

**ITEM 1 – BUILDING SETBACK ENCROACHMENT PERMIT
ALDER SLOPES 2011 ADDITION, TRACT D-1**

KPB File No.	2021-050
Planning Commission Meeting:	May 10, 2021
Applicant / Owner:	Andrew Peter, Homer, Alaska
Surveyor:	N/A
General Location:	Fritz Creek / Kachemak Bay APC

Parent Parcel No.:	172-150-24
Legal Description:	Tract D-1, Alder Slopes 2011 Addition (HM 2011-005)
Assessing Use:	Residential
Zoning:	Rural Unrestricted

STAFF REPORT

Specific Request / Purpose as stated in the petition: The request is to reduce the 20 foot building setback to a 10 foot building setback for a 30 foot length on Greenwood Road. The reduction in the building setback will allow a permanent structure to be constructed as shown on applicant’s sketch. The depiction of the building is drawn to scale, and located in the correct location on the plat. The applicant consulted with a local surveyor, and he advised “if it is a vacation of an easement the borough should be able to work with a sketch”.

The justification provided by applicant:

- Very low traffic; Greenwood Road is not borough maintained and reaches a dead end less than 1000’ from this location... 2 or 3 vehicles per day is the usual passage
- The road is narrow, and the improvements made for this project have already made snow removal easier. With that said, this snow removal is not paid by the borough as it is not maintained by the borough.
- The building location is on the “outside” of a curve; there is no visibility limitation caused by construction of this structure
- An although this should have minimal/no influence, my neighbor on Greenwood has a shed/shop well within the ROW (north of his home)... I have no complaints, nor do I want to cause issue; just stating a fact.

Site Investigation:

The permit is being requested for a future permanent structure to be constructed with access off Greenwood Road. Greenwood Road is constructed but not maintained by Kenai Peninsula Borough or State DOT. The property is outside of City limits. Photos have been provided by applicant. A site inspection was not performed by Staff.

Per KPB GIS data, the property is not subject to any wetlands. The terrain slopes to the southeast. Approximate slopes of 14 percent can be found within the dedication of Greenwood Road along Tract D-1. The parcel is 3.17 acres and contains a residence, driveway and other improvements.

Staff Analysis:

Tract D-1 of Alder Slopes 2011 Addition (HM 2011-05) notes and depicts a 20 foot building setback along the 60 foot right of way, Greenwood Road. The setback was originally put in place on this property on the parent parcel, Tract D, Alder Slopes, 1980 Addition (HM 81-62). The parent plat dedicated Greenwood Road in question and established the 20 foot building setback by plat note.

The property is located in the Fritz Creek area. Greenwood Road connects to East End Road, a State maintained right of way, at approximately milepost 12. The area included in the application is on Greenwood Road, approximately 1,685 feet from the intersection with East End Road. Per KPB GIS imagery, the constructed portion of Greenwood Road continues approximately another 1,140 feet. The dedicated but unconstructed portion appears to continue approximately another 767 feet.

The plat, Alder Slopes 2011 Addition (HM 2011-5), depicts a power line that is close to the proposed building location. The owner has been in contact with Homer Electric Association, Inc. (HEA) and has supplied a letter of non-objection. HEA notes the depiction was approximate. The letter from HEA states that no permanent structures are to be installed within an electrical distribution line easement. The application does not include a utility easement vacation. Staff recommends the owner work with HEA to ensure there are no violations of easements and that all safety protocols are followed.

Staff would like to note that while a sketch is allowed to be submitted with the application, per KPB 20.10.110(G) the resolution will require an exhibit drawing that shall be prepared, signed and sealed, by a licensed land surveyor.

Findings:

1. A 20 foot building setback was placed on Tract D of Alder Slopes 1980 Addition (HM 81-62) in 1981.
2. The 20 foot building setback was carried over to Tract D-1 of Alder Slopes 2011 Addition (HM 2011-5).
3. Tract D-1 is located on Greenwood Road.
4. Greenwood Road is a 60 foot wide right of way that is constructed in the area requested on the permit.
5. Greenwood Road is not maintained by the Kenai Peninsula Borough or any other government agency.
6. The permit is for a future permanent structure.
7. There are no low wet areas in the permit area.
8. Tract D-1 slopes downward to the southeast.
9. Tract D-1 is 3.17 acres in size.
10. Per KPB Assessing information, there are three lots with improvements located past the area in question.
11. Greenwood Road dedication connects with Summit Street, a 30 foot right of way north-south dedication that is not constructed.
12. No site inspection was performed.
13. Photos were submitted.
14. KPB Code Compliance does not support the issuance of the permit.
15. This portion of Greenwood Road can be included in the KPB road maintenance program when the road is improved to meet KPB road construction requirements.

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.
 2. The building setback encroachment may not interfere with sight lines or distances.
 3. The building setback encroachment may not create a safety hazard.
- 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	Comments not available at the time the staff report was prepared.
Code Compliance – Eric Ogren	<i>“Would not support building in the setback, since the structure is not built as of yet and it is known to violate code. Suggest to move the planned structure back 10 feet out of the setback.”</i>
Advisory Planning Commission	Within the Kachemak Bay APC. Information has been forwarded to the APC for review. Minutes were not received when the staff report was prepared. If minutes are available they will be included in the desk packet.

RECOMMENDATION:

Based on the standards to grant a building setback encroachment permit, **staff recommends** to deny the issuance of the permit and not adopt Resolution 2021-16.

If the Planning Commission approves the building setback permit, **staff recommends** that findings to support the permit be tied to the three standards and adopt Resolution 2021-16 thus granting the building setback encroachment permit, subject to compliance with KPB 20.10.110 sections F and G.

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

BUILDING SETBACK ENCROACHMENT PERMIT CHECKLIST
complete items are marked with a check box - ☒

20.10.110. – Building setback encroachment permits.

Platting staff comments: Staff reviewed the plat and all the items required by 20.10.110 were met, unless otherwise noted below:

- ☒ A. Unless otherwise regulated by city zoning ordinances of properties within its boundaries, any person desiring to construct, or cause, an encroachment within a building setback shall apply for a building setback encroachment permit to the planning department. Failure to obtain an encroachment permit is subject to remedies set forth in KPB 20.10.030.
- ☒ B. A permit fee shall be charged for building setback encroachment permit as provided in the current approved Kenai Peninsula Borough Schedule of Rates, Charges and Fees. A person who fails to apply for, and obtain, a building setback encroachment permit prior to an enforcement notice being issued pursuant to KPB 21.50.100 is subject to enforcement.
- ☒ C. All building setback encroachments, including those that pre-date the effective date of this ordinance, must apply for a building setback encroachment permit. Permits for building setback encroachments that existed prior to the effective date of this ordinance shall pay the same permit fee as applies to permits received prior to placement or construction of the encroachment.
- ☒ D. When the building setback encroachment permit application is complete, it will be scheduled for the next available planning commission meeting.
- ☒ 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.
 - 2. The building setback encroachment may not interfere with sight lines or distances.
 - 3. The building setback encroachment may not create a safety hazard.
- ☒ 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.
- ☒ 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 BUILDING SETBACK ENCROACHMENT PERMIT CHECKLIST
