

Presented by: The Manager  
Presented: 07/12/2021  
Drafted by: R. Palmer III

## ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2021-19

### **An Ordinance Establishing the Planning Commission as the Board of Adjustment.**

BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

**Section 1. Classification.** This ordinance is of a general and permanent nature and shall become a part of the City and Borough of Juneau Municipal Code.

**Section 2. Amendment of Section.** CBJC 49.10.170 Duties, is amended to read:

#### **49.10.170 Duties.**

- (a) *Comprehensive plan review.* The commission shall undertake a general review of the comprehensive plan two years after the adoption of the most recent update, and shall recommend appropriate amendments to the assembly. Proposed map changes shall be reviewed on a neighborhood or community basis as directed by the planning commission.
- (b) *Review of the capital improvements program.* Upon adequate notice which shall be provided by the director, the commission shall review annually the capital improvements program of the City and Borough and submit its recommendations to the assembly.
- (c) *City and borough land disposals and projects.* The commission shall review and make recommendations to the assembly on land disposals as prescribed by title 53, or capital improvement projects by any City and Borough agency.
- (d) *Development code amendments.* The commission shall make recommendations to the assembly on all proposed amendments to this title, zonings and rezonings, indicating compliance with the provisions of this title and the comprehensive plan.
- (e) *Land use actions and related decisions.*
  - (1) All plats approved by the platting board prior to adoption of Serial No. 87-49 are ratified, notwithstanding the use of the commission seal or resolution.
  - (2) The commission shall hear and decide all major development permit applications, density bonus requests, and appeals of decisions made by the director.

- (3) Hear and decide variance request other than administrative variances.
- (4) Rule upon map boundary questions and interpret the text of the title as provided in section 49.20.300.
- (5) Make similar use determinations as provided in section 49.20.320.

**Section 3. Amendment of Article.** Article II Board of Adjustment of Chapter 49.10, Administration and Compliance, is repealed and reserved:

**ARTICLE II. Reserved.**

**Section 4. Amendment of Article.** Article II Variances of Chapter 49.20, Appeals, Variances, and Interpretations, is amended to read:

...

**49.20.210 Submittal.**

Except as provided in this article for an administrative variance, an application for a variance shall be submitted to the planning commission through the department.

...

**49.20.230 Public notice.**

- (a) Upon determination that the administrative variance application is complete, the director shall mail notice of the application to the immediately adjoining property owners, as determined by the director, and provide at least 14 days to submit written comments before issuing a decision.
- (b) For variances other than administrative, public notice according to section 49.15.230 shall be given prior to a hearing on the application by the planning commission.

**49.20.240 Board of adjustment action.**

The planning commission shall hear all variance requests except administrative variances, and shall either approve, conditionally approve, modify, or deny the request based on the criteria in section 49.20.250(b).

**49.20.250 Variance standards.**

- (a) Administrative variances.
  - (1) An administrative variance may be granted to allow projections not to exceed 25 percent of the yard setback requirements of this title or two feet, whichever is less, upon the director determining the following:

(A) Enforcement of the setback ordinance would result in an unreasonable hardship;

(B) The grant of the variance is not detrimental to public health, safety, or welfare; and

(C) The grant of the variance is narrowly tailored to relieve the hardship.

(2) An administrative variance decision by the director may be appealed if a notice of appeal is filed within 20 days of the date the decision is signed by the director, in accordance with section 49.15.239.

(b) Non-administrative variances.

(1) A variance may be granted to provide an applicant relief from requirements of this title after the prescribed hearing and after the planning commission has determined that:

(A) Enforcement of the ordinance would create an undue hardship resulting from the unusual or special conditions of the property;

(B) The unusual or special conditions of the property are not caused by the person seeking the variance;

(C) The grant of the variance is not detrimental to public health, safety, or welfare; and

(D) The grant of the variance is narrowly tailored to relieve the hardship.

#### **49.20.260 Conditions of approval.**

The planning commission may attach to a variance conditions regarding the location, character, and other features of the proposed structures or uses as it finds necessary to carry out the intent of this title and to protect the public interest.

...

**Section 5. Amendment of Article.** Article III Interpretations of Chapter 49.20, Appeals, Variances, and Interpretations, is amended to read:

#### **49.20.300 Authorization to interpret.**

The planning commission is authorized to interpret the zoning map and the text of this title and to pass upon questions of lot lines or district boundary lines and similar questions presented by the department or a property owner directly concerned.

**49.20.310 Submittal.**

An application for a map or text interpretation shall be submitted to the planning commission by filing a copy of the application with the director in the department of community development. The application shall contain information sufficient to enable the commission to make the necessary interpretation. The interpretation shall be scheduled for consideration by the commission. Individual mailed notice of boundary line interpretations shall be provided to adjacent property owners.

**49.20.320 Use not listed.**

After public notice and a hearing, the planning commission may permit in any district any use which is not specifically listed in the table of permissible uses but which is determined to be of the same general character as those which are listed as permitted in such district. Once such determination is made, the use will be deemed as listed in the table of permissible uses.

**Section 6. Amendment of Section.** CBJC 49.65.265 Suspension or revocation of permit, is amended to read:

**49.65.265 Suspension or revocation of permit.**

(a) The manager may suspend a permit issued under this article upon a determination that the site or operation is not in compliance with the conditions of the permit. Upon the oral or written notification of the suspension to the permit holder or to any person operating under the authority of the permit, all operations under the permit shall cease except those specifically authorized by the manager in the suspension notice. An oral notice shall be followed as soon as practical by a written notice. A suspended permit may be reinstated by the manager upon a determination the site or operation has been brought into compliance with the conditions of the permit.

(b) The manager may revoke a permit if there is substantial noncompliance with the terms of the permit or the site or operation under the permit has a history of noncompliance. Upon oral or written notification of the revocation to the permit holder or to any person operating under the authority of the permit, all operations under the permit shall cease except those specifically authorized by the manager in the revocation notice. An oral notice shall be followed as soon as practical by a written notice. A permit which has been revoked may not be reissued; however, an application for a new permit at the site may be filed. If a new permit is filed, the commission may consider the history of noncompliance with the prior permit conditions in determining whether a new permit should be issued.

(c) A suspension or revocation order may be appealed to the planning commission.

**Section 7. Amendment of Section.** CBJC 49.70.1230 Alternative development procedure, is amended to read:

**49.70.1230 Alternative development procedure.**

(a) *Alternative development permit.* The planning commission shall hear all applications pursuant to this article.

(b) *Pre-application conference.* Prior to submission of an application, the developer shall meet with the director for the purpose of discussing the site, the proposed development activity, and the alternative development permit procedure. It is the intent of this section to provide for an exchange of general and preliminary information only and no statement by either the developer or the director shall be regarded as binding or authoritative for purposes of this Code. A copy of this article shall be provided to the developer at the conference.

(c) *Application.* The developer shall submit to the director one copy of the completed permit application together with all supporting materials and the permit fee.

(d) *Director's review procedure.*

(1) The director shall endeavor to determine whether the application accurately reflects the developer's intentions, shall advise the developer whether or not the application is acceptable, and, if it is not, what corrective action may be taken.

(2) After accepting the application, the director shall schedule it for a hearing before the planning commission and shall give notice to the developer and the public in accordance with 49.15.230.

(3) The director shall forward the application to the planning commission together with a report setting forth the director's recommendation for approval or denial, with or without conditions, and the reasons therefor. The director shall make the determinations specified in subsection (e) of this section.

(4) Copies of the application or the relevant portions thereof shall be transmitted to interested agencies as specified on a list maintained by the director for that purpose. Referral agencies shall be invited to respond within 15 days unless an extension is requested and granted in writing for good cause by the director.

(5) Even if the proposed development complies with all the requirements of this title and all recommended conditions of approval, the director may nonetheless recommend denial of the application if it is found that the development:

(A) Will materially endanger the public health or safety;

(B) Will substantially decrease the value of or be out of harmony with property in the neighboring area; or

(C) Will not be in general conformity with the land use plan, thoroughfare plan, or other officially adopted plans.

(e) *Review of director's determinations.*

(1) At the hearing on the alternative development permit, the planning commission shall review the director's report to consider:

(A) Whether the proposed development is appropriate according to the alternative development overlay district;

(B) Whether the application is complete; and

(C) Whether the development as proposed will comply with the other requirements of this title.

(2) The planning commission shall adopt the director's determination on each item set forth in paragraph (1) of this subsection unless it finds, by a preponderance of the evidence, that the director's determination was in error, and states its reasoning for each finding with particularity.

(f) *Planning commission determinations.* Even if the planning commission adopts the director's determinations pursuant to subsection (e) of this section, it may nonetheless deny or condition the permit if it concludes, based upon its own independent review of the information submitted at the hearing, that the development will more probably than not:

(1) Materially endanger the public health or safety;

(2) Substantially decrease the value of or be out of harmony with property in the neighboring area; or

(3) Lack general conformity with the comprehensive plan, thoroughfare plan, or other officially adopted plans.

**Section 8. Amendment of Section.** CBJC 49.70.1240 Alternative development requirements, is amended to read:

**49.70.1240 Alternative development requirements.**

The planning commission may reduce the following requirements of the table of dimensional standards, 49.25.400, for development of new residential buildings, and the expansion, restoration, or repair of existing residential buildings. The term residential building includes accessory structures.

(a) *Setbacks.* No part of any residential building may be erected closer to the property line than:

(1) The average corresponding setback(s) of residential buildings within a 150-foot radius as determined by the director. If any of the corresponding setbacks used in the averaging calculation is located a greater distance than the required setback of the underlying zoning, then the standard setback in 49.25.400 of the underlying zoning will be used. If any of the corresponding setbacks used in the averaging calculation encroaches into the public right-of-way or onto an adjacent property, then zero feet will be used in the averaging calculation for that setback; or

(2) The footprint of the existing residential building. No encroachment into the public right-of-way or on adjacent property shall be permitted.

(b) *Lot coverage.* A lot within the overlay district shall not exceed 60 percent lot coverage.

(c) *Vegetative coverage.* A lot within the overlay shall maintain 15 percent vegetative coverage.

**Section 9. Amendment of Section.** CBJC 49.80.120 Definitions, is amended to read:

**49.80.120 Definitions.**

The following words, terms and phrases, when used in this title, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

...

*Office, professional* means an office used for the practice of law, the healing arts, accountancy, architecture, engineering or other use determined similar by the planning commission.

...

**Section 10. Amendment of Section.** CBJC 49.85.100 Generally, is amended to read:

**49.85.100 Generally.**

Processing fees are established for each development, platting and other land use action in accordance with the following schedule:

...

(10) Variances and Alternative Development Permits.

(A) Administrative Variance, \$120.00;

(B) Non-Administrative Variance, \$400.00;

(C) Alternative Development Permit, \$400.00.

...

**Section 11. Amendment of Section.** CBJC 19.02.010.3 Limitations of authority, is amended to read:

**19.02.010.3 Limitations of authority.**

An application for appeal shall be based on a claim that the true intent of the building codes or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of these codes do not fully apply, or an equally good or better form of construction is proposed. The board of appeals shall not be empowered to waive requirements of the building codes.

All variance requests to IRC 323.3.1 through 323.3.5 and IBC 1612 shall be heard by the Planning Commission, under procedures established per 49.70.410.

**Section 12. Effective Date.** This ordinance shall be effective 30 days after its adoption.

Adopted this 2<sup>nd</sup> day of August, 2021.



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Beth A. Weldon, Mayor

Attest:



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Elizabeth J. McEwen, Municipal Clerk