

By: Sandra Swanger-
Jensen
Introduced: April 3, 2017
Public Hearing: April 17, 2017
Action: Approved

**MATANUSKA-SUSITNA BOROUGH
PLANNING COMMISSION RESOLUTION NO. 17-13**

A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH PLANNING COMMISSION APPROVING A VARIANCE TO THE WATERBODY SETBACK FOR A TWO STORY RECREATIONAL CABIN LOT 11B, BURNETT SUBDIVISION ON SHEPHERDS ISLAND; PALMER RECORDING DISTRICT; WITHIN TOWNSHIP 17 NORTH, RANGE 3 WEST, SECTION 30, SEWARD MERIDIAN.

WHEREAS, an application for a variance from the setback requirement of MSB 17.55.010(A) AND 17.55.020(A) has been received to allow a two-story recreational cabin to be located at least 60 feet from the high water mark of Big Lake, five feet from the two public use easements for Lot 11B, Burnett Subdivision on Shepherds Island; within Township 17 North, Range 3 West, Section 30, Seward Meridian; and

WHEREAS, the Planning Commission conducted a public hearing on April 17, 2017 on this matter; and

WHEREAS, the Planning Commission reviewed the application, associated materials, and the staff report containing findings of fact and conclusion of law; and

WHEREAS, the subject parcel is a Legal Nonconforming Lot consisting of .28 acres; and

WHEREAS, lot 11B as a Legal Nonconforming lot was platted as Burnett Subdivision filed as Plat No. W-62, recorded on April 30, 1959 as 311-1959-W-62; and

WHEREAS, the lot was created prior to statehood of Alaska (1959) and prior to the Matanuska-Susitna Borough becoming incorporate as a second class borough in 1964; and

WHEREAS, the proposal maximizes the shoreline setback distance of 60 feet with the proposed location of the cabin from the high water mark, while also maintaining a five foot setback on the north and west property line from the two public use easements to assist in reducing the impact to the shoreline; and

WHEREAS, the subject lot is impacted by two public use easements requiring a minimum of a 25 foot setback from the north and west property line, a 10 foot setback from the east side property line, and 75 foot shoreline setback, leaving an unusually small buildable area of 53 square feet; and

WHEREAS, the subject structure is a two-story recreational cabin; and

WHEREAS, staff conducted an analysis of 13 lots on the island upon which the subject parcel is located. The analysis only looked at waterbody setbacks and did not consider side lot line or public-use-easement setbacks. Borough assessment records and LiDAR-derived water break line and building footprint data were used for the analysis; and

WHEREAS, the analysis examined whether the other structures in the surrounding area currently and legally enjoy a similar use; and

WHEREAS, four out of 13 residences on the island are considered to commonly enjoy a similar use; and

WHEREAS, nine out of 13 residences are single story and are not similar to the proposed use; and

WHEREAS, of the 13 parcels analyzed, three of the residences are likely built in violation of waterbody setbacks and should not be considered as uses that are commonly enjoyed; and

WHEREAS, it is not feasible to maintain a 75 foot setback without infringing on a public use easement due to the size of the lot; and

WHEREAS, lot 11B as a Legal Nonconforming Lot was platted as Burnett Subdivision filed as Plat No. W-62, recorded on April 30, 1959 as 311-1959-W-62; and

WHEREAS, the lot was created prior to statehood of Alaska (1959) and prior to the Matanuska-Susitna Borough becoming incorporate as a second class borough in 1964; and

WHEREAS, the borough code MSB 17.65 Variances was adopted to grant relief to property owners whose lots are impacted by topographic constraints and/or existing land use regulations thereby making the lot undevelopable; and

WHEREAS, the subject lot is impacted by the two public use easements requiring a minimum of a 25 foot setback from the north and west property line, a 10 foot setback from the east side property line, and 75 foot shoreline setback leaving an unusually small buildable area of 53 square feet; and

WHEREAS, the subject lot is surrounded by privately owned upland undeveloped lots to the north consisting of .31 acres; those lots on the water front are developed with a few undeveloped ranging in lot size from .32 up to .44 acres; and

WHEREAS, the structures on these lots are a mixture between single story, multi-story and out buildings. The habitable structures vary in age when built from 1960 to 2006. The cabins in the area appear to be recreational use; and

WHEREAS, the lot is located within the Big Lake Community Council Boundary and the Big Lake Comprehensive Plan (Update 2009) (Plan) is applicable to the subject property; and

WHEREAS, the Big Lake Comprehensive Plan does not specifically address shoreline setbacks, setbacks from rights-of-way, or substandard lots, but the Plan does describe two specific goals; and

WHEREAS, under *Regulation and Enforcement of Issues* in strategy 6 of the Plan offers general suggestions to help achieve the land use goals, such as permitting and general enforcement of existing regulations; and

WHEREAS, within the Community Council Boundary there are four types of areas with the predominance character to remain residential/settlement: (1) Town Center Residential, (2) Close-In Residential, (3) Dispersed Residential, and (4) Conservative Residential. The subject property is identified as: *Dispersed Residential*, rural density, which is the primary land use in community; and

WHEREAS, the person seeking the variance acquired the property by a Quitclaim Deed December 2011, which the property had a current shoreline setback violation; and

WHEREAS, the person seeking the variance did not create the nonconforming lot; and

WHEREAS, the property cannot accommodate a structure under the borough code minimum setback requirements from a public use easement and the Shoreland Setback; and

WHEREAS, the buildable area is an unusually small area and is approximately 53 square feet in size; and

WHEREAS, the lot cannot accommodate residential home or cabin without requiring a variance; and

WHEREAS, residential or recreational structures are allowed on this lot; and

WHEREAS, the lot is not in a Special Land Use District; and

WHEREAS, the variance is sought to enable the applicant to utilize the recreational property and enjoy commonly as others; and

WHEREAS, the property does not have sufficient buildable area to accommodate a reasonable use and a variance is the only viable remedy; and

NOW, THEREFORE, BE IT RESOLVED that the Matanuska-Susitna Borough Planning Commission hereby adopts the aforementioned findings of fact and makes the following conclusions of law:

1. There are unusual conditions or circumstances applicable to this property for which the variance is sought, as the subject lot is unusually small and impacted on three sides by a waterbody and two public use easements (MSB 17.65.020(A)(1)).
2. The strict application of this title MSB 17.55 would deprive the applicant of rights commonly enjoyed by others as the subject lot has unusual conditions or circumstances applicable. The lot is unusually small, including being impacted on three sides by a waterbody and two public use easements. The 1,232 square foot cabin is reasonable use of the property (MSB 17.65.020(A)(2)).
3. Granting the variance will not be injurious to nearby property or harmful to the public welfare (MSB 17.65.020(A)(3)).

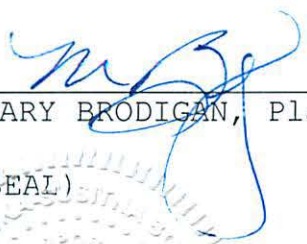
4. The granting of the variance will be in harmony with the objectives of this title and in the Big Lake Comprehensive Plan (MSB 17.65.020(A)(4)).
5. Deviation from MSB 17.55 is necessary to permit reasonable use of the property due to the unusually small buildable area (MSB 17.65.020(A)(5)).
6. The person seeking the variance did not cause the existing setback violations (MSB 17.65.030(A)(1)).
7. The variance, if granted, will not permit a land use within a district in which a specific use is prohibited (MSB 17.65.030(A)(2)).
8. The variance is not being sought to relieve pecuniary hardship or inconvenience (MSB 17.65.030(A)(3)).

ADOPTED by the Matanuska-Susitna Borough Planning Commission
this 17th day of April, 2017.



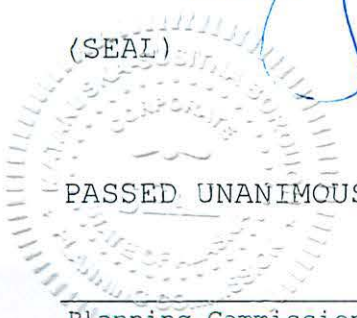
COLLEEN VAGUE, Chair

ATTEST



MARY BRODIGAN, Planning Clerk

(SEAL)


PASSED UNANIMOUSLY: Vague, Anderson, Chesbro, Elder, Glashan, and
Rauchenstein