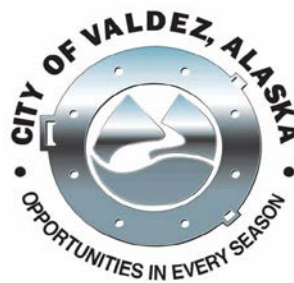


City of Valdez

212 Chenega Ave.
Valdez, AK 99686



Meeting Minutes - Draft

Wednesday, August 8, 2018

7:00 PM

Regular Meeting

Council Chambers

Planning and Zoning Commission

REGULAR AGENDA - 7:00 PM**I. CALL TO ORDER**

Chair Pro-Tem Blehm called the meeting to order at 7:00 p.m. in Valdez City Council Chambers.

Community Development Director, Ms. Rochelle Rollenhagen, said staff had struggled to get the agenda packet together electronically due to the recent cyber-attack. She said staff had provided the Commissioners a printed packet. Chair Pro-Tem Blehm asked Ms. Rollenhagen for an update on how staff was coping with the cyber-attack.

Ms. Rollenhagen said the department was scheduled to have computers in office by that Friday. She added they would not have email access but they would at least be able to run word processing software. She said staff had been operating for two weeks with no computers and had been working hard to maintain normalcy.

II. ROLL CALL

Present: 5 - Chair Pro-Tem Blehm
Commissioner Haase
Commissioner Reese
Commissioner Uren
Commissioner Wade

Excused: 1 - Chair Gondek

Also Present: 4 - Paul Nylund, Sr. Planner
Nicole LeRoy, Planning Technician
Rochelle Rollenhagen, Community Development Director
Danae Gilfillan, Administrative Assistant

Vacancy: 1 - Commissioner Weaver due to term expiration

III. PUBLIC BUSINESS FROM THE FLOOR

There was no public business from the floor.

IV. APPROVAL OF MINUTES

There were no minutes to be approved.

V. PUBLIC HEARING

1. Public hearing on use variance request from Jerry Gray for the carport/sheds an accessory use on Lot 6, Block 2, Alpine Woods Subdivision, 5230 Whispering Spruce Drive, without a primary use

Chair Pro-Tem Blehm said they would be having a public hearing to discuss a use variance for applicant Mr. Jerry Gray. Ms. Rollenhagen remarked she was surprised the applicant was not in attendance. Since there was no one

from the public in attendance to comment, Chair Pro-Tem Blehm opened the public hearing by requesting public comment, and closed the hearing after hearing no comment.

VI. NEW BUSINESS

1. Use Variance Request from Jerry Gray for the Carport/shed as an Accessory Use on Lot 6, Block 2, Alpine Woods Subdivision, 5230 Whispering Spruce Drive, without a primary use

MOTION: Commissioner Haase moved, seconded by Commissioner Reese to approve the use variance request from Jerry Gray for the carport/shed as an accessory use on Lot 6, Block 2, Alpine Woods Subdivision, 5230 Whispering Spruce Drive, without a primary use. With conditions being utilized in 12 months after approved. The motion carried by the following vote after the following discussion occurred along with conditions listed below.

1. That the carport/shed be for personal use only.
2. That it is clear this case will not set a precedence for use variances.
3. In conformance with Valdez Municipal Code Section 17.06.070 (B) any conditional use, variance or exception approved by the Planning and Zoning Commission shall be conditional upon the privilege granted being utilized within twelve months after the effective date of the approval. In the even construction work is involved, it must actually commence within the stated period and must be diligently prosecuted to completion; otherwise the approval is automatically voided. The Planning and Zoning Commission may extend the time the construction is to start if satisfactory evidence of planning progress is presented. Any substantial change to the plans or building proposal shall require resubmission to the Planning and Zoning Commission.

Ms. Rollenhagen said Mr. Gray had applied for a building permit early that spring to construct a garage on the lot adjacent to the lot his residence was located on. Ms. Rollenhagen explained that the lot Mr. Gray wanted to construct the carport on was vacant, and because he did not have a primary use on that lot, his application was denied. Ms. Rollenhagen said the department had explored various options to allow permitting of the accessory structure and had settled upon the option of a use variance, at the direction of their legal counsel.

Ms. Rollenhagen explained that use variances were prohibited in all cities except home rule cities, and that there were only roughly ten states that allowed use variances. She said they were not good planning practice, as they changed the intent of the zoning ordinance. She stated that variances were for topographical or dimensional restrictions. She said she had never processed a use variance throughout her career, and that they were very uncommon. Ms. Rollenhagen said she had brought this forward at the advice of the City Attorney but advised that they would want to see a high bar for the evaluation and approval criteria.

Chair Pro-Tem Blehm remarked it was unfortunate the applicant was not in attendance to speak to their request. Ms. Rollenhagen agreed and said they had been properly notified of the meeting.

Commissioner Reese asked how the Community Development justified recommending approval of the use variance. Ms. Rollenhagen explained the variance was for construction of an accessory structure on the lot across the street from Mr. Gray's primary residence. The use variance was for an accessory structure, without a primary structure on the lot. She said, unfortunately, if Mr. Gray ever sold his lot, the accessory use would remain in perpetuity. She said it would have to be proven that Mr. Gray could not construct a carport of the same lot as his primary residence. She said the applicant would much rather have both structures on one lot, but that his lot was very wet. She said the location of his septic system and drain field also precluded the reasonable placement of an accessory carport on the same lot as his primary residence.

Chair Pro-Tem Blehm noted that the applicant had a 180 foot driveway to access his home. Ms. Rollenhagen said the applicant had to place his home on the highest point on his property. Commissioner Wade said she had recently walked through the applicant's property, and agreed his primary lot was limited. She asked what the intent of the structure being permitted was. Ms. Rollenhagen explained the proposed structure was just an open unit carport.

Commissioner Wade asked why someone couldn't put a structure they wanted on property they owned. Ms. Rollenhagen clarified that a primary use would be required before an accessory use could be permitting per the zoning ordinance. Commissioner Wade asked what was considered a primary use. Ms. Rollenhagen said that in a residential district, it was usually a residence. Commissioner Wade said she would rather see a garage/carport on the lot in question than a house, as the water table was very high. Ms. Rollenhagen agreed it was a better location. She said that as much as a use variance contradicted her planning philosophy, she thought it was a good thing in this case.

Commissioner Uren asked if the placement of the proposed carport would prevent the construction of a home in the future. Chair Pro-Tem Blehm replied it would since it was planned to be constructed in the middle of the lot. Commissioner Uren asked if development of the carport, or bringing in fill would affect the water table for other land owners in the area. He questioned the City's liability if it did become an issue.

Ms. Rollenhagen replied that if the use variance was granted, the applicant would have to get a floodplain determination. Commissioner Reese asked if approval of the item would take up a valuable lot that could be sold for development of a new home. Commissioner Uren commented that the City was in a housing shortage, and they would be setting themselves back if they eliminated a potential home site. Ms. Rollenhagen replied about three feet of fill would be needed for safe construction of a new home on the lot. Chair Pro-Tem Blehm pointed out that that this was one of the lots that was looked at for condemnation a few years prior because it was constantly flooding. Ms. Rollenhagen said in this instance, she thought the applicant had a good case for a use variance.

Commissioner Uren reiterated his concern over the impact of bringing in fill on the neighboring properties downstream. Commissioner Wade said there shouldn't be any more residences constructed in the high water table, and that it would very costly. She said she would rather see a shop than a home. She asked if the City had purchased a neighboring lot due to similar flooding issues. Ms. Rollenhagen replied the City had.

Chair Pro-Tem Blehm said that in the future, the Commission might want to look at vacating the right of way to prevent further expansion of the subdivision.

Commissioner Haase said he agreed with the City Attorney's attached comments about having high standards for a use variance. He said a garage was not out of character for a residential district, and there were exceptional physical characteristics of the lot that would prevent Mr. Gray from constructing the carport on the same lot as his primary residence. He said it would not cause hardships for the neighbors, nor would it hurt public safety or welfare.

Commissioner Reese asked if the applicant would be bringing in fill for the construction of the carport. Chair Pro-Tem Blehm replied it would be as little as possible. He added that the water in the area moved through the soil rapidly, that surface runoff would not cause flooding on anyone else's property. He said he wanted to go through the Attorney's attached memo one page at a time and review the criteria.

Ms. Rollenhagen emphasized that when the Commissioners made this decision, they needed to state they would not establish precedence for use variances, and that if another application for a use variance was submitted, they were not bound by their prior approval. Commissioner Blehm noted that there was an existing private well and septic on the lot in question and said he was unsure why the applicant want not taking advantage of the existing septic system and remarked he wished the applicant was in attendance. Ms. Rollenhagen said she wished the applicant was in attendance as well.

Chair Pro-Tem Blehm asked how the two locations would be taxed by the City. Ms. Rollenhagen replied she assumed they would be taxed separately. Chair Pro-Tem Blehm asked if they sold the lot, if the variance would stay with that parcel. Ms. Rollenhagen replied it would. Chair Pro-Tem Blehm clarified that if the lot was sold, it would be a zoning violation. Ms. Rollenhagen said Mr. Gray had applied for a building permit for the structure.

Commissioner Wade said she thought the placement of the 24' x 32' garage structure would not preclude the placement of a house in the future because of the large size of the lot.

Commissioner Uren commented that the Commission couldn't know ahead of time where the septic drainfield for a home would be located, and that upgrades to the existing well and drainfield to accommodate a new home would be costly. Commissioner Wade said that most of the wells in the area needed to be upgraded anyway, and that the septic system was out of date. Chair Pro-Tem Blehm expressed concern over the City's liability if the lot flooded.

Commissioner Reese noted that if the City ever decided to purchase the lot in question, it would be an improved value which was a benefit. Commissioner Haase noted that there was no motion on the floor to discuss the item. Chair Pro-Tem Blehm thanked him for recognizing this and said the item was motioned by Commissioner Haase, seconded by Commissioner Reese. Chair Pro-Tem Blehm said there was one public comment on the application, from a city employee, Mr. Mike Bowden.

Ms. Rollenhagen said it was a confusing comment, but that she had clarified with Mr. Bowden that when he said "all for it" he meant he was in favor of approval. Ms. Rollenhagen added that the Community Development Department had not received any other comments.

Chair Pro-Tem Blehm said he fully agreed with the City Attorney's comments regarding the application, and said it appeared to be Mr. Gray's intent to construct a carport when he purchased the property. Chair Pro-Tem Blehm reiterated that the approval of the item had to satisfy all of the conditions laid out in the Attorney's memo. Commissioner Haase said he thought the Commission should consider if the use was out of character for a residential district.

Commissioner Reese said he felt an argument could be made either way on this point, and that an accessory use should be in conjunction with a primary use. However, he agreed with Commissioner Haase that it was within the character of the district. He added that he agreed with Commissioner Wade as well, that there would be room on the lot for a home if one was desired at a later date. He added that generally, a subdivision should not have lots with only garages on them.

Chair Pro-Tem Blehm commented that there was a neighboring property that also had the appearance of a shed, but that there was a residence on the back side of it.

Commissioner Reese said he was concerned the Commission would be legally bound to approve someone else's use variance application, just because they approved the Gray's variance. Ms. Rollenhagen clarified that this was why the findings of fact were so important. She added that if the Commission preferred clarification from Legal to feel comfortable with making a decision, they could postpone the item. Commissioner Reese said he was in favor of permitting the use in this particular case, but that he was concerned if someone else wanted to do something similar but undesirable, the Commission would not be able to deny them legally. Ms. Rollenhagen said legally she could not clarify the Commission's legal obligation, but that Commissioner Reese's point was why the decision to substantiate was so important.

Chair Pro-Tem Blehm said he believed there was enough information included in the packet but that he was concerned about setting an undesirable precedent and that the applicant was not in attendance to answer questions. Ms. Rollenhagen said proper notifications had been sent out, and that she was unsure why the applicant was not in attendance.

Chair Pro-Tem Blehm read the intent of the rural residential zoning code as being low density living, and said it was intended to be a residential area, and

not a storage area, even if the storage structure was associated with a neighboring residential property. Chair Pro-Tem Blehm remarked they had been joined by the applicant, and said he assumed the applicant had seen copies of the four criteria necessary to justify approval of the use variance. Ms. Rollenhagen replied the four criteria were on the application.

Chair Pro-Tem Blehm asked the applicant if they had any input on their application, and if they were prepared to defend their application on the grounds of the four criteria beyond a shadow of a doubt. Ms. Charis Gray, applicant, spoke but was inaudible on the record.

Commissioner Haase stated he felt comfortable moving forward with what was included in the packet and Commissioner Reese and Commissioner Wade agreed.

Chair Pro-Tem Blehm asked if granting of the variance would be contrary to the objectives of the Comprehensive Plan. He read again the intent of the rural residential district, and noted that the variance would convey with the property, and alter the character of the zoning district. Commissioner Haase said he thought that having access to a garage in Valdez definitely enhanced the value of someone's home, which spoke to the residential nature of the area.

Chair Pro-Tem Blehm agreed, but said the problem was that it was an accessory structure, without a primary structure, which was at odds with the Comprehensive Plan. Commissioner Uren addressed the applicant and asked if they intended to improve the land to have a primary residence on it. Ms. Gray replied they did not. Chair Pro-Tem Blehm asked if time was of the essence. Ms. Gray replied it was not, and that they were constructing a new home on their primary residential lot.

Chair Pro-Tem Blehm said he couldn't approve the item as it stood. He was interested to hear what the City said about terminating Whispering Spruce's right of way and combining the two properties. Ms. Rollenhagen said it would be a good idea to combine the two properties, however, she did not think it was possible because there were uses that depended on the right of way. Commissioner Wade commented that there was snow storage at the end of the street, and some trail access as well. Ms. Rollenhagen said she did not think the City would be in favor of vacating that right of way, because it was in use. Commissioner Reese asked if there were other options for snow storage. Commissioner Wade said the current snow storage location was preferable since it allowed for snow melt to drain into the nearby creek. She added that she had no problem approving the use variance, and was in support of residents improving their properties. Chair Pro-Tem Blehm said he did not think that the cul-de-sac was essential for snow storage. Mr. Paul Nylund, Senior Planner, noted that there were some private parcels relying on that right of way for legal access, which would prevent the right of way from being vacated.

Commissioner Haase said he was comfortable with voting that night. Chair Pro-Tem Blehm asked if anyone had any further comments, and there were none. Chair Pro-Tem Blehm read the proposed staff conditions again for the record.

VOTE ON THE MOTION:

Yays: 4

Nay: 1

Name of commissioner voting nay not indicated on the recorded.

Excused: 1 Chair Gondek

Vacancy: 1 Commissioner Weaver

2. Temporary land use permit #18-02 for Christine O'Connor for the Roadside Potatohead Restaurant for three months on 325 square feet of public right-of-way immediately adjacent to Lot 12, Block, 40, Harbor subdivision

MOTION: Commissioner Haase moved, seconded by Commissioner Uren to approve the Temporary land use permit #18-02 for Christine O'Connor for the Roadside Potatohead Restaurant for three months on 325 square feet of public right-of-way immediately adjacent to Lot 12, Block, 40, Harbor subdivision. The motion carried by the following vote after the following discussion occurred.

Commissioner Wade asked when the temporary land use permit would expire. Ms. Nicole LeRoy, Planning Technician, clarified that the term expiration would be September 30, 2018.

Commissioner Uren said that he wanted the parking space design on North Harbor Drive be revisited, he said he did not have a problem with the Potatohead's request, but did have issue with how the public parking was set up on that street.

Commissioner Haase said he was in favor if anything the City could do to help local businesses prosper, he said he thought it was a good use of City property.

Chair Pro-Tem Blehm agreed, but said the area in question was a main artery to and from the Harbor. He said he had public safety in mind, and that if a car charged at the people sitting the proposed eating area, they would not be able to get away. He said if the Commission permitted the use, and someone was injured, the City would be liable. Commissioner Reese said perhaps that ballads could be used to protect public safety. Chair Pro-Tem Blehm invited comments from the floor.

Ms. Martha Barberio, Economic Development Director, asked if there were Americans with Disabilities Act (ADA) guidelines that prohibited allowing the Potatohead to use the right-of-way. Chair Pro-Tem Blehm said the width of the sidewalk satisfied ADA requirements. Ms. Barberio commented that pedestrian access and safety was important. Commissioner Reese reiterated that parking blocks would satisfy pedestrian safety needs. Ms. Barberio said the streets on North Harbor Drive were wide enough, and the sidewalks could be expanded. Chair Pro-Tem Blehm said he hoped they could see a temporary solution, such as bollards for the remainder of the season, and then a more permanent solution to pedestrian safety developed.

Commissioner Reese asked if they could place a condition that they place jersey barriers for the remainder of the solutions. Commissioner Uren asked if the Commission wanted to require the business owner to place the bollards, or if the City would take that responsibility. Commissioners agreed the parking blocks should be the City's responsibility.

Ms. Rollenhagen said that if the Commission wanted to place conditions, they would need to amend the motion to include those conditions.

Ms. LeRoy said that the Public Works Department would need to comment on any parking barriers, and that she did not want to commit the City to placing them without consulting with the Streets Department. Ms. LeRoy noted that when the dunnage suggestion was brought up as part of the recent Fat Mermaid outdoor seating temporary land use permit discussion, Public Works had said placing parking blocks would set traffic too far out into the street.

There being no further comments, Chair Pro-Tem Blehm invited a vote.

VOTE ON THE MOTION:

Yays: 4

Nay: 1

Name of commissioner voting nay not indicated on the recorded.

Excused: 1 Chair Gondek, Commissioner

Vacancy: 1 Commissioner Weaver

VII. COMMISSION BUSINESS FROM THE FLOOR

Commissioner Haase said he wished they could have the Commission's 2018 goals for discussion on the agenda, and welcomed Commissioner Wade to the Commission. Commissioner Reese agreed with Commissioner Haase's comments regarding the 2018 Commission goals, and welcomed Commissioner Wade as well.

Commissioner Uren said he thought next summer's cruise ships presented an important opportunity for the community, and asked the Commissioners to think of ways to enhance the tourist experience in Valdez.

Commissioner Wade thanked everyone for welcoming her and said she was glad to be on the Commission. She noted that there were some issues and changes with the new floodplain maps that she was interested in discussing.

Chair Pro-Tem Blehm echoed the other Commissioner's comments regarding the 2018 goals and priorities and added that he had not yet had the opportunity to meet the new Building Inspector. Chair Pro-Tem Blehm said he was interested in an update on code revision and enforcement.

Ms. Rollenhagen said the Building Inspector was responsible for enforcement from a building perspective and added that a new full time nuisance abatement officer was approved, and that the job description was still being written. She said it would be moving forward in the next few weeks. She said she had about fifteen abatements she was going to move forward with but lost her records in the cyber-attack. She noted that if the Commissioners wanted to have the Building

Inspector attend a meeting to be introduced, that could be arranged. Ms. Rollenhagen continued on to give an update on the personnel changes in the office and announced the upcoming flood mitigation task force meeting as well. She noted that the City's contracted hydrologist would be attending that meeting. Ms. Rollenhagen said the City was undergoing code revisions of other titles, but had not yet made it to Titles 15 and 17 yet. She said the most recent Hazard Mitigation Plan was still in review with the State.

Commissioner Wade asked what the hydrologist would be addressing. Ms. Rollenhagen replied he would be presenting a PowerPoint on the three main rivers in a work session to City Council, and then would be attending the flood mitigation task force meeting.

Chair Pro-Tem asked if there were any further comments, there were none.

VIII. ADJOURNMENT

There being no further business, Chair Pro-Tem Blehm adjourned the meeting at 8:30 p.m.