



MUNICIPALITY OF SKAGWAY, ALASKA
BOARD OF APPEALS MEETING

March 5, 2024
Page 1 of 3

1. **Call to Order:**

Mayor Bass called the meeting to order at 6:00 p.m.

2. **Roll Call:**

Present: Mayor: Sam Bass **Assembly Members:** Jay Burnham, Orion Hanson, Alex Weddell, Deb Potter, Dan Henry (via telephone)

Absent: **Assembly Members:** Kate Kolodi

3. **Proof of Notice:**

The Borough Clerk indicated that 'Proof of Notice' is printed on the back of the agenda and was posted on the municipal bulletin boards.

4. **Declarations:**

A. **Conflict of Interest**

Assemblymember Jay Burnham indicated that he rents to the Kitchen Sink who uses Skagway Development Corporation (SDC), the appellant's employer, to write his monthly rent check. He does not believe it to be a conflict of interest.

B. **Statement of Contact by Assemblymembers**

Assemblymember Potter indicated that she does not recall the exact date, but that she encountered Mr. Hillis in a coffee shop and discussed their mutual frustration about the housing situation; she does not recall if they spoke about the appeal specifically. On January 11, 2024, she met with Mr. Hillis in his capacity at the Skagway Development Corporation to discuss SDC's housing narrative and construction costs in Skagway; the meeting began by acknowledging what could not be discussed regarding the appeal.

Assemblymember Hanson indicated that he has had communications with Mr. Hillis regarding a construction project.

Assemblymember Weddell indicated that she has not spoken to Mr. Hillis about his appeal but that she did speak to him briefly about banking in Skagway.

Assemblymember Jay Burnham indicated that he had a 10-to-15-minute chat with Mr. Hillis regarding housing and made it clear he could not talk about anything related to the appeal.

5. **Public Hearing of Jonathan Hillis, Appeal of Planning & Zoning Commission Decision Regarding Conditional Use Permit Application No. 23-72 from Jonathan Hillis in the Residential General Zoning District, Request to Convert a Garage to a Studio Apartment on Lot 7 Block 105, Skagway Townsite:**

Public Hearing

Assemblymember Hanson indicated that he would like the Permitting Official to describe the difference between a conditional use and a variance.

Permitting Official Fairbanks indicated that variances are a relief from dimensional standards and conditional uses are specific flexibility in the zoning regulations for uses of the land.

Assemblymember Hanson indicated he would like to know if a variance can be conveyed in the sale of a property.

Permitting Official Fairbanks indicated that subsequent owners of property subject to a variance permit succeed to the benefits and limitations of the original permit holder.

Assemblymember Potter indicated that the Planning and Zoning Resolution No. 24-03 states that the conditional use permit is approved if the condition that the setback requirements are met. She would like to know what the property owner would need to do to meet that condition.

Permitting Official Fairbanks indicated that in her opinion the best solution would be to move the whole building. Fairbanks indicated that all buildings must meet the setback requirements, and in this case, there is a variance that was granted to allow the garage to be built. Fairbanks indicated that the granting of this variance was a mistake because there was no “extraordinary circumstance” requiring that a variance be given. The 2010 Planning & Zoning Commission granted the variance because there was already a foundation present, but the existence of a foundation should not be considered an extraordinary circumstance. Fairbanks added that the commission could have included a condition that the variance only applies to a garage structure, but they did not.

The Public Hearing was closed.

6. Board of Appeals Decision on Appeal of Planning & Zoning Commission Decision:

Main Motion/Second: Burnham/Weddell to uphold the decision of the Planning & Zoning Commission.

Assemblymember Hanson indicated that he does not believe the condition of the setback requirements being met is applicable to public health or safety. Unlike conditional use, a variance conveys with the land and Mr. Hillis purchased this property with the variance for that structure already in place.

Secondary Motion/Second: Hanson/Potter to amend the main motion to modify Planning & Zoning ruling regarding Resolution No. 24-03R to remove the setback requirements.

Assemblymember Jay Burnham indicated that the variance was granted for a garage structure and not an accessory housing structure, so the variance should not apply. While he sees the benefits of adding additional housing, it should be done according to code.

Assemblymember Potter indicated that, per code, the Board of Appeals shall only consider such grounds for appeal as is specified in the notice of the appeal by the appellant, and that the issue of having a variance is not one of the items mentioned.

Assemblymember Jay Burnham indicated that the appeal also states that the grounds for the permit required the appellant move the building four feet to the north and three inches to the east to fall within the setbacks, and that does not seem to be correct.

Mayor Bass indicated that in the transcript from the Planning and Zoning meeting Chair Brena indicates that the existing side yard setback is one foot and should be five feet, and the back yard setback is three feet and should be five feet. The appellant's statement that it needed to be moved three inches could have been a typo.

Assemblymember Weddell indicated that while the appeal does not directly use the word "variance" it does refer to ingress and egress and a variance by definition is relief from dimensional standards that are set. It would not be a leap to interpret that the appellant is referring to the variance, even if not directly stated that way.

The Secondary Motion passed by roll call vote, 4 yes, 1 no, 1 absent; with Assemblymember Jay Burnham dissenting.

Assemblymember Jay Burnham indicated that he is concerned about not upholding the ruling of the Planning & Zoning Commission. It sends a message that someone can build something however they want and not follow setbacks or the code in general. A five-foot setback is a standard rule to protect the health, safety and welfare of the occupants and neighboring structures. The appellant should just modify or move the building to meet the setbacks. It may cost more to do that, but that should not be a factor in the decision made tonight.

Assemblymember Hanson indicated that this structure was granted a variance, and while he agrees that setback reliefs should not be granted arbitrarily, this one has already been approved and recorded.

Assemblymember Jay Burnham indicated that the variance was granted for a structure that was a garage, and it was not granted for a living space.

Mayor Bass indicated that the issue is that if the variance does not transfer with the property use, then this variance was granted for a garage and would not apply to a housing unit.

Assemblymember Weddell indicated that in reading the minutes of the meeting in which the variance was granted, the commission is clear that they are talking about a garage and not housing. However, they failed to consider future use and stipulate that the variance applies only to a garage structure, so she is inclined to think that the variance would still apply to this proposed use.

Mayor Bass indicated that the code states that the Board of Appeals shall only consider such grounds for appeal as specified in detail in the notice of appeal from the appellant. He encourages the Board to consider whether the appellant has specified in detail the issue of the variance in the appeal.

Secondary Motion/Second: Burnham/Weddell to postpone the decision and reconvene as the Board of Appeals on March 21, 2024.

The Secondary Motion passed by roll call vote, 4 yes, 1 no, 1 absent; with Assemblymember Hanson dissenting.

7. Adjournment:

Motion/Second: Hanson/Weddell to adjourn at 7:03 p.m.

The Motion passed by roll call vote, 5 yes, 0 no, 1 absent.

Sam Bass, Mayor

ATTEST:

Steve Burnham Jr., Borough Clerk

(SEAL)