

C. CONSENT AGENDA

***7. Minutes**

b. September 25, 2023 PC Meeting Minutes

Kenai Peninsula Borough Planning Commission

Betty J. Glick Assembly Chambers, Kenai Peninsula Borough George A. Navarre Administration Building

September 25, 2023
7:30 P.M.
UNAPPROVED MINUTES

AGENDA ITEM A. CALL TO ORDER

Commissioner Brantley called the meeting to order at 7:30 p.m.

AGENDA ITEM B. ROLL CALL

Commissioners Present

Jeffery Epperheimer, Nikiski District
Pamela Gillham, Kalifornsky/Kasilof District
Virginia Morgan, Cooper Landing/Hope District
Jeremy Brantley, Ridgeway/Sterling District
Dawson Slaughter, South Peninsula District
Charlene Tautfest, City of Soldotna
Franco Venuti, City of Homer
Diane Fikes, City of Kenai

With 8 members of an 8-member seated commission in attendance, a quorum was present.

Staff Present

Robert Ruffner, Planning Director
Walker Steinhage, Borough Deputy Attorney
Todd Sherwood, Borough Deputy Attorney
Samantha Lopez, River Center Manager
Morgan Aldridge, Planner
Jenny Robertson, Land Management Administrative Assistant
Ann Shirnberg, Planning Administrative Assistant

AGENDA ITEM C. CONSENT & REGULAR AGENDAS

- *2 Planning Commission Resolutions**
 - a. PC Resolution 2023-19

- *3. Plats Granted Administrative Approval**
 - a. Hank and Mattie Bartos Subdivision; KPB File 2022-180
 - b. Kenai Meadows Addition No. 1; KPB File 2022-035
 - c. Soldotna Junction Sub Creek Side Estates 2023 Addn.; KPB File 2023-027

- *6. Commissioner Excused Absences**
 - a. City of Seward, Vacant

- *7. Minutes**
 - a. September 11, 2023 Planning Commission meeting minutes.

Chair Brantley asked Ms. Shirnberg to read the consent agenda items into the record. Chair Brantley then asked if anyone wished to speak to any of the items on the consent agenda. Seeing and hearing no one wishing to comment, Chair Brantley brought it back to the commission for a motion.

MOTION: Commissioner Slaughter moved, seconded by Commissioner Gillham to approve the consent agenda and amend the regular agendas.

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes - 8	Brantley, Epperheimer, Fikes, Gillham, Morgan, Slaughter, Tautfest, Venuti
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AGENDA ITEM E. NEW BUSINESS

Chair Brantley asked Ms. Shirnberg to read the public hearing procedures into the record.

ITEM 1. BUILDING SETBACK ENCROACHMENT PERMIT - LAKEWOOD ESTATES AMENDED

KPB File No.	2023-094
Planning Commission Meeting:	September 25, 2023
Applicant / Owner:	Stephen Parker of Montgomery, Texas
Surveyor:	John Segesser / Segesser Surveys
General Location:	Sterling Highway and Lakewood Road, Sterling Area

Parent Parcel No.:	063-021-03
Legal Description:	T 5N R 9W SEC 9 Seward Meridian KN 2004088 Lakewood Estates Amended Lot 1 BLK 1
Assessing Use:	Commercial
Zoning:	Rural Unrestricted
PC Resolution	2023-29

Staff report was given by Planner Director Robert Ruffner.

Chair Brantley opened the item for public comment. Seeing and hearing no one wishing to comment, public comment was closed and discussion was opened among the commission.

MOTION: Commissioner Epperheimer moved, seconded by Commissioner Gillham to adopt Planning Commission Resolution 2023-29 granting a setback encroachment permit to Block 1, Lot 1, Lakewood Estates Amended, Plat KN 0970037, citing findings 3, 4, 6 & 9 in support of standard one, findings 3, 6, & 9 in support of standard two and findings 2-4, 6 & 9 in support of standard three. As set forth in the staff report.

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes - 8	Brantley, Epperheimer, Fikes, Gillham, Morgan, Slaughter, Tautfest, Venuti
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ITEM 2. BUILDING SETBACK ENCROACHMENT PERMIT – ASHTON PARK SUBDIVISION

KPB File No.	2023-097
Planning Commission Meeting:	September 25, 2023
Applicant / Owner:	Laurel Frison of Soldotna, Alaska
Surveyor:	None
General Location:	Merrywood Avenue, Kalifornsky Area

Parent Parcel No.:	055-081-45
Legal Description:	T 5N R 11W SEC 35 Seward Meridian KN 0970074 Ashton Park Sub Lot 1 Blk 1
Assessing Use:	Residential
Zoning:	Rural Unrestricted
PC Resolution	Rural Unrestricted 2023-30

Staff report was given by Planning Director Robert Ruffner.

Chair Brantley opened the item for public comment.

Laurel Frison; 47490 Merrywood Avenue, Soldotna, AK 99669: Ms. Frison is the applicant and requested the commission approve her request for a building setback encroachment permit. They were wanting to build a one car garage in the front yard. She also requested that the cedar fence be allowed to remain in the setback as it provides some privacy for themselves and their neighbor. She stated that the cedar fence doesn't appear to be blocking anything. However, they would remove it if required to do so. She also noted that the chain link fence that had been there had been damaged by snow and had been removed.

David Marquiss; 34525 Commerce Street, Soldotna, AK 99669: Mr. Marquiss is a neighboring landowner and did not support approving the setback encroachment permit. He there were already had 5 structures on this lot and he felt another should not be approved. He also believed that one of the buildings in the backyard was another residential structure. He expressed concerns that if this permit were approved it could encourage other landowners to build within their setbacks. He then stated he believed the applicants had already begun building in the setback.

Laurel Frison; 47490 Merrywood Avenue, Soldotna, AK 99669: Ms. Frison stated the structures in the backyard were two sheds that were built to match their house and a greenhouse. She noted they really didn't want to build the garage in the front yard but it was the best location. They had looked into building the garage in the backyard but realized they would have no way to get back there. It would also make removing snow very difficult as they would have nowhere to move the snow to. She stated they had not begun building in the setback but had cleared the land in preparation to build.

Seeing and hearing no one else wishing to comment, public comment was closed and discussion was opened among the commission.

MOTION: Commissioner Slaughter moved, seconded by Commissioner Fikes to adopt Planning Commission Resolution 2023-30 granting a setback encroachment permit to Block 1, Lot 1, Ashton Park Subdivision, Plat KN 097074, citing findings 5-8, 10 & 12 in support of standard one, findings 5-7 & 10-12 in support of standard two and findings 5-8 & 10-12 in support of standard three, as set forth in the staff report.

Commissioner Epperheimer noted staff does not have any negative comment related to the construction of this structure in the setback. Would he be correct in assuming that the Planning Department has no issues with this request? Director Ruffner replied the setback code mostly addresses line-of-site issues related to the rights-of-way, which is what staff is most concerned with. Staff does have some potential issues with the cedar fence in the setback as the fence is not see-through. He noted the borough roads department did not have any comment on this permit. The permit request before the commission tonight only addresses the request to build a new structure in the setback.

Commissioner Venuti noted this is a pretty serious request before the commission and asked the applicant why the only drawing supplied was a rough draft on graph paper. He also wondered why the proposed garage cannot be moved to the right side of the house and become an attached garage. That way they would not have to build in the setback. Ms. Frison replied the drawing was just a rough draft of what they were thinking of doing. They had a better drawing as well as a letter explaining more fully what they wanted to do, but were told by staff they had missed the cutoff to submit information for the meeting. She noted their lot was very narrow and deep and that there would not be room to build the garage on either side of the house. She believed on one side of the house they had 10' and about 11' on the other side. Commissioner Venuti then asked if they had already begun building the structure. Ms. Frison replied they had not begun building in the setback but had cleared the land in preparation to build. They cleared the area before they even knew that their preferred location was in the setback. They became aware that they were in the setback when she pulled out and reviewed the 1997 as-built. Commissioner Venuti then stated it appears from their site plan and rough drawing that there is room on the property to build the garage without having to build in the setback. Mr. Frison replied that if they built the garage attached to the house it would block all the sunlight to the home. Ms. Frison noted that where it would be attached is where all their front windows are located.

Commissioner Fikes noted finding 11 in the staff report states that Merrywood Ave. is not fully developed, could staff please clarify and expand on the statement. Director Ruffner replied the section of Merrywood in front of this lot is a developed 60' wide right of way but as you continue to the west the road is not developed and is only a 30' wide dedication. Commissioner Fikes then asked if Merrywood was borough maintained and if roads had any objections. Director Ruffner stated the developed section of Merrywood was borough maintained and the roads department did not supply any comments. Commissioner Fikes then asked the applicants if they had any type of garage on their house as it exists now. Ms. Frison replied the house is a small two-bedroom and has a two-car garage. Currently one half of the garage is being used as a living space, leaving a one-car garage. Commissioner Fikes asked if she was correct in understanding that they currently have a two-car garage and are proposing to build an unattached one car garage in the setback. Ms. Frison replied that is correct.

Commissioner Gillham asked if staff knows the actual distance between the house and the side property lines. How much room is there for the applicant to travel on either side to get to the backyard? Would there be room to push snow and for it to not go on to the neighbor's properties? Director Ruffner replied there is an as-built from 1997 on page E2-3 of the packet. The as-built shows there is 10.8' on the east side and on the west side there is 17.4' between the house and the side lot lines. Again, he noted the as-built is from 1997 and things may have changed since the as-built was produced.

Commissioner Slaughter noted the as-built in the packet is difficult to read. Is he correct in understanding that there is 81' between the house and the property line fronting Merrywood Ave.? Director Ruffner agreed the as-built is difficult to read. To him it looks like there is 81' from the house to the setback line on the west side of the property and a little bit more on the east side of the property. Commissioner Slaughter then stated it appears to him that there would be room to build the garage without having to go into the setback, however the as-built is old and difficult to read. Without some updated information or a new as-built clarifying the actual numbers he isn't sure where he stands on this.

Deputy Borough Attorney Todd Sherwood informed the commission he has some legal guidance for the commission that relates to this situation. The information comes from the decision related to the remand hearing that they will be discussing later in the meeting. It has to do with the standards and conditions the commission applies in these situations. As stated in the staff report there are three standards related to setback encroachment permits that need to be met.

1. The building setback encroachment may not interfere with road maintenance.
2. The building setback encroachment may not interfere with sight lines or distances.
3. The building setback encroachment may not create a safety hazard.

In the decision from the hearing officer related to the remand hearing, he stated he did not find there was substantial evidence to support several findings used by the commission to support their decision. He then noted there was a comment received regarding tonight's permit raising concerns related to road maintenance interference and safety. The findings in the staff report supporting the standard that the setback encroachment would not interfere with road maintenance are basically conclusionary statements. The commission may want to ask themselves whether there is substantial evidence to support the conclusion that standard has been met. The commission may wish to develop evidence to support the finding by asking questions of staff or the applicant. What is it about the fact (finding) that there is 11 feet left in the building setback? How does that ensure that road maintenance won't be negatively affected? How does that finding meet the standard? In the end the burden is on the applicant to show substantial evidence that the standards have been met. He is not saying the commission should vote one way or another, he is just saying that it would be wise legally to develop the record further before taking a vote.

Chair Brantley had a question for staff. He noted the snow removal issue has come up several times. It is his understanding that borough maintenance cannot push snow from clearing rights-of-way over the property lines on to private property. The snow must remain within the right-of-way. Setbacks are not for the borough to use for snow removal. Is his understanding correct. Director Ruffner replied that he is correct, snow that falls into public rights-of-way has to be stored within the right-of-way. Chair Brantley noted snow removal is often cited as a concern that road maintenance will be interfered with. Since the borough cannot use the setback for snow removal, he doesn't believe that would be a concern here. Other work that road maintenance does, such as pulling ditches does not happen within the setback either. Since road maintenance cannot use the setback for any of their maintenance activities, he doesn't see encroaching 9 feet into the setback causing road maintenance interference.

Commissioner Fikes asked staff how they came to the conclusion in finding 5, that there is not enough room to build. The applicants already have a 2-car garage and she wondered why they could not just add on to the existing garage? Director Ruffner replied the finding may have been derived from the as-built submitted by the applicant and the commission may wish to enquire about it to develop further evidence. Commissioner Fikes noted the as-built was not clear and was difficult to read. She is having a difficult time using the as-built as evidence to support this finding. She wondered if they should postpone making a decision and ask the applicants for further information. Deputy Attorney Steinhage replied the commission could postpone action on this matter until brought back by staff. It also might be helpful if the commission had specific questions or guidance for staff. Commissioner Fikes stated it would be helpful if they could have a clearer copy of the as-built and better diagrams of the proposed structure. That would be helpful in determining whether or not the standards have been met.

Deputy Attorney Sherwood noted the burden to supply substantial evidence that the standards have been met falls on the applicant. Staff is not responsible for developing evidence. Staff can be a resource to support and assist the applicant but the responsibility still remains with the applicant.

Chair Brantley asked if there were any other commissioners who supported the idea of postponement.

Commissioner Fikes stated she supported postponement as she doesn't feel they have enough evidence to support the conclusions that the standards have been met.

Commissioner Gillham agreed with Commissioner Fikes and would like more evidence showing that the standards have been met. She agrees that more information is needed before they can make a decision.

Chair Brantley stated he prefers to postpone action instead of denying the permit. If the commission were to deny the permit the applicants would have to wait a year before coming back with a new application.

Commissioner Slaughter agreed with postponing action and moved to withdraw his earlier motion. Commissioner Fikes as the second agreed. The motion was withdrawn.

MOTION: Commissioner Slaughter moved, seconded by Commissioner Venuti to postpone action on this item until brought back by staff

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes - 8	Brantley, Epperheimer, Fikes, Gillham, Morgan, Slaughter, Tautfest, Venuti
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ITEM 3. CONDITIONAL USE PERMIT – WILSON

KPB File No.	2023-28
Planning Commission Meeting:	September 25, 2023
Applicant / Owner:	Trevor Wilson
Legal Description:	T 5N R 10W SEC 19 SM KN 0870069 POACHER'S COVE PLANNED UNIT DEVELOPMENT AMENDED LOT 4
Physical Address:	45646 Spruce Avenue W.
KPB Parcel Number	05748938

Staff report was given by Resource Planner Morgan Aldridge.

Chair Brantley opened the item for public comment. Seeing and hearing no one wishing to comment, public comment was closed and discussion was opened among the commission.

MOTION: Commissioner Slaughter moved, seconded by Commissioner Fikes to adopt Planning Commission Resolution 2023-28 granting a conditional use permit pursuant to KPB 21.18 for the construction of a residential structure with the 50-foot Habitat Protection District of the Kenai River.

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes - 8	Brantley, Epperheimer, Fikes, Gillham, Morgan, Slaughter, Tautfest, Venuti
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ITEM 4. ORDINANCE 2023-23

AMENDING KPB 20.30.280 & KPB 21.06 REGARDING FLOODPLAIN MANAGEMENT TO ADOPT REQUIRED CHANGES TO REMAIN COMPLIANT WITH THE NATIONAL FLOOD INSURANCE PROGRAM

Staff report was given by River Center Manager Samantha Lopez.

Chair Brantley opened the item for public comment. Seeing and hearing no one wishing to comment, public comment was closed and discussion was opened among the commission.

MOTION: Commissioner Slaughter moved, seconded by Commissioner Epperheimer to forward to the Assembly a recommendation to adopt Ordinance 2023-23, amending KPB 20.30.280 & KPB 21.06 regarding floodplain management to adopt required changes to remain compliant with the National Flood Insurance Program.

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes - 8	Brantley, Epperheimer, Fikes, Gillham, Morgan, Slaughter, Tautfest, Venuti
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AGENDA ITEM F. PLAT COMMITTEE REPORT

Commissioner Slaughter reported the plat committee reviewed and granted preliminary approval to 4 plats,

AGENDA ITEM G. OTHER

ITEM 1. REMAND HEARING

KPB File No.	2022-121
Planning Commission Resolution:	2022-46
Applicant / Owner:	David & Nancy Whitmore
General Location:	GL Hollier Street / Ridgeway Area
Legal Description	Lot 10, Lake Estates Subdivision, Plat KN 1648
Parcel ID Number	057-250-01

Borough Attorney Walker Steinhage gave a brief review the remand decision with the commission. He noted the only thing that the commission needs to discuss tonight is the date for the hearing and whether or not they wish to reopen the record.

Commission Morgan disclosed that she had been contacted by a community member about this matter. The community member suggested that the hearing should be held as soon as possible and that the structure should be removed. She stated she did not respond to either of the suggestions and did not engage in discussion on this matter with the individual and she believes that she can still be impartial on this matter. Chair Brantley ruled that there was no ex parte communication that took place and that Commissioner Morgan can participate in the matter.

MOTION: Commissioner Gillham moved seconded by Commissioner Venuti to set the remand hearing for the October 9, 2023 Planning Commission meeting and to reopen the record to the parties and the public.

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes - 8	Brantley, Epperheimer, Fikes, Gillham, Morgan, Slaughter, Tautfest, Venuti
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AGENDA ITEM H. PUBLIC COMMENT/PRESENTATIONS

Chair Brantley asked if there was anyone from the public who would like to comment on anything not appearing on the agenda. No one wished to comment

AGENDA ITEM J. COMMISSIONER COMMENTS

Commissioner Gillham requested an excused absence from the October 23 Planning Commission meeting.

AGENDA ITEM K. ADJOURNMENT

Commissioner Venuti moved to adjourn the meeting at 8:58 P.M.

Ann E. Shirnberg
Administrative Assistant