

MINUTES
WETLANDS REVIEW BOARD
REGULAR MEETING
June 25, 2015, 5:15 p.m. City Hall room 224

Meeting Summary

Roll Call

Board Members Present: Amy Sumner, Brenda Wright, Nina Horne, Jerry Medina, Andrew Campbell, Lisa Hoferkamp

Board Members Absent: Dan Miller (excused due to conflict of interest); Ben Haight; Hal Geiger

A quorum was present.

Staff Members Present: Teri Camery, Jonathan Lange, Chrissy McNally CBJ Planners

Public Present: Gretchen Pikul, DEC; John and Celeste Armstrong, applicants

Meeting called to order at 5:18 p.m.

II. May 21, 2015 Regular Meeting minutes approved.

III. Agenda approved.

IV. Public Participation on Non-Agenda Items

None

V. Board Comments.

None

VI. **Agenda Items**

1) **VAR2015 0016, a Streamside Setback Variance to Casa Del Sol (aka Pederson Hill) Creek**

Staff Presentation

Ms. Camery explained that the Board is reviewing this project in its scientific advisory role. Draft minutes, a summary of board comments, and the final board motion will be included in Mr. Lange's staff report to the Planning Commission.

Mr. Lange provided an overview of the project and the reason for the proposed streamside setback variance because of the utility easement 35 feet from the creek. He noted that Casa Del Sol Creek is a DEC-classified impaired waterbody. He said that the Board reviewed the project previously at the March 20, 2014 regular board meeting, and referred to the board minutes from this meeting in the packet. He said that the proposed work requires two approvals from the Planning Commission; one for the streamside setback variance and one to amend the plat note that refers to the previously approved location of the utilities outside of the 50-foot setback.

Mr. Lange said the fill on the site was originally placed 35 feet from the Ordinary High Water Mark of the creek in 1984 with a Corps of Engineers permit. The top of slope where the current fill exists is where the applicant wants to place the utility easement. The area is filled currently but the work done for the utilities and possible future driveway would be in the 50-foot setback. Mr. Lange said the application includes Best Management Practices for treating the water before it reaches the stream with a bioswale.

Ms. Hoferkamp asked for clarification regarding mitigation. Mr. Lange said that mitigation was planned for development of the driveways. Ms. Hoferkamp requested confirmation that mitigation had not been offered for the 15-foot incursion into the setback, and Mr. Lange concurred.

Ms. Pikul asked if the easement could be placed on the southern edge of Lot 5 to avoid the need for a variance. Mr. Campbell pointed out that this would mean less useable property. Ms. Pikul said she did not understand this conclusion. Mr. Lange explained that CDD staff evaluates the buildable area of proposed subdivision lots. He said that in the Industrial zone, the minimum lot size is only 2,000 square feet. He agreed that there is more than 2,000 square feet available if the easement is moved into the southern area of Lot 5. Ms. Pikul said she didn't think the easement would cut into the useable portion of the lot. Mr. Lange agreed that there would be space left on the other portion. He said that it's down to the preference of the developer. He noted that the project is scheduled for the July 28 Planning Commission meeting.

Mr. Campbell asked if staff has a position on the proposal. Mr. Lange stated that he does not have one yet; he is in the process of reviewing the variance criteria.

Ms. Wright asked if anyone has been on site to see if there is water in the creek. Mr. Armstrong said there is very little. He said that in the rainy season the creek is one foot deep.

Mr. Medina asked staff for guidance on stream habitat standards. Ms. Camery referred to CBJ Code 49.70.950(c)(7) and read the section to the board as follows:

Rivers, streams, and lakes shall be managed so as to protect natural vegetation, water quality, important fish or wildlife habitat and natural waterflow.

Applicant Presentation

Mr. Armstrong referred to the 1984 Corps of Engineers Permit that allowed fill but not structures up to 25 feet from the creek. The area was filled with shot rock to the toe of the slope at the 25-

foot zone. He said that he has been driving on the fill for 30 years. He is asking to use the area that has been filled and already in place, with the exception of the utility installation. He would like to continue to use it as it has been used.

Ms. Hoferkamp asked if the area would be paved. Mr. Armstrong stated that the area would be surfaced with D-1 gravel, however future property owners could pave. Ms. Hoferkamp asked if there was any way to ensure that the area is not paved. Mr. Campbell said that this could be added as a condition. He said it has been done before but he was not sure of the mechanism. He said it was upheld by the Planning Commission, and he believed the case was Northern Keta. He thought there were two cases. Ms. Camery could not recall these cases but said she would be happy to look it up. Mr. Lange and Ms. Camery said that a deed restriction or plat note might be an option.

Mr. Armstrong stated that there is no new fill anywhere, and the only development would be to put in the new water and sewer line. He said the water and sewer line would be in the driveway portion as far from the stream as possible, at 45 feet with an encroachment of 5 feet.

Ms. Wright asked if the driveway could be moved between lots 5 and 6. Mr. Armstrong said that would be difficult because power and electricity has been installed according to the proposed plan.

Ms. Horne said that she agrees with the Lot 5 option. Mr. Campbell said he believes this intrudes into Lot 7, because the easement would enter Lot 7 in the middle of the lot. Mr. Armstrong said it interferes with Lot 9, because the hammerhead for fire department access takes up a lot of the buildable area.

Public Participation

There was no formal public participation.

Board/Staff Discussion

Ms. Sumner requested clarification regarding 45 feet versus 35 feet from the creek. Mr. Armstrong explained that it depends on whether you measure from the toe of the slope or the top of the slope. Mr. Lange clarified that the 20 foot access and utilities easement would be 35 feet from the stream, but the applicant has stated that the water and sewer installation is proposed to be at the 45 foot line.

Mr. Medina referred to the Board's original motion in March 2014, which was based on no encroachment within the setback. He said that he understands the need for maximum use of the property, however he does not believe that the applicant has provided a good enough reason to encroach into the setback.

Ms. Wright asked if lots 5, 7, 8, and 9 are all encroaching, or if it's just lot 5. Mr. Lange stated that the encroachment affects all four lots.

Mr. Campbell wondered how active the stream is. Ms. Wright said she has seen rearing fish, but not spawning. Ms. Camery and Ms. Pikul confirmed that the area is anadromous and subject to the 50-foot no development setback. Ms. Pikul pulled up an anadromous stream map on her phone to demonstrate.

Ms. Horne said that she does not see a convincing argument to the change the Board's position.

Mr. Campbell said that it is important that the Board is consistent with all applicants. He said that the Board has recommended approval for variances that were not different from this one, in areas previously filled. He said that it's unfortunate that the proposal has come to the Board this way, however this situation happens often in construction. He said he supports the application so the lots can be used for their intended purpose.

Ms. Horne said she believes there are other options.

Mr. Armstrong said that if he had not subdivided the property, he would still be using it for truck traffic. He described the use on the lot in the subdivision that he owns as low-impact. Ms. Camery reminded the Board that they are reviewing a subdivision layout that may have a range of uses allowed in the Industrial zone in the long-term; review is therefore not based on the current use of the property.

Mr. Medina said that the variance criteria in the code are very specific. He said there are no unusual topographic features on the property to justify the variance. He said the developer needs to come up with more options.

Ms. Hoferkamp said that the misrepresentation by the surveyor is unfortunate; however the anadromous stream is clear.

Mr. Campbell noted that within the easement there's an existing filled driveway. Mr. Armstrong confirmed this. Ms. Camery noted that the streamside setback has been in CBJ Code since 1987. Fill and other developments that were placed within streamside setbacks before this time are considered legally non-conforming. Mr. Lange concurred that any new development has to be outside of the 50-foot setback.

Ms. Sumner stated that there is already fill there and she doesn't see any additional impact to the stream from the proposal. Ms. Pikul said that the bioswale would be an improvement to the area.

Mr. Armstrong said he is asking to put the swale in and drive vehicles across fill that already exists.

Mr. Campbell noted the disagreement among Board members on the proposal. He said that he would hate to see the Board say no without making a contribution and offering conditions in the event that the Planning Commission approves the variance.

Ms. Horne said she was not clear on the mitigation that was proposed. Mr. Armstrong said that he had replaced a culvert three months ago to improve fish passage on the site. Mr. Campbell

said that this is not specifically mitigation for the streamside setback variance, however it is a nice contribution to address the impact of the development.

Board motion

Ms. Wright referred to the Board's original motion in March 2014 and made revisions to offer a new motion as follows:

The Board does not recommend approval of the proposed variance because the survey shows that the driveway and utilities are within the 50-foot setback. However if the Board of Adjustment approves the variance, the Board requests special consideration of snow storage areas, creation and maintenance of grassy swales, and related stormwater management issues to ensure that sediment and pollutants to not reach the stream. The Board also requests careful attention to the location of the 50-foot setback on lots 5, 7, and 8 to ensure that buildings are not located within the setback. The Board requests measures to reduce the spread of invasive species in the project area during the development stage. The Board further requests the use of a deed restriction or plat note to prohibit use of impervious surfaces within the 50-foot setback.

Mr. Medina seconded the motion.

In favor: Ms. Wright, Ms. Horne, Ms. Hoferkamp, Mr. Medina

Opposed: Ms. Sumner, Mr. Campbell

Mr. Campbell said he could not support the motion because he supported the variance, however he agreed with the rest of the language in the motion. Ms. Sumner said she did not see any additional impact from the variance.

Ms. Camery said that she thought that a 4-2 vote might mean that the Board motion had failed according to Roberts Rules of Order. She apologized that she did not know for sure. She said that she would need to check with CBJ Law or someone at CDD who knows the rules well to confirm. Mr. Campbell noted that the Board has never been in this situation before. Ms. Camery said that the Board could propose a revised motion just in the CBJ Clerk's office determines that the first one has failed; however if the Clerk's Office determines that the first vote passed, then the first motion is the one that would be carried forward to the Planning Commission.

Ms. Sumner therefore proposed a new motion, identical to the first motion except for the first line, as follows:

If the Board of Adjustment approves the variance, the Board requests special consideration of snow storage areas, creation and maintenance of grassy swales, and related stormwater management issues to ensure that sediment and pollutants to not reach the stream. The Board also requests careful attention to the location of the 50-foot setback on lots 5, 7, and 8 to ensure that buildings are not located within the setback. The Board requests measures to reduce the spread of invasive species in the project area

during the development stage. The Board further requests the use of a deed restriction or plat note to prohibit use of impervious surfaces within the 50-foot setback.

Ms. Wright seconded the motion.

In favor: Ms. Sumner, Mr. Campbell

Opposed: Ms. Wright, Ms. Horne, Ms. Hoferkamp, Mr. Medina

ADDENDUM: CDD staff confirmed with the City Clerk's office on 6/26/15 that five votes in the affirmative are required for a motion to pass, regardless of the Board's advisory role. Therefore both motions have failed.

2) Juneau Wetlands Management Plan Update

Ms. Camery stated that Bosworth Botanical Consulting has completed all on-site wetland assessments, 360 total, and is now conducting off-site assessments utilizing the 2013 Lidar and imagery. She said this includes approximately 20 off-site assessments of Goldbelt property adjacent to the West Douglas road corridor. There will be approximately 60-70 offsite assessments total, which address areas where CBJ/CDD could not obtain private property permission for on-site assessments on large vacant parcels within the identified priority areas. She said that a preliminary draft Juneau Wetlands Management Plan, which will be reviewed by the Board, is due in September.

VII. Pending Permits and Updates

Ms. Camery explained that CDD is reviewing a proposed asphalt plant on city leased-land near Lemon Creek. The project is farther than 50 feet from the stream, therefore a streamside setback variance is not needed and the project is not coming to the WRB for advisory review. She has asked the applicant for the exact distance from the creek, and the project review includes extensive evaluation of stormwater treatment measures. The development requires an air quality permit and a Stormwater Pollution Prevention Plan from DEC, which will be required as conditions of approval. The project is currently scheduled for the July 28 Planning Commission meeting.

Ms. Camery noted that she is still expecting a Conditional Use Permit application from SECON for stream mining farther upstream in Lemon Creek Valley.

VIII. Planning Commission Liaison Update.

Planning Commissioners were not in attendance.

IX. Next meeting: Thursday July 16, 5:15 p.m., City Hall room 224.

The meeting was adjourned at approximately 6:45 p.m.