

7/20/20 City of Hood River Planning Commission Meeting Notes  
Meeting held via Zoom Webinar

Commissioners: Arthur Babitz, Erika Price, Megan Ramey, Sue Powers, Tina Lassen, Mark Frost, Bill Irving

Staff: Planning Director Dustin Nilsen (DN), Associate Planner Jennifer Kaden (JBK), Senior Planner Kevin Liburdy (KL), Ami Santillan partial attendance, GIS Analyst Jonathan Skloven-Gill (JSG)

Meeting went live: 5:32pm

AB reminded participants the meeting is being recorded.

AB call to order: 5:32pm, with explanation of meeting via Zoom video conference based on Governor's order

### **I. Call to Order**

### **II. Planning Director's Update**

DN explained upcoming projects including legislative Transportation System Plan amendment based on Westside Plan with DKS Associates. Also implementation of HB 2001, have RFQ out for code work and graphics, contractor to be selected within three weeks. Depending upon case load, may need three hearings in August, using fifth Monday. Sue Powers will be gone on fifth Monday in August.

### **III. Public Hearing**

AB explained to meeting attendees that staff will assist when it's time to present testimony. JSG explained there are at least three individuals who have indicated an interest in testifying.

AB explained there are two hearings focused on relatively small pieces of code. Similar elements in both cases but both will be reviewed on the record. Propose dealing with hearings sequentially up to the point of closing the hearing – i.e. hear evidence and take testimony on 2020-04, close, then open and hearing evidence on take testimony on 2020-07, close, then deliberate on each hearing – but must avoid mixing testimony. Commissioner Irving will be recusing himself because he's an appellant. Thoughts from commissioners? MF, OK with proposed approach. SP, not sure, will be hard to keep distinct but could be OK. EP, OK with proposed approach but will be recusing from the Oak Street hearing as a neighbor. MR, OK with AB's proposal. TL, if we can avoid confusion, OK with approach, might be more efficient for audience.

AB explained approach for reviewing both appeals again. Appellants OK with approach?

Bill Irving, OK with approach, codes are intermingled, worth talking about together.

JSG gave permission to appellants to "speak"

Gunnar Sacher, agree these are similar proposals and OK with approach.

AB, no objection from appellants.

DN: remainder of audience OK with AB's approach? Raise hand if object.

AB: no hands raised in audience, will proceed. Read hearing script.

AB: described order of events for tonight. (5:47-5:48pm); continued with script. Ask for questions from audience? No hands raised

AB: called for bias, conflict of interest, ex parte contact in regard to File No. 2020-04.

SP: No.

TL: None.

MF: None.

EP: Conflict of interest, am next door neighbor, will recuse from this hearing.

BI: Ex parte contact and conflict of interest as real estate representative for appellant, will recuse

MR: None.

AB: Was contacted by a neighbor who had concerns about nature of development. We discussed and her issue was a question of design, probably not an appealable issue but could be considered if in Historic District. That is all ex parte contact I've had.

AB: Any questions by commissioners of other commissioners? None.

AB: Any questions by audience or challenges to participation. Raise hand. No challenges.

AB: Staff report please.

#### **A. FILE NO. 2020-04 – Sacher-Nicol THmP**

**PROPOSAL: Appeal of a Director's Decision to approve a Minor Partition to establish two townhouse lots for a two-unit Townhouse Project. The project features conversion of a Duplex, which is under construction, into a two-unit Townhouse Project.**

DN: JBK will present staff report.

JBK: appellant makes argument first.

AB: is appellant prepared to testify? Invite them in.

AB: Welcome Gunnar Sacher.

Gunnar: Thank you for opportunity. Speaking for team including Ian Nicol and contractor Kor Harrison.

AB: Invite Ian and Kor in.

Gunnar: will explain issue. May need some guidance on how to respond to staff's memo. Important to get interpretation for projections. At issue is an architectural feature that is intended to break up and add depth to design. It is composed of ordinary bay window with window sill, no floor area. Believe city's response is not in alignment with code as written, and contest conditions. Subjective interpretations, inconsistent with previous interpretations. Director's decision may imply that no bay windows are permitted in setbacks even though there are examples. Staff memo provides a good summary of issues. Have specific feedback for statements in memo that we can address later.

AB: do other members of appellant's team want to speak?

Kor Harrison: there are a lot of projections around town in front yard setbacks that I've built.

AB: I will be clear where comments will be closed.

JBK: Shared computer screen with PC and audience. Appeal of decision in 2020-04. Decision approved application but there are objections to findings and conditions related to code provisions. Provided presentation to address projections, setbacks and lot coverage. Code provision allows projections in rear and side setbacks, up to three inches per foot. Code has definition for "projection" which includes features "such as", and that phrase is important. Not limited to those features, and defines family of terms. Staff used the "such as" to look at features with similar characteristics to those listed in definition such as cornices, decorative molding typically around edge of roof; eaves and gutters, functions of a roof; canopies and sunshades add covering; chimneys and flues. Looked at common characteristics. They're linear, extend roof, exterior features, don't add volume except for chimney or flue, they don't extend wall plane, so those are characteristics we looked at. Appellants argue staff interpretation is subjective. Looked at window feature that evolved from cantilevered dining area, to bay window with floor area, to a bay window with sill. Appellant explained tonight it doesn't have floor area from floor to ceiling. Has characteristics like a chimney so staff found it acceptable in a setback. Projections permitted in setbacks are a subset of features with similar characteristics. Without a formal interpretation otherwise, needed to apply code using language in code for staff decision. Code provides latitude with "such as." Decision found that window feature proposed was different from subset of listed projections because it extends wall plane. There are no dimensional limits on length or width of projection. Examples don't add to building volume. Provided illustration with window box feature, could be extended full width of façade, so where to draw the line? The other issue is lot coverage, and the definition recently was updated. This application was submitted under previously lot coverage standards, but decision unaffected by code change. Code refers to "main building footprint" and includes examples of features that are to be counted. Appellant argues window box is not similar to a bay window for this code provision. And, if permitted as projection, appellant does not believe that should count toward lot coverage. Code calls out chimneys are part of main building footprint, so included it in lot coverage calculation. Appellant does not believe it should count toward coverage. Staff decision found window seat is useable space, it's conditioned or heated, and it rests directly on the ground as it extends wall plane. Staff had no dimensional limits and found it all would need to be included in coverage. So, staff allowed vertical features in setback but lot coverage is a distinct code provision. If it's not similar to a chimney, it becomes less clear if it counts toward lot coverage. Questions from commissioners? Appellant can rebut anything presented by staff.

MF: Is there anything that says that a chimney needs to have a hole in the top. Chimney vs. chase?

JBK: Code is not more detailed than the terms that are used. Staff looked at not whether the space is empty or used, just if it projects. Appreciate applicants' effort to provide architectural relief to facades, but that's not how we determine if it's allowed in a setback or counts toward coverage.

AB: questions from PC?

TL: Looking at illustrations in presentation. Is there any limit on number or total square footage of projections?

JBK: No.

AB: other questions?

SP: Does a projection have to have a function or can it just be a design feature? Didn't see it in the code, I'm asking about intent.

JBK: Don't have legislative intent. Provision for projections is allowed in side and rear setbacks in residential zones. Have definition of projection and dimensional limitation of three inches per foot of setback.

MF: Is there an explicit discussion around bay windows?

JBK: It shows up under lot coverage provisions only.

MF: Portland city code has language but was curious about our code.

JBK: That's part of why we're here.

AB: If looking at Portland code, that's ex parte contact. What did you learn?

MF: Just pulled it up and Portland has limitations on size and area on bay windows.

AB: Hypothetical questions, how would they be considered? If have wall and want to add gargoyle, is it a projection?

DN: Is it a gargoyle attached or freestanding? Can you live inside it?

AB: Might just be glued to the side of the house. How would you analyze?

JBK: Unlikely we would see that and it's hard to answer hypotheticals. Sounds like an ornament that may not be regulated.

AB: No limit on length? Could have a 5-foot-long gargoyle?

JBK: will need to look at application.

AB: trying to see logic.

JBK: applied code to features that were proposed.

AB: Looking at element vs. features. What a stamped concrete column attached to my brick building – is it a projection and included in lot coverage?

DN: would look at a pediment in category as on par with eave, cornice, awning, etc.

AB: Based on the "such as" language in the code?

DN: Yes. For example, a pediment over a door would be a "such as."

AB: Is a chimney limited to 15 inches in depth?

JBK: No dimensional limit on width, but 15 inch limit on projection.

AB: Is conditioned space used in code?

JBK: No, tried to differentiate features proposed from features included in code. That was a way to explain how they're different.

AB: Staff spoke about evolution of this window element. I tried to find Attachment A.5 or A.6 drawing, not sure which one it was. What drawing was used to make decision?

DN: Don't have a drawing associated with A.5 that's noted in written narrative.

AB: But staff made a decision based on some set of drawings.

JBK: Prepared some exhibits for this.

AB: Is it A.5 or A.6? A.5 in decision looks like a garage. Can ask appellant to address.

JBK: A.5 is several pages in decision, you may be looking at floorplan. A.3 in decision shows elevation drawing.

AB: pg. 3 of A.5 in 20-04 decision, third floor plan, window over kitchen sink?

JBK: Grey feature to side of that.

AB: Can wait for applicant to clarify?

AB: Any questions for staff before moving on?

AB: Do we have testimony in support of the appeal?

#### **PUBLIC TESTIMONY**

JSG: One hand is raised.

Susan Froehlich: in support of staff decision so can talk later.

AB: OK.

JBK: If Susan is testifying in support of director's decision, this is the correct time.

AB: I made a mistake and should have taken testimony for appellant earlier.

AB: Susan, go ahead.

Susan Froehlich, own house down the street. Surprised that it went from duplex to townhouse. Have concerns but not sure how to go through them. List them?

AB: list them.

Susan: is townhouse division complete? One driveway, 12-foot wide, to access home existing on corner as well as two townhouses, seems tight. People will need to park on 8<sup>th</sup> Street because no parking allowed on Oak Street. Decision indicates there's 20 feet of access on Oak St. I guess that's for emergency access, I don't know. Canopy in front, 12-foot and 12.5-foot setback but canopies are 2.5 feet so that goes into setback in front and that should be changed a little bit. It's a huge building so keep the setbacks. The height is 28 feet – if over 28 feet setback increases to 8 feet. Keep the projections out or redo it. The lot is 45.06% on one parcel and 45.18% on the other which exceed maximum. Encourage builder and owner to reduce it a bit and not worry about bay windows. I see construction continuing – who is going to make sure it is built correctly and what happens if not, will somebody take a Sawzall to it? Support planning director's decision.

AB: Are there questions that staff can respond to?

JBK: Very common for two-unit townhouses to start out as a duplex and for partition to be done during construction or after, and that's what happening in this case. This appeal is in regard to the land division. It doesn't change how it looks but conditions of approval affect a couple of things. Code has a 10-foot minimum setback from Oak Street and there is no provision for projections into that setback, so that is addressed with a condition of approval. There also is a maximum percentage of lot coverage, it's firm, and there are conditions addressing that too. Calculation of lot coverage is subject to this appeal. Building height is not questioned in this decision, and is affected by slope on lot.

AB: Other questions?

DN: 12-foot driveway is not an alley. No direct access to Oak Street. Code requires access from lowest classification of street, and shared access points, which limits impacts to on-street parking. Final plat includes a survey so, if there is an error, the plat won't be recorded. Have example of duplex that was not divided because could not meet lot coverage.

AB: Other testimony?

Bill Irving: Not sure if support one position or another so this is for commission. 17.04.120(A.2) addresses main building footprint includes bay windows with floor area. If code contemplates bay window with floor area, then it excludes bay windows without floor area. So, a bay window without floor area should not be included in lot coverage.

AB: Other testimony, for, against or neutral? Raise hands.

Reed Simpson: Audio broken. The only thing being contested is bay windows.

JSG: provided phone number, meeting ID and password to participate via phone.

AB: Reed, is your phone connected too? Can you speak via phone only?

Reed Simpson: Support staff findings. Of all the findings the only being appealed is bump outs. I'm an adjacent owner. Staff has done a good job. It should be adjusted. Listen to Jennifer. This is the first time I've testified.

Deanne Woodring: Own 815 Oak St. and 824 State St. Neutral party. Concern is with division of lots to 25'x100'. Want to make commission aware that owners can tear down historic homes and replace them with modern designs. This will change dynamic of Hood River.

AB: Any other testimony on 2020-04? None.

AB: Move on in agenda, rebuttal by the appellant?

Gunnar Sacher: Comments to presentation and memo. Reason we're here is not to debate the project but to debate two conditions of approval. Focusing on two features. Page 6 of appeal memo includes drawing addressing design, Attachment A.1.

JBK: He's referring to appeal application materials

AB. OK.

Gunnar Sacher: This is the design we're debating. A bay window without extension over floor, and a vertical chase feature. With regard to projection and bay window, the difficulty is that examples are given but they're not exhaustive. Director trying to make decision by matching design to code language. There will be gaps. Not sure of intent of code. There has to be some flexibility with interpretation of code. Code does not call out every architectural feature. Regarding conditioned space argument, if that terminology helps clarify certain features, then that should be added to the code. But, it's not part of code and should not be used to make interpretation. Jennifer gave great examples of features that are not reflected in code. Recommend improving code to make decisions easier in the future. There may not evidence of formal interpretations but there is plenty of evidence in the neighborhood of approval of designs that we're asking for including project we did on Sherman where a bay window with floor space was approved. Memo says it was an unintended error. Analogy of chimney or flue is not understood. If not called out by code, we go to dictionary. We're not proposing a chimney or flue. With regard to lot coverage, should update code. This is not a bay window with a window seat. It is a bay window with a window sill as explained in writing. A window sill at 42 inches tall is not a seat. With regard to analogy to chimney is not acceptable. Analogous indicates similarity. There is no similarity in function, maybe in design. How have similar features been approved? We agree there is room for interpretation. We don't understand timing of discussion but agree code is not clear. Do Ian or Kor want to add anything?

Ian Nicol: Adding to Mark Frost's comment on Portland's code. The proposed projections are less than 14% of the side of the building, so we're not abusing an architectural form. Purpose is to break things up so it's not a box. Commission will do great injustice if features are not allowed. Flat sides will be used maximize interior space.

AB: Kor?

Kor Harrison: from perspective of builder, code is confusing. Change code to avoid having these conversations with every home that is built.

AB: Do commissioners have questions for appellants?

SP: For Ian, what's the purpose of the bump out? Is there a benefit to the interior?

Ian Nicol: Original design had projection with floor space because that's been approved in the past. So we removed portion of the floor. Used floor space to support engineering. Purpose is to break up façade so it's not boring. Changed material on side to help break it up.

Gunnar: Responding to Sue, we went through several design iterations. What do we need to do to create a code that allows for interpretation.

AB: Measured 42 inches, which goes to my shoulder when I'm sitting in my chair.

AB: Any other commissioner questions?

TL: How deep is this window?

Gunnar: Within setback allowance of 15 inches.

TL: 15 inches?

Gunnar: Yes.

AB: Other questions? None.

AB: That was rebuttal by appellant. Closing comments from staff?

JBK: Window feature was a moving target. Changed from cantilevered floor area adjacent to dining area to what we have now. Did not have height of window sill until now. Decision doesn't address whether it will be allowed with respect to lot coverage because decision required it to be changed. Lot coverage provisions specifically call out features with floor area, as well as features that rest directly or indirectly on the ground. It was difficult to determine what this feature was but that was moot with condition calling for it to be eliminated. Appellant argues vertical feature is not similar to a chimney. If commission agrees, staff will need direction for future decisions. Staff looked to characteristics to determine if features should be considered projections. There has been testimony tonight to look at the function of the feature.

DN: In response to questions about what has been permitted in the past, there have been a variety of decisions that have been made. This case is putting certain features under a microscope, calling attention to issues in the code. We've tried to explain how we arrived at the decision by showing our work, using dictionary, etc. Can agree that proposed feature improves aesthetic but need to be able to explain how these features will be viewed in the future. When administered by staff, need to use code carefully.

AB: questions by commissioners for staff on those final comments? None.

AB: term "indirectly on the ground" in lot coverage. Can staff provide explanation? How is that interpreted?



JBK: Directly on ground has foundation on ground. Indirectly means it may not have foundation but it's integral to the building.

AB: The roof or cornice wouldn't be considered "indirectly on the ground."

JBK: Correct.

DN: Indirectly on the ground includes cantilevers such as a second floor or deck/

AB: Understood, code provides examples but looking for other references.

JBK: Not familiar with any other references to "indirectly on the ground" in the code.

AB: Asked for final comments.

Ian Nicol: We given approval with bay window and floor space in a building permit but did not pick up that permit. Had exhaustive meetings with JBK and DN. Have been trying to resolve requirements that are changing. Not sure how to react to City's process. It's a financial burden.

Gunnar: We did not want to make this point but putting project under microscope has taken time. Something needs to be change for developers and builders. Putting contractors on furlough impacts people. If code needs to be tightened, do that separately and interpret future projects with that code. If staff decision is approved, won't have bay windows in setbacks in the future.

AB: Any other testimony? None. Public testimony portion of the hearing is now closed. Is commission still OK moving into the next hearing?

TL: Have been at this for two hours. Should deliberate this hearing now or continue to another night.

AB: How much time will next presentation take?

JBK: Not sure but it will be shorter.

AB: 2020-04 is now recessed. Can we bring in Bill Irving to talk about how much time we'll need for next hearing?

Bill Irving: The appeals go at same portion of the code. I have a couple of visuals and five or ten issues to consider that I want commission to consider as they evaluate both appeals. Maybe 15-20 minutes?

AB: Erika? Can proceed with deliberation on 20-04, or could open testimony on 20-07. Commission preference?

MR: Would prefer to see Bill's plans.

SP: OK to look at Irving's appeal.

MF: OK to go to next project, but it includes a height issue too.

TL: Appellant has been waiting months. Would stay with current appeal.

AB: Erika?

Erika Price: Getting audio on phone. Was kicked out of meeting. Frustrating to get back in. Where are we?

AB: Recess on 20-04. Should we take testimony on 20-07 before deliberating on 20-04?

EP: Open 20-07.

AB: Have majority in favor of opening 20-07.

**B. FILE NO. 2020-07 – Irving THmP**

**PROPOSAL: Appeal of a Director’s Decision to approve a Minor Partition to establish two townhouse lots for a two-unit Townhouse Project. No building permit has been issued.**

AB: No new people on call so won’t go through script again. Appellant’s statement?

BI: Appealing condition of decision related to architectural feature that’s similar to a bay window. Can I share a screen?

JSG: Yes.

BI: Presented screen.

AB: Irving’s screen is shown.

BI: Showed side three-dimension of image of building and pointed to bump outs, one of which was approved extending 15 inches into setback, but second feature with window and kitchen sink is addressed in a condition to become compliant with code or be removed. Tonight’s discussion has included confusing statements from staff. Have been on commission a long time and have been applicant including for projects on State Street on Sherman Ave. that were reviewed through PUD process. Staff stated that these features were approved erroneously but that’s an incorrect. My biggest issue is that staff are writing code without legislative process. How can they interpret similarities of architectural features? Take exception to some language in the staff memo. Comparison of chimney to extension of wall plane is inconsistent. Similar volume and visual characteristics? See chimney and kitchen sink bumpouts. Unclear how to go forward based on staff’s interpretations. How could it be approved 10 years ago but not now? Each listed architectural feature listed in the code has function.

AB: Commissioners have questions for Bill?

BI: AB asked if there is other code we can use for guidance. 17.16.040 (9) calls out elements used to break up façade. The PUD code also lists sample architectural features and one is façade articulation and another is bay windows.

AB: Made procedural error. Need to ask for ex parte, bias conflict.

SP: None.  
TL: None.  
MF: None.  
EP: None.  
MR: None.  
AB: None.

AB: Any questions or challenges of commissioners? None by public or by commissioners.

AB: Erika, you can proceed with questions that appellant can respond to.

EP: Will hold off for and provide comments.

AB: Any questions for Bill? None.

AB: Testimony in agreement with appeal? None.

AB: Staff report?

JBK: Sharing screening. Won't go through entire powerpoint in detail in interest of time. This appeal is different than previous in that there is one code provision being appealed for projections. Can projections include conditioned space and is proposed cantilevered kitchen allowed in the setback? Applicant brought up previous decisions done through PUD or Conditional Use. Those decisions required public hearing and, to the extent that cantilevered projections were approved, those are different review processes than staff level. What was referred to as an error with previous decision to allow features in setbacks, I don't recall any analysis in those hearings. Errors were in the context of ministerial decisions, in some cases with elements not being depicted on a site plans. Those are unintentional error. Every day staff sees projects pushing the limits of setbacks, lot coverage and height. Discussed chimney features in powerpoint, and the report explains that chimneys are potentially limited exception to including volume. Projections are only used to specify which features can be a setback. There is nothing to limit a builder or developer to adding architectural features that are outside of setbacks. Illustration with chimney and cantilevered kitchen from exterior is easier to distinguish when looking at floorplan. Chimney is permitted to encroach. Cantilevered kitchen is not listed as a permitted projection. Staff prepared illustration to ask commission where to draw a line in terms of with and height to avoid an entire façade wall projecting into a setback and decreasing separation from other structures. No question about lot coverage in this appeal. There was question about building height but it's not disputed in this hearing. This is a denovo hearing.

AB: Commissioners have questions for JBK? None.

## **PUBLIC TESTIMONY**

AB: Bill will be able to rebut. Any testimony from public in agreement with staff decision?

Susan Froehlich: In favor of director's opinion. Where do you stop? Setbacks are there for a reason.

Reed Simpson: This not an interpretation on the fly. I had no problem interpreting code in a manner consistent with staff. I'm being affected.

AB: Anyone else in audience?

Deane Woodring: Support staff opinion. Stop setbacks from getting pushed too far.

AB: Anyone else? None.

AB: Appellant's rebuttal?

BI: Don't agree with staff's logic. Need to clarify code. Can't understand what would qualify as a projection right now. If commission can get to consensus, that would help. References by staff of conditioned space is a red herring. It's not in the code so it should not be used for interpretation.

AB: Any other testimony neither for nor against? None.

AB: Final staff comments?

JBK: Reed owns property next door. Regarding comments about writing code. Staff, when faced with it, looks at plain language of code. Question isn't about whether staff likes the code or wants it to say something. Code is clear what is allowed as projections in setbacks, and includes phrase "such as" meaning other similar items can be included and that's how code has been implemented. Apologize for using "conditioned space." Wasn't intended to be a yardstick, just a similarity among features.

AB: Is Reed on Oak Street?

JBK: He is on Sherman Ave., next door, and submitted comments for this file 20-07.

AB: Did somebody else testify for Oak Street?

JBK: Mr. Simpson did, perhaps mistaking the item for this one.

DN: Mr. Simpson is at 209 Sherman. Staff presented code as it reads and have tried to explain what something "such as" might include. Regardless of how I feel about the code, we're just looking at the code. This is not being reviewed as a Conditional Use, it was reviewed by staff at the building permit level and as such must be reviewed narrowly. Whether or not decisions were made by staff erroneously, those decisions weren't in front of the commission.

AB: Questions by commissioners for staff?

AB: Appellant rebuttal? You have the burden of proof.

BI: Go back to the code reference for architectural features for projections and chimney is allowed. I showed a very similar architectural feature and it could fall under the "such as" language. Looked at other parts of code for guidance, in PUD, where intent was to break up facades. That's what this feature does. So I think there's a way to find it's similar to a chimney.

AB: Closing public hearing for 20-07. Recessing 20-07. Does commission want a break before deliberation or continue to date certain? At a minimum need a two minute break.

SP: OK with two-minute break.

AB: Will return in two minutes. 8:29pm return from recess.

**DELIBERATION: File No. 2020-04**

AB: Resuming hearing on File No. 20-04; Erika Price will not participate in deliberation who recused herself.

EP: Recognizing cases are similar, can we be deliberate on that question for both applications?

AB: No legal procedure to do two applications at the same time. We are now deliberating on 20-04.

MF: Appreciate intent to break up façade but also considering intent of setbacks including fire safety, and vegetation. Can appreciate staff's comments that, as well build to the limits, these issues are being exacerbated. Drew diagram and if two adjacent properties had same projections would have 7.5 feet between buildings, not maintain fire clearance. I started by considering why we have setbacks. The second issue about what is a projection and what is not, the code lists cornices, eaves, etc. which are thin elements that don't have mass or volume and that seems different than chimneys, so examples seem clear. "Such as" might allow gargoyles rather than a large bay window. Breaking up facades is great work but have an issue with setbacks.

SP: Agree on purpose of setback. Read definition of projection, it enhances outside but not inside of building. I have a problem with a projection enhancing inside.

TL: Sympathize that City has not been consistent. Can just look to code and hope for consistency going forward. Will echo Mark. Concerned with projection creep as a way to add more space. Build within setbacks and it will be easier. Won't be able to create definitions to satisfy everyone. Should clarify definitions, not inclined to keep pushing the envelope but letting this go. Can't agree that these windows are needed. Fire separation is a concern.

MR: What would the permissible alternative be to have an architecturally interesting façade. Would building need to shrink?

SP: Building could be smaller, or a different window treatment that doesn't protrude.

TL: If want a window to stick out, design it to meet setback. My neighbor's have projection that goes right to property line. Snow fell off our roof and damaged their home. Need setbacks for safety reasons.

AB: Staff in difficult position because code is broken. Code allows certain classes of features but it doesn't explain what factors should be used to judge what else might be OK. There are legislative issues to be addressed but not relevant to interpretation. In this case, applicant designed to meet code. Staff came up with logic to administer code. But that's not what the code says. Staff are legislating because they're forced to. If code is ambiguous, code should be interpreted in favor of applicant. Applicant's shouldn't have to guess how code will be interpreted. Code is broken. Applicant made reasonable argument. Tell staff to fix code.

MR: Ambiguity penalizes applicant.

AB: Anyone else?

SP: Is objective not for commission to help interpret code? Agree with some of Arthur's concerns but trying to interpret code.

AB: Code is supposed to be clear and objective. It looks like we agree that it's not. So, how to balance this? Would like to see setback respected, but not supposed to be exercising discretion. Bad code is our fault, not applicant's.

TL: There's always going to be some discretion with architectural elements. Should we have code for gargoyles? Staff explained what they have to work with and what they did, and I think they did a good job of interpreting.

AB: Code should say architectural features should be permitted to encroach for some reason, and then provide examples.

TL: Could debate definition of bay window. Design always will be discretionary.

AB: Then all design should go to commission for review.

MF: If update code to remove "such as", then remaining elements are similar. Timing of updating code is unclear.

AB: Law requires application to be consistent with code that's in place at the time the application is submitted.

AB: Responding to hand in audience, cannot take further testimony, commission is in deliberation.

AB: Does the appeal have merit? Looks like 3-2 to uphold director's decision. Should we have further discussion? How sure are each of you in your position? Have we deliberated enough?

MF: List of projections differ from a bay window. It seems like a clear distinction.

AB: Conclusion is based on a common characteristic?

MF: A thin protrusion vs. a wall.

SP: Agree with Mark.

TL: I don't think denying this appeal prevents buildings from going forward. The window doesn't get bumped out. Who knows when we'll get to a code update. Inclined to go with staff's decision.

AB: I disagree but don't disagree with goal. Motion?

## **MOTION**

SP: Moved to reject the appeal and accept planning director's decision.

TL: Second motion.

AB: Restated motion. Further discussion? None.

AB: In favor? TL, MF, SP.

AB: Opposed? MR, AB.

AB: Motion passes 3-2.

AB: Going now back to File 20-07.

**DELIBERATION: File No. 2020-07**

AB: Erika now allowed to participate. We're in deliberation on 20-07. Opening statement? Differences?

EP: In regard to projection, they are exterior elements, not occupiable interior space. This application pushes kitchen into setback. Staff noted that site plans often don't depict all elements. Intent of code is to not have interior space in the setback.

AB: Others? Response to concept of pushing out interior space.

SP: Projection goes on outside and is not meant to extend the inside.

MF: Agree with Erika that bumping out kitchen is not acceptable. Proposal extends roof and floor into setback. Inconsistent with reason for setbacks.

TL: Agree with Mark, it pushes the definition of what a projection is intended for beyond the intent of a projection.

MR: Ambiguity in code penalizes developers and the artform of architecture.

AB: Agree with Erika that projecting interior space outward is a problem. Commonality of elements are architectural. In this case this is considerably beyond ornamental. Line has been blurred to a point where I'm uncomfortable. Looking at list of "such as" elements, I don't see them in this case.

EP: Difference between element of decoration versus extending wall plane.

AB: Is thickness or thinness of element relevant.

MF: If inside of house is burning and wall is pushed out 15 inches and neighbor does the same, what happens when pushing spaces closer together.

EP: Fire rating of walls is.

AB: Is a chimney different?

EP: It's not occupiable and usually constructed for fire rating.

AB: Two chimneys next to each other versus to bay windows, same problem? Question is about what does the code allow? Expanding volume of interior is a problem.

AB: Motion?

**MOTION**

MF: Moved to accept director’s decision and reject the appeal on 2020-07.

EP: Seconded the motion.

AB: Repeated motion. Any discussion? I have a question. Director’s decision was that the kitchen bump out is rejected, the other bump out is legal. Agree?

SP: The other projection is a fireplace and chimney and is allowed as a projection.

AB: I’m OK with it as an architectural feature.

AB: Any other comments?

AB: In favor? MF, SP, TL, EP.

AB: Opposed? MR

AB: Chair votes aye, motion passes 5-1.

AB: Return to regular meeting. Nothing else on agenda. Adjourned.

**IV. Adjourn**

AB meeting adjourned at 9:14 pm



Oct, 21, 2021

Chair Aruther Babitz (acting Chair Mark Frost)      Date



Oct. 21, 2021

Dustin Nilsen, Planning Director      Date (Approved)