

Kenai Peninsula Borough Planning Commission

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

May 10, 2021
7:30 P.M.
UNAPPROVED MINUTES

CALL TO ORDER

Chair Martin called the meeting to order at 7:45 p.m.
(Meeting started late due to Plat Committee running over time)

ROLL CALL

Commissioners Present

Syverine Bentz, Anchor Point/ Ninilchik
Paulette Bokenko-Carluccio, City of Seldovia
Jeremy Brantley, Sterling
Davin Chesser, Northwest Borough
Diane Fikes, City of Kenai
Pamela Gillham, Ridgeway
Blair Martin, Kalifornsky Beach
Virginia Morgan, East Peninsula
Robert Ruffner, Kasilof/Clam Gulch
Franco Venuti, City of Homer

With 10 members of an 11-member commission in attendance, a quorum was present.

Staff Present

Marcus Mueller, Land Management Officer
Scott Huff, Platting Manager
Ann Shirnberg, Administrative Assistant
Julie Hindman, Platting Specialist
Avery Harrison, Administrative Assistant

AGENDA ITEM B. ROLL CALL

AGENDA ITEM C. CONSENT AGENDA

- *3. Plat Granted Administrative Approval
 - a. Echo Section Line Easement Vacation Plat Associated With US Survey #14477
KPB File 2019-138
 - b. WhistleBait Estates Addition No. 1; KPB File 2020-143
- *6 Commissioner Excused Absences
 - a. Cindy Ecklund, City of Seward
- *7 Minutes
 - a. April 26, 2021 Planning Commission Meeting

Chair Martin asked if anyone present wanted to speak to or had concerns about any of the items on the consent or regular agendas. Hearing no one wishing to comment, Chair Martin returned the discussion to the Commission.

MOTION: Commissioner Carluccio moved, seconded by Commissioner Ruffner to approve the consent agenda and the regular agenda.

Seeing and hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes	10	No	0	Absent	1
Yes	Bentz, Brantley, Carluccio, Chesser, Ecklund, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti				
Absent	Ecklund				

AGENDA ITEM E. NEW BUSINESS

Chair Martin asked Ms. Shirnberg to read the procedure for public testimony.

AGENDA ITEM E. NEW BUSINESS

**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 given by Scott Huff

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 Commission	Planning	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.

Mr. Huff noted that after the staff report was prepared the KPB Roads Department did respond and they had no comment on this application.

END OF STAFF REPORT

Chair Martin open the meeting for public comment.

James Hollowell - 53370 Greenwood Rd. Homer, AK 99603: Mr. Hollowell is a landowner along Greenwood Road. Mr. Hollowell stated he opposed approving this permit. He noted where the applicant is proposing to build this new structure is very close to the road edge and believes it could be a potential hazard.

Commissioner Fikes asked Mr. Hollowell if he believed having the proposed building so close to the road would create an issue with road maintenance. Mr. Hollowell replied he believed it could potentially create an issue with plowing of the road. He referred to the map that was included with the notice sent out and he believes where the proposed building would go is close to the road, slightly downhill and could affect future road maintenance particularly in the wintertime.

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

MOTION: Commissioner Gillham moved, seconded by Commissioner Carluccio to approve PC Resolution 2021-16 granting a building setback encroachment permit to a portion of the 20' building setback adjoining the northern boundary of Tract D-1, Alder Slopes 2011 Addition (HM 2011-05), granted by Alder Slopes,

1980 Addition (HM81-62); KPB File 2021-050.

Commissioner Ruffner stated he was struggling with this application and was not sure how he was going to vote on this permit. He noted the commission sees a lot of building setback encroachment requests. Normally they are requested after the fact, when the building is already in place. In most cases when these are approved it is because it would be very difficult and costly to move the existing structure. In this case, the applicant is seeking permission ahead of time, before the structure is built. He is also just asking for 10 feet of the setback and not the whole 20 feet. While there is a history of approving building setback encroachments, he does agree with the Code Compliance Officers comments. The structure is not yet built and the commission should adhere to borough code.

Commissioner Fikes stated that she shares similar thoughts as Commissioner Ruffner. She is concerned about the potential for future road maintenance issues. She also has concerns about setting a precedent of going against borough code.

Commissioner Brantley stated he would feel better about approving the permit if there was something about the lot that required the structure to be built in that specific area. When looking at the topography he does not see a reason, such a steep incline or depression that would make the chosen location the only suitable one. With the information he has before him now he does not believe he will be supporting this request

Seeing and hearing no objection or further discussion, the motion was carried by the following vote:

MOTION FAILED BY UNANIMOUS VOTE

Yes	0	No	10	Absent	1
Yes					
No	Bentz, Brantley, Carluccio, Chesser, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti				
Absent	Ecklund				

AGENDA ITEM K. DIRECTOR'S COMMENTS

AGENDA ITEM L. COMMISSIONER COMMENTS

AGENDA ITEM M. ADJOURNMENT – Commissioner Carluccio moved to adjourn the meeting at 8:10 p.m.

Ann E. Shirnberg
Administrative Assistant