

To: Interested Persons

From: Sarah Whiteley, Deputy City Clerk *se*

Date: August 4, 2015

Re: Administrative Hearing Officer | Appeal Case No. 15-01

In accordance with WMC 16.36.070.A, please be advised that on July 29, 2015, an *Application for Appeal* of an action by the Wasilla Planning Commission, was received by the City Clerk in regard to the following:

Appeal Case No. 15-01:

- Interested Persons Filing the Appeal: **Noel Kopperud & Alex Kopperud**
- Appellant's Representative: **Self**
- Planning Commission Resolution Serial No. 15-10(AM)
- Decision appealed from: Variance #15-01 was approved by the Wasilla Planning Commission on July 14, 2015 (Resolution No. 15-10AM). The variance approval was for a 19.5 foot variance from the required 25 foot front yard setback and a 33 foot variance from the required 75 foot shoreline setback in order to construct a single-family dwelling on Tract 1, Parcel 3, Lakeshore 1963 Subdivision.

The record of appeal is due from the City Planner on August 27, 2015. After that time the record will be available for public review during business hours at the Office of the City Clerk, or you may visit www.cityofwasilla.com/appeal to view an electronic copy. To request a paper copy of the written record, please submit your request to me in writing; include your physical, mailing, email addresses, and your phone number. A copy charge of .35 cents per page will apply.

Within the next several weeks an administrative hearing officer will be appointed to this case. After that time, you will receive a notice informing you of the date written arguments are due in the City Clerk's Office, and the date and time of the appeal hearing.

Please contact our office with questions. We are available by email at clerk@ci.wasilla.ak.us or by phone at **907.373.9090**.

Attachment: Application for Appeal referenced above



CITY OF WASILLA • OFFICE OF THE CITY CLERK • 290 E. HERNING AVENUE • WASILLA, AK 99654
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**APPLICATION FOR APPEAL
OF A DECISION OR ORDER MADE BY THE
CITY OF WASILLA PLANNING COMMISSION**

Any "interested person" as defined in WMC 16.36.010, adversely affected by a decision or order of the Planning Commission, may appeal the decision or order within fifteen (15) calendar days of the action. This application, along with a \$500 **non-refundable** filing fee, and a \$500 deposit (total \$1,000), must be submitted to the City Clerk.

Attach a letter to this application which clearly and concisely states with **specificity** the grounds of the appeal. If applicable, cite specific sections of the Wasilla Municipal Code, which you believe conflict with the decision or order of the Planning Commission.

For information on the appeal process, please see Wasilla Municipal Code Chapter 16.36, or contact the City Clerk.

Interested Person Filing the Appeal (Per WMC 16.36.010): Noel Kopperud & Alex Kopperud

Appellant's Representative: Self

Mailing Address: P.O. Box 4470, Palmer, Alaska 99645

Day Phone No.: 745-1439 **Cell Number:** _____ **Fax Number:** _____

Email Address: kopp907@gmail.com

Planning Department Case Number: V15-01 **Planning Commission Resolution No.** 15-10 AM

Date of Decision or Order of the Planning Commission: July 15, 2015 Chairman's signature

Deposit Refund: Provided you are entitled to a refund of a portion of the deposit, to whom do you wish the refund check to be made payable to: Noel Kopperud (above address)

Appellant's Signature: *Noel Kopperud* **Date:** 7.28.2015
Alex Kopperud
Printed Name: Noel Kopperud, Alex Kopperud

RECEIVED

JUL 29 2015

Received in City Clerk's Office by: Sarah Jane White **Date:** July 29, 2015
Fees: \$500 non-refundable filing fee (receipt attached) \$500 deposit paid (receipt attached)
City Clerk's Appeal Case Number: 15-01

Statement of Reasons and Grounds in Support of Noel and Alex Kopperud's Appeal of City of Wasilla Planning Commission Resolution Serial No. 15-10 (AM)

1. In letters to the planning commission dated June 1 and July 7, 2015, Noel Kopperud, as a member of the public and an adjacent landowner, provided written summary of the reasons why variance V15-01 was not in the public interest and did not comply with the criteria and conditions specified by Wasilla Municipal Code (WMC) 16.28.110. Those letters are attached hereto and incorporated as an integral part hereof. Additional letters submitted by various agencies and members of the public directly address the failure of the proposed variance application to meet the five standards and five conditions required for the granting of a variance under WMC 16.28.110. Both Noel and Alex Kopperud, who resides in the house adjacent to the property for which the variance is sought, testified and provided exhibits at public hearings on this matter. There is not a substantial factual basis in the record which establishes that the applicant proved he met the standards and conditions required by WMC 16.28.110 for the variance set out in Resolution no. 15-10 (AM).
2. The Wasilla Planning Commission abused its discretion and failed to act in accord with its rules and procedures as set forth in WMC 16.16. The commission failed to give proper notice and provide a fair hearing, such that the due process rights guaranteed appellants and other members of the public by the Alaska and US constitutions were violated. The applicant failed to post public notice on the lot as required by WMC 16.16.040 (A)(2)(f). After the first public hearing, the commission failed to act on the application as required in the Wasilla code. Thereafter, the applicant failed to make an application for an amended variance. The applicant was allowed by the commission to make last-minute submissions into the record with letters and documentation that was not made available to the public in accordance with the commission's rules. Such failure to follow the commission's rules about timely submission of a new and identifiable application deny the public a reasonable opportunity to respond to the variance request.
3. The planning commission's variance to the area-wide shoreline setback provision, incorporated in MSB code 17.36.210 and WMC 16.24.030 (C)(3), violates the equal protection clause of the Alaska and US constitutions.
4. The variance granted in this matter violates the Matanuska-Susitna Borough's area-wide comprehensive plan for Wasilla Lake, as well as the City's comprehensive plan for the same waterbody.
5. Resolution no. 15-10 (AM) is based upon an erroneous legal conclusion that denial of the variance application would constitute a taking or condemnation of applicant's property.

6. Resolution no. 15-10 (AM) is based upon an erroneous legal conclusion that every platted lot in the City of Wasilla must have sufficient variances granted to allow construction of a house thereon.

7. Resolution no. 15-10 (AM) is based upon two charts provided by the planning department for use by the commission. Those charts contain substantial factual errors and are misleading.

8. Resolution no. 15-10 (AM) contains findings and conditions that are arbitrary and conclusory. The findings are not supported by any review of substantial factual evidence on the record that would give reasonable notice of the rationale for the findings.

9. The concerns of the public were not considered by the Wasilla Planning Commission and there is no substantial factual basis on the record to reflect such consideration. In certain cases the commission was directed by the planning staff to disregard concerns expressed by the public.

10. The variance application filed in this matter is not the variance that was approved by Resolution no. 15-10 (AM).

11. The planning commission allowed and encouraged applicant to change his application throughout the proceedings, where the public had no meaningful opportunity to be heard or participate.

12. Such ad-hoc negotiation with the applicant by the commission and applicant violated due process rights of the public and were inconsistent with the Wasilla Municipal Code and basic notions of fundamental fairness.

13. After the planning commission took the variance under consideration at the second public hearing, the commission was deadlocked with one member absent. The record reflects that the commission was coerced into proceeding with granting of the variance without a majority.

The decision reached by the planning commission and reflected by Resolution no. 15-10 (AM) is the result of an illicit compromise and is not based upon any substantial factual basis in the record.

14. There is no substantial factual consideration on the record which reflects the commission's weighing of the public detriment caused by vacating the shoreline setback on applicant's property, in exchange for his demand for a site to build a large house in the setback area.

15. The record, taken as a whole, reflects that the Wasilla Planning Commission granted the variance in this matter based upon applicant's statement of his needs, pecuniary inconvenience, and other personal considerations of the applicant rather than an objective factual consideration

of the public interest. The variance was sought to relieve pecuniary inconvenience in violation and does not comply with 16.28.110 (C)(5).

16. The planning commission did not follow the variance standard provision of WMC 16.28.110 (C) (3) requiring the commission to find that no reasonable use of the property could be made without the granting of a variance. The record reflects that the applicant had owned the property for over three years prior to making the application for the variance, and was making reasonable use of it during this time. The commission found that the applicant knew or had constructive notice of all of the size limitations, plat errors, and use restrictions on the property when he bought it. Under the circumstances, there is no substantial factual basis in the record for the commission to find that the applicant's personal plight was such that he could make no reasonable use of the property unless he was able to build a home of the size approved by the variance in the shoreline setback area.

17. Resolution no. 15-10 (AM) is based upon the erroneous legal conclusion that the planning commission could give no consideration to the fact that applicant owns the contiguous lot and has used it in conjunction with the parcel for which the variance is sought. At all times, the applicant has had within his exclusive control the ability to minimize the impact on the public shoreline setback area by re-platting or other options which were not considered by the planning commission.

18. Resolution no. 15-10 (AM) is based upon the erroneous legal conclusion that no consideration should be given to construction in the shoreline setback which adversely impacts the view of property adjacent to the parcel for which the variance is sought.

19. Resolution no. 15-10 (AM) is a governmental action which constitutes a taking of an established view that is entirely within a protected shoreline setback area and is an action inconsistent with the requirements of WMC 16.28.110 (D)(5).

20. The Wasilla Planning Commission reviewed substantial facts that proved the lot for which the variance was sought had a tiny building site, was extremely steep and problematic, and that Wasilla Lake would be polluted by drainage from applicant's proposed construction. Applicant failed to meet his burden of proof that construction of a building the size approved by Resolution no. 15-10 (AM) could and would be constructed in such a manner that the building challenges are resolved before construction commences. There are no substantial facts on the record which indicate the planning commission was able to resolve any of the site building challenges in accord with the mandates of WMC 16.28.110 and other State, Borough, and City anti-pollution and related laws. The commission gave no consideration on the record to the public comments requiring that such concerns be addressed before any variance was approved. The commission *did* recognize the futility of attempting after-the-fact creation and enforcement of appropriate public safeguards with respect to the proposed building in the Wasilla Lake shoreline setback area.

21. The Wasilla Planning Commission based its determination of the appropriate shoreline setback for Resolution no. 15-10 (AM) on an alternate basis than the shoreline setback ordinance created in MSB code 17.36.210 and WMC 16.24.030 (C)(3). Portions of Wasilla Lake are outside of the City and within the Borough, while other portions are in the City of Wasilla. The Wasilla Planning Commission is a quasi-judicial agency without authority to legislate or modify existing setback standards for a particular area or property on Wasilla Lake, or any other waterbody in the Matanuska-Susitna Borough. Any such effort by the planning commission is void and cannot, as in this case, serve as a basis for determining the standard for granting of a variance application. Such actions constitute an illicit effort to enact spot zoning in violation of the due process and equal protection rights of all other members of the public who rely upon enforcement of shoreline setbacks, as well as Wasilla Lake waterfront property owners who must comply with enacted shoreline restrictions.

22. The variance application does not include a drawing that complies with the Wasilla code. A professionally-developed site plan would include more elevation details and survey points as well as additional required information. The application also included substantial false and misleading factual information which should have required a determination by the planning commission to deny the application and require re-submission at its first consideration of the filed application document. Failure to require such information of the applicant creates a substantial hardship for the public to determine the impact of the proposed variance on the lake and adjacent properties. Such inadequate information deprives all interested parties of reasonable notice about the variance and an opportunity to be heard on the impacts caused by the proposed building within the shoreline setback area. Such failure to provide reasonable notice of the variance under consideration is a violation of the commission's rules under WMC 16.16 and due process rights guaranteed by the Alaska and US constitutions.

23. The initial application received approval in all respects from the planning staff. The review did not address any of the concerns of the neighbors, public, or others submitted in written response to the notice. Such consideration is required for approval by WMC 16.16.050. In addition, the staff report never addressed the specific intention of the applicant to install a bed and breakfast in accord with WMC 16.16.060(H), in a congested cul-de-sac area with virtually no off-street parking. While the record reflects some of these issues raised by the public were addressed by the commission, the general approval requirements under WMC 16.16.050 were never reviewed on the record and remained unresolved in Resolution no. 15-10 (AM).

By: Planning
Public Hearing: 06/09/15
Public Hearing Continued: 07/14/15
Adopted: 07/14/15

**WASILLA PLANNING COMMISSION
RESOLUTION SERIAL NO. 15-10(AM)**

A RESOLUTION OF THE WASILLA PLANNING COMMISSION APPROVING VARIANCE NO. V15-01 ALLOWING AN 19.5 FOOT VARIANCE FROM THE REQUIRED 25 FOOT FRONT YARD SETBACK AND A 33 FOOT VARIANCE FROM THE REQUIRED 75 FOOT SHORELINE SETBACK IN ORDER TO CONSTRUCT A SINGLE-FAMILY DWELLING, LOCATED ON TRACT 1, PARCEL 3, LAKESHORE 1963 SUBDIVISION IN THE MULTI FAMILY ZONING DISTRICT.

WHEREAS, William Starn submitted an application for a variance on May 12, 2015, along with a site plan and application fee; and

WHEREAS, notice of the application was mailed to all property owners within a 1,200 feet radius and review agencies and the Planning Commission as required by §16.16.040(A)(2) of the Wasilla Municipal Code; and

WHEREAS, a notice of the Planning Commission public hearing was published in the Frontiersman on June 2, 2015; and

WHEREAS, the Wasilla Planning Commission conducted a public hearing on June 9, 2015 regarding the requested variance taking into account the information submitted by the applicant, the information contained in the staff report, written and verbal testimony, the applicable provisions of the Wasilla Municipal Code and Comprehensive Plan, and other pertinent information brought before them; and

WHEREAS, the Wasilla Planning Commission continued the public hearing until the July 14, 2015 meeting; and

WHEREAS, a notice of the continued Planning Commission public hearing was published in the Frontiersman on July 7, 2015; and

WHEREAS, notice of the continued public hearing was mailed to all property owners within a 1,200 feet radius and review agencies and the Planning Commission as required by §16.16.040(A)(2) of the Wasilla Municipal Code; and

WHEREAS, the Wasilla conducted the continued public hearing on July 14, 2015 regarding the requested variance taking into account the information submitted by the applicant, the information contained in the staff report, written and verbal testimony, the applicable provisions of the Wasilla Municipal Code and Comprehensive Plan, and other pertinent information brought before them; and

WHEREAS, the Wasilla Planning Commission determined that a request for a 45-foot shoreline setback did not meet the variance criteria; and

WHEREAS, the Wasilla Planning Commission determined that a 42-foot shoreline setback did meet the variance criteria; and

WHEREAS, the Wasilla Planning Commission adopted Findings of Fact, attached as Exhibit A, summarizing basic facts and reasoning of the Commission.

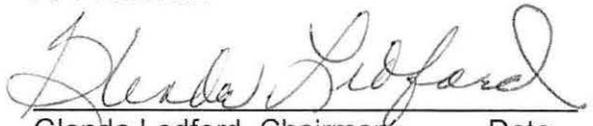
NOW, THEREFORE BE IT RESOLVED, that the Wasilla Planning Commission hereby approves this application with the Findings of Fact, attached as Exhibit A and incorporated herein, with the following conditions:

1. Prepare a landscape plan to the City Planner for review and approval that re-vegetates the area between the structure and the high-water mark of Wasilla Lake in accordance with the Property Owner's Guide to Shoreline Landscaping in the Matanuska-Susitna Borough and any other requirements necessary to ensure adequate protection of the lake and shoreline.
2. Design the site appropriately to prevent direct runoff from the lot into the lake.

3. Obtain all necessary permits and approvals for the installation of any necessary water/sewer infrastructure.
4. Provide adequate shoreline vegetation or other stabilization methods at the water's edge to prevent additional erosion.
5. Obtain all necessary approvals prior to working on the water's edge.

ADOPTED by the Wasilla Planning Commission on July 14, 2015.

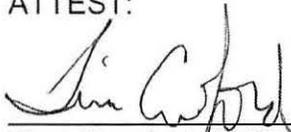
APPROVED:


Glenda Ledford, Chairman

Date

7/15/15

ATTEST:


Tina Crawford/AICP, City Planner

VOTE: Yes: Dean, Means, Ledford
No: Pinard

EXHIBIT A
Wasilla Planning Commission Resolution 15-10
FINDINGS OF FACT – 16.28.110

§16.28.110(A) Application.

An application for a variance must be submitted to the planner. The application must be accompanied by a site plan of the relevant part of the parcel or lot. The planner may require that the site plan be produced by a registered professional engineer or land surveyor. The site plan shall depict all information relevant to the variance request.

Finding: A complete application was submitted to the Planning Department on May 12, 2015.

§16.28.110(B) Variance requests must be heard by the commission. Notice, comment period and hearing procedures follow the format outlined in WMC16.16.040.

Finding: The public hearing was scheduled in a timely manner for the next available Planning Commission meeting and the hearing format is consistent with the requirements in WMC 16.16.040(E). Public notice was mailed May 22, 2015 to all properties within a 1,200' radius, allowing for the proper number of days in which to comment in accordance with 16.16.040. Hearing procedure shall follow the criteria outlined in 16.16.040(A).

§16.28.110(C) Variance Standards

A variance may be granted only if:

1. The conditions upon which the variance application is based do not apply generally to properties in the district or vicinity other than the property for which the variance is sought;

Finding: The small, triangular shape does not apply generally to properties in the district or vicinity.

2. Such conditions arise out of natural features inherent in the property such as shape or topographical conditions of the property or because of unusual physical surroundings or such conditions arise out of surrounding development or conditions;

Finding: The parcel is in the original platted configuration from 1963.

3. Because of such conditions the strict application to the property of the requirements of this chapter will result in an undue, substantial hardship to the owner of the property such that no reasonable use of the property could be made;

Finding: Without approval of a variance, the parcel would be basically unbuildable since the Land Development Code requires a 25' front yard setback and a 75' shoreline setback.

4. The special conditions that require the variance are not caused by the person seeking the variance, a predecessor in interest, or the agent of either; and

Finding: The applicant did not cause the conditions that require a variance.

5. The variance is not sought solely to relieve pecuniary hardship or inconvenience.

Finding: With the amendment to a 42-foot setback, the variance is not sought to relieve a pecuniary (financial) hardship or inconvenience. Without any variance, no structure may be built on the lot.

§16.28.110(D) If a property qualified for a variance under this section, the variance granted must meet the following conditions:

1. The deviation from the requirement of this title that is permitted by variance may be no more than is necessary to permit a reasonable use of the lot;

Finding: With the amendment to a 42-foot setback, the variance request is the minimum necessary to permit reasonable use of the parcel. The applicant is proposing a single-family dwelling.

2. The variance will not permit a land use that is prohibited by this title;

Finding: The proposed residential use is not prohibited as a residential use is permitted in a Residential Multifamily (RM) zoning district.

3. The variance is in keeping with the spirit and intent of this chapter and the requirements from which relief is sought;

Finding: The variance is in keeping with the spirit and intent of the chapter.

4. The variance will not be detrimental to the public health, safety or welfare; and

Finding: With the amendment to a 42-foot setback, the variance will not be detrimental to public health or welfare.

5. The variance will not significantly adversely affect other property.

Finding: With the amendment to a 42-foot setback, the requested variance will not significantly adversely affect other properties in the area.

