

**BEFORE THE BOARD OF ADJUSTMENT FOR THE
CITY OF KENAI, ALASKA**

210 Fidalgo Avenue
Kenai, Alaska 99611

**IN THE MATTER OF THE APPEAL
OF ADAM TUGAN/ CORNERSTONE
DEVELOPMENTS OF ALASKA, LLC
APPEAL OF PLANNING AND
ZONING COMMISSION ACTION
DENYING A CONDITIONAL USE
PERMIT FOR A MINI STORAGE
AT 1001 3rd STREET**

Case No. BA-25-01

DECISION ON APPEAL

I. INTRODUCTION

Adam Tugan, on behalf of Cornerstone Developments of Alaska, LLC., (“Cornerstone”) appealed the DECISION of the City of Kenai Planning and Zoning Commission (“Commission”) denying a Conditional Use Permit to operate a mini-storage at 1001 Third St., Kenai, Alaska. For the reasons set forth below, the Board of Adjustment REVERSES the DECISION of the Planning and Zoning Commission and APPROVES the Conditional Use Permit with specific conditions as described below.

II. PROCEDURAL HISTORY

On April 8, 2025 Corner Stone Development submitted an application for a conditional use permit at 1001 Third Street for an 82-unit indoor heated storage facility (“mini-storage.”) [R.40-41] A mini-storage facility is defined in KMC 14.20.320 as a completely enclosed structure containing three or more areas or rooms available for lease or rent for the purpose of general storage of household goods, vehicles or personal property where the lessee of the unit is provided direct access to deposit or store items and where vehicles do not fill the majority of the allowed storage space. A conditional use permit is required to operate a mini-storage in the Urban

Residential Zone where the property is located.¹ The intent of the RU Zone is to provide for apartments and compatible uses in areas near centers of shopping, services, and employment where high density residential development is desirable.² A mini-storage is listed as an industrial use in the Land Use Table.³

Resolution No. PZ2025-17, granting the conditional use permit was presented at the May 14, 2025 Planning and Zoning Commission Meeting, with a supporting staff report. [R.61 and R. 34-38] At the hearing before the Commission, Gwen Urciuoli provided comment in opposition to the CUP expressing concern that it would set a precedent for other commercial uses in the area, would decrease property values, cause light pollution and increase noise and crime in the area. [R.62] Michael Urciuoli also testified against the conditional use permit because of concerns related to the condition of Third Street, that homeless people might live in the units and that a mini storage did not belong in the residential area. [R.62]

Mr. Tugan, representing Cornerstone, testified at the hearing before the Commission that Cornerstone intended to fence the entire property, that Cornerstone owned the adjacent lot and was currently building two fourplex buildings on that lot. [R.62] He also provided that Cornerstone did not intend to hook up to water or sewer for the mini-storage. [R.62] Mr. Tugan provided that Cornerstone could provide access off Redoubt instead of Third Street if desired, operating hours for the facility would not exceed 7:00 am to 7:00 pm, and Cornerstone would consider lighting alternatives to minimize neighborhood disturbance and provide security cameras for safety. [R.62] Resolution PZ2025-17 was amended by the Commission to require a site obscuring fence along Third Street and limiting hours of operation from 7:00 am to 7:00 pm. [R.62-63] The Resolution failed with a vote of 3 to 3, supported by Commissioners Reveal, Earsley and Twait, and not supported by Fikes, Krause and Woodward. [R.63] Commissioner Pettey was not present. [R.63]

On May 20, 2025 an appeal of the decision of the Planning and Zoning Commission was received by the City Clerk's office from Mr. Tugan on behalf of Cornerstone. [R.5] The Appeal was then set for a hearing before the Board of Adjustment on July 2, 2025. [R.14]

¹ KMC 14.22.010

² KMC 14.20.100

³ KMC 14.22.010

III. STANDARD OF REVIEW

Kenai Municipal Code provides that “...the Board of Adjustment may reverse, remand or affirm, wholly or partly, or may modify the order, requirement, decision or determination, as ought to be made, and to that end shall have all the powers of the body from whom the appeal is taken.”⁴ The Board reviews the appeal *de novo*.⁵ Therefore, no deference is given to the decision by the Commission. While public testimony does hold evidentiary weight, the Board cannot base its decision solely on support or opposition by the public.⁶

The function of the Board is to determine whether the requirements for a conditional use permit have been met and grant or deny the conditional use permit on the conditions supported by the substantial evidence before it.⁷ Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.⁸ The Board must make specific findings supporting its conclusions.⁹

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Kenai Municipal Code 14.20.150(a) states in relevant part that: “[t]he conditional use permit procedure is intended to allow flexibility in the consideration of the impact of the proposed use on surrounding property and the application of controls and safeguards to assure that the proposed use will be compatible with the surroundings.” The applicant for a conditional use permit has the burden of establishing that the conditional use meets the following six criteria:

- (1) The use is consistent with the purpose of this chapter and the purposes and intent of the zoning district;
- (2) The value of the adjoining property and neighborhood will not be significantly impaired;
- (3) The proposed use is in harmony with the Comprehensive Plan;
- (4) Public services and facilities are adequate to serve the proposed use;

⁴ KMC 14.20.290(f)(2).

⁵ *Id.*

⁶ *South Anchorage Concerned Coalition, Inc. v. Coffey*, 862 P.2d 168, 172 n.11(Alaska 1993)

⁷ *Id.* At 931-932.

⁸ *Id.* Citing *Kiener v. City of Anchorage*, 378 P.2d 406, 411(Alaska 1963).

⁹ *Fields*, at 932. And KMC 14.20.180(c).

- (5) The proposed use will not be harmful to the public safety, health or welfare; and
- (6) Any and all specific conditions deemed necessary by the Commission to fulfill the above-mentioned conditions should be met by the applicant. These may include, but are not limited to, measures relative to access, screening, site development, building design, operation of the use and other similar aspects related to the proposed use.¹⁰

The Board received two written public comments prior to the Hearing. [R.110-111]. One from Jordan Muffoletto, a member of Galt Ventures LLC., (“Galt”) states that Galt purchased property a 1001 4th Street specifically because of the multifamily zoning designation. [R.110] Mr. Muffoletto expressed concern that a mini-storage in the area undermines the intent of the zone and shifts the trajectory of the neighborhood away from long term multifamily housing and would negatively impact the value of adjoining property including the one recently purchased by Galt. [R. 110] Jim Lane, also a member of Galt, similarly stated that Galt purchased the property based on the zoning designation of multifamily housing and that the mini-storage, if permitted, would detract from Galt’s property value. [R.111]

At the hearing before the Board, Michael Urciuoli provided public comment to the Board. He stated that allowing a mini-storage in the area was illegal, that he doesn’t want to be a neighbor to the proposed use and that it should be located elsewhere. Mr. Urciuoli was asked by the Board if he wanted to specifically speak to any of the six criteria required for a conditional use permit to be granted, but he declined.

Cornerstone presented a written argument to the Board, advocating for a reversal of the denial of its Conditional Use Permit. [R.65-67] Additionally, Cornerstone presented a “Comparative Traffic Study,” “Comparative Lighting Analysis,” an analysis of the six factors required to obtain a conditional use permit, an economic impact analysis, crime and safety measure analysis, community need statement and revised site plan. [R. 72-84] Mr. Tugan appeared via zoom at the hearing to represent Cornerstone, providing testimony and answering questions of the Board.

¹⁰ KMC 14.20.150(d)(1-6).

Preliminarily, KMC 14.20.100 provides in full:

- (a) *Intent*. The RU Zone is intended to provide for apartments and compatible uses in areas near centers of shopping, services, and employment where high density residential development is desirable.
- (b) *Principal Permitted Uses*. As allowed in Land Use Table.
- (c) *Conditional Uses*. As allowed in Land Use Table and subject to the provisions of this chapter.
- (d) *Accessory Uses*. As defined (see Definitions).
- (e) *Home Occupations*. Uses as allowed by this chapter.
- (f) *Development Requirements*. As described in Development Requirements Table.
- (g) *Parking Requirements*. As required by this chapter.

The Land Use Table permits single family residences through building with seven or more units.¹¹ Also permitted in this zone are professional offices, churches, dormitories/ boarding houses, and essential services.¹² Additionally, the land use table allows for numerous other uses by conditional use, including but not limited to automotive sales, service station, hotels, restaurants, repair shops, warehouses and mini-storages.¹³ Conditional uses allowed in the zone pursuant to the Land Use Table are not illegal uses, but are uses that are conditionally allowed subject to the six criteria discussed below in detail.

A. Cornerstone Meets its Burden that the Use of the Property for a Mini-Storage is Consistent with the Purpose of the Zoning Code and Purposes and Intent of the Zoning District.

The Zoning Code, through the conditional use process, is intended to allow flexibility in the consideration of the impact of the proposed use on surrounding property. The RU Zone is intended for apartments and compatible uses near centers of shopping, services and employment where high density development is desirable.¹⁴

¹¹ KMC 14.22.010.

¹² KMC 14.22.010. "Essential Services" includes municipal and utility infrastructure.

¹³ KMC 14.22.010.

¹⁴ KMC 14.20.100.

In this case, the substantial evidence shows that the proposed mini-storage is compatible and consistent with the RU zone. The mini-storage, based on the site plan, is compatible with high density multifamily living and other compatible uses located near shopping centers, service centers and employment centers. The property is adjacent to Redoubt Avenue which is a Minor Collector Route and has higher daily traffic counts than surrounding side streets. [R.35] Cornerstone is planning on accessing the subject property off Redoubt¹⁵ which will limit any increased traffic on smaller streets. Cornerstone presented evidence that its 82-unit mini-storage would generate equal or lesser vehicle trips per day than other permitted uses in the zone, such as the 8 unit dwelling complex it is currently constructing in the area. [R.72-73] The Planner also concluded that traffic in the area would not be significantly impacted by the proposed use. [R.35]¹⁶ Cornerstone's agreement to limit hours of operation from 7:00 am to 7:00 pm also eliminates traffic impacts in the early morning and nights. Cornerstone further has agreed to maintain a vegetative buffer along Third Street and adjacent lots and provide a six-foot sight obscuring fence where no vegetative buffers exists¹⁷ which will limit visual impacts to the neighborhood. Finally, Cornerstone has agreed to use only downward facing motion detecting flood lights in its facility to limit light pollution. In its comparative lighting analysis, Cornerstone showed that its lighting plan for the mini-storage would emit comparable or less light pollution than permitted uses in the zone, such as the eight unit building it is constructing on an adjacent lot. [R.74-75] No evidence was submitted that contradicts any of Cornerstone's assertions. Consistent with the recommendations of the City Planner, the Board concludes that the mini-storage with an access off Redoubt, reasonable hours of operation, and a lighting plan utilizing downfacing motion detecting light is consistent with the purpose of the zone. The use is not one that would generate excessive noise or other nuisances and seems comparable to other multifamily or professional office uses allowed in the zone especially with the vegetative buffers and sight obscuring fencing proposed.

¹⁵ [R.80].

¹⁶ The Planner clarified during his report to the Board that he currently recommends an entrance off Redoubt Avenue to reduce traffic impacts to side streets.

¹⁷ [R.80 and 83].

B. Cornerstone Met its Burden to Show the Value of Adjoining Property or Neighborhood Would Not Be Significantly Impaired.

The requirements for granting a conditional use permit require the applicant to show the value of adjoining property and the neighborhood would not be significantly impaired by the use. Cornerstone argues that the indoor storage facility is low impact, generates minimal noise, traffic and visual disruption compared to retail or other industrial uses. [R.78] Cornerstone provided that industry data from the Appraisal Institute indicates that such facilities in residential zone have a neutral or slightly positive effect on nearby property values due to their utility as a community amenity. [R.78] Cornerstone additionally provided an example of a 2024 storage facility in Soldotna that increased nearby home values by reducing lot clutter. No evidence was presented that contradicts this evidence, though the Board notes that several neighbors expressed concern that their property values would go down.

Cornerstone also provided that with its mitigating factors, such as vegetative buffers, sight obscuring fences, lighting plan, and hours of operation, overall impact would be minimal due to compatibility with the neighborhood. [R.79] This is consistent with the findings and conclusions of the City Planner that the use would minimize neighborhood disruption through natural landscaping, setbacks, and screening to ensure a proper buffer and therefore not impact the economic or noneconomic value of adjacent properties and the neighborhood. [R.35]

The Board agrees that the substantial evidence presented by Cornerstone is reasonable to support the conclusion that the proposed use with mitigating factors would not negatively impact the economic or noneconomic value of adjacent properties or the neighborhood. The Board finds it reasonable that a mini-storage with proper controls could have a neutral or slightly positive effect on neighborhoods by cleaning up clutter and/ or providing an amenity desired by residents. Further the site plan (vegetative buffers, site obscuring fence, lighting plan) and operational plan proposed by Cornerstone limits the impact of the storage unit on the neighborhood so it should not have a negative impact on values of adjacent properties. Finally, Cornerstone itself is building an eight unit dwelling adjacent to the mini-storage, indicating its belief that the mini-storage will not negatively impact adjacent values.

C. Cornerstone Met its Burden to Show the Mini-Storage is in Harmony with the Comprehensive Plan.

Cornerstone argues that the City's 2016 Comprehensive Plan promotes quality of life, economic development, and strategic growth which its mini-storage facility aligns with. [R.77] Cornerstone provides that its use of the property improves quality of life by protecting livability, and providing a harmonious design, that its use promotes economic development through business friendly-regulations and land use by infill of existing subdivisions, utilizing buffers and infrastructure coordination. [R.77]

The Planner recommended that this use complies with the First Goal of the Comprehensive Plan: Quality of Life, which includes protecting and rejuvenating livability of existing neighborhoods, establishing design standards so development is in harmony and scale with surrounding uses, and having design guidelines for commercial development including landscaping, setbacks and parking. [R.36] The Planner also found that Goal Two of the Plan was met which is to provide economic development to support the fiscal health of the City through the implementation of business-friendly regulations, taxation, and incentives to create a stable, positive climate for private investment. [R.36] Finally, the Planner recommended that the Third Goal of the Plan, developing land use strategies to implement a forward-looking approach to community development and the promotion of infill of existing and improved subdivisions and using buffers was met by the development.

Again, without any evidence presented to the contrary, the Board finds that the proposed use of the property meets goals in the Comprehensive Plan of quality of life, economic development, and a forward-looking approach to community development. The Board finds the mini-storage will promote quality of life by providing a means for those living in high density multifamily developments to keep their personal belongings in an appropriate safe manner. As testified to by Mr. Tugan, many local residents have seasonal personal belongings that require storage. The proposed use provides economic development opportunities in the City, and the granting of the conditional use permit is consistent with reasonable business friendly regulations. The proposed use also provides infill of an existing improved subdivision use, utilizing appropriate buffers and landscaping to separate the business from residential use.

By meeting several of the goals in the City's comprehensive plan, and without any evidence presented to the contrary, the Board finds the Cornerstone has met its burden to show that mini-storage is in harmony with the Comprehensive Plan.

D. The Proposed Use Will not be Harmful to Public Safety, Health or Welfare.

The Board finds that the proposed use will not be harmful to public health safety or welfare. There was public concern raised that the mini-storage could attract homelessness or other crime to the area. However, Cornerstone presented evidence that generally mini-storages do not attract crime, and specifically that the Kenai Police Department records do not show crime spikes near similar low impact uses locally. [R 79] Cornerstone is providing fencing around the entire property with a secured entrance and motion activated lighting and cameras, which should deter crime. [R.79]

The proposed facility is adjacent to a paved maintained City street, and Mr. Tugan provided information during the hearing that shows there is adequate room for vehicles to stop and open the gate without impacting traffic on Redoubt Avenue. Finally, adequate City and other utilities are in place to serve the proposed mini-storage.

E. There are Additional Conditions that can be Imposed on the Conditional Use Permit that Would Allow the Use to Satisfy all of the Requirements for Granting a Conditional Use Permit for a Mini-Storage.

The final criteria allows for the imposition of additional limitations or safeguards to be required in the design and operation of the proposed conditional use to ensure it meets the other five criteria for granting a conditional use. After considering public input and evidence and testimony presented at the hearing, the Board imposes the following conditions on the conditional use permit:

1. Any development or use of the property must comply with all applicable Federal, State and City laws and regulations regardless of whether or not the requirements are listed as conditions for the Conditional Use permit. Justification: this is a standard requirement for conditional use permits recommended by the City Planner.
2. Upon request, the operator of the conditional use permit or representative must meet with City staff for on-site inspections. Justification: this is also a standard requirement,

proposed by the City Planner, to enable the City to ensure the mini-storage is operated consistent with the Conditional Use Permit.

3. The mini-storage may only allow customer access between the hours of 7:00 am and 7:00 pm. Justification: this requirement was volunteered by the applicant, and safeguards against business activity impacting any residential uses very early in the morning or late into the evenings.
4. For exterior lighting inside the gated facility, the mini-storage may only utilize downward facing motion activated lighting. Unless otherwise approved by the City Planner or Building Official, lighting inside the gated facility must be attached to buildings. Lighting at the entrance/ gate of the facility must be approved by City Planner or Building Official and be consistent with the intent of the zoning district. Justification: volunteered by applicant and consistent with zoning district.
5. The property must be securely enclosed by a six-foot fence with a secured entrance. The fence must be sight-obscuring on all sides except the side facing Redoubt Avenue. A minimum ten-foot wide vegetive buffer consisting of existing trees and shrubs must be maintained along Third Street and adjacent lots. It is understood some vegetation may be lost during fence construction. Justification: this was volunteered by the applicant and minimizes the mini-storage's impact in the area, providing privacy and aesthetic value.
6. The entrance to the facility must be off Redoubt Avenue. Justification: this was volunteered by the applicant, and reduces traffic impacts on smaller streets.
7. Setbacks must be a minimum of 25 feet in front and ten feet side and rear. Justification: these volunteered setback requirements exceed municipal code requirements and provide extra buffering between the mini-storage facility and adjacent land uses.
8. Drainage must be designed to flow towards Redoubt Avenue or otherwise be collected so as not to impact adjacent lots. Justification: the Board wants to ensure adjacent properties are not impacted by the mini-storage use.
9. No storage of any items outside the indoor storage facility. Justification: volunteered by Applicant.

CONCLUSION

After reviewing the evidence, public comment and presentation before it, the Board of Adjustment REVERSES the Decision of the Planning and Zoning Commission denying the Conditional Use Permit. The Board GRANTS the Conditional Use Permit, subject to the eight additional conditions stated above, to operate an 82- unit mini-storage at 1001 Third Street, based on the findings and conclusion of law stated above. Generally, the Board concludes that with adequate buffers and screening coupled with reasonable hours of operation, the mini-storage can be operated without negatively impacting surrounding properties and the use fits in well with the zone as a conditional use. While concerns were expressed by several members of the public, no evidence was presented to refute the evidence presented by Cornerstone and Cornerstone met its burden under Kenai Municipal Code to obtain the Conditional Use Permit.

Dated this 23rd day of July, 2025

BY: Brian G. Gabriel
Brian G. Gabriel, Board Chair

BY: Deborah Sounart
Deborah Sounart, Board Member

BY: Alex Douthit
Alex Douthit, Board Member

BY: Soyala Kisen
Soyala Kisen, Board Member

BY: Henry Knackstedt
Henry Knackstedt, Board Member

BY: _____

Phillip Daniel, Board Member

BY: _____

Victoria Askin, Board Member

Notice of Right to Appeal


This decision constitutes the final decision of the City of Kenai Board of Adjustment in this matter. An appeal of this decision to the Alaska Superior Court must be filed within thirty (30) days of the date of this decision, in accordance with Kenai Municipal Code Section 14.20.300, Alaska Statute 22.10.020(d), and Alaska Rule of Appellate Procedure 602(a)(2).

CERTIFICATE OF DISTRIBUTION

I certify that on 23rd day of July, 2025, a copy of this DECISION ON APPEAL was distributed by Certified and/or First Class Mail to each of the following:

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Shellie Saner, City Clerk
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