

An Appeal Hearing was called to order June 15, 2018 at 2:00 p.m. by Administrative Law Judge Lawrence Pederson at the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

Parties present: Frank Griswold, Appellant
Derek and Catriona Reynolds, Property Owners

City Staff: Rick Abboud, City Planner
Melissa Jacobsen, City Clerk

Administrative Law Judge (ALJ) Pederson announced that this is the matter of Conditional Use Permit 2012-02 for the City of Homer. He introduced himself and explained he is an Administrative Law Judge with the Alaska Office of Administrative Hearings. The appellant, Mr. Griswold requested a hearing on this case in front of a hearing officer in lieu of the Board of Adjustment. The City of Homer has retained the Alaska Office of Administrative Hearings to do this hearing, and the case was assigned to him.

ALJ Pederson reviewed the format for the hearing. He allocated 15 minutes for Mr. Griswold's initial argument and 5 minutes at the end for rebuttal. He allocated 15 minutes to the Reynolds and 15 minutes to City Planner Abboud. ALJ Pederson opened the floor to Mr. Griswold for his initial argument.

Frank Griswold raise a procedural issue and asked if ALJ Pederson may reconsider his decision to deny the motion to supplement the record regarding the minutes. He explained he failed in his motion to bring attention to page 1, which shows who participated and what time it started. Page 6 indicates what time the meeting adjourned. Mr. Griswold explained it is of importance because in the decision the Commission claimed they carefully reviewed the record and the testimony and evidence presented, but those two pages in the record would show that the meeting lasted one hour and six minutes. He believes its relevant information to the length of deliberations. He asked ALJ Pederson that it either be included in the information or that he take judicial notice of them.

There was brief discussion whether the length of time deliberating the evidence provided for consideration was relevant it the decision. ALJ Pederson allowed the record to be supplemented with pages 1 and 6 of the minutes and asked the Clerk to append those pages at the end of the record.

Mr. Griswold raised a second preliminary issue that it's important to have clarification as to who Mr. Abboud is representing in this matter, whether it's himself, the City Administration, the Planning Commission, or some other entity. He also questioned whether Vice Chair Bentz or another member of the Commission should be considered as an indispensable party.

ALJ Pederson denied the motion.

Mr. Griswold raised a third point requesting that if any issue in this case is determined moot, such as the issue of the three minute time limitation on public and no limitation on the applicant, he would like the public interest exception to the mootness doctrine applied because if there is not some ruling made, the Commission will continue this practice.

ALJ Pederson responded he doesn't think it's a moot point, and explained mootness is an issue where something has already been resolved and we don't need to revisit it. There isn't an actual issue. In this case, it's a live issue that hasn't been resolved and he will be looking at it.

ALJ Pederson confirmed that at this point Mr. Griswold completed his procedural comments and would be starting his argument. He announced Mr. Griswold has 15 minutes.

Mr. Griswold addressed that-

- Finding 9 in the Decision and Findings document is the same in the staff report and it's unclear whether the Commission adopted the reasoning of the staff report into their decision.
- The staff report analysis of the Comprehensive Plan only looked at one goal, Chapter 4, Goal 4, which is one of dozens. It appears staff cherry picked one goal out of the Comprehensive Plan, and ignored all others.
- Finding 9 says no evidence has been found that the proposal is contrary to the applicable land use goals and objectives of the Comprehensive Plan, but staff made no effort to find the evidence. The staff or Commission had a duty to investigate this and look for applicable land use goals.
- This application concerns building in a setback and there are very solid public interest reasons for maintaining a setback.
- If they want to get rid of the setbacks why don't they just do it by ordinance, and say instead of a 20 foot setback why don't they say 10, or none.
- It's unreasonable to apply the conditional use permitting process to a setback reduction, it should be addressed through a variance, which is a stricter process.
- There was no discussion about the value of setbacks or potential harm to other properties.
- The Advisory Planning Commission is advisory and doesn't have authority to decide these applications.
- Alaska Statute 29.40.40 lays out very strict criteria for variance. Homer City Code 21.72 should be addressed through the variance process.
- The differences in the CBD zoning and the zoning for Town Center, formerly CBD. When looking at the Comprehensive Plan, it is so broad that it allows anyone to do what they want.
- Other Comprehensive Plan goals which he suggested may have been applicable.
- There were a lot of applicable CBD provisions that were ignored.

ALJ Pederson referenced Mr. Griswold's brief on page 7 which addresses that the Commission exceeded of its authority because Homer City Code 21.18.404(b)(4) is unconstitutional as applied. Mr. Griswold explained if he wants to make a direct challenge of that ordinance it

would have to be done through the original filing. ALJ Pederson and Mr. Griswold discussed the notion of unconstitutionality as applied in this instance.

ALJ Pederson opened the floor to Derek and Catriona Reynolds.

Catriona Reynolds explained they purchased the property with the idea to renovate and create their own place for a bicycle shop in the downtown area, rather than renting. The building was built very close to the road in the early 50's. The existing porch was already encroaching in the set back. In researching the proper steps to improve the porch and entrance they were advised to use the conditional use permit, that would identify what they planned to do and why. She briefly reviewed the information in the record that the Planning Commission considered and explained that had they been advised to apply for a variance they would have done so. They wanted to receive approval before building, which they did. They have continued and the renovations have been made. With the exception of Mr. Griswold, the comments they have received have been favorable regarding the improvement. In reference to a comment made regarding strip zoning, the entryway now is where the entryway has always been.

ALJ Pederson opened the floor to City Planner Abboud.

City Planner Abboud feels he addressed his comments in his brief. He reiterated there is an option in code for this procedure, established well before he came to the city, and has been used 7 times or more in the last 10 years. It's not a variance, it's an allowance and is treated as such. He doesn't find any evidence this is a violation of state statute. This is a method of trying to enact our community plans and adjusting to changing times on Pioneer Avenue.

ALJ Pederson opened the floor to Mr. Griswold for his rebuttal.

Mr. Griswold commented the previous use was clearly grandfathered, but grandfathered or non-conforming uses are eventually supposed to cease, not be enhanced or expanded. To the point many were delighted to see the renovation of the property, he was as well. His concern is what's built in the setback. It would be a hardship, but they could have moved the building. He cited benefits of setbacks, including providing a public facade, environmental benefits, personalization of home or shop, creating a feeling of community and openness, public space between the street, protecting privacy of building owner and public, providing a buffer between building and road, allowing for landscaping and screening, and facilitating construction and maintenance of public utilities, and et cetera. Any setback should match that of existing development where some variation is desired, the building frontage should be offset as little as possible. In this case, many of the adjacent businesses have parking in front and building set back farther on their property. These are reasons why there are setbacks and without considering the positive benefits, they are making a huge mistake eliminating them. There is an application for another one in process, and this just sets precedence for others to do the same. As the CBD loses its setbacks, it potentially loses 7% of the property values.

In closing, ALJ Pederson explained he has 60 days to issue a decision. It will be in writing, will be sent to each of the parties, and will state the parties appeal rights. Mr. Griswold debated his appeal rights, and ALJ Pederson confirmed Mr. Griswold has not waived his rights and that final decisions are appealable within 30 days of the date decision.

ADJOURN

There being no further business to come before the hearing officer, the hearing was closed at 2:57 p.m.

MELISSA JACOBSEN, MMC, CITY CLERK