

**City and Borough of Sitka
PLANNING AND ZONING COMMISSION
Minutes of Meeting
February 6, 2007**

Present: Pat Hughes, Bob Goss, Don Alexander, Tom Rogers, Brian McNitt, Planning Director Wells Williams, Planner Sara Russell, and Secretary Maria Finkenbinder

Members of the Public: Dennis Hicks, Dennis Allen, Calvin Carlson, Shane Snyder, Clayton Nellis, Suzan and Rick Armstrong, Greg Brown, Denton Pearson, Terry Lavallee, Britta Speck, Mike and Sue Litman, Larry Edwards, Bob Carlson, Shannon Haugland (Sentinel)

Chair Hughes called the meeting to order at 7:00 pm.

Consideration of Minutes from the January 16th, 2007 meeting:

MOTION: **M/S Goss/Alexander** moved to approve the minutes from the January 16th, 2007 meeting.

ACTION: Motion **PASSED unanimously** on a voice vote.

The evening's business:

**EXTENSION OF VARIANCE REQUEST
REDUCTION OF SEAWARD SIDE SETBACK TO ZERO FEET
726 SIGINAKA WAY
DENNIS HICKS**

Public hearing and consideration for an extension of a variance request approved in February 2006 to reduce a seaward side setback to zero feet for construction of a home seaward of ATS 15 at 726 Siginaka Way. This extension request is filed by Dennis Hicks.

Ms. Russell briefly reviewed the original variance request approved in February 2006 which was to reduce a seaward side setback to zero feet for construction of a home. She pointed out that the applicant has been working with the Corps of Engineers in the past year and was granted an authorization on November 8, 2006 with one of the conditions that he does no in-water work between March 15 and May 31. The variance request is set to expire on March 4, 2007 and the applicant is seeking an extension so that he may proceed with the construction of his home.

Mr. Williams added that the approval of Mr. Hick's variance request was contingent upon approval by the City Public Works Director and City Administrator to place fill on municipal land. He admitted being wrong in assuming that the City Administrator will not approve the fill.

Mr. McNitt said he had several concerns about the project and maintained that the area is an inappropriate location to build a house.

Mr. Hicks told the Board that since he got his variance, he "jumped through all the hoops" and he's now ready to begin construction of his home.

MOTION: **M/S Alexander/Goss** moved to approve an extension of a variance request approved in February 2006 to reduce a seaward side setback to zero feet for construction of a home seaward of ATS 15 at 726 Siginaka Way. This extension request is filed by Dennis Hicks.

ACTION: Motion **PASSED 4-1** on a voice vote with McNitt opposed.

SUBDIVISION REPLAT

(1) CREATES NEW LOTS 1, 2 AND 3

(2) CREATES AN ACCESS AND UTILITY EASEMENTS

DENNIS ALLEN AND CALVIN CARLSON

298, 300, 314, 332, 336, AND 338 KAAGWAANTAAN ST.

Public hearing and consideration of subdivision replat for 298, 300, 314, 332, 336, and 338 Kaagwaantaan St. The plat combines Lots 28, 30 and a Portion of Lot 33 of the Sitka Indian Village, with a Portion of Lot A of the Ness Subdivision creating Lot 1. The plat also creates an access and utility easement serving Lots 2 and 3 and the northerly Portion of Lot 35. Lot 2 will consist of Lot 34 and a Portion of Lot 33. Lot 3 consists of Lot 32 and a Portion of Lot A, Ness Subdivision. Lot 4 consists of the remainder of Lot A, Ness Subdivision. This request is filed by Dennis Allen and Calvin Carlson.

Ms. Russell briefly walked the Board through the current configuration of the subject properties, explaining how the dispute between Mr. Allen and Mr. Carlson came about. She pointed out that for years, Mr. Carlson accessed his property through Mr. Allen's property which is fronting Kaagwaantaan St. In between Mr. Allen's and Mr. Carlson's properties is a portion of land reportedly given by neighboring property owner, Mr. Gary Lang, to Mr. Carlson. In 2005, when Mr. Allen purchased the property he has been renting for years, he wanted to close any access through his property. The dispute was settled in court which required a replat:

- (1) Creating a new lot 1 by combining lots 28, 30 and a portion of lot 33 (all of which are from the existing Allen property) and a portion of lot A of the Ness Subdivision (a portion of the land transferred from Mr. Lang to Mr. Carlson) which will become Mr. Allen's property;
- (2) Create a new lot 2 which consists of lot 34 (Carlson property) and a portion of lot 33 (Allen property), which will become Mr. Carlson's property;
- (3) Create a new lot 3 which consists of lot 32 (Carlson property) and the remaining portion of lot A of the Ness Subdivision (a portion of the land transferred from Mr. Lang to Mr. Carlson), which will also be part of Mr. Carlson's property.
- (4) Relocate the access and utility easements to Mr. Carlson from Mr. Allen's property to the left of Mr. Allen's property, adjoining Anne Carlson's property.

Mr. Williams said that the replat is mandated by the Court and there's nothing more the Commission and the Planning Department can do about it except give its approval.

Asked by the Chair if they both agree on the request, Mr. Allen and Mr. Carlson replied in the affirmative.

MOTION: **M/S McNitt/Alexander** moved to approve a subdivision replat for 298, 300, 314, 332, 336, and 338 Kaagwaantaan St. The plat combines Lots 28, 30 and a Portion of Lot 33 of the Sitka Indian Village, with a Portion of Lot A of the Ness Subdivision creating Lot 1. The plat also creates an access and utility easement serving Lots 2 and 3 and the northerly Portion of Lot 35. Lot 2 will consist of Lot 34 and a Portion of Lot 33. Lot 3 consists of Lot 32 and a Portion of Lot A, Ness Subdivision. Lot 4 consists of the remainder of Lot A, Ness Subdivision. This request is filed by Dennis Allen and Calvin Carlson.

The approval of this request is with the recognition that the utility easement will be relocated to the proposed access and utility easement.

ACTION: Motion **PASSED unanimously** on a voice vote.

REVIEW OF VARIANCE

GRANTED TO SITKA HOTEL IN FEBRUARY 2006

- (1) REDUCTION OF FRONT SETBACK FACING HARBOR DRIVE TO ZERO FEET**
- (2) REDUCTION OF WEST REAR SETBACK TO ZERO FEET**

SHANE SNYDER, OWNER

Public hearing and consideration of a review for a variance granted to Sitka Hotel in February 2006 to 1) reduce the front setback facing Harbor Drive to zero feet, and, 2) reduce the west rear setback to zero feet for and ADA ramp, reconstruction, and expansion of the portion of the Hotel destroyed by fire.

Ms. Russell explained to the members that Mr. Snyder received a variance for Sitka Hotel in February 2006 with the conditions that (1) Sitka Hotel work with Victoria's, the Sitka Fur Gallery, and Brenner's owners to relocate the garbage cans out of the public right of way, and (2) the variance return to the Planning Commission for a one-year review. She said that during that meeting, there were concerns raised about the garbage cans of the above-mentioned businesses being located in the public right of way.

In a letter to the Planning and Zoning Commission read for the record by Ms. Russell, Mr. Snyder indicated that *"the Sitka Hotel has taken the following measures to move the garbage cans from the alley: (1) Return Fur Gallery can for off season, and (2) Installed wheels on cans to move them to private property when not being picked up. The plan for the 2007 season is to place the cans between Brenners and the Sitka Hotel. After pouring a concrete pad, the cans can then be easily rolled in and out for pickups."*

On the Chair's question if there has been any complaints about the garbage cans, Mr. Williams replied in the negative.

MOTION: **M/S McNitt/Goss** moved to find that the required one year review has been satisfactorily completed and no future reviews are required. The finding is made with the condition that the garbage cans in question be permanently relocated to the area between Brenner's and Sitka Hotel, as specified in Mr. Snyder's letter.

ACTION: Motion **PASSED unanimously** on a voice vote.

At this juncture, Mr. Rogers asked to be recused from participating in the discussion of the two succeeding items and left the table.

**ZERO LOT LINE SUBDIVISION - CONCEPT PLAT
602 VERSA PLACE
CLAYTON & LARISSA NELLIS
KEITH & TINA SHULER**

Public hearing and consideration of a concept plat for a zero lot line subdivision at 602 Versa Place. This request is filed by Clayton & Larissa Nellis and Keith & Tina Shuler. The property is also known as Lot 1 Block 7, Hillside Subdivision.

Ms. Russell gave a brief background of the request which involves dividing an 11,548 square lot into two 5,774 square foot lots. She said that there is adequate parking on site to meet the standard parking requirement of two parking spaces per lot. Access to the property will be from Versa Place. An access and utility easement will cross Lot A to provide access to Lot B.

She also mentioned the 20-foot easement on the south side and a 10-foot slope easement on the north side of the property where a small piece of the 6-foot ground level deck encroaches. She explained that typically encroachments are not allowed in easements but Public Works has indicated that one solution is to cantilever the deck. This will require the applicant to request a variance. The applicant has offered a less complicated solution which would be to decrease the width of the deck from 6 feet to 5 feet.

MOTION: **M/S Goss/Alexander** moved to approve a concept plat for a zero lot line subdivision at 602 Versa Place. This request is filed by Clayton & Larissa Nellis and Keith & Tina Shuler. The property is also known as Lot 1 Block 7, Hillside Subdivision.

ACTION: Motion **PASSED 4-0** on a voice vote with Rogers recused.

Mr. Williams stated that the final plat will come back before the Board when the applicant has the foundation poured and surveyed.

**ZERO LOT LINE SUBDIVISION - CONCEPT PLAT
217 VITSKARI STREET
SUZAN AND RICK ARMSTRONG**

Public hearing and consideration of a concept plat for a zero lot line subdivision at 217 Vitskari Street. This request is filed by Suzan and Rick Armstrong. The property is also known as Lot 6 Block 1, Hillside Subdivision.

Ms. Russell briefly described the request which was similar to the previous request – a zero lot line subdivision but this time involving an 8,000 square foot lot. The lot will be divided into two 4,000 square foot lots. She pointed out that the applicant is fully aware of the requirement for separate utility services and has indicated the approximate tie in location for the second side. In addition, there is adequate parking on site to meet the standard parking requirement of two parking spaces per lot. She mentioned the possibility of a need for a variance in front of lot A which will come back later.

MOTION: **M/S McNitt/Goss** moved to approve a concept plat for a zero lot line subdivision at 217 Vitskari Street. This request is filed by Suzan and Rick Armstrong. The property is also known as Lot 6 Block 7, Hillside Subdivision.

ACTION: Motion **PASSED 4-0** on a voice vote with Rogers recused.

Mr. Williams stated that the final plat will come back before the Board when the applicant has the foundation poured and surveyed.

At this juncture, Mr. Rogers rejoined the table.

**CONDITIONAL USE PERMIT
TO INCREASE THE MAXIMUM NUMBER OF
ALLOWABLE GUESTS FROM 16 TO 24
EXISTING LODGE ACCOMMODATES 32 GUESTS
QUEST ALASKA LODGE
GREG BROWN**

Public hearing and consideration of a conditional use permit request filed by Greg Brown for Quest Alaska Lodge to increase the maximum number of allowable guests from 16 to 24. Currently the existing lodge accommodates 32 guests. The property is also known as Lots 1, 2, 3 and 4 of Morne Island. The owner of record is the Rivett Family Trust.

Mr. Williams explained to the Board that in June 1995, Mr. Ron Rivett received a conditional use permit to operate a lodge on Morne Island. The Planning Commission recommended approval of 13 guests but upon appeal by the applicant, the Assembly ultimately approved the conditional use permit for 16 guests with the condition that the lodge is going to have one owner and it wasn't going to change hands.

Further, Mr. Williams said that in the past couple of years, the lodge has expanded and added more cabins on lots 3 and 4 the building permits for which the Planning Office has signed on based on the view of Mr. Denton Pearson, Quest Lodge's lawyer, that the cabins were short term rentals and therefore can be extended and still be in conformance with the conditional use permit. Mr. Williams described the situation as a mix-and-match situation which he said, in retrospect, they shouldn't have allowed. He added that the Planning Office has not received any complaints on Morne Island since 1995.

He said Mr. Brown is interested in purchasing the property if he could get the conditional use permit increased from 16 to 24. The latter has indicated that the lodge can accommodate more than 16 guests up to

32. According to Mr. Williams, Staff encouraged Mr. Brown to come up with a number that is acceptable to the area which is not the maximum occupancy that has grown into over the years and they will end supporting that on the basis that it provides an opportunity to clean up a non-conforming situation.

Mr. Williams recommended that the motion be made very specific, that they not only look at the total number of guests but also on the total number of employees and other types of quantifiers. He explained that the Planning Office is not equipped to do enforcement on island properties which is something they need to start gearing up for.

On the Chair's query if they will be considering the three buildings as part of the lodge and two for short term rentals, Mr. Williams suggested that they consider Morne Island in its entirety and place a condition that the lot lines be erased and the property be replatted.

On Mr. McNitt's question if the approval of the expansion somehow changed the capacity of the conditional permit or the ability for the property owner to satisfy the permit and still have more than 16 guests, Mr. Williams maintained that the 16-guest limit in 1995 stands. The municipal approval in the past couple of years created an argument on the part of the Quest Lodge's lawyer that somehow the 1995 letter is no longer valid and there is a higher number that's been approved. He added that there is no document that supersedes the approval for 16 guests.

On Mr. Roger's query about Mr. Brown's application for a forest service permit that indicates 28 clients, he clarified that it includes day clients who would be staying in town. He added that they just contracted a boat to be made by Allen Marine with a drop bow which can be used for handicap people as well as for their kayaking business.

Mr. Brown

Mr. Brown told the Board that he wanted to move to Sitka but just couldn't find a waterfront property. When the opportunity came up for him to purchase Quest Lodge, he took a look at it and thought of changing the direction of the business from fishing to eco-tourism, a more family-friendly type of business. He told the Board that there are 32 beds for clients to sleep in. The cabins are currently set up as bunk-style bedrooms and he plans to change it and make it more suitable for families. He's been attending the Alaska Naturalist Program classes at UAS, working with them, and at the same time interviewing people so he will end up with staff capable of doing hiking, kayaking, wildlife viewing, and fishing and are first-aid certified.

He also indicated that there is an owner's house on the island which he intends to make it his home. The business will be structured in a way that it will be quite and peaceful. There will be no aviation but they will be setting up a gift shop and a restaurant. He stressed that there won't be more than 24 guests on the island. He outlined the number of employees he will be hiring. To wit:

- Stay in employees plus himself
 - 4 guides
 - General Manager and family
 - Cook/Chef
 - 1 person helping with permits (short-term)
- Commuting from Downtown Sitka
 - Waitress
 - Cleaning woman
 - 3 fishing guys

At a later part of the meeting, Mr. Brown told the Board that he has no intention of getting into a legal fight with the City. He clarified that the no. of people living on the island does not change from the previous year. Financially, he said it doesn't make any sense to have all the buildings that wouldn't be usable if the number of guests is reduced to 16 people. He assured the Board that Mr. McNitt's ill feelings with the current landlord will not happen with him. He has a very good track record in every place he lived and worked.

Public Comments

Ms. Russell read a letter from John McIntosh, owner of Maude Island, who wished to go on record that they are opposing the zoning ordinance amendment and the change of conditional use permit and any modifications to the use of Morne Island. Mr. McIntosh asserted that the cabins were originally built without City approval and have become a commercial operation in an area of residential islands. It has increased usage and outflow among the islands. His letter also indicated that an extended and increased number of people living, working and staying on Morne Island will only increase pollution and traffic to a relatively clean area.

Mr. Carlson sought clarification about the expansion of the business without City approval which he felt is a practice that is very disturbing.

Mr. Edwards said that he objected to the original conditional use permit and will also object to the current request. He added that the expansion of the operations will bring more people out to the Morne Island area.

Additional Board Comments

Mr. McNitt stated the moving along the current request sets a bad precedent, perpetuates a bad situation and leads to more bad policy in the future. He said that the owners of the island were “bad neighbors” and “bad citizens” by developing and doing what they wanted without permits. He told the Board that he traced the history of the original permit and learned that the owners got the permit after the fact when the lodge was already accommodating 24 guests. He added that the Planning and Zoning Commission turned down the request but the applicant appealed to the Assembly. Basically, the Assembly was threatened with a lawsuit and the City ended up backing down and allowed 16 guests. He said that it was already clear then that the lodge already had 24 guests when they started with a 16-guest permit.

Mr. McNitt said that through Quest Lodge’s “bad neighbor” policy and “bullying,” the owners are now selling the property for a higher value because they are not abiding by the City permits. To allow it, the Planning and Zoning is doing nothing more than allowing bad behavior and not having compliance with the permits. He said he is strongly opposed to the request.

Further, he read a portion of a 1995 Planning and Zoning Commission meeting minutes when the Commission turned the application which listed down the reasons for the denial of the permit. To wit:

- (1) Significant public concerns.
- (2) Island zoning ordinances deserve support.
- (3) Planning Commission review process was sound.

Mr. Williams acknowledged that Mr. McNitt spent an amount of time reviewing the documents. He begged to disagree however on Mr. McNitt’s view that the case is exactly the same as Dove Island Lodge. He explained that Dove Island is a subdivided island with an adjacent property that regardless who the property owner is, that adjacent property would be significantly harmed by an operation and a huge amount of traffic going through the center of that lot. He added that what is different, Morne Island won’t end up as a subdivided island and doesn’t have the immediate impacts of Dove Island.

Based on the Code provisions, Mr. Williams computed the total number of guests for an unsubdivided island the size of Morne Island which adds up to 13.

MOTION: **M/S McNitt/Alexander** moved to recommend approval of a conditional use permit request filed by Greg Brown for Quest Alaska Lodge to increase the maximum number of allowable guests from 16 to 24. Currently the existing lodge accommodates 32 guests. The property is also known as Lots 1, 2, 3 and 4 of Morne Island. The owner of record is the Rivett Family Trust.

ACTION: Motion **FAILED 0-5** on a voice vote.

MOTION: **M/S McNitt/Goss** moved to adopt the following findings in the denial of the request:

- (1) Public concerns.
- (2) Quest Lodge is currently operating out-of-compliance of its conditional use permit.
- (3) The client load will adversely affect adjacent property owners including water-borne traffic.
- (4) The property is located in close proximity to other islands in the area.
- (5) There is a potential to generate noise due to the increase number of guests which is over and above the existing conditional use permit.

ACTION: Motion **PASSED unanimously** on a voice vote.

Mr. Williams said the recommendation of the Board goes automatically to the Assembly on Feb. 27th.

Mr. McNitt raised the possibility of putting on the Board's agenda a discussion on revoking the conditional use permit of Morne Island or starting some kind of enforcement action on Morne Island.

Mr. Williams explained that there is a process in the Code for revoking permits and he wants to make sure that any action by the Board will not prejudice the process. At a later part of the meeting after checking the Code, he said that it will be questionable for the Planning and Zoning Commission to ask enforcement action based on evidence or information provided by an applicant. He added that the Planning Office has the legal authority to enforce action.

**ZONING ORDINANCE TEXT AMENDMENT
REVISING THE DEFINITION OF "LODGE"
SITKA GENERAL CODE SECTION 22.08.485**

Public hearing and consideration of a zoning ordinance text amendment revising the definition of the term "lodge" as it appears in Sitka General Code section 22.08.485.

Mr. Williams presented the current wording and proposed wording for the definition of the term "lodge":

Current wording: "Lodge" means premises that provides lodging (room and board) accommodations during all seasons for use by visitors engaging in recreational activities and includes a variety of related services. Lodges on islands may include satellite small cabins along with the main structure.

Proposed wording: "Lodge" means premises that provides accommodations (room and board) and a variety of other related services, with or without an exchange of money, on a regular basis, during any season, for visitors engaging in recreational activities such as sight-seeing, fishing, etc. Lodges employ at least one person to provide guest services such as food preparation, housekeeping, sports fishing, sight-seeing, etc.

Mr. Williams suggested that the Board work around the proposed definition and add more specifics such as what an employee does and defining further "employ at least one person."

Mr. Goss stated there is a lot of opposition in trying to redefine lodges and he hasn't heard of any positive comment. He felt that the "one-employee" phrase is too restrictive and vague. He said he was uncomfortable with the definition and that the main issue is how to enforce it.

Mr. McNitt said that he doesn't have any problem to change the phrase to "employ at least 2 or 3 people". He explained that they need to have the ability to call in question when a lodge is a lodge.

Mr. Williams suggested revising the phrase on employees to read as "employ at least two compensated

employees that reside on the island to provide...”

Public Comments

Mr. Pearson, property owner of Long Island, told the Board that by redefining the term “lodge”, they are “courting the gods of unintended consequences”. He suggested that they leave the Code as it is. He said that they need to look at developing more island properties to enhance the tax base and improve the local economy.

On learning that the definition applies to the entire borough, not just island properties, Mr. Lavalley expressed elation and said he will support the definition.

Ms. Speck expressed support to the changes on the revised definition.

Ms. Litman preferred to keep the revised definition which will apply to the entire borough and keep all interested parties in agreement. She was amenable to changing the phrase “employ at least two full-time employees”.

Mr. Litman pointed out that the key is the phrase “on a regular basis” which addresses the concerns and objections.

Mr. Williams cautioned the Board that they might run afoul if the definition is applied to the whole City, explaining that lodges on the road system doesn’t have a threshold for stay-in employees. He added that it will also weaken the City’s ability to regulate the lodges on the road system. The “at least 2 resident employees” condition will only apply to island lodges. He suggested coming up with a different definition for lodges on the road system. He said Staff will take another shot at the proposed zoning text change and bring it back in the next meeting.

ZONING ORDINANCE TEXT AMENDMENTS USE TABLE 22.16.015-2 CULTURAL/RECREATIONAL USES TO REGULATE THE TYPES OF DOCKS THAT ARE PERMITTED, CONDITIONAL AND PROHIBITED USES IN ISLAND ZONING DISTRICTS

Public hearing and consideration of a zoning ordinance text amendments to Use Table 22.16.015-2 Cultural/Recreational Uses that regulate the types of docks that are permitted, conditional and prohibited uses in island zoning districts revising the definition of the term “lodge” as it appears in Sitka General Code section 22.08.485.

Mr. Williams pointed out that Dove Island Lodge case brought up this issue, saying that currently, commercial docks and community docks are not listed in large island zoning districts. Staff suggested that:

- (1) personal use and community personal use docks be permitted on subdivided and unsubdivided islands in the GI, LI and OS zones;
- (2) commercial docks be a permitted use on unsubdivided islands in the GI zone, conditional uses on subdivided islands in the GI zone, and conditional uses on all islands in the LI zone. They would remain prohibited in the OS zone.

He added that commercial float planes are part of the fabric of rural Alaska and it is hard not to allow it.

No further comments were made. This item will be brought back in the next meeting.

PLANNING DIRECTOR’S REPORT

Mr. Williams said that the Alaska Mental Health Trust rezoning will come back before the Board on March 6th while no date has been set for the Shee Atika condominium project. There is a potential that a conditional

use permit for a fuel dock will be brought before the Board. For the meantime, the Board will be focusing on lodges, docks and zero lot lines.

PUBLIC BUSINESS FROM THE FLOOR

Ms. Speck spoke about “after-the-fact” permits and variances which she felt must be addressed appropriately. She urged the Board to adopt a stricter policy to address non-compliance and suggested that the Planning Department take a look at an Anchorage code provision.

Mr. Williams said that there is a process in place. Planning Staff catch non-compliance 95% of the time and recommend to correct it either by going through the Planning and Zoning Commission or redesigning the building. He added that Sitka has a chapter in the Zoning Code that is parallel to the Anchorage provision cited by Ms. Speck.

ADJOURNMENT

MOTION: M/S McNitt/Rogers moved to adjourn the meeting.

The meeting adjourned at 8:55 pm.

Chair, Pat Hughes

Secretary, Maria Finkenbinder