sewer main in Halibut Point Road would be able to accept the additional level of flow, but there could be impacts to the private sewer line. If a line breaks, raw sewage could flow into neighboring properties. Public Works lets property owners deal with issues in private utility connections to avoid costs to rate payers. But, if it was deemed necessary, they would be brought in to provide emergency repairs and clean-up, and the Building Official may have to issue an order to vacate if a spill was ongoing. When asked about standard sizing for sewer lines in major subdivisions, Harmon stated a major subdivision could use a 8" line but CBS concerns were not about capacity, but rather access to the line, and the complexity of management for property owners to maintain a private utility. Harmon explained that this number of parcels connecting to a private utility hasn't been seen before, so he was not able to provide information on the number of breaks typical in private lines/systems of this magnitude, but generally the failure of a private utility varied with age depending on the surrounding area and how well the line was installed in the first place. Typically, and as best practice, CBS would expect properties to directly connect to public sewer mains located within a municipal right-of-way and utilize sewer pumps if necessary. Harmon stated that these pumps would be preferable to a multi-user private utility line as they are more manageable for property owners to maintain (both in terms of cost and professional service availability), and owners can have more individual control over their own maintenance and utility service. Following up on the question regarding standard sewer line sizes, Schmetzer stated that to determine the right size of sewer line for a major subdivision, it would have to be evaluated on a case-by-case and evaluated as a complete system. Ainslie clarified that given the unprecedented nature of the proposal, CBS comments were attempting to lay out the risk potentials for both the residents as well as city staff to administer the intent of the subdivision code and manage infrastructure in the future.

During commission discussion, Mudry stated when Tisher gave public testimony at the last review, he stated that more properties connecting to the sewer line would help with the overall maintenance and flushing of the line. Spivey stated precedent was already set when the five previous lots were approved. Following a question from Windsor regarding other recently approved platting variances for utility connections, Ainslie provided information on two subdivisions (one on Anna Drive and one on Mary's Court); the primary difference in those cases was that the lots in question did not make direct contact with a municipal right-of-way, and could therefore meet the burden of proof that a variance was warranted. In this case, all the resultant lots directly abutted Kramer Avenue. Riley expressed that it was important to look forward at possible future developments when making decisions. The purview of the planning commission was to make decisions and guide development in a way which benefits the future of our community. Spivey stated that the body should allow, in certain instances, more creative efficient ways to encourage the development of properties particularly when it is part of a larger development plan being undertaken by a private developer. He felt the commission shouldn't be overstepping private property owners, and that owners should be aware of the maintenance responsibilities required for their property at time of purchase and be able to work with their neighbors if a private line fails. Spivey and Windsor agreed that the precedence of this decision wouldn't grant blanket approval for future requests, but rather could be evaluated on a case-by-case basis taking the developer's expertise and track record into account. Ainslie stated that the Commission using their judgment of a developer's expertise and history to determine whether a platting variance should be granted is an even more worrying precedent to set, as decisions made should be based on standards that treat all applicants fairly; if the same relief offered in this case would not be offered to another developer the Commission didn't know as well, that was indicative of how dangerous the precedent was.

M/Mudry-S/Windsor moved to approve the platting variance to serve more than four lots (eleven lots) with a private utility easement for a subdivision of 300 Kramer Avenue in the R-1 single family and duplex residential district subject to the attached conditions of approval. The property was also known as Lot 3, West Woodbury Subdivision. The request was filed by Todd Fleming. The owner of record was Sound Development, LLC. The motion passed 3-2 by voice vote.

M/Mudry-S/Windsor moved to adopt the required findings for platting variances as listed in the staff report. The motion passed 3-2 by voice vote.

D [P 22- 07](#)

Public hearing and consideration of a preliminary plat for a minor subdivision to result in four lots at 300 Kramer Avenue in the R-1 single family and duplex residential district. The property is also known as Lot 3, West Woodbury Subdivision. The request is filed by Todd Fleming. The owner of record is Sound Development, LLC.

Ainslie introduced the proposal to subdivide Lot 3, West Woodbury Subdivision into four lots. The resultant Lots 1 and 2 are of a size for development of single-family or duplex residences. Lots 3 and 4 are large and could be further subdivided. A private water line extension was constructed within Kramer Avenue in conjunction with the neighboring Tisher Subdivision development. The line is 8" diameter, which matches the diameter of the CBS water line. CBS had reviewed the design and permitting for construction of the water line and would consider adopting it as city infrastructure. There was a requirement that a drainage plan be developed and accepted by the Municipal Engineer as there were significant drainage courses in the area. Staff recommended approval.

The applicant, Todd Fleming, had no more information to provide and there was no public comment. Commissioners had no discussion.

M/Mudry-S/Alderson moved to approve the preliminary plat for a minor subdivision to result in four lots at 300 Kramer Avenue in the R-1 single family and duplex residential district subject to the attached conditions of approval (A or B). The property was also known as Lot 3, West Woodbury Subdivision. The request was filed by Todd Fleming. The owner of record was Sound Development, LLC. The motion passed 5-0 by voice vote.

M/Mudry- S/Alderson moved to adopt the findings as listed in the staff report. The motion passed 5-0 by voice vote.

VIII. ADJOURNMENT

Seeing no objections, Chair Spivey adjourned the meeting at 8:27 PM