



CITY AND BOROUGH OF SITKA

Minutes - Final

Planning Commission

Chris Spivey, Chair
Darrell Windsor, Vice Chair
Tamie (Harkins) Parker Song
Debra Pohlman
Randy Hughey

Tuesday, August 16, 2016

7:00 PM

Sealing Cove Business Center

I. CALL TO ORDER AND ROLL CALL

Chair Spivey called the meeting to order at 7:00 PM.

Present: Spivey, Parker Song, Pohlman, Hughey (phone)

Absent: Windsor (excused)

II. CONSIDERATION OF THE AGENDA

III. CONSIDERATION OF THE MINUTES

A Approval of the August 2, 2016 meeting minutes.

Pohlman/Parker Song moved to **APPROVE** the August 2, 2016 minutes.

Motion **PASSED 4-0.**

IV. REPORTS

B Planning Regulations and Procedures.

C Annual report submitted by Sheila Finkenbinder for a bed and breakfast conditional use permit at 415 DeArmond Street. No action required.

V. THE EVENING BUSINESS

D Public hearing and annual review of an approved conditional use permit for a lodge and commercial dock at Dove Island Lodge. The property is also known as Lot 1 of the Dove Island Resubdivision. The owners of record are Harold and Tracie Lambeth.

Bosak explained the history of the conditional use permit. This is the final required review. Future reviews will only be upon receipt of meritorious complaints. Complaints haven't been received recently. Staff recommend approval of the final review.

Pohlman/Parker Song moved to **APPROVE** the annual review of the conditional

use permit granted to Duane and Tracie Lambeth for a lodge and commercial dock on Dove Island, in the GI General Island zone. The property is also known as Lot 1 Dove Island Resubdivision. The owners of record are Harold D. and Tracie Lambeth.

Motion PASSED 4-0.

E

Public hearing and consideration of a minor subdivision at 211 Shotgun Alley, zoned SFLD Single Family Low Density Residential. The subdivision would result in four lots. The property is also known as Lot 2 of Johnstone Subdivision Replat. The request is filed by Barth Hamberg. The owner of record is Barth Hamberg.

Scarcelli reviewed the request for a four-lot minor subdivision at 211 Shotgun Alley. Scarcelli showed photos of drainage on the parcel, grading, pads, trees, culverts, creek, and flagging. Scarcelli reported that he visited the site after a significant rain event August 7-11, and water runoff was minimal. Staff believes this observation corroborates the drainage assessment and Municipal Engineer's statements regarding drainage. The subdivision complies with Title 21 and Title 22 regulations. Scarcelli reviewed the discussion points of the last hearing, including that the potential harm to the downstream property "really was the result of the downstream property had by their own course of action or by their prior owners that they bought from had constrained the lower drainage ditch." The proposal complies with the Comprehensive Plan by allowing for the public process to work through issues, and by developing more lots for residential development. Staff recommend approval of the preliminary plat with extensive findings. Scarcelli read a letter submitted by the applicant's attorney, Robert S. Spitzfaden.

Pohlman asked how Spitzfaden's letter "jives" with the requirements on the deed when Hamberg purchased the property. Scarcelli stated that covenants are primarily a civil issue, and stated that the Acting Municipal Attorney was available to answer questions.

Brian Hanson, Acting Municipal Attorney, stated that staff have followed code requirements. Hanson stated that it is not the role of the city and this commission to enforce a private document.

Barth Hamberg stated that he had no new information to add. Hamberg stated that his proposal complies with code and is a truly low-density development. Hamberg stated that he believes he has created a model for development, and thanked staff for their work.

Davey Lubin stated that Hamberg and Scarcelli inaccurately pointed out that Lubin and his wife altered their drainage. Lubin stated that the stream has been in its current state for approximately 40 years. Lubin stated that the covenants went along with the sale of the property, and the commission is now considering a development that does not comply with the covenants. Lubin stated that he attempted to pursue mediation through the Administrator, and Lubin reported that Hamberg was not interested in mediation or mitigation.

Spivey stated that Hamberg has met code requirements, and the commission is to follow the code whether or not they agree with the code. Spivey believes that Hamberg has done the job that he has been asked to do. Spivey believes the stream is able to handle the natural flow. Parker Song stated that Hamberg

has followed the code, and this decision is not about opinions. Pohlman stated that she believes it would be ironic to approve a subdivision that doesn't comply with covenants. Pohlman stated that she finds it challenging. Hughey stated that he doesn't believe the development poses significant loss or harm to downhill neighbors.

Parker Song/Pohlman moved to **APPROVE** the preliminary plat for the Cedars Subdivision, subject to the attached condition of approval, for a 4 lot minor subdivision at 211 Shotgun Alley, zoned Single Family Low Density Residential. The property is currently legally described as Lot 2 of Johnstone Subdivision Replat. The request is filed by Barth Hamberg. The owner of record is Barth Hamberg.

a. Condition of Approval: All subject lots, future sales, and development comply with recorded restrictive covenants of record that state to effect that lots shall not be further subdivided; further, the main stream shall not be filled or otherwise impacted to prevent it from flowing in a free and natural state or would impact natural water levels of such stream; development shall be done with a trained soil scientist, hydrologist, or engineer to prevent soil wasting or erosion to insure no adverse erosion will occur to properties located below said parcel; development shall strive to maintain the natural character of the land with an effort to emphasize the natural landscape with locally appropriate flora; and all of these restrictions and covenants shall run with the land.

Motion PASSED 3-1. Pohlman voting against.

Parker Song/Pohlman moved to adopt the Senior Planner's analysis and **APPROVE** the findings of fact for the preliminary plat for the Cedars Subdivision, subject to the attached condition of approval, for a 4 lot minor subdivision at 211 Shotgun Alley, zoned Single Family Low Density Residential. The property is currently legally described as Lot 2 of Johnstone Subdivision Replat. The request is filed by Barth Hamberg. The owner of record is Barth Hamberg. It is found that the project:

- a. Complies with all applicable zoning regulations, specifically because minimum lot size and dimensions have been met by providing lots that range from 15,029 square feet to 80,796 and on average exceed the width of 80 feet, which further the intent of the zone for less density;
- b. Complies with subdivision regulations, specifically because those criteria addressed in Section 21.40 have been surpassed and the drainage assessment has been approved by the Municipal Engineer and no further requirements are needed for subdivision;
- c. Does not pose a negative impact to the public's health, safety, or welfare because the proposal as set forth in the application, preliminary plat, recorded covenants, and drainage assessment complies with the subdivision code and it is a reasonable development of a minor subdivision;
- d. Has not caused any apparent direct harm, and further that any potential for harm has been adequately and reasonably addressed in the drainage report, the condition of approval, existing restrictions and covenants, and/or through development standards and permit review;
- e. Has not caused the harm experienced by the downhill property and that any harm experienced by the downhill property is caused by the fact that their own drainage system cannot handle reasonable amounts of flow regardless of development; and
- f. Follows the objectives in the Comprehensive Plan by providing for conflict resolution, orderly development of residential land of adequate size and

access without adversely impacting surrounding land uses.

Motion PASSED 3-1. Pohlman voting against.

F

Public hearing and consideration of a variance request for 216 Lakeview Drive, in the R-1 zone. The request is for the reduction in the northwesterly side setback from 5 feet to 1 foot for the construction of a garage to replace an existing carport. The property is also known as Lot 51 Lakeview Heights Subdivision. The request is filed by Ida Eliason. The owner of record is Ida Eliason.

Spivey recused himself and sat in the audience.

Pierson explained the request. The foundation of the proposed garage would be 3 feet from the property line, with eaves 1 foot from the property line. Staff recommend a modified variance to allow the structure to come to 3 feet of the property line.

Ida Eliason passed out aerial photos. Eliason stated that she wants to park one car, keep her hot water heater outside, and have some storage. Eliason stated that there is ample space between the carport and her neighbor's home. Bosak suggested narrowing the garage.

Pohlman asked about building on the existing footprint. Bosak stated that if an item is not an exact replacement, that is an opportunity to bring properties into code compliance. Light, space, and air are considerations for zoning setbacks.

Parker Song stated the inclination is to grant the request because her neighboring property will not have adverse impacts to life, space, and air. Pohlman stated her hesitation to go against code, and the neighbor has the right to expand in Eliason's direction.

Parker Song/Hughey moved to adopt and **APPROVE** the required findings for major structures or expansions as discussed in the staff report.

Required Findings for Variances Involving Major Structures or Expansions.
Before any variance is granted, it shall be shown:

- a) That there are special circumstances to the intended use that do not apply generally to the other properties, specifically, the narrow lot dimensions;
- b) The variance is necessary for the preservation and enjoyment of a substantial property right of use possessed by other properties but are denied to this parcel, specifically, the ability to adequately protect a vehicle from rain;
- c) That the granting of such a variance will not be materially detrimental to the public welfare or injurious to the property, nearby parcels, or public infrastructure, specifically, by replacing a deteriorating structure; and
- d) That the granting of such the modified side setback variance from 5 feet to 3 feet will not adversely affect the Comprehensive Plan: specifically, the variance is in line with Comprehensive Plan 2.4.1, which states, "To guide the orderly and efficient use of private and public land in a manner that maintains a small-town atmosphere, encourages a rural lifestyle, recognizes the natural environment, and enhances the quality of life for present and future generations without infringing on the rights of private landowners, by replacing an existing structure while not encroaching further on setbacks."

Motion PASSED 3-0.

Hughey/Parker Song moved to **APPROVE** a modified variance request for 216 Lakeview Drive. The variance is for the reduction in the northwesterly side setback from 5 feet to 3 feet for the replacement of a carport with a garage. The property is also known as Lot 51 Lakeview Heights Subdivision. The request is filed by Ida Eliason. The owner of record is Ida Eliason.

Motion PASSED 3-0.

G

Public hearing and consideration of a minor subdivision and easement change request for 204 Jeff Davis Street, in the R-2 zone. The property is also known as Lot 17 Sheldon Jackson Campus Subdivision. The request is filed by Randy Hitchcock. The owner of record is Randy Hitchcock.

Item was PULLED from the agenda.

H

Public hearing and consideration of a minor subdivision request filed for tidelands adjacent to 1 Lincoln Street, as required for the tideland lease process. The property is also known as a portion of ATS 15, and is in the Waterfront District. The request is filed by Petro Marine Services. The owner of record is the City and Borough of Sitka.

Bosak explained the request. The applicant seeks to lease tidelands on which to build a replacement fuel dock. Staff recommend approval of the final plat. Spivey asked why this would be a 50 year lease. Bosak stated that the Attorney's office determined that 50 was the right length to support investment in new infrastructure.

Jerry Jacobs represented Petro Marine, and stated that he had nothing additional to add.

No public comment.

Spivey stated that it is straight-forward.

Pohlman/Parker Song moved to adopt and APPROVE the findings as discussed in the staff report.

- 1) That the proposed minor subdivision complies with the Comprehensive Plan and Sitka General Code by delineating an area for a prospective tideland lease; and**
- 2) That the subdivision would not be injurious to public health, safety, and welfare.**

Motion PASSED 4-0.

Pohlman/Parker Song moved to APPROVE the final plat of the minor subdivision for tidelands adjacent to 1 Lincoln Street. The property is also known a portion of ATS 15. The request is filed by Petro Marine Services. The owner of record is the City and Borough of Sitka.

Motion PASSED 4-0.

I

Public hearing and discussion of easement concerns and a lease renewal at 323 Seward Street filed by the White Elephant Shop. The renewal would be for 30 years. The property is also known as all of lot 7 and a

fractional part of lots 8, C-9, and C-10 of Block 8, U.S. Survey 1474 Tract A. The owner of record is the City and Borough of Sitka.

Pierson explained the history of the lease and easement concerns. Staff believes that White Elephant has adequately addressed easement issues.

Karen Grussendorf represented the board of White Elephant Shop, and stated that the board believes that they have done their job in remedying the easement concerns.

No public comment.

Spivey stated that he believes the White Elephant Shop has done their due diligence.

Parker Song/Pohlman moved to RECOMMEND that the access easement concerns at 323 Seward Street have been adequately addressed.

Motion PASSED 4-0.

J

Public hearing and consideration of a zoning map amendment filed by Lynne Brandon for 663-800 Alice Loop. The properties are also known as Lots 1-5 of Alice and Charcoal Island and Alice Island Planned Unit Development Phase 1, and Lots 1-16 of Ethel Staton Subdivision.

Scarcelli passed out a zoning map of 663-800 Alice Loop, and shared photos of homes, plats, Sealing Cove Business Center, and the general neighborhood. The proposal is to rezone 663-800 Alice Loop from Waterfront District to R-1 Residential. Alice and Charcoal Island has residential and commercial development. Surrounding land uses are vacant, residential, public facilities, municipal harbor, and commercial. A variety of commercial and public facility uses are in the area, including AT&T, Trani boat business in development, heated storage bays, Department of Transportation, municipal water treatment, and Sealing Cove Business Center. Waterfront District allows various uses that generate impacts to a higher and greater degree than residential districts, and residential owners in the Waterfront District must be aware of those potential uses. Property owners should have become aware of the Waterfront zoning when they purchased their properties. A group of property owners in the residential community support the proposed zoning map amendment, while Shee Atika opposes the proposal. The application had standing and was ripe. Residential property owners purchased their homes with strict covenants in place, which favors residential zoning. Adjacent commercial development could negatively impact residential property values. Scarcelli referred to the Griswold case. The rezoning would be inconsistent with the comprehensive plan because it would reduce the amount of available Waterfront zoned land, which is already limited. Only approximately 53 acres of Waterfront District land exists in Sitka. This proposed rezoning would remove approximately 9 acres or 18% of all Waterfront District land, or 90% of all vacant and developable Waterfront District land. Rezoning this parcel would set a precedent that all Waterfront land could be open to rezoning. The proposed rezoning would benefit private property owners but not the community at large. The Griswold case concluded that 7.22 acres does not constitute spot zoning, but this request is to rezone 8.97 acres. An argument in favor of the zoning amendment is that the covenants support the zoning amendment due to the potential impacts to property values. An argument against the zoning

amendment is that 2/3 of the spot zoning factors of the Griswold case support denial, and that the proposed amendment would remove 18% of Waterfront District zoned land. Overall, staff recommend against the zoning map amendment. Bosak stated that waterfront in other communities has co-aligned with residential uses, creating unique neighborhoods.

Lynne Brandon stated that she represents a group of community members. Brandon stated that she disagrees with the Senior Planner's analysis. Brandon stated that she has been involved with land use planning for years but municipal code regarding Waterfront District is confusing. Brandon stated that they were given approximately 18 legal documents when they purchased the property. Brandon stated that the residential properties are already essentially removed from Waterfront zoning as they are developed as residential properties with strict covenants. Brandon stated that the neighborhood is quiet and friendly, and potential commercial development at 800 Alice Loop would not be harmonious with the neighborhood. Brandon stated that public health and safety are not protected without the rezoning. Brandon asked if commissioners went through the Comprehensive Plan citations in the staff report. Brandon stated that she was part of the Comprehensive Plan development, and waterfront access was intended to be protected along the road system, not necessarily in the Waterfront District. Brandon cited the following Comprehensive Plan sections as supporting her request: 2.4.5, 2.4.21, 2.4.22, 2.4.23, 2.4.24, and 2.6.2. Brandon stated that the Coastal Management Program no longer exists. Brandon cited the Comprehensive Plan as stating that leapfrog development should be discouraged, and that neighborhood associations should be encouraged. Brandon asked the Commission to maintain the neighborhood character.

Pohlman stated that a tasteful set of apartments would not be permitted in R-1, and that higher density residential had been intended for 800 Alice Loop in previous discussions. Brandon stated that representatives had requested Shee Atika to place identical covenants on 800 Alice Loop, but right now they have no reassurances. Pohlman asked if residents are equally uncomfortable with higher density residential development as with commercial development. Brandon stated that Shee Atika has not been willing to make any commitments. Spivey asked if Brandon explained the various zoning designations when she requested feedback from neighbors. Brandon stated that she shared municipal code with neighbors.

Steve Atkinson joined via teleconference to give public comment. Atkinson stated that he does not view 800 Alice Loop as waterfront. Atkinson stated that covenants are more restrictive than R-1 zoning, so the request would make the zoning consistent with covenants. Atkinson stated a preference for R-1 but that he is not opposed to R-2.

Jerry Helem of 749 Alice Loop stated concern that he might encounter difficulties with building a dock if the zoning is changed. Helem stated that he has proposed a 10 by 40 foot dock. Bosak stated that up to 300 linear foot personal use docks are permitted in R-1 and R-2. Docks that exceed this size would require a conditional use permit. Helem stated that the Corps permit has been granted with a 5 year timeline to build, and he believes that it should be grandfathered in. Helem stated that the neighborhood is not affordable housing, and he does not want to see another Paxton Manor in 800 Alice Loop. Scarcelli stated that a building permit and substantial construction would have

to be done to vest his interest in the dock.

Richard Doland stated that he owns one of the lots. Doland stated that the covenants are substantial, and the idea is to protect the interests of property owners. Doland stated that property is hard to come by, and this is a good location for residential development. Doland stated that he believes it would be a mistake to allow commercial and industrial development at 800 Alice Loop.

Spivey stated that he is torn. He does not want to handcuff the current landowner of 800 Alice Loop. Hughey stated that the covenants set up the reasonable expectation that the neighborhood would be residential, and 800 Alice Loop should be reasonably residential. Hughey stated support for higher density residential development. Pohlman stated that one portion of the border of the property is waterfront. Spivey stated that he did not feel confident in making a decision on the request, and asked about the legal ramifications of changing the zoning on owners that object. Scarcelli stated that with Shee Atika's objection, approval would require the affirmative vote of 5 Assembly members. Bosak stated that the Waterfront District is defined as being in close proximity to the waterfront, not necessarily on the waterfront. Spivey stated that he would prefer that all landowners would be in agreement. Hughey stated that he preferred to postpone the item to see if harm would be done to 800 Alice Loop by rezoning to R-2. Bosak stated that it would require asking the applicant to amend the application.

Hughey/Parker Song moved to RECOMMEND denial of the zoning map amendment filed by Lynne Brandon for 663 800 Alice Loop. The properties are also known as Lots 1 5 of Alice and Charcoal Island and Alice Island Planned Unit Development Phase 1, and Lots 1 16 of Ethel Staton Subdivision.

Motion PASSED 4-0.

Pohlman/Parker Song moved to APPROVE the findings as discussed in the staff report.

1. That the granting of such zoning map amendment would adversely affect the Comprehensive Plan, and it is inconsistent with Comprehensive Plan Sections 2.4.12, 2.4.13, 2.5.10, and 2.6.1 by not providing lands adequate for all intended and desired uses such as residential, commercial, and water-dependent uses.
2. The zoning map change as proposed would not be in line with providing waterfront dependent uses that are identified in the Comprehensive Plan and also the intent of the WD zoning district specified in Section 22.16.100(A).
3. The zoning map change may result in adverse effects on public health, safety, and welfare by impacting the ability of lands near the water front and Sealing Cove Harbor to be able to be developed for commercial, industrial, or other marine business type uses that benefit the community as a whole and not just private property interests.

Motion PASSED 4-0.

K

Public hearing and consideration of a variance request for the reduction of the rear setback from 10 feet to 3 feet for the construction of a partially covered porch at 1935 Dodge Circle, in the R-1 residential zone. The property is also known as Lot 1 Alder Way Subdivision. The request is filed by Kris and Erica Pearson. The owners of record are Kristopher and Erica Pearson.

Pierson described the request. The applicant seeks to build a partially covered rear deck within 3 feet of the rear property line. The rear yard is approximately on the same plane as the second story of the downhill property. The property is bounded by Dodge Circle on the front and access easements on both sides. Staff recommend a modified variance to 5 feet to minimally impact the downhill neighbor.

Kris Pearson explained the request using the photo on the projector. Kris stated that the sun does not go uphill from the house, so he does not believe that the proposed deck would block light access to the downhill property. Pohlman asked where the roofline would align with the downhill property. Kris showed on the as-built that there is not a structure downhill from the requested roofline. Kris stated that they want to maximize the use of their property. Kris offered to reduce the eaves by 1 foot.

Pohlman/Parker Song moved to APPROVE findings as discussed in the staff report.

Required Findings for Variances.

1. Required Findings for Variances Involving Major Structures or Expansions.
Before any variance is granted, it shall be shown:

- a) That there are special circumstances to the intended use that do not apply generally to the other properties, specifically, that geography has created a significant elevation differential between the two adjacent properties;
- b) The variance is necessary for the preservation and enjoyment of a substantial property right of use possessed by other properties but are denied to this parcel, specifically, the ability to create outdoor living space that is protected from rain;
- c) That the granting of such a variance will not be materially detrimental to the public welfare or injurious to the property, nearby parcels, or public infrastructure, specifically, that a fence provides screening; and
- d) That the granting of such the modified rear setback variance from 10 feet to 4 feet will not adversely affect the Comprehensive Plan: specifically, the variance is in line with Comprehensive Plan 2.4.1 which states, "To guide the orderly and efficient use of private and public land in a manner which maintains a small-town atmosphere, encourages a rural lifestyle, recognizes the natural environment, and enhances the quality of life for present and future generations," by allowing for the development of outdoor living space while not adversely impacting neighbors.

Motion PASSED 4-0.

Pohlman/Parker Song moved to APPROVE a modified variance request for 1935 Dodge Circle. The variance is for the reduction in the rear setback from 10 feet to 4 feet for the construction of a partially covered deck. The property is also known as Lot 1 Alder Way Subdivision. The request is filed by Kris and Erica Pearson. The owners of record are Kris and Erica Pearson.

Motion PASSED 4-0.

VI. PLANNING DIRECTOR'S REPORT

Bosak stated that the next Comprehensive Plan meeting will be on September 6 at Sheldon Jackson campus, regarding economics. Short-term rentals on boats will be on the September 20 agenda. Pierson reported that an

administrative variance was granted for a side setback at 613 Lake Street. Scarcelli gave information on a landslide memorial ceremony on August 18. Bosak stated that in the aftermath of the landslide, hazard mapping has been supported and a critical areas ordinance is in progress.

VII. PUBLIC BUSINESS FROM THE FLOOR

VIII. ADJOURNMENT

Pohlman/ Parker Song moved to ADJOURN at 9:35 PM.

Motion PASSED 4-0.

ATTEST: _____
Samantha Pierson, Planner I