

**KENAI PENINSULA BOROUGH PLANNING COMMISSION
RESOLUTION 2021-28**

**A RESOLUTION ESTABLISHING THE APPEAL PROCEDURE FOR APPEALS OF
THE PLANNING DIRECTOR'S DECISION APPROVING IN PART AND DENYING IN
PART A NONCONFORMING USE APPLICATION FOR FIVE USES OF LOT 35A,
WITHIN THE C & H ESTATES LOZD**

WHEREAS, on July 6, 2021 the KPB Planning Director issued a decision approving in part and denying in part, a nonconforming use application for five (5) nonconforming uses of Lot 35A, C & H Estates, according to Plat 80-23, Homer Recording District (KPB Parcel ID #174-410-45).

WHEREAS, the applicant and a property owner within the C & H Estates Local Option Zoning District (LOZD) have appealed the planning director's decision;

WHEREAS, borough code does not provide an appeal procedure for an appeal of a planning director's nonconforming use decision to the planning commission; and

WHEREAS, this resolution will establish the procedure that the planning commission shall follow for the appeal hearing in this consolidated appeal matter;

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That the below procedure will govern the planning commission hearing for all three appeals filed in this matter concerning the July 6, 2021, decision on reconsideration issued by the KPB Planning Director. The two appeals will be consolidated and heard as a single appeal hearing.

SECTION 2. That the below procedure shall apply at the appeal hearing:

1. Chair will introduce the item on the agenda.
2. KPB Planning Director, Staff or Legal Counsel – presentation of issues and director's decision (10 minutes)
3. Appellant/Applicant Lang Opening Presentation (10 minutes)
4. Appellant Cutler Opening Presentation (10 minutes)
5. Lang Rebuttal & Closing (5 minutes)
6. Cutler Rebuttal & Closing (5 minutes)
7. KPB Rebuttal & Closing Statement (5 minutes)

Following the completion of closing statements, the planning commission may move into adjudicative session for deliberations. Following deliberations, the planning commission will, on record, either issue a decision at that time or provide notice to the parties that a written decision

will be issued at a later time. The planning commission may remand, affirm, reverse, or modify, in whole or in part, the appealed decision.

SECTION 3. The planning commission chair shall act as presiding officer. The parties are allowed to have witnesses and may be represented by counsel. Witness testimony shall be counted against the time of the party calling the witness. The parties will not be allowed to cross-examine other witnesses during the hearing. The presiding officer is authorized to grant or deny a request for a continuance or postponement of the appeal hearing to a later date. A party may not request more than one continuance in this matter and the presiding officer shall deny any request for a continuance made within 10 days of the date of the scheduled appeal hearing, unless the party requesting the continuance provides satisfactory evidence of a family or medical emergency necessitating a continuance on short notice. If the hearing date is continued, the planning department shall send, by first class U.S. Mail and e-mail if known, notice to the appellants, the applicant, and any other parties who have entered an appearance in the matter.

SECTION 4. With the potential exception of a request for a continuance, there will be no pre-hearing motion practice. All issues or objections must be raised during the hearing.

SECTION 5. Interested parties may submit any information the party deems relevant to the planning commission's deliberations in this matter. Written statements and other documents or information may be submitted to the planning commission on or before _____ by: (i) emailing the items to planning@kpb.us; or (ii) delivering, via either in-person or U.S. Mail delivery, physical copies of the information to the planning department administrative assistant located on the third floor of the borough building at 144 N. Binkley St. Soldotna, Alaska 99669.

SECTION 6. That the consolidated appeal hearing is scheduled for _____, 2021, at ____:____ PM, unless continued by order of the presiding officer.

SECTION 7. That this resolution shall take effect immediately upon its adoption.

ADOPTED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH THIS _____ DAY OF _____, 2021.

Blair J. Martin, Chairperson
Planning Commission

ATTEST:

Ann Shirnberg
Administrative Assistant