

E. NEW BUSINESS

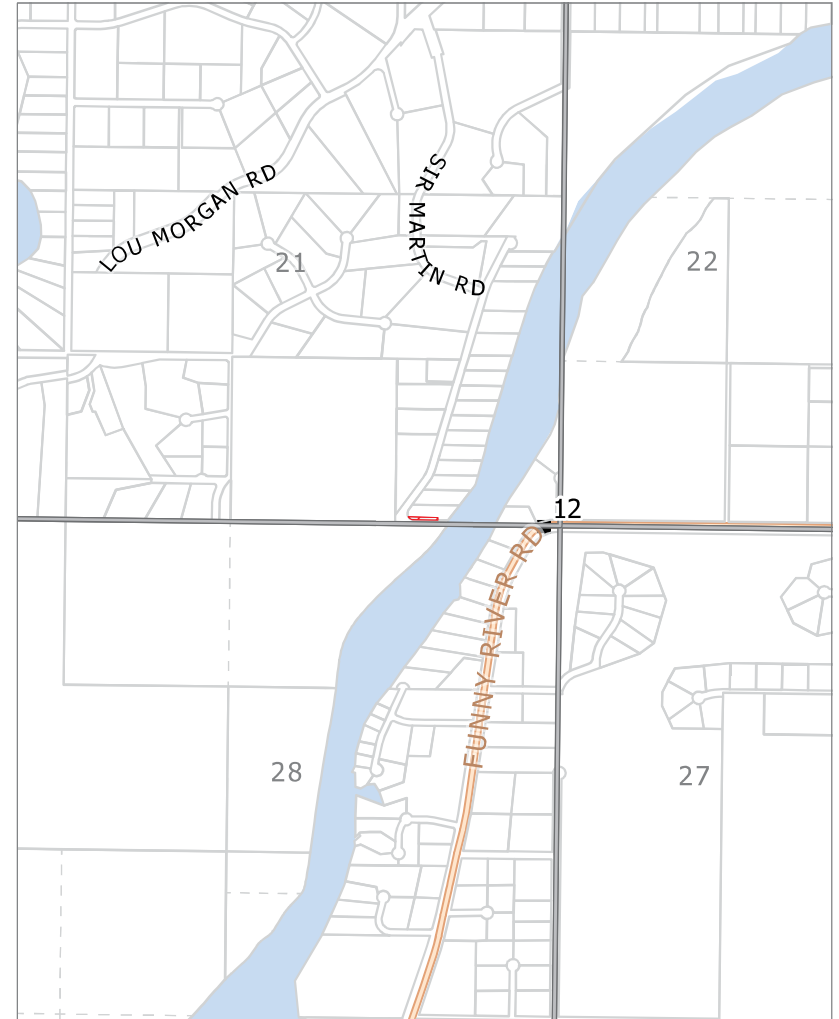
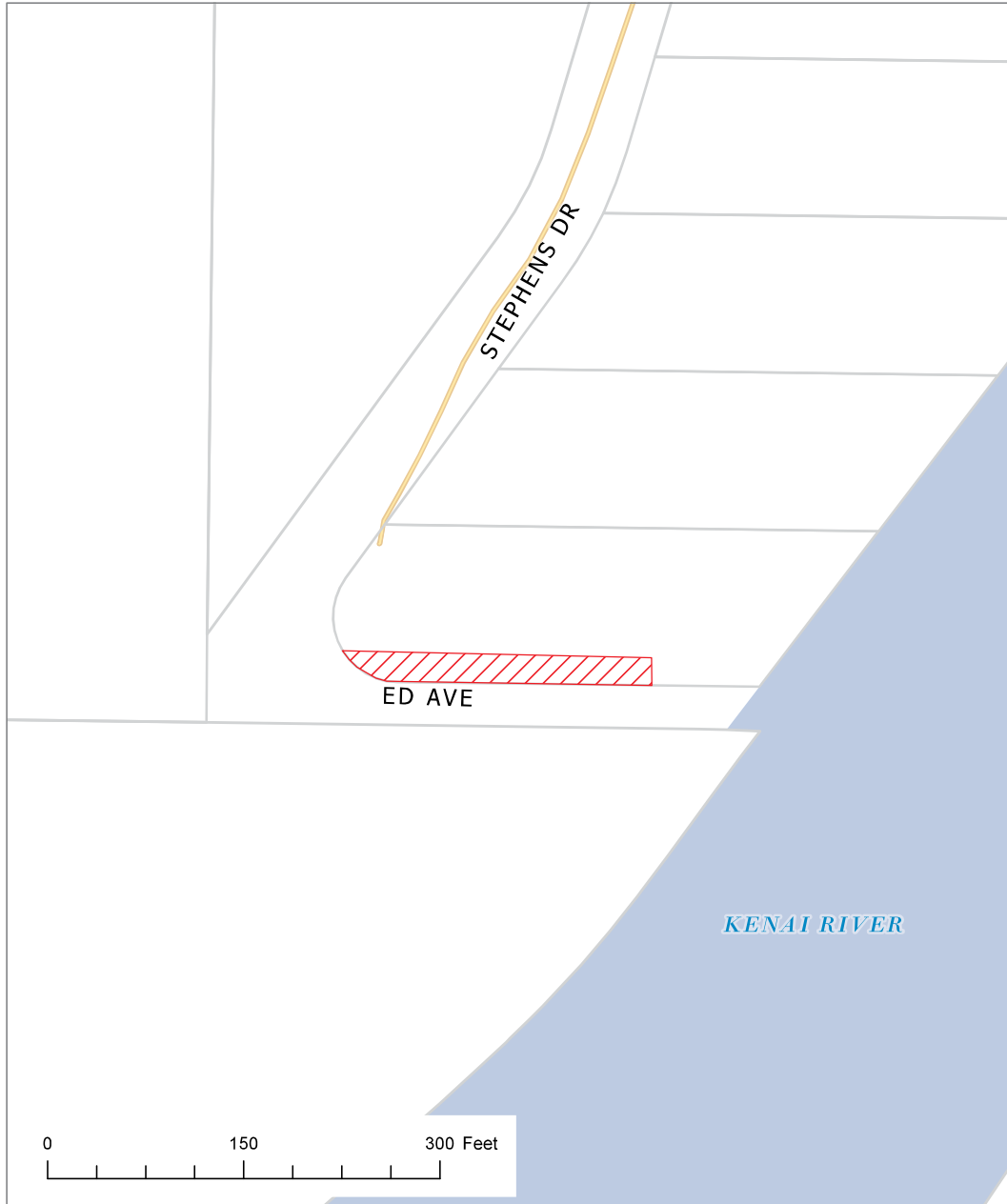
1. Building Setback Encroachment Permit

KPB File 2023-040

Petitioner/Landowner: Burner

Request: Permits a garage, cabin, and lodge to remain in the building setback of Lot 18, Block 1, Bos'n Landing Subdivision Part One, Plat KN 77-101

Sterling Area

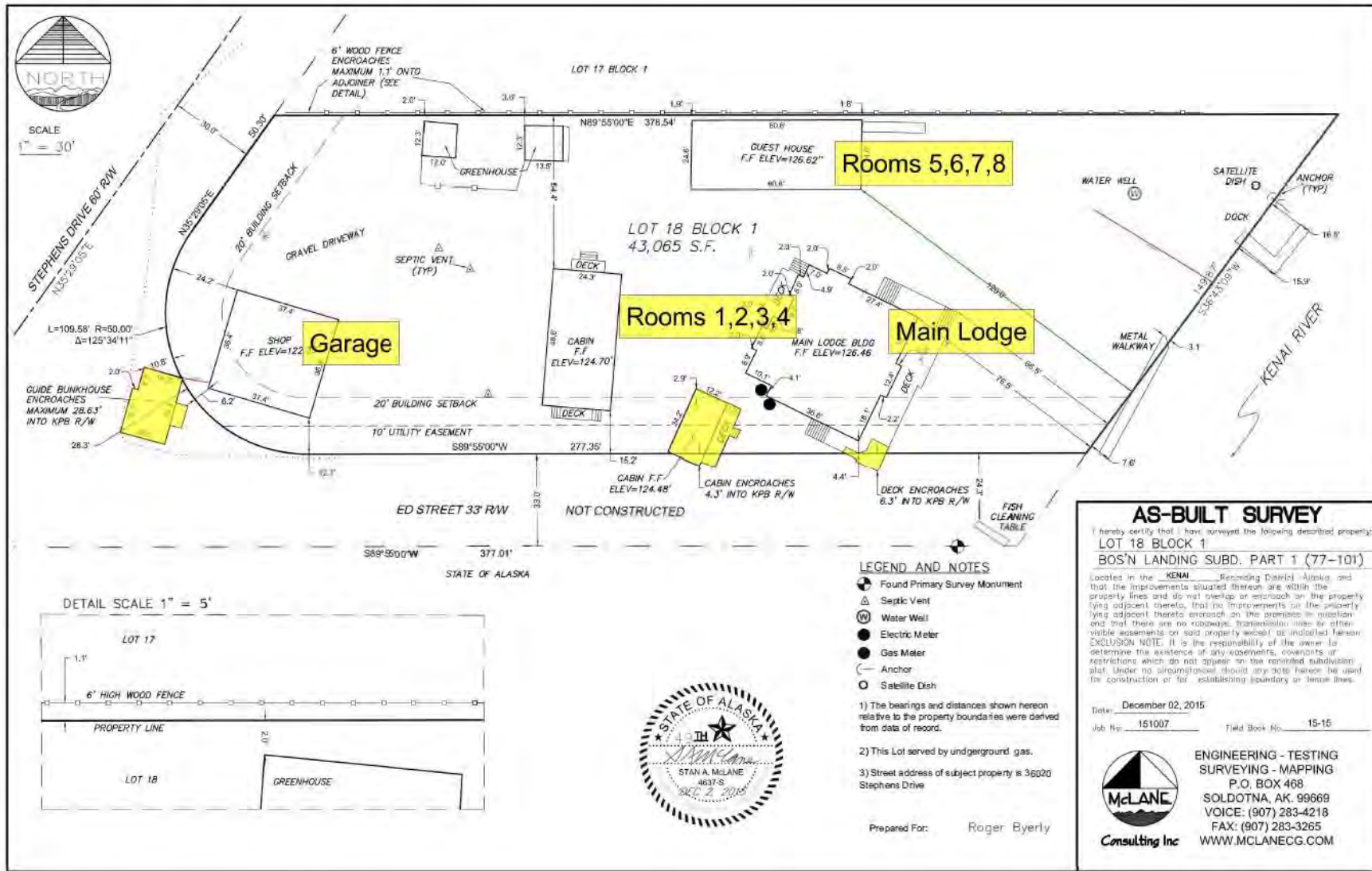


KPB File # 2023-040
S31 T05S R12W
Sterling



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KPB 2023-040



AGENDA ITEM E. NEW BUSINESS

**ITEM 1. – BUILDING SETBACK ENCROACHMENT PERMIT – LOT 18, BLOCK 1, BOS'N LANDING
SUBDIVISION PART 1 (KN 77-101)**

KPB File No.	2023-040
Planning Commission Meeting:	April 24, 2023
Applicant / Owner:	Mark and Julie Burner of Rifle, Colorado
Surveyor:	None
General Location:	Stephens Drive, Ed Avenue, Sterling

Parent Parcel No.:	063-560-04
Legal Description:	Lot 18 Block 1 Bos'n Landing Subdivision Part 1 KN 77-101 T05N R09W Sec 21
Assessing Use:	Lodge-Multiple Cabins
Zoning:	Rural Unrestricted

STAFF REPORT

Specific Request / Purpose as stated in the petition: Buildings were built in the setback before I owned it and I want to bring everything to code. The plat shows areas in yellow that are to be removed. I am asking for a variance for the main lodge, rooms 1, 2, 3, 4 and the garage.

Site Investigation: Per the as-built and submittal, three structures encroach into the 20 foot building setback along Ed Avenue and a portion along Stephens Drive. The setbacks were granted on Bos'n Landing Subdivision Part One KN 77-101. The petitioner has stated the encroachments into the dedicated right-of-way will be removed. The garage located on the west end of the lot encroaches 13.8 feet into the setback. The cabin with wood deck the petitioner refers to as "Rooms 1,2,3,4" encroaches 10.2 feet into the setback. The "Main Lodge" will be entirely in the 20 foot setback with a portion of the deck being removed from Ed Avenue right-of-way.

Stephens Drive is a 60-foot right-of-way and is borough maintained to the subject property. This application is for encroachments along Ed Avenue and a portion along the curve shared with Stephens Drive. Ed Avenue is a 33-foot right-of-way currently unconstructed and provides access to the Kenai River. According to staff research the dedication is atop of a 33-foot Section Line Easement. The State of Alaska owns the lands to the south and it appears there may be additional easements along the section line within that property. To the land to the south is part of the Morgan's Landing State Recreation Area. Section lines are managed by the State of Alaska and ***staff recommends anyone looking to improve Ed Street should work with the State and the Road Service Area for the proper permits.***

According to wetland assessments most of Stephens Drive is classified as a drainageway leading to the Kenai River. There are no steep slopes within the subject area or surrounding rights-of-way.

Street views are available for the area, but do not go further than where borough maintenance ends and the subject property uses as a driveway. Per KPB GIS Imagery, there are multiple encroachments in the right-of-way that could hinder the public access to Ed Avenue.

Staff Analysis: The property was subdivided by Bos'n Landing Subdivision Part One, KN 77-101. The plat subdivided several government lots. The plat created Lot 18 Block 1 as well as dedicated Stephens Drive and Ed

Avenue, originally named Ed Street, and granted setbacks. The setbacks were not depicted, but a plat note stated *"All lots are subject to a 20' building setback along dedicated R/W's."*

The plat also granted a 10' foot utility easement along Ed Avenue by including the plat note, *"All utility easements on East-West lot lines in Blk. 1 extend to 150' from the river except in Lots 1 and 18."* That easement was depicted on the plat.

Additionally, a 50 foot radius temporary turnaround was granted on the plat. As this turnaround is at the very end of a lot, it does not appear there any encroachment issues within that area.

Per KPB GIS Imagery, it appears only the petitioners are using the existing travel way and borough maintenance ends at what is being used as the driveway to the property.

It does appear that some of the structures are within the utility easements. Staff would advise the owners to investigate the utility easement encroachments. If it is determined that a utility provider needs to use the easement any damage or relocation of items is at the owner's expense.

The as-built that was submitted with the application is dated 2015. On that as-built the owners have depicted and labeled various structures. They have notified us that the structures where improvements that are shown in yellow and encroaching into the right-a-way will be moved. This includes a portion of the deck attached to the main lodge building.

The as-built also indicates a fence has been built over the property line to the north. This would be a civil matter between the owners of the property. Staff would recommend the owners resolve the encroachment issues.

The as-built includes some docks and walkways. These items should have the proper permitting through the River Center. No comment was received regarding the lack of permits. Staff would like to acknowledge that there is a fish cleaning table located within the right-a-way per the 2015 as-built. If that table or any other improvements are within the right-a-way they will require movement and if it will be along the river the proper permits.

This is not within an Advisory Planning Commission boundary.

Due to the age of the as-built and the requirements to remove all structures from the right-a-way dedication, ***staff recommends a one year approval be granted and once all requirements have been met Resolution 2023-09 will be brought back to the planning commission for adoption.*** If the new as-built depicts additional encroachments not reviewed under this application a new application will be required and a new hearing will be scheduled.

Findings:

1. A building setback along Stephens Drive and Ed Avenue was created by Bos'n Landing Subdivision Part One, KN 77-101.
2. Per the as-built there are multiple encroachments into the rights-of-way.
3. Stephens Drive is a maintained 60-foot-wide constructed right-of-way.
4. Ed Avenue is a 33-foot-wide dedication and is not constructed.
5. The Ed Avenue dedication coincides with a section line easement.
6. Ed Avenue provides access to the Kenai River.
7. State lands are located to the south.
8. Per KPB Assessing information, the first structure was built in 1985 with additional buildings being added later.
9. The as-built provided is from 2015.
10. 9.8 feet of the setback will remain for the cabin labeled rooms 1, 2, 3, 4.
11. 6.2 feet of the setback will remain for the garage along the curve with 12.7 feet remaining along Ed Avenue.
12. There will be no remainder of the setback along the main lodge due to the deck.
13. There is no steep terrain located near the encroaching improvements.
14. Stephens Drive does not continue past Ed Avenue intersection.

15. A continuation of Stephens Drive is unlikely due to low wet areas and the existing campground and state recreation area.

20.10.110. – Building setback encroachment permits.

E. The following standards shall be considered for all building setback encroachment permit applications:

1. The building setback encroachment may not interfere with road maintenance.

Findings 4, 10, and 11 appear to support this standard.

2. The building setback encroachment may not interfere with sight lines or distances.

Findings 4, 10, 11, and 13-15 appear to support this standard.

3. The building setback encroachment may not create a safety hazard.

Findings 4, 10, 11, and 13-15 appear to support this standard.

F. The granting of a building setback encroachment permit will only be for the portion of the improvement or building that is located within the building setback and the permit will be valid for the life of the structure or for a period of time set by the Planning Commission. The granting of a building setback permit will not remove any portion of the 20 foot building setback from the parcel.

G. The Planning Commission shall approve or deny a building setback encroachment permit. If approved, a resolution will be adopted by the planning commission and recorded by the planning department within the time frame set out in the resolution to complete the permit. The resolution will require an exhibit drawing showing, and dimensioning, the building setback encroachment permit area. The exhibit drawing shall be prepared, signed and sealed, by a licensed land surveyor.

KPB department / agency review:

KPB Roads Dept. comments	Out of Jurisdiction: No Roads Director: Griebel, Scott Comments: If ROW encroachments are to be removed, I defer to Planning/Platting to make the setback determination.
SOA DOT comments	
KPB River Center review	A. Floodplain Reviewer: Carver, Nancy Floodplain Status: IS in flood hazard area Comments: Flood Zone: A4 Map Panel: 020012-2065A In Floodway: False Floodway Panel: B. Habitat Protection Reviewer: Aldridge, Morgan Habitat Protection District Status: IS totally or partially within HPD Comments: i:0#.w kpb\maldridge C. State Parks Reviewer: Russell, Pam Comments: No Comments
State of Alaska Fish and Game	
Addressing	Reviewer: Robinson, Celina Affected Addresses: Existing Street Names are Correct: Yes

	List of Correct Street Names: Existing Street Name Corrections Needed: All New Street Names are Approved: No List of Approved Street Names: List of Street Names Denied: Comments: NO ADDRESSING COMMENTS AT THIS TIME
Code Compliance	Reviewer: Ogren, Eric Comments: These encroachments were self-reported to KPB Code Compliance. In order to come into compliance, the owner will have to remove all structures in the ROW, and obtain a permit for the 20ft building set back violations.
Planner	Reviewer: Raidmae, Ryan There are not any Local Option Zoning District issues with this proposed plat. Material Site Comments: There are not any material site issues with this proposed plat.
Assessing	Reviewer: Windsor, Heather Comments: No comment

Utility provider review:

HEA	
ENSTAR	
ACS	
GCI	

RECOMMENDATION:

Based on the standards to grant a building setback encroachment permit, **staff recommends** to grant approval for the portion of structures within the 20 foot building setback as shown on the 2015 as-built survey, subject to:

1. Compliance with KPB 20.10.110 sections F and G.
2. Removal of all encroachments within the right-of-way dedication.
3. Providing a current as-built to be used as an exhibit drawing prepared, signed, and sealed by a licensed land surveyor.
4. The recording fees be submitted to the Kenai Peninsula Borough Planning Department for the recording of the resolution.
5. Failure to provide an as-built so that it may be recorded within one year approval will result in a new application, hearing, and approval.
6. Additional encroachments found on the new as-built will require a new hearing.

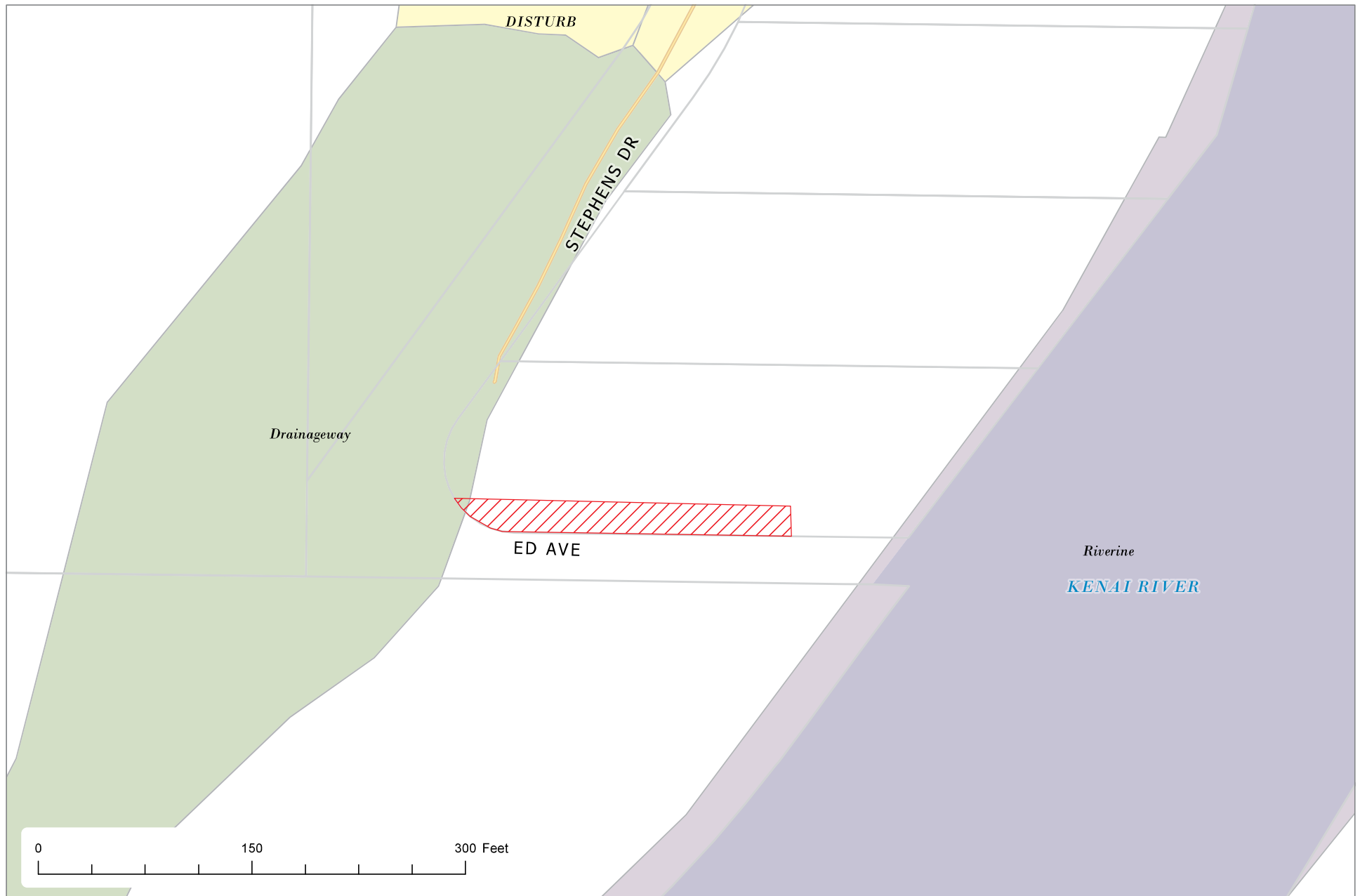
NOTE:

20.10.110.(H) A decision of the planning commission may be appealed to the hearing officer by a party of record, as defined by KPB 20.90, within 15 days of the date of notice of decision in accordance with KPB 21.20.250.

END OF STAFF REPORT



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Aerial with 5-foot Contours





LEGEND AND NOTES

- Round B.L.O. monument (1976)
- Round official survey mark (2087-S 1976)
- Set official survey at mark (2032-S 1977)
- Set 1/2" x 24" steel rebar at all lot corners
- All bearings refer to the SOUTH boundary of the 21 as being N49°55'00"E datum of record
- All lots are subject to a 20' side set back along dedicated R/W's.
- All wastewater disposal systems shall comply with existing law at time of construction
- All lots along the Kenai River are subject to a 10' maintenance easement for government use only.
- The first finish floor of any bldg. shall be constructed 3 feet above standard flood plain as determined by the U.S. Corps of Engineers.
- All color markers are for compilation purposes only, property extends to the mean high water of the Kenai River.
- All utility easements on East-West lot lines in Block 1 extend to 50' from the river except in Lots 1 and 18.

CERTIFICATE OF OWNERSHIP AND DEDICATION

We hereby certify that we are the owners of said property, and request the approval of this plat showing such easements for public utilities, roadways, and or streets dedicated by us for public use.

George H. Bradford
George H. Bradford, Box 41, Sterling, Alaska 99682

Michael J. McLean
Michael J. McLean, Box 41, Sterling, Alaska 99682

George H. Bradford, Michael J. McLean for
George H. Bradford, Box 41, Sterling, Alaska 99682

NOTARY'S ACKNOWLEDGEMENT

Subscribed and sworn before me this 20 day of July, 1977.

My commission expires 12-31-80

George H. Bradford
Notary Public for Alaska

PLAT APPROVAL

This plat having been approved by the Kenai Peninsula Borough Planning Commission as recorded in the official minutes of the meeting of June 11, 1977 is hereby acknowledged and accepted as the official plat, subject to any and all conditions and requirements of ordinances and law governing thereon.

KENAI PENINSULA BOROUGH
By *Richard J. McLean*

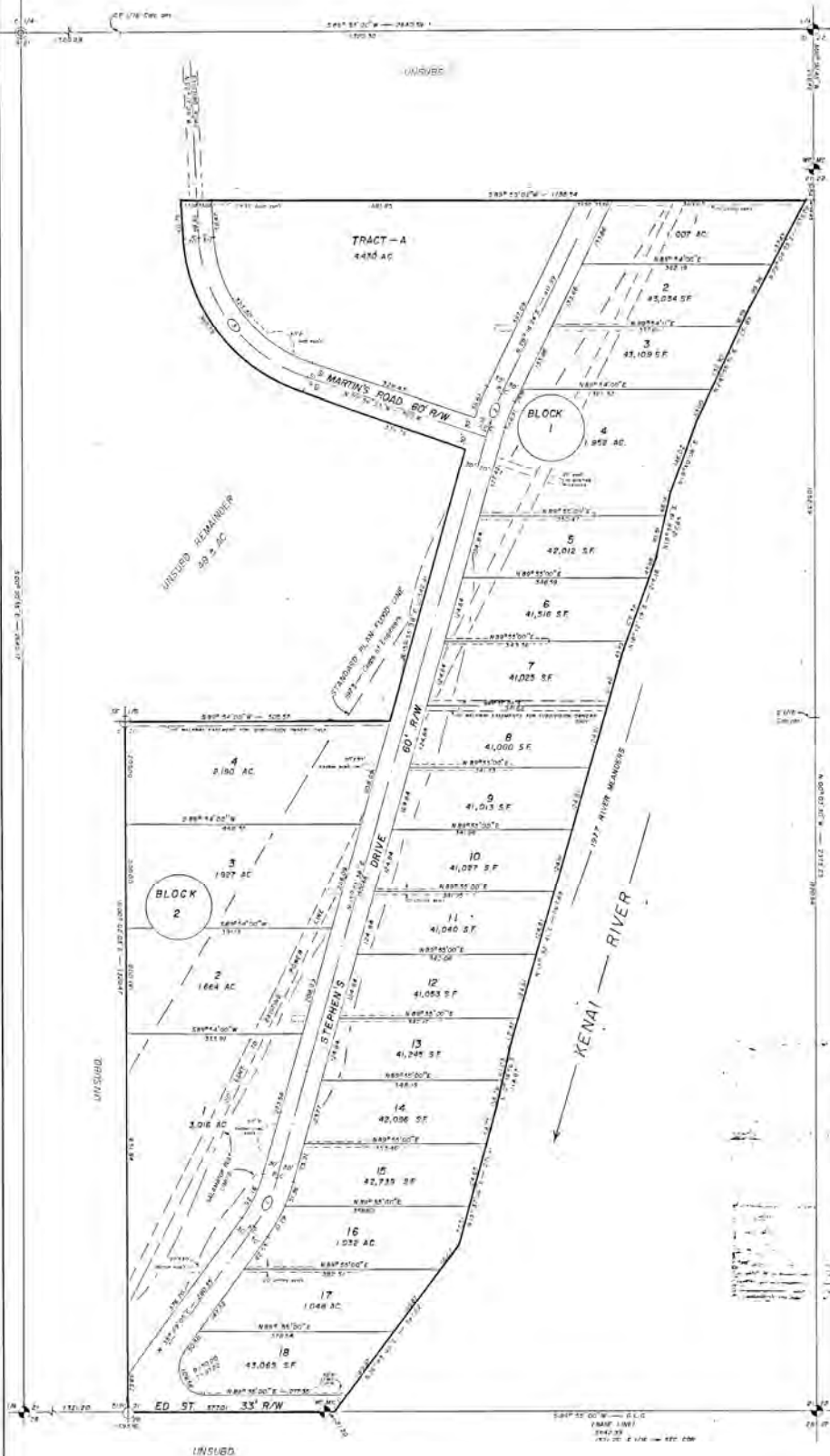
BOS'N LANDING SUBDIVISION PART ONE

George Bradford, ET AL - owner
Box 408, Solomna, AK, 99688

DESCRIPTION
SEVEN ACRES SITUATED IN A PORTION OF DON'T LOT 2, 600' LOT 8, SECTIONS 28, 29, 34 AND 35 THE KENAI PENINSULA BOROUGH

Surveyed by: Milson and Associates
Solomna, AK

DATE OF SURVEY: 6/4 - 6/25/77
SCALE: 1" = 100'
BK. NO. 77-2



CURVE DATA				
Curve	Δ	R	Δ	E
1	107°12'43"	500.00	44.15	44.17
2	287°19'14"	500.00	100.00	274.83

Leavitt, Rhealyn

From: Hoback <seagalleyalaska@aol.com>
Sent: Friday, April 14, 2023 12:17 PM
To: Planning Dept,
Subject: <EXTERNAL-SENDER>KPB File No 2023-040
Attachments: 2023 Ed Street.docx

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Please accept this letter as input for the KPB meeting dated April 24, 2023

Please see attached...

We own neighboring properties to the Subject Lodge.

We will be Driving back to Alaska on the date of the meeting, unable to physically attend the meeting, nor pick up internet for a Zoom participation.

Thank you for giving us a chance to participate through written submission.

Physical Addresses: 36085, 36151, 36120, 36080 Stephens Dr.

John F. Hoback
Verele E. Hoback
35555 Kenai Spur Hwy 410
Soldotna, AK 99669
907-223-6771
seagalleyalaska@aol.com

**Kenai Peninsula Borough Planning Department
Attn: Madeleine Quainton
144 North Binkley Street
Soldotna, Alaska 99669**

**Re: KBP File No. 2023-040 Building Setback encroachment permit application
Mark and Julie Bruner of Sterling, AK. Re: Variance request...Meeting: Monday April 24th.**

Thank you for seeking our input concerning this matter... We have reviewed the letter (and supporting drawings). Please consider the following comments:

Mark and Julie Bruner are nice folks, and seem to blend well with our community, we all get along. This whole issue is kind of awkward, so for the sake of not pitting neighbor against neighbor I will keep my comments to the facts.

The subdivision roads and setbacks are documented and recorded as Bos'n Landing Subdivision, a Sterling Community. The Subdivision properties have been bought and sold based on the recorded plat and the amenities it provides to the community as a whole. Fact: There are many property owners in Bos'n Landing (Phase I and Phase II) that do not have water front on the Kenai River. Stephen's Drive and Ed Street, their right-of-ways (R/W's), easements, setbacks and river access points are for the betterment of the community as a whole. As property owners in Bos'n Landing Subdivision they purchased the privilege of accessibility through these points provided for them on the plat for current and future generations. In Short: The concern for the future of Ed Street R/W is a big deal to Bos'n Landing owners.

Over the years there has been talk of how our subdivision might seek avenues to further develop Ed Street for the use of the Bos'n Landing Home Owners. Especially for those without Boat Launches and those that do not have waterfront on the Kenai. Consequently, Ed Street has been considered a potential for future development for the benefit of the whole community.

As the requested permit and variance proposal implies; Two Buildings currently on the street R/W will be removed to include a small portion of the Lodge deck. Consequently: When Ed Street is developed Three buildings will be within feet (even inches) of Ed street right of way. Buildings this close to a Street need a stout fence/partition that clearly defines safety space for vehicles, pedestrians and structures between the Street and Private property. Concrete safety poles might also be used as well to re-enforce the fence. Future Vehicle traffic (possibly pulling trailers) will be driving within inches of decks and a few feet of buildings:

- The Lodge will be close to 4' off the street with the decks "touching" the street.
- Rooms 1.2.3.4: 15 feet off the street with a Deck about 10' off the street.
- A Garage about 6' off the street (causing a blind corner).

Further Concerns:

1. Allowing the setbacks to be reduced to ¼ of code, where by leaving the buildings so close (touching) Ed Street that they might jeopardize any future planned development of the street itself. This would be a "Very Big" loss involving the home owners of the subdivision. It would be nice to have assurances that this will "not" happen.
2. With the Utility Easement virtually eliminated, where would the utilities be installed when needed? ie. street lighting, or electronic gates, or other unforeseen needs.
3. With an active lodge Physically touching Ed Street, there will be Kids, Pets, Guests playing and recreating on Ed Street. This will be a liability issue in the future. Building set backs are in place for a reason and safety is one of them.
4. When Ed Street is maintained, where does the snow and drainage go if the lodge touches the street? Ed Street; although currently not constructed, is on the subdivision master plan and must be protected with all the rights of the Street R/W .

Out of concerns for Mark and Julie Bruner and a tough situation which they may not have created, but should have known at closing. We need to ask what have they been doing to fix the problem since they have owned the property for a number of years with no corrections? We realize that moving and/or taking down structures (encroaching on Ed Street R/W)) is a promised change. Question: Are the structures being moved onto the lodge properties current Lot, Easements and setbacks then applying for more variances in the future?

Suggestions:

In support of the Bruner's, and helping solve a bad situation, we do not entirely oppose the variance requests involving the setbacks and easements, for the record we do approve of helping the lodge owners. Along with granting the variances, (should the borough indeed grant them). But there should be consequences for not respecting the Boroughs reasons and design for easements and setbacks in the first place. It is crystal clear that the encroachments were intentional, a blatant disregarding of the Boroughs laws and codes involving the Anglers Lodge property and its owners.

1. A reconciliation offer in return for granting the Variance requests by the Bruner's would not be out of line by the Borough. We suggest that the Lodge owners agree to "voluntarily" construct a commercial grade fence along the Ed street R/W line (Lot 18 B1 lot line), 6' tall. Continuing around the blind corner along Stephens Dr. property setback line to their legal driveway entrance. This would protect Ed Street and Stephens Drive from further encroachment errors, as well as create a safety zone, an awareness for their customers that; beyond that point is not Lodge property. Remembering that the Lodge did not just encroach

on the Ed Street R/W, Easements and setbacks (but completely blocked other owners use for 8+ years) Not just once but built on it again, and again. A fence will help remind current and future Lodge Owners of their established boundaries. But more importantly: A way of showing Bos'n Landing Subdivision owners a sincere apology and a visible act of good faith. For the future enjoyment of the Subdivision as a whole by all owners.

We have been told that the borough cannot require a property owner to build a fence, however the Borough does have the decision-making power to insure public safety is considered while protecting R/W's for future legal development. Negotiation should not be off the table.

3. Important to Note: We have experienced multiple 4+ (single) vehicle accidents along Stephens Drive due to speed and distracted driving linked with lodge guests and employees. There is constant heavy commercial traffic (Tour Buses, garbage trucks, pump trucks, as well as (Tractor-Trailer) delivery trucks) frequenting the Lodge. Often backing-up the entire length of Stephens Drive. The Lodges Commercial boats on trailers backing-up the entire Stephens Drive and parking/blocking the Stephens Drive turn around for extended periods of time for all traffic.

The Lodges XL Garage Structure built on the properties easement and setbacks has reduced the lodges turnaround space, consequently commercial vehicles and Motor Homes are using neighboring private driveways to get turned around... Note: One Semi cab did slide off the road and teetered toward the small lake while attempting the sharp turnaround out of a driveway. That was a close call!

In Closing,

The Borough needs to consider a detailed plan of action to discourage future encroachments by the Lodge outside their property Lines, setbacks and easements, as well as increased safety and control of the high volume of traffic, including lack of turn around area. In the Lodge owners defense, they have tried to Slow down and work with their drivers. The Lodge Owners do listen and seem to respect and support the community. However the issues are ongoing and hazardous.

Please Note:

The decision of the Borrow committee will affect "all" of the land owners in the Bos'n Landing Subdivisions Phase I and II. And because of that fact; it stands to reason the all of the home owners should have a say in any decisions to alter the Bos'n Landing Subdivision Designed easements, setbacks, R/W's and river access points. To only notify and include properties within 600 feet (most of which are on the river) is denying everyone involved in the subdivision their say. Some residents will consider the failure to include them as short

sighted if not unlawful. To avoid Legal issues; This meeting should involve notifications to all Bos'n Landing Subdivision.