

DATE: October 3, 2016

TO: **Board of Adjustment**

FROM: Liz Cabrera  
Staff, Planning Commission

Subject: **Appeal of Conditional Use Permit**

Summary: Appeal of the Planning Commission's decision to deny a conditional use permit for a two-family dwelling on an industrial lot located at 107 South Nordic Drive.

**Recommendation: Affirm Planning Commission Decision**

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**A. Proceedings before Planning Commission:**

1. On March 11, 2016, Mr. Menish had applied for and received a building permit to construct which includes 2,000 sq. ft. caretaker dwelling, a 1,000 sq. ft. warehouse and an additional second dwelling unit inside the building on an industrial parcel. On April 1, 2016, a building permit was issued with the notation that the warehouse/caretaker dwelling is an allowable use, but a second dwelling would require a conditional use permit.
2. On April 21, 2016, Bill Menish submitted an application for a conditional use permit to allow a two-family dwelling in an industrial district at 710 South Nordic (PID#: 01-010-061).
3. PMC 19.44.040 (D) provides for conditional uses permitted by action of the commission in the industrial district, these uses include "One- and two-family dwellings."
4. On June 20, 2016, the Planning Commission accepted the application and scheduled a public hearing for July 25, 2016. The July 25 meeting was cancelled for lack of quorum and rescheduled for August 23, 2016.
5. Hearing notices were mailed to property owners within 600 feet of the subject parcel on July 6, 2016. Public notice was posted in three public locations, including the borough web site, the subject property, the post office, and published in the Petersburg Pilot.
6. At the August 23<sup>rd</sup> public hearing, the commission reviewed the application and comments from an adjacent property owner (Olivia Olsen). Motion to grant the permit failed, 1-5. Motion to accept the findings of fact passed, 6-0.
7. On August 25<sup>th</sup>, a letter of determination was sent to the applicant at his address of record.
8. PMC 19.92.010(D) requires appeals to be filed within 10 consecutive calendar days of the date the decision is made. Appellant submitted application for appeal and fees on September 7, 2016. This is fifteen days following the date of the decision. Applicant was told by Borough staff that the deadline to file an appeal was September 9, 2016. See attached email.

**B. Documents attached to this memo and provided to the appellant:**

1. Clerk's email granting appeal filing deadline extension
2. Documents provided to Planning Commission in their August 23, 2016 meeting packet, which include:
  - a. Staff Report for August 23, 2016 Planning Commission meeting
  - b. Letter from Olivia Olsen, adjoining property owner
  - c. Maps showing location of property at 710 S. Nordic Drive
  - d. Menish Application for Conditional Use Permit
3. Pertinent pages (pgs 1, 3, 4 and 5) of draft minutes for the August 23, 2016 Planning Commission meeting.
4. August 24, 2016 Letter of Determination for Conditional Use Permit

**C. Conditions of approval as set out in ordinance:**

PMC 19.72.020 sets forth the applicable conditions of approval of a conditional use permit as follows:

"A. The commission shall consider the suitability of the property, the character of the surrounding property and the economic and aesthetic effects of the proposed use upon the property and neighboring property. The use will be permitted if it is in harmony with the general purpose and intent of this title and where the use will be in keeping with the uses generally authorized for the zone in which the use is to take place. The commission shall require the conditional user to take those steps necessary so that the permitted conditional use will not be offensive because of injurious and noxious noise, vibrations, smoke, gas, fumes or odors or will not be hazardous to the community because of danger of fire or explosion.

B. Exits and entrances and off-street parking for the conditional use shall be located to prevent traffic hazards or congestion on public streets.

C. *[not applicable here]*

**D. Criteria for Granting Appeal:**

The planning commission or board of adjustment may grant an appeal only if:

1. The appellant establishes there was an error in the application of pertinent law;
2. The appellant establishes the decision is not supported by adequate written findings or the findings fail to inform of the basis upon which the decision appealed from was made;
3. The appellant establishes the building official or planning commission failed to follow procedures;
4. The appellant establishes there was misrepresentation of a fact.



## **E. Determinations Based on Findings of Fact:**

It is unclear which of the criteria the Appellant is addressing in his appeal but based on the information it appears asserting an error in application of pertinent law.

A. Appellant claims the Commission erred in finding that the requested conditional use is incompatible with existing current uses, because there are other residential dwellings in the industrial zone.

In its deliberation, the Planning Commission noted there are existing residential dwellings in the industrial district and these were allowed as “caretaker/watchman dwellings” under PMC 19.44.020(L). The applicant has also been granted a building permit to construct a caretaker dwelling under this same code provision.

The Commission is tasked to allow a use “where the use will be in keeping with the uses generally authorized for the zone in which the use is to take place.” In its findings, the Commission noted the subject property is adjacent to a well-developed industrial facilities, such as the commercial drive-down dock, bulkhead, and the cold storage, which operate 24-hours a day/7 days a week. The Commission determined that residential uses are not compatible with ongoing, active industrial uses. During deliberation, the Commission provided examples where industrial operations in Petersburg have been curtailed due to noise or other impact on nearby residences.

B. Appellant claims the Commission erred in finding that the requested conditional use was inconsistent with future use of the area (specifically the Waterfront Master Plan) because a B&B or apartment falls under the objective of providing waterfront tourism and recreation.

In term of compatibility with future use, the Planning Commission notes the future land use for this parcel is “Waterfront A”. Waterfront A is defined as “Water-dependent commercial or industrial” and is designated “for specific areas prioritized for water dependent commercial, industrial uses; other uses may be allowed, but ideally only as interim uses (e.g., short term lease).”

As the appellant states, the borough’s Waterfront Master Plan speaks to “changing zoning policies to more strategic about use of waterfront land for water-dependent uses; focusing on commercial fishing but also including tourism and high-value residential uses.” While maximizing the value of waterfront lands is a key recommendation, it does not mean that all uses would be encouraged simultaneously on all waterfront lands. In implementing this direction through the general land use map, areas located on the water and currently zoned industrial were selected for the Waterfront A land use. These are lands are either on the water and/or adjacent to existing infrastructure which are important to maintaining a working waterfront.

Areas that are not currently zoned as industrial were placed in the Waterfront B category. Waterfront B is a mixed-use “area(s) on or near the waterfront, where waterfront location is key to value of the use; examples include residential, lodging, restaurants, select retail; uses must be sited and designed to take advantage of waterfront values, and maintain the scale of single family detached residential buildings.”

In effect, the desired future condition is to respond to public concern raised during the comprehensive plan process to ensure there is sufficient industrial waterfront land for current and future needs of industrial and commercial uses that are water-dependent, and at the same time to allow a greater variety of uses on all other waterfront lands to maximize the value of those lands.

A B&B, while benefitting from a waterfront location, is not dependent on waterfront or waterfront infrastructure to provide its goods and services. Thus, the use described by the appellant, a B&B or apartment, would be a use included under the Waterfront B land use designation not Waterfront A.

C. Appellant contends the Planning Commission erred in the finding that industrial property is in limited supply in the area is in error.

The appellant did not provide factual information to the Planning Commission regarding the number of days the property was for sale prior to his purchase, so this information was not included in the record and the Assembly would need to supplement the record. However, the fact that the property was for sale for a particular length of time does not mean there is an ample supply of industrial waterfront land; it simply means there is a limited pool of buyers at this time for this type of property.

D. Appellant contends the Planning Commission may have denied his application because they believed he was attempting to circumvent the planning and zoning regulations.

The matter of where the applicant was in his construction was discussed but it was not a substantive fact and was not included in the findings of fact or the letter of determination.

From: Debra Thompson  
Sent: Tuesday, August 30, 2016 2:50 PM  
To: Bill Menish <billrmenish@gmail.com>

Hi Bill,

To confirm our conversation this afternoon, the deadline to file an appeal on the August 23 Planning Commission decision will be Friday, September 9, 2016.

Thank you,  
Debbie

From: Liz Cabrera  
Sent: Tuesday, August 30, 2016 12:27 PM  
To: Bill Menish <billrmenish@gmail.com>

Hi Bill,

The decision is up to Debbie Thompson in the Clerk's Office. I've cc'd her here so she can review your request.

Liz

From: Bill Menish [mailto:billrmenish@gmail.com]  
Sent: Monday, August 29, 2016 9:11 PM  
To: Liz Cabrera <petersburgedc@gmail.com>

Hi Liz,

You had the meeting on the 24th and yet just today the 29th of August you email me that I was turned down. With only 10 days to appeal and only 5 days left, that is very little time to gather more information and do the appeal form. Can you give me 10 days from today to put my appeal in. It was 3 months before there was a quorum to have a meeting to consider my conditional use permit in which I was in town and was available to be at the meeting. Please take this under consideration.

Bill

Please see Clerk's note, attached.



Clerk's note:

Mr. Menish's application for a conditional use permit was received by Borough Staff on April 21, 2016, yet it was not on the Planning & Zoning Commission's May 10, 2016 agenda due to an honest error on the part of such Staff.

The application was on the June 20 P&Z meeting agenda and was scheduled for a July 25 Public Hearing but the July 25 meeting was cancelled due to a lack of quorum.

The Public Hearing was held at the P&Z meeting on August 23 and the denial of the Conditional Use Permit was issued at the same meeting.

For Mr. Menish this was a 4 month wait for a decision. During the 4 month wait, Mr. Menish had left town for an extended period of time, as is his practice, so was unavailable to be in attendance at the August 23 meeting.

Borough Staff mailed Mr. Menish's letter of denial to his local mailing address with the knowledge that he was not in Petersburg. When Mr. Menish phoned Borough Staff on August 29 to check in on the issue, he learned of the denial of his application, and Borough Staff emailed him a copy of the denial letter.

On August 30 he requested an extension of the 10 day filing deadline (which would have been September 2, 2016). The extension request was forwarded to me and at first I told Mr. Menish there was no provision in the code for an extension of the appeal deadline. He was persistent in his request for the extension stating he needed a little more time to complete the appeal paperwork properly and explained the timeline of events from April to August expressing his frustration with the process. For these reasons, and to lean in favor of the Petersburg resident, I granted an extension to file to September 9, 2016.

Mr. Menish filed his appeal on September 7, 2016.

## Planning Commission Staff Report

Meeting date: ~~July 25, 2016~~

Aug 23, 2016

**TO:** Planning Commission

**FROM:** Liz Cabrera, Community & Economic Development Director  
Joe Bertagnoli, Building Official

**Subject:** Conditional Use – Parcel 01-010-061  
Bill Menish

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**Recommendation:** Deny application for a conditional use permit.

**The Petersburg Planning & Zoning Commission makes the following findings of fact:**

1. An application for conditional use permit was submitted by Bill Menish (applicant) submitted and fees paid on April 21, 2016. The application was accepted and scheduled for a public hearing on June 14, 2016.
2. Applicant is requesting a conditional use permit to allow a two-family dwelling in an industrial district at 710 South Nordic. (PID#: 01-010-061)
3. Subject parcel is zoned industrial. Future land use under the comprehensive plan is “waterfront A” or waterfront industrial.
4. The surrounding area is primarily industrial.
5. Applicant is constructing a warehouse with a caretaker dwelling on the subject parcel, which is allowable in the industrial district.
6. Review of the application by the Harbor Department noted the adjacent area is location of the commercial drive down dock, bulkhead, community cold storage, and commercial gear storage area. These industrial facilities are open and operate 24 hrs./day and 7 days a week.
7. Hearing notices were mailed to property owners within 600 feet of the subject parcel on July 6, 2016.
8. On Aug 23, 2016, a duly noticed public hearing was held by the Petersburg Planning & Zoning Commission.
9. At the public hearing, the Planning Commission considered and reviewed applicant materials, public comments and testimony, and staff comments.
10. Planning Commission received the following written/verbal comments:

**Section 2. Based on the preceding findings of fact, the Petersburg Planning & Zoning Commission makes the following determinations:**

The subject parcel and surrounding area are zoned industrial and actively in use as industrial areas. Dwellings, especially rentals or vacation rentals, are incompatible with industrial uses and not in keeping with current or intended future use of the area.

## Planning Commission Staff Report

Meeting date: ~~July 25, 2016~~

*August 23, 2016*

Industrial property, especially waterfront industrial, is in limited supply in our community. The intended use should be preserved.

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Chair, Planning Commission

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Secretary, Planning Commission



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# OLIVIA OLSEN

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**To:** Community & Economic Development Department of the Petersburg  
Borough Planning & Zoning Commission

**Date:** July 22, 2016

**From:** Olivia Olsen

**Regarding:** PID#: 01-010-061 Bill Menish request for conditional use permit

As the northern adjoining property owner I would like to have my input on record concerning the request for a conditional use permit for a two-family dwelling.

I have no objection to the two family dwelling being built in an industrial zone area as long as the property owners and the residents residing on the property understand that it is an industrial area and they do not object when I choose to develop my adjoining property in an industrial manner, or if I should chose to follow their lead to build as residential or a combination of either.

Best regards,



Olivia Olsen





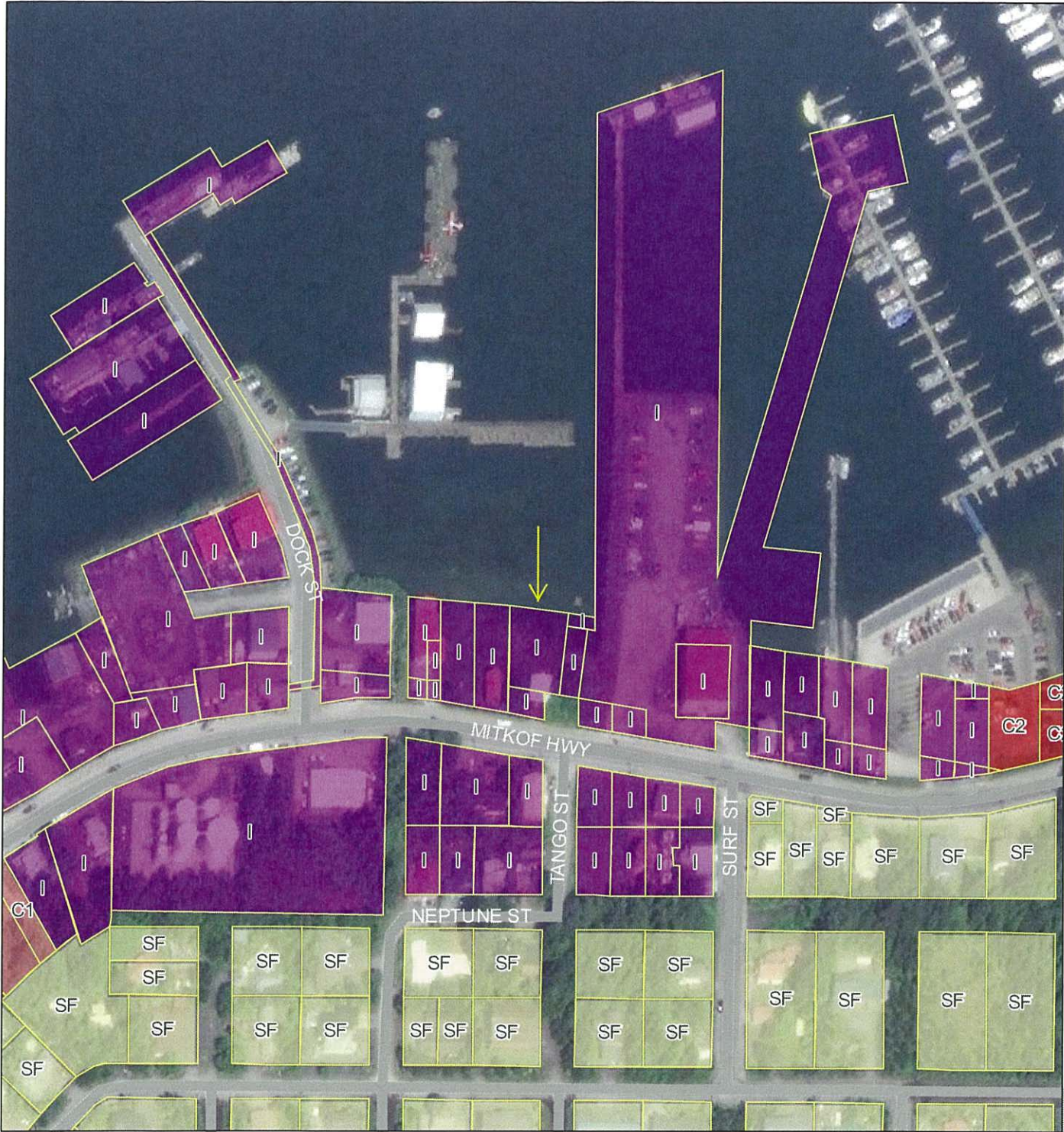
Sources: Esri, HERE, DeLorme, USGS, Intermap, increment P Corp., NRCAN, Esri Japan, METI, Esri China (Hong Kong), Esri (Thailand), TomTom, MapmyIndia, © OpenStreetMap contributors, and the GIS User Community

**710 S. Nordic Drive**

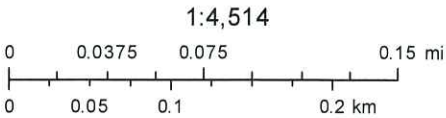




Zoning Map - 710 S. Nordic ( Menish)



July 12, 2016



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community





**COMPLETED**  
4/21/16 PD. C.C.

## APPLICATION FOR CONDITIONAL USE PERMIT

1. Applicant(s):

Bill Menish

2. Description of Property

Physical address or location of the area requested for the Conditional Use Permit:

710 South Nordic Drive

Lot(s) size of the petition area:

11,500 approx

Existing zoning of the petition area:

Industrial

3. Application information

Type of conditional use applied for:

To put a 600 square foot one bedroom on the bottom floor  
one building with an auxiliary apt.

Explain details of proposed development:

build a 600 foot 1 bedroom 1 bath room  
in the forward (water) end of the building  
To use as a long term rental or a B+B

Explain schedule of timing of development program:

the start time is April 21 to put up the  
building to get it enclosed by end of May and  
do the electric and all starting in Oct or Nov

4. Conditions of approval for a conditional use permit

The commission shall consider the suitability of the property, the character of the surrounding property and the economic and aesthetic effects of the proposed use upon the property and the neighboring property. The use will be permitted if it is in harmony with the general purpose and intent of this title and where the use will be in keeping with the uses generally authorized for the zone in which the use is to take place.

The commission shall require the conditional user to take those steps necessary so that the permitted conditional use will not be offensive because of injuries and noxious noise, vibrations, smoke, gas, fumes or odors or will not be hazardous to the community because of danger of fire or explosion. this use will be non intrusive that I think goes well with the area

Explain how your application meets these conditions:

there are other similar properties in the area  
to what I would like to do

Note: In granting a conditional use permit, the commission shall state the conditions required. All conditions must be complied with. Violation of any condition shall result in revocation of the permit and further use of the property or maintenance of any building thereon shall constitute a violation of title 19 of the Petersburg Municipal Code, and shall be punishable accordingly.

### 5. Site Plan

A schematic site plat must be provided showing the type and location of all proposed uses on the site, and all vehicular and pedestrian circulation patterns relevant to those uses.

*Site plan has been submitted*

### 6. Signature

*Bill Merrill*  
I hereby affirm that the above information is true and correct to the best of my knowledge. I also affirm that I am the true and legal property owner or authorized agent thereof for the property subject herein.

*Bill Merrill* *3-16-16*  
Signature of Applicant Date

\_\_\_\_\_  
Signature of the Owner(s) (If different than above) Date

*710 South Nordic* *Box 877*  
Street Address Mailing Address

*Petersburg* *AK* *99833* *206910 4401*  
City State Zip Code Telephone

Please submit completed application, site plan, additional documents related to the request, and \$170 application fee:

by mail: Community & Economic Development Department  
PO Box 329  
Petersburg, AK 99833

in person: 12 South Nordic Drive (Municipal Building), Petersburg, AK

by email: [ced@petersburgak.gov](mailto:ced@petersburgak.gov)

NOTE: If submitting application by email, please note your application is not complete until application fee is received. Please contact the Community & Economic Development Department to arrange for payment of application fee.

For assistance, please contact the Community & Economic Development Department at 772-4533.

FOR OFFICE USE ONLY			
Parcel ID: <u><i>01-010-061</i></u>	Date Received: <u><i>4/19/16</i></u>	Received By: <u><i>KM</i></u>	
Fee: \$170.00 (CODE: 110.000.404110)			
Public Hearing Date: _____	Approved: _____	Denied: _____	



Hand-drawn floor plan of an apartment. The plan includes the following features and dimensions:

- Overall Dimensions:** 12' 8 1/2" (width) x 18' 1/2" (depth).
- Entrance:** Labeled "ENTRANCE" at the top center.
- Living Area:** A large open space on the right side.
- Kitchen:** Located at the bottom center, containing a sink and stove.
- Bathroom:** Located at the bottom left, containing a toilet and shower.
- Bedroom:** Located at the top left, containing a bed.
- Storage:** A closet labeled "CLOSET" is located near the entrance.
- Dimensions:** Various dimensions are noted throughout the plan, including 12' 8 1/2", 18' 1/2", 14', 12', 10', 8', 6', 5', 4', 3', 2', 1', 1/2', 1/4', 1/8', 1/16', 1/32', 1/64', 1/128', 1/256', 1/512', 1/1024', 1/2048', 1/4096', 1/8192', 1/16384', 1/32768', 1/65536', 1/131072', 1/262144', 1/524288', 1/1048576', 1/2097152', 1/4194304', 1/8388608', 1/16777216', 1/33554432', 1/67108864', 1/134217728', 1/268435456', 1/536870912', 1/1073741824', 1/2147483648', 1/4294967296', 1/8589934592', 1/17179869184', 1/34359738368', 1/68719476736', 1/137438953472', 1/274877906944', 1/549755813888', 1/1099511627776', 1/2199023255552', 1/4398046511104', 1/8796093022208', 1/17592186044416', 1/35184372088832', 1/70368744177664', 1/140737488355328', 1/281474976710656', 1/562949953421312', 1/1125899906842624', 1/2251799813685248', 1/4503599627370496', 1/9007199254740992', 1/18014398509481984', 1/36028797018963968', 1/72057594037927936', 1/144115188075855872', 1/288230376151711744', 1/576460752303423488', 1/1152921504606846976', 1/2305843009213693952', 1/4611686018427387904', 1/9223372036854775808', 1/18446744073709551616', 1/36893488147419103232', 1/73786976294838206464', 1/147573952589676412928', 1/295147905179352825856', 1/590295810358705651712', 1/1180591620717411303424', 1/2361183241434822606848', 1/4722366482869645213696', 1/9444732965739290427392', 1/18889465931478580854784', 1/37778931862957161709568', 1/75557863725914323419136', 1/151115727451828646838272', 1/302231454903657293676544', 1/604462909807314587353088', 1/1208925819614629174706176', 1/2417851639229258349412352', 1/4835703278458516698824704', 1/9671406556917033397649408', 1/19342813113834066795298816', 1/38685626227668133590597632', 1/77371252455336267181195264', 1/154742504910672534362390528', 1/309485009821345068724781056', 1/618970019642690137449562112', 1/1237940039285380274899124224', 1/2475880078570760549798248448', 1/4951760157141521099596496896', 1/9903520314283042199192993792', 1/19807040628566084398385987584', 1/39614081257132168796771975168', 1/79228162514264337593543950336', 1/158456325028528675187087900672', 1/316912650057057350374175801344', 1/633825300114114700748351602688', 1/1267650600228229401496703205376', 1/2535301200456458802993406410752', 1/5070602400912917605986812821504', 1/10141204801825835211973625643008', 1/20282409603651670423947251286016', 1/40564819207303340847894502572032', 1/81129638414606681695789005144064', 1/162259276829213363391578010288128', 1/324518553658426726783156020576256', 1/649037107316853453566312041152512', 1/1298074214633706907132624082305024', 1/2596148429267413814265248164610048', 1/5192296858534827628530496329220096', 1/10384593717069655257060992658440192', 1/20769187434139310514121985316880384', 1/41538374868278621028243970633760768', 1/83076749736557242056487941267521536', 1/166153499473114484112975882535043072', 1/332306998946228968225951765070086144', 1/664613997892457936451903530140172288', 1/1329227995784915872903807060280344576', 1/2658455991569831745807614120560689152', 1/5316911983139663491615228241121378304', 1/10633823966279326983230456482242756608', 1/21267647932558653966460912964485513216', 1/42535295865117307932921825928971026432', 1/85070591730234615865843651857942052864', 1/170141183460469231731687303715884105728', 1/340282366920938463463374607431768211456', 1/680564733841876926926749214863536422912', 1/1361129467683753853853498429727072845824', 1/2722258935367507707706996859454145691648', 1/5444517870735015415413993718908291383296', 1/10889035741470030830827987437816582766592', 1/21778071482940061661655974875633165533184', 1/43556142965880123323311949751266331066368', 1/87112285931760246646623899502532662132736', 1/174224571863520493293247799005065324265472', 1/348449143727040986586495598010130648530944', 1/696898287454081973172991196020261297061888', 1/1393796574908163946345982392040522594123776', 1/2787593149816327892691964784081045188247552', 1/5575186299632655785383929568162090376495104', 1/11150372599265311570767859136324180752990208', 1/22300745198530623141535718272648361505980416', 1/4460149039

[illegible]

Hand-drawn floor plan of an apartment. The plan includes the following features and dimensions:

- Overall Dimensions:** 12' 8 1/2" (width) x 18' 1/2" (depth).
- Entrance:** Labeled "ENTRANCE" at the top center.
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- Bathroom:** Located at the bottom left, containing a toilet and shower.
- Bedroom:** Located at the top left, containing a bed.
- Storage:** A closet labeled "CLOSET" is located near the entrance.
- Dimensions:** Various dimensions are noted throughout the plan, including 10', 12', 14', and 18' 1/2".

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- Overall Dimensions:**
  - Top: 12' 8 1/2"
  - Right: 18' 1/2"
  - Bottom: 12'
  - Left: 10' 10"
- Rooms and Areas:**
  - Living Room:** Located at the top, labeled "LIVING ROOM" and "APARTMENT BELOW".
  - Bedroom:** Located on the left, labeled "BED ROOM".
  - Bathroom:** Located in the center, labeled "BATH".
  - Kitchen:** Located on the right, labeled "KITCHEN".
  - Shower:** Located at the bottom left, labeled "Shower".
  - Entry:** Located at the bottom center, labeled "ENTRANCE".
  - Storage:** Located at the bottom right, labeled "STORAGE".
- Dimensions of Rooms:**
  - Living Room: 12' 8 1/2" x 18' 1/2"
  - Bed Room: 10' 10" x 12'
  - Bath: 5' 0" x 6' 0"
  - Kitchen: 6' 0" x 6' 0"
  - Shower: 4' 0" x 6' 0"
  - Entry: 4' 0" x 6' 0"
  - Storage: 4' 0" x 6' 0"
- Other Labels:**
  - "APARTMENT BELOW" (written vertically on the right side)
  - "STORAGE" (written vertically on the left side)
  - "ENTRANCE" (written vertically on the right side)
  - "BED ROOM" (written vertically on the left side)
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  - "HALL"
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**DRAFT MINUTES OF THE PETERSBURG Planning Commission on 2016-08-23 2:00 PM, HELD TUESDAY, AUGUST 23, 2016 AT 2:00 P.M. IN THE CITY COUNCIL CHAMBERS OF THE MUNICIPAL BUILDING. DRAFT**

1. **CALL TO ORDER/ROLL CALL** Present: Chris Fry, Dave Kensinger, Otis Marsh, and Richard Burke. Absent: None.
2. **APPROVAL OF THE PREVIOUS MEETINGS MINUTES** Motion offered by Otis Marsh, supported by Richard Burke, to approve the previous meetings minutes Motion passed unanimously.

**PZ#16-187 Meeting minutes from June 20, 2016**

Legislation Text

Meeting Minutes 20-Jul-2016

3. **AMENDMENT AND APPROVAL OF AGENDA** Motion offered by Dave Kensinger, supported by Otis Marsh, to approve the agenda as presented. Motion passed unanimously.
4. **PUBLIC HEARING** Motion offered by Dave Kensinger, supported by Richard Burke, to approve opening all the public hearings Motion passed unanimously.
  - a) **PUBLIC HEARING FOR AN APPLICATION FROM RICHARD AHO AND GAIL HERLICK-AHO FOR A CONDITIONAL USE PERMIT FOR A NETHOUSE IN A SINGLE-FAMILY RESIDENTIAL DISTRICT AT 110 CORNELIUS ROAD (PID #: 01-031-612).** Richard Aho spoke on his own behalf. Aho explained why they would like to build this nethouse. Aho stated that they are looking to build on a different lot and sell this house. Unfortunately, they do not have enough room on the new property for all their fishing belongings and would like to store it on the existing property. Commissioner Kensinger asked what would happen to the nethouse should they sell this property. Aho explained that the nethouse is separated from the main house up the hill and could be sold separately.
  - b) **PUBLIC HEARING FOR AN APPLICATION FROM BILL MENISH FOR A CONDITIONAL USE PERMIT TO ALLOW A TWO-FAMILY DWELLING IN AN INDUSTRIAL DISTRICT AT 710 SOUTH NORDIC. (PID#: 01-010-061)** There were no comments on the Menish public hearing.
  - c) **PUBLIC HEARING FOR AN APPLICATION FROM RAYMOND AND BERTHIEL EVENS FOR A MINOR SUBDIVISION AT 405 SANDY BEACH RD. (PID#: 01-003-124)** There were no comments on the Evens public hearing.
  - d) **PUBLIC HEARING FOR AN APPLICATION FROM THE PETERSBURG BOROUGH TO VACATE A PORTION OF A PUBLIC EASEMENT AT 919 SANDY BEACH RD. (PID#: 01-014-125)** Commissioner Fry stated that he had received word that there was a request to postpone this agenda item. Director Cabrera stated that



meeting was actually to deny and the Commission approved, hence requiring a corrected vote on the Findings of Fact. Commissioner Kensinger asked about wastewater and materials being stored on the property. Those issues are included. Discussion. Motion offered by Otis Marsh, supported by Richard Burke, to approve the Adoption of findings of fact for previous approval of a conditional use permit for use of a trailer during construction at 202 S Frederick Drive. (PID#: 01-021-310) Motion passed unanimously.

**PZ#16-193 Whitney.FF**

[Legislation Text](#)

[WhitneyFindings](#)

- b) **CONSIDERATION OF AN APPLICATION FROM RICHARD AHO AND GAIL HERLICK-AHO FOR A CONDITIONAL USE PERMIT FOR A NETHOUSE IN A SINGLE-FAMILY RESIDENTIAL DISTRICT AT 110 CORNELIUS ROAD (PID #: 01-031-612).** Cabrera made note that the actual date of the meeting should reflect August 23, 2016 and not July 25, 2016. Commissioner Marsh asked if it would be feasible to move the structure further back on the property with a 20ft. setback. Inspector Bertagnoli stated that there should be plenty of room. Aho stated that he could certainly do that. Motion offered by Dave Kensinger, supported by Otis Marsh, to approve the application from Richard Aho and Gail Herlick-Aho for a conditional use permit for a nethouse in a single-family residential district at 110 Cornelius Road (PID #: 01-031-612), with the condition that the set back be 20' instead of 30'. Motion passed unanimously. Motion offered by Dave Kensinger, supported by Otis Marsh, to approve The findings of fact as submitted in the Staff report with the 20' setback condition. Motion passed unanimously.

**PZ#16-188 Aho.dox**

[Legislation Text](#)

[Aho.dox](#)

- c) **CONSIDERATION OF AN APPLICATION FROM BILL MENISH FOR A CONDITIONAL USE PERMIT TO ALLOW A TWO-FAMILY DWELLING IN AN INDUSTRIAL DISTRICT AT 710 SOUTH NORDIC. (PID#: 01-010-061)** Director Cabrera reported that there has been a letter submitted by Olivia Olsen stating that she is not in opposition to this application as long as the possible approval for this use is on record should she want to develop her property, located nearby, in a like manner. Read into the record by Commissioner Burke. Commissioner Fry stated that this was discussed during the comprehensive plan review the that portion of the waterfront being of important industrial use. Inspector Bertagnoli asked if Mr. Menish had been contacted about this meeting today. Cabrera answered that he is out of town. Bertagnoli gave a history of the Menish building, stating that Menish came in saying that he wanted to build a warehouse and an apartment, which would be used as a "caretaker dwelling" which obviously, we wouldn't be here for that. Once the plans came in, his plans changed and all of a sudden it's a warehouse underneath, the "caretaker" dwelling above and then he added a small little apartment on the water side on the front. That's when things changed regarding having to get a conditional use permit. It was then that the structure became a warehouse and, basically, a duplex above, thus requiring this application. The building size did not change, but the use was changed. Discussion. Commissioner Kensinger asked



that if Menish had not added that second apartment, he'd be fine with completing the structure according to existing zoning ordinances. Cabrera stated that it is acceptable to build a "caretaker" dwelling on industrially zoned property without a problem, which is what Menish stated he was originally going to do but now has added a second dwelling and that's where he needs a conditional use permit for that second dwelling. Discussion regarding the "caretaker dwelling" language. Discussion on the plans and sizes with comments regarding the difficulty in reading them. Marsh asked if the building was done. Bertagnoli stated that the building is up and framed but he is not sure if Menish has completed the additional apartment yet or not. Marsh stated that it sounded like it the commission was a couple of months behind, whereas Cabrera and Bertagnoli stated that it's actually the risk to the property owner to wait until he's built most of the building and then come in and get the permit with no guarantee that he's going to receive that permit. When Mr. Menish put the building permit plans in, he did not come forward and say that this is what he wanted to do, it was after the fact and that's when Bertagnoli told him that if the second dwelling was what he wanted to do, he'd need have to a the conditional use permit. It doesn't change that Menish will have the warehouse and a caretaker dwelling, what would change with this scenario is that he would have a tenant there along with his dwelling - a tenant or a B&B. Discussion of neighboring properties. Fry asked if there was any other testimonials other than the written comment from Ms. Olsen. Cabrera stated that she did run this by the Harbor Department and they didn't object, but they are obviously concerned about setting a precedent and when you have residential in an industrial area there can be issues. Harbormaster Glorianne Wollen wanted it to be clear that the drive-down dock is open 24/7 and Cabrera stated the same with the Cold Storage facility. Wollen also mentioned that it isn't necessarily the applicant or the person that built, it's the next person that wants to build that becomes problematic. Discussion. Marsh asked what the commissions options are. Bertagnoli stated that basically, if the commission approves it, it will go on; if the commission disapproves it, his department would have to do some sort of policing to see that Menish doesn't rent that apartment out. Cabrera asked if the apartment was done, whereas Bertagnoli stated that he doesn't think so. Discussion. Kensinger wanted to know what Menish was going to use the apartment for - a rental or a B&B. Cabrera report that Menish stated he plans to use it as both; either/or. Fry stated that the application states both. Both Marsh and Medalen stated that they thought it was a done deal since it was close to completion. Medalen stated that he didn't have a problem with it as long as if neighboring property owners want to develop, like Olivia Olsen says, Menish doesn't come back and complain about it, then he doesn't have a problem with allowing it. Bertagnoli stated that that's the reason for having conditional use permits for putting residential in commercially zoned so that folks know what's going on in that industrial area. Discussion on complaints made, both past and present about commercial noise by residential occupants, both residential abutting industrial as well as industrial abutting industrial. Cabrera stated that just because someone has gone ahead and started doing something that they weren't necessarily supposed to do, in general, I don't think you should reward that or lean towards that since people will just start building whatever and wherever they want and get permission later with the expectation that the commission is going to grant that because they've already spent money on it. Cabrera stated that she doesn't think that's fair to the people who go about doing things the right way. Bertagnoli agreed. Bertagnoli also wanted to reiterate that when this



project originally began, the apartment was not in it - it was just warehouse and caretaker dwelling. It was only later that Menish brought in plans, right during the Municipal Building personnel move, that Bertagnoli informed him that he would require a permit for the additional dwelling, so Menish was aware at that time of the permitting process. In the meantime, Menish continued construction, which was fine, but the use of the building would be subject to the conditional use permit outcome. Discussion. Kensinger asked for a reading of the actual ordinance of caretaker dwellings on industrially zoned property. The ordinance states one dwelling. Discussion on existing caretaker dwellings in the area. Fry asked if the commission was ready to vote. Marsh called for the question. Motion offered by Otis Marsh, supported by Richard Burke, to approve an application from Bill Menish for a conditional use permit to allow a two-family dwelling in an industrial district at 710 South Nordic. (PID#: 01-010-061) Motion failed (1-4) (Harold D. Medalen in favor) Motion offered by Dave Kensinger, supported by Richard Burke, to approve Findings of Fact denying the application from Bill Menish for a conditional use permit to allow a two-family dwelling in an industrial district at 710 South Nordic. (PID#: 01-010-061) stating section 2 of the findings of fact, as submitted in the staff report; "The subject parcel and surrounding area are zoned industrial and actively in use as industrial areas. Dwellings, especially rentals or vacation rentals, are incompatible with industrial uses and not in keeping with current or intended future use of the area. Industrial property, especially waterfront industrial, is in limited supply in our community. The intended use should be preserved." Motion passed unanimously.

**PZ#16-190 Menish.dox**

[Legislation Text](#)

[Menish.dox](#)

- d) **CONSIDERATION OF AN APPLICATION FROM RAYMOND AND BERTHIEL EVENS FOR A MINOR SUBDIVISION AT 405 SANDY BEACH RD. (PID#: 01-003-124)** Director Cabrera gave a history of the application. Surveyor Braun gave his opinion of this property. Discussion. Motion offered by Dave Kensinger, supported by Otis Marsh, to approve the application from Raymond and Berthiel Evens for a minor subdivision at 405 Sandy Beach Rd. (PID#: 01-003-124) with conditions. Motion passed unanimously. Motion offered by Dave Kensinger, supported by Otis Marsh, to approve the Findings of Fact on the application from Raymond and Berthiel Evens for a minor subdivision at 405 Sandy Beach Rd. (PID#: 01-003-124) accepting the staff submitted Findings of Fact with notations on the plat about flood. Motion passed unanimously.

**PZ#16-189 Evens.dox**

[Legislation Text](#)

[Evens.dox](#)

- e) **CONSIDERATION OF AN APPLICATION FROM THE PETERSBURG BOROUGH TO VACATE A PORTION OF A PUBLIC EASEMENT AT 919 SANDY BEACH RD. (PID#: 01-014-125)** Commissioner Kensinger spoke on the concerns of neighboring landowners. Kensinger spoke about his discussions with Ms. Kris Norosz and would like to enable them the opportunity to be present and speak on it. Kensinger stated that he is still confused as to whether there is an easement to vacate or





August 24, 2016

Mr. Bill Menish  
P.O. Box 877  
Petersburg, Alaska 99833

Re: Letter of Determination – Conditional Use Permit

Dear Mr. Menish,

At the commission meeting on August 23, 2016, the Planning and Zoning Commission conducted a public hearing and considered your request for a conditional use permit to allow a two-family dwelling in an industrial district at 710 South Nordic Drive.

The Planning and Zoning Commission reviewed your application and found the request does not satisfy the requirements as described in Petersburg Municipal Code 19.20.040, and has denied a conditional use permit for the following reason:

The subject parcel and surrounding area are zoned industrial and actively in use as industrial areas. Dwellings, especially rentals or vacation rentals, are incompatible with industrial uses and not in keeping with current or intended future use of the area.

Industrial property, especially waterfront industrial, is in limited supply in our community. The intended use should be preserved.

Petersburg Municipal Code 19.92 provides for an appeal of a commission decision to the Borough Assembly within 10 consecutive calendar days of the date the decision is made.

Enclosed is a copy of your application. The Planning Department will keep the original on file.

Sincerely,

Liz Cabrera  
Director of Community Development

enclosure