



MUNICIPALITY OF SKAGWAY, ALASKA
PLANNING & ZONING COMMISSION MINUTES

April 11, 2024
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1. Call to Order:

Chair Brena called the meeting to order at 5:30 p.m.

2. Roll Call:

Present: Commissioners: Gary Hisman, David Brena, Jacy Kern, Rocky Outcalt (via telephone)

Assembly Ex Officio: Orion Hanson

Absent: Commissioners: Laura Mabee

3. Approval of Minutes:

A. March 14, 2024

Motion/Second: Hisman/Kern to approve the minutes for March 14, 2024.

The Motion passed by roll call vote, 4 yes, 0 no, 1 absent.

4. Approval of Agenda:

Motion/Second: Kern/Hisman to approve the agenda and to extend the end time to 7:00 p.m. if necessary.

The Motion passed by roll call vote, 4 yes, 0 no, 1 absent.

5. Communications:

A. Correspondence

Chair Brena indicated that there are four letters pertaining to a conditional use permit application and he will summarize those during the discussion of that application.

B. Permitting Official Report

Permitting Official Fairbanks indicated that she has a memo in the packet regarding some of the agenda items.

C. Hear Citizens Present

James Scott Ream indicated his concerns regarding allowing particular uses in areas that are not zoned for those uses.

Penny Sullivan indicated that as a neighboring property owner, she is not opposed to the conditional use permit application for James Higgins.

6. Unfinished Business:

7. **New Business:**

8. **Resolutions:**

- A. Adoption of Planning & Zoning Resolution No. 24-04R: Approving Conditional Use Permit Application No. 2024005, Petro 49 Request to Put in a Three Person Camp as Temporary Living for Contractors at 241 Klondike Highway Parcel A-2 2003-1

Motion/Second: Kern/Hisman to adopt Resolution No. 24-04R.

The Motion passed by roll call vote, 4 yes, 0 no, 1 absent.

9. **Public Hearings:**

- A. Application to Name/Rename a Street No. 24-01: Municipality of Skagway, Lot 2 Columbo Subdivision #1, Plat 2017-1; Lot 18-2 Columbo Subdivision Plat 99-15, Request to Name an Unnamed Private Street
1. Public Hearing

The Public Hearing closed with no comments.

2. Consideration

Motion/Second: Kern/Hisman to approve application 24-01 to name "Fox Trot Road" by proposed resolution.

The Motion passed by roll call vote, 4 yes, 0 no, 1 absent.

- B. Conditional Use Permit Application #2024017, James Higgins, Lots 9 & 10 Block 76, Request to Convert Garage to Accessory Dwelling Unit
1. Public Hearing

Chair Brena opened the Public Hearing and invited the applicant to introduce their application.

Assemblymember Hanson indicated that he would like to be recused from this item because he is the contractor on the application.

Applicant Representative, Orion Hanson of Hanson General Contractors indicated that the project was started during the pandemic and the property owner needed to house his brother and mother. Pictures in the packet show that one corner of the building is 39 inches from the lot line, but that alley is very confusing. People are looking for housing solutions and it is difficult to ensure that a building from 1979 can be in line with 2024 code requirements. To meet the setbacks this building would need to be picked up and rotated 22 inches.

Chair Brena called a five-minute recess.

Applicant James Higgins indicated that this housing is going to be private residence for his family.

Chair Brena indicated that he would like to know if any building permit applications were submitted for this project.

Permitting Official Fairbanks indicated that there are no building permits for this project. She issued a stop work order and a letter of non-compliance to the property owner, who in turn completed a conditional use permit application as well as a building permit application. She advised the conditional use permit should be obtained before addressing the building permit application.

Chair Brena indicated that he would like to know what inspections the Permitting Official would typically do as a building is converted from a garage to an accessory dwelling unit.

Permitting Official Fairbanks indicated that the first inspection would examine the foundation and the insulation. The second inspection would examine the framing and floor elevation above the foundation slab. The third inspection is of the drywall and that would be followed by the final occupancy inspection.

Chair Brena indicated that he would like to know the Permitting Official's thoughts regarding this structure being more than one accessory dwelling unit.

Permitting Official Fairbanks indicated that the upstairs portion is labeled as a "bonus room"; however, the only access to it is from stairs on the external building and no direct access from the downstairs dwelling unit. She has been approached by members of the public who claim that the previous summer there were two separate dwellings and that a third one is being built. She has not been able to view the entire inside of the building.

Chair Brena indicated he would like to know if the Permitting Official verified the setbacks.

Permitting Official Fairbanks indicated that the contractor and property owner disagreed with the measurements from a 2003 survey and asked that she look at the alley survey completed in 2020. She asked the Public Works Director to help her conduct new measurements, which verified that the 2003 survey was correct. Per the code, the setback is 5 feet from the alley and one corner of the building is only 2 feet 7 inches.

Chair Brena indicated that to summarize, the building was properly permitted as a garage in 1979 and some time during 2020 or 2021 it was remodeled into an accessory dwelling unit with a potential second unit upstairs and no permits were applied for or issued for that work. The Permitting Official issued a stop work order when work resumed in 2024 which caused the property owner to apply for this conditional use permit.

Permitting Official Fairbanks indicated that the letter of non-compliance issued to the property owner indicated several zoning and building code violations and noted that no persons should be occupying the building or conducting any work to the building or daily fines would be issued.

2. Consideration

Chair Brena indicated that he is sympathetic to the applicant; however, there is no reason why proper permits should not have been sought, nor should any contractor participate without permits. The Planning and Zoning Commission does not have legislative power to change setback requirements and therefore cannot approve a permit that does not follow the code.

Commissioner Hisman indicated that he agrees that the Planning and Zoning Commission does not have the ability to grant this permit. He would urge that the Assembly discuss the issue of setback requirements.

Main Motion/Second: Hisman/Kern to deny conditional use permit application No. 2024017 by proposed resolution.

Commissioner Outcalt indicated that he is sympathetic to the housing needs but permits need to be obtained for this kind of work. He does not believe the encroachment on the alley setback is a fire safety issue, but the Assembly would need to change the legislated rules to be able to grant this permit.

Chair Brena indicated that the commission will now consider each of the standards, and standard A states that the requested conditional use will protect the public health, safety, and welfare.

Secondary Motion/Second: Kern/Hisman to amend the main motion to include the finding of fact that the requested conditional use will not protect the public health, safety, and welfare because of fire safety standards.

The Secondary Motion passed by roll call vote, 4 yes, 0 no, 1 absent.

Chair Brena indicated that standard B states that the requested conditional use permit will not permanently or substantially injure the lawful use of neighboring properties or uses.

Secondary Motion/Second: Hisman/Kern to amend the main motion to include the finding of fact that the requested conditional use permit will not permanently or substantially injure the lawful use of neighboring properties or uses.

Commissioner Hisman indicated that he does not see this as injuring the neighboring properties or uses.

The Secondary Motion passed by roll call vote, 3 yes, 1 no, 1 absent; with Commissioner Brena dissenting.

Chair Brena indicated that standard C states that the requested conditional use will generally be in harmony with the comprehensive plan, coastal management plan, and other officially adopted plans.

Secondary Motion/Second: Hisman/Kern to amend the main motion to include the finding of fact that the requested conditional use permit will not generally be in harmony with the comprehensive plan, coastal management plan, or other officially adopted plans due to zoning regulations and setback requirements.

The Secondary Motion passed by roll call vote, 3 yes, 1 no, 1 absent; with Commissioner Outcalt dissenting.

Chair Brena indicated that standard D states that the requested conditional use permit will not substantially decrease the value or be out of harmony with property in the neighboring area.

Secondary Motion/Second: Kern/Hisman to amend the main motion to include the finding of fact that the requested conditional use permit will not substantially decrease the value or be out of harmony with property in the neighboring area.

The Secondary Motion passed by roll call vote, 4 yes, 0 no, 1 absent.

The Main Motion passed by roll call vote, 4 yes, 0 no, 1 absent.

- C. **Conditional Use Permit Application No. 2024018: P.A.R.N., Lot 1 Block 44, Request to Conduct Commercial Sales on a Lot Zoned as Industrial**

Chair Brena called a five-minute recess.

1. Public Hearing

Chair Brena opened the Public Hearing and invited the applicant to introduce their application.

Applicant Representative, Lauren Taylor indicated that they would like to move the caboose that sold coffee on the Railroad dock to temporarily conduct sales until it can be returned to the original location in one to two years.

Commissioner Hisman indicated that he would like to know what kind of sales would be conducted.

Applicant Representative, Lauren Taylor indicated coffee, espresso, and retail souvenirs would be sold.

Chair Brena indicated he would like to know if the previous location had plans to further develop that area into a larger retail operation back in 2017.

Applicant Representative, Lauren Taylor indicated she was not aware of any plans.

Chair Brena invited any other members of the public to speak about this application.

Shelley O'Boyle indicated that she submitted a letter opposing this application. She believes it violates standard C because the area is zoned as industrial not commercial, so it is not in harmony with currently adopted plans by the municipality. It also violates standard D because it will decrease the value or be out of harmony with property in the neighboring area. There are several unrented retail spaces that could be rented to conduct commercial sales. Additionally, P.A.R.N. owns other commercially zoned properties where the caboose could be moved to.

Bob Gibson indicated that P.A.R.N. already operates a coffee and retail shop at the depot located on Second Avenue and it would be unfair to allow them a closer space to the waterfront when there are unoccupied retail rental spaces that are empty.

Chair Brena indicated that the commission received six letters submitted by members of the public and he summarized each one.

2. Consideration

Commissioner Hisman indicated that it is a concern to have commercial business moving into the waterfront and he believes that allowing the caboose to be moved could create a safety issue due to congestion of pedestrians and vehicles.

Assemblymember Hanson indicated that the business historic district was created so as not to overcrowd the waterfront.

Chair Brena indicated that "commercial sales" is not one of the conditional uses listed in the code.

Main Motion/Second: Kern/Hisman to deny conditional use permit application No. 2024018 by proposed resolution.

Chair Brena indicated that the commission will now consider the four standards one by one. Standard A is that the request will protect the public health, safety, and welfare.

Secondary Motion/Second: Hisman/Kern to amend the main motion to include the finding of fact that the requested conditional use will not protect the public health, safety, and welfare because of increased congestion on an already busy corner.

The Secondary Motion passed by roll call vote, 3 yes, 1 no, 1 absent; with Commissioner Outcalt dissenting.

Chair Brena indicated that standard B is that the requested conditional use will not permanently or substantially injure the lawful use of neighboring properties or uses.

Secondary Motion/Second: Hisman/Kern to amend the main motion to include the finding of fact that the requested conditional use will permanently or substantially injure the lawful use of neighboring properties or uses.

Chair Brena indicated that allowing commercial use in the industrial zone has the potential to harm all the merchants in the historic district and the rest of town.

The Secondary Motion passed by roll call vote, 4 yes, 0 no, 1 absent.

Chair Brena indicated that standard C states that the requested conditional use will generally be in harmony with the comprehensive plan, coastal management plan, and other officially adopted plans.

Secondary Motion/Second: Kern/Hisman to amend the main motion to include the finding of fact that the requested conditional use will not generally be in harmony with the comprehensive plan, coastal management plan, and other officially adopted plans.

The Secondary Motion passed by roll call vote, 4 yes, 0 no, 1 absent.

Chair Brena indicated that standard D states that the requested conditional use will not substantially decrease the value or be out of harmony with property in the neighboring area.

Secondary Motion/Second: Hisman/Kern to amend the main motion to include the finding of fact that the requested conditional use will substantially decrease the value or be out of harmony with property in the neighboring area.

The Secondary Motion passed by roll call vote, 4 yes, 0 no, 1 absent.

The Main Motion passed by roll call vote, 4 yes, 0 no, 1 absent.

10. Commission Discussion:

The Commission discussed setback requirements.

11. Adjournment:

Motion/Second: Hisman/Kern to adjourn at 6:50 p.m.

The Motion passed with no objection from the table.

ATTEST:

David Brena, Chair

Kathy Carr, Deputy Borough Clerk
(SEAL)