

By: Planning
Public Hearing: 08/13/19
Adopted: 08/13/19

**WASILLA PLANNING COMMISSION
RESOLUTION SERIAL NO. 19-10**

A RESOLUTION OF THE WASILLA PLANNING COMMISSION DENYING VARIANCE NO. V19-02 ALLOWING A VARIANCE OF 41.8 FEET TO THE REQUIRED 75 FEET SHORELINE SETBACK FROM THE WATER'S EDGE TO ALLOW A 33.2 FEET SHORELINE SETBACK THAT WILL BE RETAINED WITH EXISTING NATIVE VEGETATION. THE VARIANCE WILL ALLOW THE 41.8 FEET WITHIN THE SHORELINE SETBACK THAT WAS CLEAR-CUT OF NATIVE VEGETATION DURING CONSTRUCTION OF A RESIDENTIAL DUPLEX TO REMAIN CLEARED OF VEGETATION AND ONLY BE REPLANTED WITH GRASS AND ENCLOSED WITH A FOUR-FOOT FENCE. THE SUBJECT PROPERTY IS LOT 3, BLOCK 2, LAKESHORE 1960 SUBDIVISION.

WHEREAS, Robert D. Yundt, II, Agent, submitted an application for a variance on July 19, 2019, 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 August 4, 2019; and

WHEREAS, the Wasilla Planning Commission conducted a public hearing on August 13, 2019 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 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 denies this variance application with the Findings of Fact, attached as Exhibit A and incorporated herein.

ADOPTED by the Wasilla Planning Commission on August 13, 2019.

APPROVED:

 
Eric Bushnell, Chair Date

ATTEST:


Tina Crawford, AICP, City Planner

VOTE: YES: Brown, Dean, and Velock
NO: Bushnell

EXHIBIT A
Wasilla Planning Commission Resolution 19-10
FINDINGS OF FACT – 16.33.090 and 16.28.110

16.33.090 **Hardship waiver – Variance.**

(A) Pre-Application Conference.

The applicant shall schedule a pre-application conference with the city planner to review the proposed waiver or modification.

Finding: The applicant did not schedule a pre-application conference.

(B) *Application and Site Plan.* After the pre-application conference, the applicant shall submit an application for the waiver or modification to the city planner with the appropriate application fee. The application shall include a site plan depicting all information relevant to the requested waiver or modification. The city planner may require that the site plan be produced by a registered professional engineer, architect, landscape architect or land surveyor.

Finding: The application and site plan were submitted by the applicant on July 19, 2019. In addition to the standard variance requirements, staff required submittal of an as-built survey showing the existing foundation of the building and the edge of clearing to accurately reflect the amount of clearing and properly advertise the variance request. The as-built survey was provided on July 26, 2019.

(C) *Public Hearing.* The planning commission shall hold a public hearing on the application. The notice, comment period, and hearing procedure shall be the same as provided in WMC 16.16.040 for a conditional use.

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. Public notice was mailed July 30, 2019 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).

(D) *Decision.* The planning commission may approve an application only if the commission finds that the application meets all of the following standards:

- 1. Either (a) natural vegetative features within or adjacent to the property, or the shape, topography, drainage or other physical features of the property, make compliance with the landscaping requirements of this title impracticable or contrary to the public interest; or (b) compliance with the landscaping requirements of this title will have an adverse effect on other property;**

Finding: This criterion is not met. There are no vegetative, topography, or physical features of the property that make compliance impracticable or contrary to the public interest and compliance will not have an adverse effect on other properties. Also, the lot is similar in size to other lots along Westpoint Drive.

Alternatively, compliance with the land clearing restrictions will enhance the quality of the lake. The vegetation within the shoreline protection area preserves natural beauty and provides habitat and food for sustainable fish and wildlife populations, bank stabilization, erosion control, and filtering of surface runoff into the Wasilla Lake. (Information obtained from *A Property Owner's Guide to Shoreline Landscaping in the Matanuska-Susitna Borough – Revised 2003* and *Streambank Revegetation and Protection – A Guide for Alaska – Revised 2005*; see excerpts in staff supplemental information.)

- 2. The special conditions that support the waiver or modification are not caused by the person seeking the waiver or modification, a predecessor in interest, or the agent of either;**

Finding: This criterion is not met. The requested waiver/modification is necessary due to the clearing by the applicant while constructing the duplex. The construction of a single-family home or a smaller duplex appears feasible without the need for additional clearing.

- 3. The waiver or modification is not sought solely to relieve pecuniary hardship or inconvenience;**

Finding: This criterion is not met. The variance application did not contain any substantive information to support the need for a waiver/modification to allow the area within the shoreline protection area to remain cleared of vegetation except grass. References by the applicant to wildland-urban interface areas, clearing requirements from insurance companies, and building inspection requirements do not apply to the duplex on this lot (see "Background Information" section above).

4. The waiver or modification will not significantly affect adjacent property or water bodies; and

Finding: This criterion is not met. The requested waiver/modification will adversely affect Wasilla Lake since the purpose of retaining the native vegetation within the shoreline protection area is to provide habitat and food for sustainable fish and wildlife populations, bank stabilization, erosion control, and filtering of surface runoff before it enters the lake.

5. The waiver or modification is consistent with the spirit and intent of this chapter.

Finding: This criterion is not met. The requested waiver/modification is not consistent with the spirit and intent of the landscaping chapter. The intent of the shoreline protection area is to preserve existing vegetation that supports the health of the lake and the wildlife and fish that access the shoreline area.

16.28.110 Variance.

(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 July 19, 2019.

(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 July 30, 2019 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).

(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: This criterion is not met. The lot size and shape are similar to the majority of other lots along Westpoint Drive and the vicinity (see comparative table in staff supplemental information). Based on the site plan submitted with the land use permit, the duplex met the minimum required setbacks with the approved 10% administrative variance.

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: This criterion is not met. There are no natural features on the lot that affect development on the lot other than being lakefront.

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: This criterion is not met. There are no natural features inherent in the property that prevent the owner from revegetating the lot.

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: This criterion is not met since the conditions requiring the variance were caused by the person seeking the variance. As indicated above, the site plan submitted with the land use permit showed that the duplex met the minimum required setbacks (with approval of a 10% administrative setback).

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

Finding: This criterion is not met. The variance appears to be sought to relieve the inconvenience and cost of revegetating the area within the shoreline protection area.

(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: This criterion is not met since the variance request is not the minimum necessary to permit reasonable use of the parcel. The duplex foundation was constructed outside of the required shoreline protection area setback and the extent of the actual clearing was not required to construct the duplex.

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

Finding: This criterion is met since the existing duplex is a permitted use in the 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 not in keeping with the spirit and intent of the chapter. WMC 16.33.050(C)(2) clearly states that "...Native vegetation shall be preserved and there shall be no clearcutting or placement of fertilizer in any area of a lot that is within 75 feet of the mean high water mark of any body of water, including a lake, stream, creek, or river."

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

Finding: This criterion is met since the variance will not be detrimental to public health or welfare.

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

Finding: This criterion is not met. The requested variance will impact the quality of the lake, the food and habitat for sustainable wildlife, may increase erosion, and will provide less filtering of runoff into the lake that will ultimately impact other properties along the lake.

16.16.040(A)(6)

Decision. The commission shall decide to deny, approve or approve with conditions the proposal or appeal. The burden of proof shall be on the applicant. The commission's decision may be made immediately following the public hearing portion of the commission meeting. The decision of the commission shall set forth the facts it finds relevant to its decision and the reasons for its decision. The effective date of the decision is the date the findings and the reasons are set out in writing and signed by the commission chairperson or the chairperson's designee.