

**SUBJECT:** Findings of Fact, Conclusion, Order, and Notice of Right to Appeal;  
Lots 3 and 4, Block 8, Kennedy Addition.

REQUESTED BY: K. VanGorder, City Clerk *KV*

PREPARED BY: J. Newman, Deputy Clerk *JN*

DATE: December 3, 2001

FOR AGENDA OF: December 10, 2001

**SUMMARY:**


Attached for your review is the final findings of fact on Appeal No. 01-01, Lots 3 and 4, Block 8, Kennedy Addition. Appellant: Wayne Walley.

**FISCAL IMPACT:**  No  Yes, amount requested: Fund:

**RECOMMENDED ACTION:**

This information is presented for informational purposes only. No council action is required.

**MAYOR REVIEW/COMMENT:**



Reviewed by: SARAH PALIN, Mayor

Presented to Council  
Date: 12/10/01  
verified by: *TV*

**CITY OF WASILLA  
BEFORE THE CITY COUNCIL APPEAL HEARING OFFICER**

IN THE MATTER OF: )  
LOTS 3 & 4, BLOCK 8, KENNEDY ADDITION )  
APPEAL NO. 01-01 )  
\_\_\_\_\_)  
WAYNE WHALEY, )  
Appellant. )  
\_\_\_\_\_)  
\_\_\_\_\_)

**FINDINGS OF FACT, CONCLUSION, ORDER, AND  
NOTICE OF RIGHT TO APPEAL**

Notice is hereby given, that the City of Wasilla Hearing Officer, on November 26, 2001, rendered the following Findings, Conclusions, and Order regarding Appeal No. 01-01, Request For A Variance for Lots 3 & 4, Block 8, Kennedy Addition To Allow Construction Of A Single Family Residence Within The Required 75' Setback From High-water Mark According To WMC 16.24.030(D)(5). (Previously Planning Case No.: V01-83)

This Final Order may be appealed pursuant to WMC 16.08.110(G) and the Alaska Rules of Appellate Procedure, Part VI, Rules 601-612.

**Findings of Fact**

1. Lots 3 and 4, Block 8, Kennedy Addition plat was recorded on June 26, 1950.
2. Norma Hall is the legal owner of Lots 3 and 4, Block 8 Kennedy Addition.
3. Rudy Mallonee is in the process of purchasing Lots 3 and 4, Block 8, Kennedy Addition from Norma Hall contingent upon approval of a setback variance from the City of Wasilla.
4. Rudy Mallonee applied for a variance to the city planner on August 30, 2001.
5. The city planner mailed out a notice for variance before the planning commission on September 5, 2001 notifying persons within 1200 feet around the subject property.

6. At the September 25, 2001 planning commission meeting, three people spoke and two written responses were received.
7. On September 25, 2001, the planning commission unanimously defeated the variance without providing written facts and findings.
8. The appeal was filed by Wayne Whaley on September 28, 2001, in a timely manner.
9. On October 8, 2001, the Wasilla City Council determined to hear the appeal.
10. On October 26, 2001, the public notice of appeal of a planning commission decision was posted on Lots 3 and 4, Block 8, Kennedy Addition and also posted at Wasilla City Hall.
11. On October 26, 2001, the public notice of appeal of a planning commission decision was mailed to all property owners within 1200 feet of Lots 3 and 4, Block 8, Kennedy Addition.
12. On October 30, November 2, 6, and 9, 2001, an advertisement was published in the *Frontiersman* noticing the appeal.
13. On November 13, 2001, the appeal hearing was held at the Wasilla City Council Chambers.
14. Twelve written responses were received by the hearing officer; one in favor of the variance, 11 opposed.
15. During the November 13, 2001 appeal hearing three persons (including the applicant and representative) spoke in favor of the appeal and six persons spoke in opposition to the appeal.
16. In July of 1973, the Matanuska-Susitna Borough setback regulation was approved requiring a 75-foot setback from all lakes and water bodies.
17. In August of 1983, the City of Wasilla established a land-use ordinance that included a 75-foot setback regulation from lakes and water bodies.
18. Variances granted by the city over the last eight years are not as close to the lake as what was applied for by Rudy Mallonee.

19. In Variances 93-39, the closest point for a shoreline setback was 47 feet from Wasilla Lake.
20. In Variance 96-18, three lots on Lake Lucille Creek were granted a reduction from the setback from the creek.
21. In Variance 00-83, Wasilla Lake was granted a variance from 75 feet to 60 feet.
22. In Variance 01-92, Wasilla Lake was granted a variance from 75 feet down to 66 feet.
23. In a Lake Lucille questionnaire dated October 19, 1993, in which 64 replies were received, no written comments were received about erosion on Lake Lucille.
24. In a Lake Lucille questionnaire dated May 19, 1995, in which 53 replies were received, three replies mention erosion on the lakeshore of Lake Lucille.
25. In 1955, Alaska Department of Fish and Game installed the outlet barrier (weir).
26. In 1967, Alaska Department of Fish and Game built a new outlet barrier (weir).
27. In 1992, the outlet barrier (weir) was rebuilt by the Alaska Department of Fish and Game and a fish ladder was installed.
28. The Lake Lucille Study states that in 1967 the outlet barrier (weir) elevated Lake Lucille by two and one-half feet.
29. The Lake Lucille Study dated May 12, 1993, states that the surface area of Lake Lucille in 1950 was 362 acres and in 1989 the surface area of Lake Lucille was 371 acres.
30. Based on public testimony, in the springtime, the low-water mark of the Northeast end of Lake Lucille was as much as 100 feet from the high-water mark, this lower ground being considered wetlands (marsh).
31. The outlet barrier (weir) elevated lake level flooding the wetlands and a majority of the flooding was in the Northeast corner of Lake Lucille (Lots 3 and 4, Block 8, Kennedy Addition are located in the Northeast corner of Lake Lucille).

32. Majority of groundwater input occurs in a small area on the Northeast end of Lake Lucille.

~~33. Lots 3 and 4 Block 8, Kennedy Addition are served by public sewer and water.~~

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### Conclusions of Law

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1. Because the Planning Commission made no findings to support its conclusion, the hearing officer will decide this matter as though he had heard the case originally.
2. Wasilla Municipal Code 16.28.110.C. provides that a variance may be granted only if:
  - a. 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;
  - b. 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;
  - c. 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;
  - d. 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
  - e. The variance is not sought solely to relieve pecuniary hardship or inconvenience.
3. 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. The conditions upon which the variance application is based are the seasonal water level increases in Lake Lucille, and the installation of the outlet barrier (weir), and the limited distance between the shoreline of the lake and the east boundary of the property. These conditions do not apply

generally to properties in the commercial zoning district or to properties in the vicinity of Lake Lucille.

4. The conditions upon which the variance application is based arise out of the seasonal rise in the water level of Lake Lucille, which is a natural feature inherent in the property and the installation of the outlet barrier (weir).

5. Because of such conditions the strict application to the property of the requirements of the shoreline setback requirement will preclude the construction of any structure on the property, resulting in an undue, substantial hardship to the owner of the property.

6. The special conditions that require the variance are not caused by the person seeking the variance, or a predecessor in interest.

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

8. Wasilla Municipal Code 16.28.110.D provides that if a property qualifies for a variance under Wasilla Municipal Code 16.28.110.C, the variance that is granted must meet the following conditions:

a. 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;

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

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

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

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

9. The variance that was applied for would permit a deviation from the requirement of Title 16 of the Wasilla Municipal Code that is greater than necessary to permit a reasonable use of the property. The proposed structure is too large for the lot area. Lot 4 is smaller in depth than Lot 3,

therefore making Lot 3 a more appropriate place to build a larger portion of the dwelling. In order to lessen parking encroachment on public right-of-way, it is more appropriate to place the garage on Lot 3, which has the 25-foot front setback.

10. The land use proposed in the variance application, two single-family dwellings, is allowed by Title 16 of the Wasilla Municipal Code.

11. In order that the variance be in keeping with the spirit and intent of chapter 16.28 of the Wasilla Municipal Code and the requirements from which relief is sought; not be detrimental to the public health, safety or welfare; and not significantly adversely affect other property, the variance should be modified as follows:

- a. The sideline setbacks should be increased to allow the flow of the runoff water from the lakeside of the house to the road.
- b. Construction on the property should be limited to one single-family dwelling.
- c. The structure on the property should be located as far as possible from the shore of Lake Lucille.

### **Order**

Based upon the above findings of fact and conclusions, the Appeal Hearing Officer makes the following final order:

IT IS HEREBY ORDERED THAT the decision of the planning commission is reversed and the variance is approved subject to the following conditions:

1. Eliminate the lot line and combining the two Lots 3 and 4, Block 8, Kennedy Addition.
2. Establish a smaller footprint of the proposed structure to be no more than 24 feet by 60 feet.
3. The Southeast corner of the dwelling shall be 10 feet from the sideline and 25 feet from the lot line front.

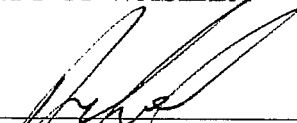
4. The Northeast corner of the dwelling shall be 20 feet off the lot line front and 30 feet from the north side lot line. If the applicant chooses to construct a building shorter in length than 60 feet, the front setback would remain the same and the side setback would increase, accordingly.
5. The structure shall be a dwelling, single-family only, no more than two-stories in height.
6. Allow the drainage to flow from the lake edge to the roadway.
7. Place the garage on the South end of the dwelling, single-family.
8. Obtain approval from the State of Alaska, Department of Conservation for the installation of a septic tank.
9. Any disturbance between structure and high-water mark of Lake Lucille shall be re-vegetated in accordance with a Property Owner's guide to Shoreline Landscaping in the Matanuska-Susitna Borough, dated March 1998.
10. Grass lawns shall not be allowed between the structure and high-water mark.
11. Shoreline transition at the water edge will either be constructed using rip-rap at the low water line and then placing bundles of dormant plant cuttings or a coir log to hold soil in place above the rip-rap up to the top of the slope above high water level.
12. Applicant is responsible for obtaining other government approvals prior to working on the water edge.
13. Final plot plan and plot profile shall be submitted to Wasilla City Planner, Wasilla City Planning Commission and the City of Wasilla Hearing Officer for review to determine the development has met all requirements set forth by this order.



DATED at Wasilla, Alaska, November 26, 2001.

CITY OF WASILLA

12:30 P.M. DC

  
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DAVID CHAPPEL, Appeal Hearing Officer

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