A regular meeting of the Fairbanks North Star Borough Planning Commission was held in the Mona Lisa Drexler Assembly Chambers, Juanita Helms Administration Center, 907 Terminal Street, Fairbanks, Alaska. The meeting was called to order at 6:02 p.m. by Wendy Presler, Chairperson.

MEMBERS PRESENT: Charles Whitaker Chris Guinn
Mike Stepovich John Perreault
Robert Peterson Mindy O’Neall
David Brandt Wendy Presler

MEMBERS ABSENT: Eric Muehling Patricia Thayer

OTHERS PRESENT: Christine Nelson, Director of Community Planning
Manish Singh, Planner
Stacy Wasinger, Planner
Don Galligan, Transportation Planner
Wendy Doxey, Assistant Borough Attorney
Nicole Nordstrand, Administrative Assistant

1. ROLL CALL

B. MESSAGES

1. Chairperson’s Comments

Ms. Presler reminded everyone that the Planning Commission’s decisions are based strictly on relevance to Title 18.

2. Commissioner’s Comments

There were no comments by Commissioners.

3. Communications to the Planning Commission

Ms. Nelson communicated that the Downtown Fairbanks Planning Community Meeting will be held Wednesday, September 27, 2017 from 6:00 – 9:00 p.m., at the Westmark Fairbanks.

4. Citizen’s Comments – limited to three (3) minutes

There were no comments by Citizens.

5. Disclosure & Statement of Conflict of Interest
Mr. Guinn indicated that he may have potentially three (3) conflicts that he would like to disclose. He reported that in the matter of GR2017-171, the Applicant, Mr. Brasier, spoke with him concerning the matter prior to submitting an application and he referred Mr. Brasier to the Community Planning Department.

Ms. Doxey asked what information had been obtained that would create a conflict, and stated that typically if there is *ex parte* contact, but it is cut off and one can be fair and impartial, a conflict is not necessarily created.

Discussion ensued between Mr. Guinn and Ms. Doxey on determination of whether a conflict may exist.

Ms. Presler questioned whether or not Mr. Guinn felt he could make a fair and impartial decision, and Mr. Guinn indicated that he could, so Ms. Presler determined no conflict exists, but the issue could be revisited if Mr. Guinn recalled something that could create a conflict.

Mr. Guinn disclosed of a potential conflict on HP2018-001 due to his intention to bid to perform the appraisal of the partial acquisition by DOT&PF.

Discussion ensued between Mr. Guinn, Ms. Presler, and Ms. Doxey concerning the legislative nature of the proceeding, standard of a substantial financial interest, and competitive bid process for the appraisal.

Ms. Presler found that no conflict by Mr. Guinn exists on the matter of HP2018-001.

Mr. Guinn disclosed that in the matter of CU2017-025, one of the “interested persons” is a long-time close friend that may give the appearance of bias.

Discussion ensued between Mr. Guinn, Ms. Presler and Ms. Doxey on the weight given to one’s testimony and appearances of impropriety.

Ms. Presler determined that Mr. Guinn does not have a conflict, but will readdress the matter when it is called to give the Applicant and/or Staff the opportunity to object to the determination.

C. * APPROVAL OF AGENDA AND CONSENT AGENDA

Approval of Consent Agenda passes all routine items indicated by asterisk (*) on agenda. Consent Agenda items are not considered separately unless any Planning Commission member or citizen so requests. In the event of such request, the item is returned to the general agenda.

MOTION: To reorder Agenda under the Quasi-Judicial Hearings to hear CU2017-024 first, then CU2017-025, and then V2017-008 by Ms. Presler and seconded by Mr. Whitaker.

PASSED WITHOUT OBJECTION

MOTION: To adopt approval of the Amended Agenda and Consent Agenda by Ms. Presler.
Ms. O’Neall objected to the minutes and stated that on Page 16 for the roll call, it should read seven (7) in favor and two (2)

**MOTION:** To adopt approval of the Agenda and Consent Agenda as reordered and as correct by Ms. Presler and seconded by Mr. Whitaker.

**PASSED WITHOUT OBJECTION**

**D. MINUTES**


**E. QUASI-JUDICIAL HEARING**

1. **CU2017-024:** A request by David Worel on behalf of Worel LLC for conditional use approval of a marijuana cultivation facility, indoor unlimited in the General Use 1 (GU-1) zone on Lots 8, 9, and 10, Block 2, Piledriver Park Subdivision (located at 807 Landing Road on the west side of Landing Road, north of Badger Road).

Mr. Worel was present.

**OATH ADMINISTERED**

Ms. Wasinger presented an abbreviated presentation of the original presentation given on August 15, 2017.

**Questions by Commissioners**

*There were no questions by Commissioners.*

**Interested-Person Testimony Opened**

*There were no additional interested-person(s) present.*

**Interested-Person Testimony Closed**

**Applicant’s Rebuttal**

*No rebuttal by Mr. Worel.*

**Questions by Commissioners**

Mr. Perreault inquired if Mr. Worel had given any thought into higher stack height mentioned at the last meeting, and Mr. Worel responded that their stack is not an issue because it is tall enough.

**MOTION:** To approve the conditional use permit for marijuana cultivation facility, indoor unlimited, on Lots 8, 9, and 10, block 2 with three (3) conditions, and adopting the staff report and three (3) Findings of Fact in support of the approval by Mr. Perreault and seconded by Ms. O’Neall.
Discussion on the Motion

Mr. Perreault stated his support of approval of the permit. He stated that the facility has primarily been an industrial trade use facility for some time, and there will not be a change to the amount of people or activity going on around it, it is not a retail establishment, and it is in the general use zone, and appears to complete all the requirements by the State for signage, security, ventilation, odor control, and no reason to not allow this person their private property rights.

Ms. Presler stated that the proposed use does conform to purpose and intent of Title 18, there are adequate facilities (septic, water, electric), and feels positive that because Mr. Worel is a HVAC contractor, the odor concern will be dealt with by the engineered system to be installed. She further indicated that the hours of operation are amenable to the area, and traffic will actually decrease from previous traffic levels.

ROLL CALL

Seven (7) in Favor: Mr. Guinn, Mr. Whitaker, Mr. Peterson, Ms. O’Neall, Mr. Stepovich, Mr. Perreault, and Ms. Presler

One (1) Opposed: Mr. Brandt

MOTION PASSED

2. CU2017-025: A request by Monique Daigle DBA AK Green Bee, Inc for conditional use approval of a marijuana cultivation facility, indoor large in the General Use 1 (GU-1) zone on Lot 2, Block 1, Benshoof Subdivision Phase 1 (located at 2364 Badger Road, on the east side of Badger road, south of Benshoof Drive).

Ms. Daigle, the Applicant, was present.

Ms. Presler revisited the issue of Commissioner Guinn’s potential conflict disclosure and asked Ms. Daigle and Staff if they had any objection to Mr. Guinn sitting on this matter.

Ms. Daigle replied she felt Mr. Guinn would be impartial on this matter, and Mr. Singh did not have any objection.

Interested-Person Testimony Re-Opened and continued from August 15, 2017

OATH ADMINISTERED TO JOVANNA MCCORMIK

Ms. Jovanna McCormik reported that marijuana establishments are known as “cash businesses” and locations are public records which make them a target for burglary and criminal activity within neighborhoods. She stated traffic had already increased with the construction vehicles. She expressed concern in Alaska Green Bee’s security citing lack of fencing, slow law enforcement response, and hackers impeding other security measures implemented by Alaska Green Bee.

Ms. Geri Benshoof stated that her residence is within 600 feet of the property in question, and has lived on the land for 51 years. She reported that the subdivision was never intended to include an industrial area, and the application should be denied because it does not meet the
goals of the FNSB Regional Comprehensive Plan. She further explained differences in the economic development goals stated by the Staff Report versus the application. She also reported concerns with chemical contaminates in the open waterways of the Chena Slough and compatibility with the surrounding community as detailed in the planning map identifying it as “preferred residential land”.

Mr. Whitaker inquired if she subdivided the area and considered rezoning to a residential classification, and Ms. Benshoof responded they did subdivide it and never thought about rezoning.

Mr. Perreault queried why they did not pursue residential zoning for the area. Ms. Benshoof explained that most of the area, at the time, was still UU and then the Borough changed it to GU; making it more restrictive, and in order to allow businesses along the road and residential in the area, it was not necessary to rezone it, but they did not envision industrial type businesses.

Mr. Lyman Benshoof testified that they purchased 160 acres in 1966 and lived on the land for 51 years, and had developed several businesses there, and subdivided all remaining parcels in 1985. He explained that there was a comprehensive plan done and the zoning was GU, and to do “spot zoning” would be problematic, but within a two mile radius, the majority of the lots are residential with the exception of 7 lots along Badger Road which are generally good locations for businesses. In 18.84, there are 12 uses that are not allowed outright and thinks there is good reason they should not be allowed, including a marijuana facility, and their goal was to put small businesses that are compatible with the neighborhood.

Mr. Peterson inquired if any covenants were created when they were subdividing the lots. Mr. Benshoof replied that there were for the residential, but not for the seven that were intended for small businesses. Mr. Peterson stated that there was some intent back then to keep those lots residential, and Mr. Benshoof agreed.

Mr. Austin Somaduroff spoke on the proposed Fire Protection plan including potential inaccessibility by the North Star Fire Department, having deficiencies in fire alarm system, fire dampers and sprinkler systems, and marijuana smoke and burning chemicals creating air pollution in the neighborhood.

Ms. Manda Kassell testified she is a teacher at Midnight Sun Elementary School (formerly Badger Road Elementary) for the past 15 years and resides 400 feet from the proposed facility. She indicated that this is an adult-oriented industry and that the Borough, in Title 18, establishes buffer zones around child-centered facilities which are applicable to this property as it is a long-established school bus stop at the corner of Benshoof Drive and Badger Road and is designated by the FNSB School District as a safe place for students to both enter and exit a school bus and must be protected by a 500 foot buffer zone. She stated that the school zone is within 160 feet of the property proposed for this marijuana facility, and pointed to an image showing the direct route children take near the property.

Mr. Perreault requested Ms. Kassell point with the laser pointer to the path she testified about, and Ms. Kassell pointed to where the bus stop is located and the path the children follow (aerial 2012, page 4 of Staff Presentation). Mr. Perreault queried if the children were cutting across Ms. Daigle’s property, and Ms. Kassell responded affirmatively.

Ms. Marchelle Somaduroff stated that her property directly borders the subject property, and the photographs in the Staff Report are not representative of the actual property location, but the
photographs provided under “Tab #8” demonstrate an established residential neighborhood. She further testified that FNSBC 18.96.240(A)(3) sets a 500 foot buffer zone around child-oriented facilities around housing facilities owned by a public housing authority with children as residents, and believes children in this residential neighborhood are also entitled to the same 500 foot buffer protection as children living in publically funded housing.

Mr. Cyrus Freeman stated his concern for the lack of planning for preservation of the environment, the failure to provide a list of chemicals to be used onsite, lack of a plan for how these chemicals will be handled to prevent pollution of the soils and groundwater systems; including the already impaired waters of the Chena Slough.

Mr. Perreault noted that in the application before him it does list the chemicals utilized and indicates a DEC approved commercial and industrial leach field system would be installed. He asked Mr. Freeman specifically what he finds “not up to snuff”. Mr. Freeman answered that the chemicals listed are just brand names and not any particular chemical, rather a company you do business with, not the actual chemical to be used. Mr. Freeman further responded that there might be an industrial septic system, but it may not be designed to process chemical waste; particularly chemical waste that cannot be broken down biologically.

Ms. Lois Maxwell addressed the toxic waste disposal of marijuana cultivation activities, and cited 18 AAC 72 Wastewater Disposal, requiring special permitting and handling of wastewater disposal systems. She further stated that the site plan submitted does not demonstrate the location of a non-domestic wastewater system or holding tank.

(The meeting recessed to fix computer technical issues)

Mr. Barry Scott Winner testified that he is affiliated with the church located near the subject property, and the driveway to the church [sic] cuts through the church parking lot exposing children and members to industrial traffic in their own parking lot. He stated that there are no traffic mitigation measures or directional signage in the application, and directional signage will be necessary to minimize errant parking lot utilization. He requested that the 100 foot buffer zone be expanded to include the access easement.

Mr. Whitaker asked if the easement on the Church’s property deed is listed for the benefit of the neighbor to access its property and if there is any other access to that property other than the easement. Mr. Winner stated he assumed that the easement is for the neighbor’s access and does not believe there is any other access.

Mr. Perreault asked if he was aware of the easement when he purchased the property, and Mr. Winner stated that the church was there before the easement. Mr. Winner explained the history of the facilities on the property and his understanding of the easement placement.

Mr. Zac Kassel testified on the authority of the State Fire Marshall concerning building plan reviews.

Ms. Crystal McCormick testified she is reading the testimony of Sue Valdrow. She stated that the application is a violation of the Alaska DEC Air Quality Code 18 AAC 05.110 which protects the health of this neighborhood. She further testified of the severe allergies associated with marijuana cultivation activities of Joe and Sue Valdrow.
Rebuttal by Ms. Daigle

Ms. Daigle addressed concerns and questions she heard including lighting, traffic, odor, security, waste removal, chemical contamination, and incomplete or false information on the application and provided a detailed response on these potential concerns.

Questions by Commissioners

Mr. Whitaker inquired if Ms. Daigle had contacted DOT to see if a driveway permit is available off of Badger Road. Ms. Daigle responded that the plat indicated it is not permitted, but she intends to contact DOT to see if it may now be possible.

Mr. Perreault asked if Ms. Daigle was aware that the access across the church property was going to be a limited access, and she responded affirmatively.

Mr. Guinn queried how Ms. Daigle intended to keep kids from utilizing the route across her property. Ms. Daigle stated it is her intent to install fencing next building season and stated that during the past year there have been no children crossing her property.

Mr. Brandt asked if there was a reason the building is located in the back corner of the lot; less than 75 feet from the neighboring lots. Ms. Daigle responded that it was in consideration of the distance from Badger Road and to allow for expansion in the future without the main entrance near Badger Road.

Interested-Person Testimony Closed

MOTION: To approve the conditional use permit for a commercial marijuana cultivation facility, indoor large, with three (3) conditions, and adopting the staff report and three (3) Findings of Fact in support of the approval by Mr. Peterson and seconded by Ms. Presler.

Discussion on the motion

Mr. Brandt declared his opposition to the application due to the “residential” nature of the neighborhood, and that it was not repurposing an existing commercial building, rather picked a location “smack dab” in the middle of a residential neighborhood.

Mr. Peterson stated that with the conditions imposed, the proposed conditional use does conform to Title 18, it is zoned GU-1 and has been since the property was subdivided.

Mr. Guinn indicated that while he does agree with Mr. Brandt on the inappropriateness of the site, it is zoned GU-1, and the Planning Commission has approved these uses in the past, and with the potential growth in the coming years there are going to be a lot of businesses along Badger Road, so reluctantly he stated he will be voting to approve it.

Mr. Perreault summarized concerns expressed during testimony as being regulated by other agencies, and stated that as a condition of the permit all those regulatory requirements must be met. He further stated that for 32 years the property owners have allowed it to be zoned GU-1, and if it should not be, then residents need to be proactive and change the zoning. He stated his belief that it is not the place of this Commission to deny someone their legal property rights
in the face of other people’s fears which should be compliant with the rules that have been set up, and as such, will reluctantly be voting to approve the permit.

Ms. Presler developed the record more on the health, safety and welfare and stated the conditional use permit does conform to Title 18 – economic development to the state economy, the applicant has acknowledged she will have ADEC approval, there is adequate transportation, energy and water are present, security and inspections are regulated by the State, and odor and particulates exhausted on the roof will be an improvement.

Ms. Doxey sought clarity from the Commission that if no other access in the future is found, if utilizing the current gravel access road is adequate facilities.

Mr. Perreault stated that if the fire department has signed off on the road, and there is moderate traffic from staff, it should be sufficient.

Ms. Presler clarified her statement was merely out of sympathy to the church and neighbors if she could find an alternate route.

ROLL CALL

Seven (7) in Favor: Ms. O’Neall, Mr. Stepovich, Mr. Perreault, Mr. Guinn, Mr. Whitaker, Mr. Peterson, and Ms. Presler

One (1) Opposed: Mr. Brandt

MOTION PASSED

3. V2017-008: A request by Allyn L. and Ruth M. Haynes for a setback variance of 15 feet to the side-yard setback requirement of 25 feet in the Rural Residential (RR) zone on Lot 7, Block 5, Mountain View Subdivision Phase 3 (located at 505 Marshall Drive, on the south side of Marshall Drive, between Skyline Drive and Lowell Road).

Mr. Allyn Haynes, the Applicant, was present.

Mr. Manish Singh presented an abbreviated presentation of the original presentation given on August 15, 2017.

Mr. Haynes indicated to the Commission that he had taken pictures of his property and the neighboring properties (Mr. Haynes approached the dais to allow the Chair to review the photographs). He explained that there are two groups of photographs; the first is of his property and show the location with a 15 foot setback and a 25 foot setback, and the second group show photographs of existing structures in the neighborhood showing garages of 900 feet or more within 2,000 feet of his property.

Ms. Presler determined the photographs are relevant to the application request.

(The meeting recessed at 8:12 p.m. to 8:26 p.m. to allow the Clerk to make copies and distribute the photographs provided by Mr. Haynes)

Mr. Haynes explained the pictures before Commissioners.
Mr. Brandt commented that photograph #3 is a tent blocking the view and photograph #1 is a travel trailer blocking the view which are all portable and can be moved. Mr. Haynes responded that the tent would be going away, but the 10’ woodshed in picture #4 would remain. Mr. Haynes further explained that height of the proposed structure.

Applicant’s Rebuttal

Mr. Haynes summarized that the location in question is the best use of the property, and stated it’s reasonably placed, it will be as unobtrusive as possible, and it will blend in with the surroundings and neighborhood. He further stated that doing this will allow him to clean up his property, protect his investment, and what he deemed to be proper use of his property similar to what his neighbors have done on their properties. He reminded the Commission of the covenants and provisions of AS 29.40.040(b).

Questions by Commissioners

Ms. O’Neall inquired if Mr. Haynes had contacted GVEA concerning its easement, and Mr. Haynes replied that he is only asking for a 15-foot setback, which is what GVEA requires, but they will be contacted.

Interested-Person Testimony Opened

Mr. Jack Allen testified that Mr. Haynes’ proposed garage would be an improvement to the neighborhood.

Ms. Lorane Mobley testified that a new garage would enhance his property and she has no objection to it being built in the location he has requested and will increase his property value considerably.

Mr. Whitaker asked if her house is the red house to the east, and Ms. Mobley responded hers is to the west.

Mr. Clifford Mobley testified that putting the garage in would be a nice improvement to Mr. Haynes’ property and add to his property value.

Ms. Presler asked Mr. Mobley to speak about the current situation concerning the cars and how it may help. Mr. Mobley replied that they are in the white buildings and in the winter time it is difficult to remove the snow from those buildings, so to have a permanent structure would make it a lot easy to take care of them.

Mr. Barton Maize testified he has lived in the red house next to Mr. Haynes for over 20 years, and is supportive of the location of the garage, and stated it is in keeping with the character of the neighborhood, and the proposed location of the structure is really the only logical space.

Mr. Whitaker asked the distance of his house from the property line. Mr. Maize replied that it is the east side of his garage shown in the picture and that distance is about 30 feet.

Mr. Brandt stated that in the pictures the land appeared fairly flat, and inquired if there is a substantial slope between Mr. Haynes property and where the sheds are located. Mr. Maize responded that there is a north/slope, and there is a modest slope to the west/east down to where the tents are located, but there is a much more pronounced slope to the west of Mr.
Haynes between the driveway that runs down between the tents/sheds and his house which is what is creating the challenges of placement in another location.

**OATH ADMINISTERED TO NICK ADKINS**

Ms. Arlene Strandberg testified she lives off of Panorama Drive. She stated that the proposed structure is architecturally and functionally harmonious with the Haynes’ existing home and will have a positive aesthetic effect on the attractiveness of the entire neighborhood. She further addressed the positive effects on the neighborhood.

Mr. Nick Adkins testified that Mr. Haynes has done the right thing by speaking with the neighbors and has their support and if he puts it in another location he is not going to get the view the rest of the neighborhood enjoys.

Mr. Darrell Russell testified he is the proposed contractor for building the structure. Ms. Presler inquired if his testimony would be citing the building and potential options, to which he responded affirmatively, and as such his testimony was allowed.

Mr. Russell stated that the location the Borough proposed as an alternative will not allow him in any way, shape or form to turn and go into the garage on the side, and the doors cannot be placed on the uphill side as there is a 9 foot drop from the top of his driveway to the location of the building which is 4 feet below the road itself. The requested proposal site would require installation of a retaining wall to allow proper drainage from the street for rain and snow runoff.

Ms. Brandt referred to the site plan, and asked what the drop is from the location marked “gravel” to in front of the orange square marked “A”. Mr. Russell responded that from the flag pole down to the proposed building is almost a 9 foot drop and the gravel is a wrap, so it is a hard surface and water doesn’t drain through it. Mr. Brandt queried if there was any other location on Mr. Haynes’ lot for placement of a 30 x 30 structure, and Mr. Russell stated there is not without substantial ground work which would not be cost effective. Mr. Russell then explained the height of the building with the various slope elements.

Ms. Christine Nelson asked Mr. Haynes if the slope affecting his property was different from that of his neighbors creating a special condition, and Mr. Haynes replied it was a contributing factor. Ms. Nelson inquired if there are other special conditions that are peculiar to his land that are different from the neighborhood. Mr. Haynes indicated that it is difficult to respond because he only sees the finished product and does not know what may have had to be done to achieve that finished property, but stated that the 900 square foot garage that is on picture #1 is on a real steep hillside, but are on the uphill side of road, so their driveway goes up and they excavated into the side of the hill, and there is only a 10 foot setback. Ms. Nelson asked Mr. Haynes to point to the slope, and Mr. Haynes used the pointer to show the location and explained the sloping issues.

**Applicant’s Rebuttal**

*Mr. Haynes offered no rebuttal.*

**Interested Party Testimony Closed**
MOTION: To approve V2017-008, a setback variance of 15 foot to the side-yard setback requirement of 25 feet in the Rural Residential zone on Lot 7, Block 5, Mountain View Subdivision Phase 3 located at 5050 Marshall Drive, on the south side of Marshall Drive, between Skyline Drive and Lowell Road by Ms. O’Neall and seconded by Mr. Whitaker.

Discussion on the Motion

Ms. O’Neall stated that the Applicant has shown there is a significant slope that prohibits him from building the structure in the areas recommended by Staff, but bigger than that is the septic distance (photo #5) which is alarmingly close and believes this is the least intrusive and obstructive way to build on his property and stated her support of the application.

Mr. Whitaker commented that it does not seem to be a safety issue at all with the nearest neighbor 40 – 55 feet apart, and Mr. Haynes is trying to be compliant with Borough code, and it does not have anything to do with pecuniary reasons, and will improve the property and neighborhood values.

Mr. Perreault stated that in addition to those already stated, the Applicant’s submissions underline that his proposed structure will meet the nature and character of the neighborhood and existing structures around the neighborhood and is not significantly different or out of character.

Mr. Brandt indicated his agreement with Ms. O’Neall’s statement concerning the slope and is an issue for the placement of the garage and where the doors can be placed and believes it is a special condition and both neighbors on each side of him testified and strongly supports his building.

Ms. Doxey referred back to the last meeting (full packet at page 291 – Staff exhibit 3) which delineates several neighbors’ detached accessory structures and requested that the Commission develop the record on why there is a special condition that requires Mr. Haynes to build in this setback when the proposed structure is a much bigger structure than the neighborhood’s general structures.

Mr. Perreault stated Mr. Haynes has provided pictures that, although bigger, it is certainly keeping in the character of other detached garages, shops, and outbuildings in the neighborhood and the significance of a couple hundred feet would not be a dramatic departure from what is normal judging from the pictures provided of the neighborhood.

Mr. Brandt communicated that there is nothing in zoning that limits the size of outbuildings just because neighbors have a smaller size, and the majority of the houses in the neighborhood have outbuildings whether large or small.

Ms. Doxey clarified that a variance is supposed to be a relief valve for someone who cannot develop their property, and if the Applicant cannot exercise his property rights similar to his neighbors in the area because of the special condition then a variance is relief to allow him to break the law in order to develop his property. She provided a theoretical analogy of how his property might fall within the level needed to grant a variance based upon the law and the necessary factual findings necessary to show how this Applicant would be deprived of a property right similar to his neighbors if the setback were enforced and he had to build a slightly smaller garage.
Mr. Perreault stated that the Applicant’s proposed structure is similar to his neighbors, and he wants to build such a structure on his property.

Ms. Doxey interjected for the record, that she saw one photo of a 900 square foot garage, and asked what were the others that she may not be aware exist.

Mr. Perreault pointed out there is the listed one of about 700 square feet, plus all the others that exist and are smaller, but by character and nature, the structure Mr. Haynes is attempting to build is similar to structures elsewhere in the neighborhood. He further stated that other Commissioners have discussed slope, septic placement, and other restrictions on where this structure can be placed, and testimony from the public support it will be an improvement to the neighborhood.

Ms. Presler stated her agreement with Mr. Perreault, that there are a couple listed by the Borough, and there really is no difference from the outside between a 676 square foot building and a 900 square foot building, and he already has 800 square feet of tents and outbuildings which will go away for a permanent, nicer structure. She further indicated that his contractor stated there really is no other place on the property for placement.

Ms. Doxey indicated that the appearance of the lot and what it looks like is not a factor to base a variance, and the findings of facts need to establish the legal basis for granting a variance.

(The meeting recessed from 9:20 p.m. to 9:35 p.m. for the Chair and Ms. O’Neall to develop Findings of Fact)

MOTION: To amend Motion to approve the requested 15 foot variance from the 25 foot side-yard setback requirement with the following five (5) findings of fact:

1. Site conditions of slope down the driveway, slope away from house, and septic location prevent construction of proposed structure elsewhere on property;
2. A 30’ x 30’ detached garage is not inconsistent with detached accessory structures on nearby property and nearby structures include a 1,000 square foot, a 900 square foot and a 750 square foot structure;
3. The proposed variance does not appear to be solely to relieve pecuniary hardship and the variance will provide increased security and the variance would allow the applicant to enjoy the same property rights as their neighbors by maintaining their mountain view;
4. The property variance will not jeopardize public health, safety, or welfare or cause increased risk or danger of fire because the closest neighboring structure will be at least 30’ from the property line; and
5. History of the development of the property demonstrates this was not an intentional or self-created problem.

by Ms. O’Neall and seconded by Ms. Presler.

Discussion on the Motion

There was no additional discussion on the Motion to Amend.
ROLL CALL (Motion to Amend with Findings of Fact)

Eight (8) in Favor: Mr. Guinn, Mr. Whitaker, Mr. Peterson, Ms. O’Neall, Mr. Stepovich, Mr. Perreault, Mr. Brandt, and Ms. Presler

Zero (0) Opposed:

MOTION PASSED

ROLL CALL (Motion to Approve Variance)

Eight (8) in Favor: Mr. Stepovich, Mr. Perreault, Mr. Brandt, Mr. Guinn, Mr. Whitaker, Mr. Peterson, Ms. O’Neall, and Ms. Presler

Zero (0) Opposed:

MOTION PASSED

F. PUBLIC HEARING

1. HP2018-001: Danby Street & Wembley Avenue Roundabout – A request by the State of Alaska Department of Transportation and Public Facilities for local planning authority approval of the Danby-Wembley Roundabout Project. This project proposes to upgrade the existing two-way stop controlled intersection with a modern roundabout in an effort to improve safety for all corridor and intersection users. This project is anticipated to require right-of-way acquisition.

Mr. Carl Heim present on behalf of Department of Transportation and Public Facilities.

Mr. Don Galligan gave a presentation of his staff report and recommendations on behalf of the Borough’s Planning Department.

Questions by Commissioners

Mr. Perreault expressed his pleasure seeing that local trucking companies were involved in the alternative plans. Mr. Galligan responded that there were 4 trucking companies involved and 6 different designs, but deferred to Mr. Heim from DOT.

Ms. O’Neall asked if the trucks going in the opposite directions are limited to the time of day or is it left to general business practices. Mr. Galligan replied that it is left to general business practices and DOT has been informed by the trucking companies that the majority of their trucking is during the evening when traffic is less.

Mr. Stepovich inquired why trucks wouldn’t just take the Aurora exit, and how many of the accidents reported were related to the larger vehicles. Mr. Galligan deferred to DOT on the exit route and was not certain on the percentage of accidents.

Applicant’s Presentation

Mr. Heim stated he is the engineering manager for DOT’s Alaska Traffic and Safety, and the project manager for this project.
Mr. Marc Frutiger introduced himself and stated he represented R&M Consultants, Inc. from Anchorage as the engineers on the project.

Mr. Heim indicated he did not have a presentation and preferred to answer questions from Commissioners.

Questions from Commissioners

Ms. Presler asked Mr. Heim to speak more about the trucking companies, designs, and access to the Aurora area. Mr. Heim responded that the original truck trial involved Lyden, Carlile, Alaska West Express and Wrightway Automotive, six different truck designs, and R&M Consultants actually laid out in chalk and ran them through all design options. He further stated, the pipe truck was the vehicle which had the most difficult time getting through the roundabout. Mr. Heim replied to Mr. Stepovich’s question regarding the Aurora exit and explained that the pipe truck comes from Flowline on Philips Field Road, so it cannot turn around to take the exit, it must go down Wembly. He responded to the crashes related to commercial vehicles questions, and indicated he wasn’t aware of any, that it was passenger vehicle accidents that caused it to be nominated by the Highway Safety Improvement Program.

Mr. Perreault asked if the companies had preferred one design over the other. Mr. Heim clarified that the pipe truck has to be guided by pilot cars at all times regardless of the time of day due to its 90 foot length and the pipe truck will go contraflow with the intersection. Mr. Heim deferred to Mr. Frutiger to explain the design further.

Mr. Frutiger explained that to allow the 90 foot truck to go through the roundabout in a traditional fashion is that the central island is shrunk in favor of additional truck apron space. He further explained the operational design and purpose of a central island.

Mr. Heim stated that Option #2 is DOT&PF’s preferred choice.

Mr. Whitaker inquired if the bike path is part of this project. Mr. Heim replied that they are coordinating with the City of Fairbanks on the project that would take the bike path from Danby to Aurora, along the north side of Wembly.

Ms. O’Neall asked how bike paths work for roundabouts with cars continuing to move. Mr. Frutiger explained that bikes are a challenge at roundabouts and explained the difference between a single-lane versus multi-lane roundabout. Ms. O’Neall asked if there would be flashing lights letting approaching cars know. Mr. Frutiger explained there would be cross-walk markings on the pavement. Ms. O’Neall then asked what the expected trip generation of the pipe truck. Mr. Heim replied that the maximum loads that have gone through that intersection at peak operating capacity is approximately 150 per month, so an average of 5 per day, but explained it could be as little as 10 or 15 per month.

Mr. Whitaker asked for further clarification on location of cross-walk. Mr. Heim pointed to the diagram on the screen and had Mr. Galligan point to the areas.

Ms. O’Neall asked if the public transit bus stops would be impacted. Mr. Frutiger explained they are working with MAC transit, and that the stop on Danby would be moved further north to locate it outside the roundabout area of operation.
Public Testimony Opened

Mr. Bob Burcell commented that he is the owner of the Cookie Jar Restaurant and expressed concerns of traffic being blocked, access to the north side, bike access and general disruptions to his business.

Public Testimony Closed

Applicant's Response

Mr. Heim responded that they are in the preliminary design phase and at 95%, and there is some right-of-way acquisition and hope to begin next spring with completion within three to four months. He further stated that after the design is complete it is transferred to the DOT construction department, and access has to be maintained at all times during construction including business, emergency, and bike and pedestrian.

Ms. O’Neall inquired if the red brick shows pavement and the green means vegetation, to which Mr. Heim responded affirmatively. Mr. Frutiger responded and explained the limitations with landscaping in a roundabout especially with maintenance staff and budget and weather/temperatures in Alaska, and explained the specific landscaping and design of this particular roundabout. Mr. Heim explained more specific plans that DOT wants to implement in this roundabout.

MOTION: To approve HP2018-001 as being consistent with the Comprehensive Plan, adopting the staff report and five findings of fact by Mr. Guinn and seconded by Mr. Perreault.

Discussion on the Motion

Ms. O’Neall communicated she believes the proposed project will be a much needed improvement and is pleased there is a consideration for bicycle plans that connect the Aurora subdivision, but is still concerned about the safety of bicycles and pedestrians and hope that the design will slow people down and make it safer. She stated her desire see more green space regardless of maintenance.

Mr. Peterson commented he is in favor of the motion, but pointed out that there are only four (4) findings; not five (5).

MOTION: to amend the Motion to include four (4) Findings of Fact by Mr. Guinn and seconded by Ms. Presler.

PASSED WITHOUT OBJECTION

Discussion on the Motion

Mr. Stepovich thanked DOT for working with the local trucking companies and with the businesses to maintain access.

Mr. Presler commented that this project is going to be a big improvement for how traffic moves through that area and a lot safer.
ROLL CALL

Eight (8) in Favor: Mr. Peterson, Ms. O’Neall, Mr. Stepovich, Mr. Perreault, Mr. Brandt, Mr. Guinn, Mr. Whitaker, and Ms. Presler.

Zero (0) Opposed:

MOTION PASSED

(The meeting recessed at 10:31 p.m., and reconvened at 10:36 p.m.)

G. APPEALS

1. GR2017-171: An appeal by Ray Brasier of the denial of a request on behalf of Patricia Anne Cornwall Roth IRA for affirmative recognition of legal nonconforming use status (grandfather rights) for an existing four-plex building in the Two-Family Residential (TF) zone for the property on Lot 2E, Block 99, Fairbanks Townsite (located at 1122 Eighth Avenue, on the north side of Eighth Avenue, northwest of Cowles Street).

OATH ADMINISTERED TO MR. BRASIER

Mr. Ray Brasier, the Appellant, was present.

Ms. Doxey reminded Ms. Presler of the need to discuss potential conflict of interest by Mr. Guinn and to explore a potential conflict of Mr. Stepovich.

Ms. Presler communicated the nature of Mr. Guinn’s involvement with Mr. Brasier in this matter, and explained that she had initially determined it did not appear Mr. Guinn would have a conflict.

Ms. Doxey explained that due to Mr. Brasier not being present during Mr. Guinn’s initial disclosure, Mr. Guinn would need to restate his potential conflict.

Mr. Guinn restated his earlier disclosure of a conversation with Mr. Brasier concerning the subject property.

Ms. Presler inquired from Mr. Guinn if he could make an impartial decision, and Mr. Guinn responded affirmatively.

Mr. Brasier, as well as Staff, stated they had no objection to Mr. Guinn sitting on this matter.

Mr. Stepovich advised that he did not receive a “dear property owner” letter, but is in the area and believes he should have received one. Discussion ensued and Staff verified that Mr. Stepovich is outside the DPO area.

Ms. Doxey communicated that Mr. Stepovich is outside the DPO range for this matter, so he is not imputed with a presumed conflict on that basis.

Ms. Wasinger gave a presentation of her staff report and recommendations on behalf of the Borough’s Planning Department.
Questions by Commissioners

Ms. O’Neall clarified that the building never complied with any of the zoning laws even as they changed, and Ms. Wasinger responded affirmatively.

Mr. Whitaker declared that his “go to” attorney Mr. Barry Donnellan, took the oath, so wanted to reveal the relationship to the Commission.

Ms. Presler questioned if Mr. Whitaker had discussed this matter with Mr. Donnellan, and if he would give more credibility to him than the testimony of others, and Mr. Whitaker responded he had not spoken with Mr. Donnellan on this matter and did not know why Mr. Donnellan would be testifying nor would he give his testimony more weight.

Ms. Doxey asked Mr. Whitaker if he could be fair and impartial in deciding this matter if Mr. Donnellan testifies and base it upon the evidence presented. Mr. Whitaker responded that he could and would.

Ms. Presler, after hearing no objection from Mr. Brasier and Staff, determined Mr. Whitaker had no conflict.

Mr. Perreault queried if a building permit existed that stated it was a four-plex.

Ms. Wasinger confirmed that there were building permits issued by the City of Fairbanks indicating it as a four-plex.

Mr. Peterson surmised that the reason people come to the Borough for permits is to ensure they are in compliance and legal, and questioned that a permit could actually be issued by mistake, wherein a person relied on that signed permit, and builds, then it would not be legal.

Ms. Doxey explained the difference between a building permit and a zoning permit and stated that even if someone came into the Borough today for a zoning permit, and Staff incorrectly indicated their compliance, it would not make a property legal and it would not entitle them to a right that they otherwise are not entitled. She explained “estoppel defense” as someone making a mistake in the issuance of a permit, a person relying upon that permit, then the Borough attempting to take enforcement action, that that person who relied on that mistake, may be able to claim estoppel, but that still does not give them a right that their development was legal, or grandfather rights later, it is holding the Borough responsible for the mistake by saying you cannot enforce against that mistake. She noted it would be a separate matter not before the Commission.

Mr. Guinn asked if the building owner could sue the Borough.

Ms. Doxey indicated that the owner could look for a declaration from the Court, but usually there has to be some controversy to raise an estoppel defense, and explained an example using the particulars of this matter.

Mr. Peterson inquired why the owner is asking for the grandfather rights.

Ms. Wasinger replied that she would defer to the Applicant, but stated her belief is that it is due to the sale of the property and requirements of the lending institution.
Mr. Brandt asked if someone going to the City for a building permit must also go to the Borough for a zoning permit.

Ms. Wasinger replied that if you are in any zone (except general use), a zoning permit is required, and the City of Fairbanks generally does not issue a building permit until they have a zoning permit; two separate processes.

Mr. Brandt asked what the process was in 1964/1965 when the duplex was built.

Ms. Wasinger responded that when it was built, the City of Fairbanks did have land use and zoning authority, as well as building authority; the Borough did not assume land use authority until May of 1965.

Mr. Brandt surmised that the person who built the four-plex would have assumed when they obtained the building permit, since all the inspections were done and all indicated it as a four-plex, that the builder correctly relied on the building permit as granting the zoning since they did not have to go to the Borough.

Ms. Wasinger replied he was correct that there would not have to be a zoning permit via any Borough process, but the building permit does list it as general residential zone.

Mr. Stepovich asked why the Borough didn't change the zoning when it took over authority since it was already built.

Ms. Wasinger responded that when the Borough adopted its comprehensive zoning ordinance it did make changes in some places, but for the City of Fairbanks, unless it was already zoned something else, it adopted the residential zoning already in place.

Ms. Presler communicated that in 1964 information likely was not available to the general public like it is today, and that a layperson(s) had no idea what general residential meant. She asked if there is any record from that time if the people issuing zoning permits were different than those issuing building permits.

Ms. Wasinger indicated she has not information to say what the process was or if the same department was responsible.

Ms. Presler inquired if they did issue zoning permits.

Ms. Nelson responded and stated that Staff did not find any record from that era of a separate zoning permit; all the records provided were building permits.

Ms. Presler deduced that it was one and the same then.

Ms. Nelson responded that there was a space for them to fill in the zone and the original building permit stated it was “general residential” and then it lists “new multi-family”, so there was some recognition of what the zone and the use were.

Ms. Doxey inquired as to what page of the packet the building permit can be found.

Ms. Wasinger stated it is on page 544, and discussion ensued as Commissioners reviewed the various permits/inspections in the packet.
Mr. Brandt asked if in 1964 there was a process to get permission to get a permit to build a four-plex in a two-family zone.

Ms. Wasinger stated there were no exceptions that would have allowed a multi-family structure or four-plex.

Mr. Brandt pursued clarification that there was no variance they could have sought.

Mr. Perreault drew the Commissions attention to page 552 which showed the permit as being new and the zoning is listed as “Multi Res”, as previously noted by Planning Staff.

Ms. Wasinger drew attention to the July 2nd versus the September 2nd, and that the July 2nd on page 544 noted it as “general residential”.

Mr. Perreault noted that on the July 2nd one, it is noted as being a multi-family dwelling, and on the July 13th one it is listed that way as well, but the use of structure is not mentioned, however, in the September 8th one it is listed as multi-residential zoning and use of structure is not checked, but in the remarks it is identified as a four-plex.

Ms. Nelson interjected that Staff does not necessarily rely on that information because there are variations between how things are filled out.

Mr. Perreault pointed out that it is indicated as multi-residential with use of structure checked as multi-dwelling on more than one occasion.

Ms. Nelson clarified that Staff checked all the ordinances back to pre-1949 and traced the zoning on the subject property, and it was never zoned multi-family residential.

Mr. Perreault stated that there are multiple occurrences of building permits being issued listing it as multi-residential and noting it as a four-plex.

Applicant’s presentation

Mr. Brasier stated that dates are important in this matter; and offered the following statements:

- The Borough came into effective January 1, 1964, unstaffed.
- The lot was initially an entire block of its own
- It was re-platted into five (5) lots which consisted of a twenty-unit apartment complex; five four-plexes on the lot.
- Grandfather rights have been granted on four of the four-plexes which were built pre-1949.
- When the lot was subdivided on April 29, 1964, it created what was a 16-unit complex down into four individual lots, each consisting of a four-plex with one lot remaining vacant.
- Prior to May of 1965, the City was acting on behalf of the Borough for zoning.
- Zoning changed in 1949 allowing single family up to a duplex, and in 1949 you could get a multi-plex by formal procedure.
- Several other four-plexes in the immediate neighborhood, including the neighbor across the street has a four-plex signed off by the same individual at the City.
He further described the intact files on the permits and property tax records and stated how the builder complied with all requirements in place at the time, and stated that none of the permits show any enforcement of the zoning; rather showed the reoccurring approval of a four-plex, so if there was an error made 53 years ago, and has been allowed to be used illegally and taxed as a four-plex by the government, they should step in and grant reversal of the denial of the grandfather rights.

**Question by Commissioners**

**Mr. Peterson** asked if the buildings were initially apartment complexes. Mr. Brasier explained his earlier testimony on the history of the lot and it being subdivided into five separate lots.

**Mr. Guinn** stated that aside from the grandfather rights, asked if it could be replatted to be a zero lot line duplex. Mr. Brasier wasn’t sure if he had a lot size restriction and Mr. Guinn asked for the lot size.

**Ms. Wasinger** responded that the lot is 9,375 square feet.

**Ms. Doxey** cautioned Commissioners from introducing evidence.

**Mr. Perreault** commented that Mr. Brasier’s previous testimony was that he found another four-plex in the neighborhood, built in 1963 and signed off by the same permitting building officer, and asked if he found others. Mr. Brasier indicated that he had found three other non-conforming multi-plexes in the immediate vicinity.

**Mr. Perreault** announced he may have a potential conflict as witness Mr. Irving is a family friend. He stated he could take Mr. Irving’s testimony honestly.

**Ms. Presler** inquired from Mr. Perreault his ability to be fair and impartial, to which Mr. Perreault responded that he could, and determined, after no objection from the Applicant or Staff, that Mr. Perreault did not have a conflict.

**Interested Person Testimony Opened**

**Mr. Barry Donnellan** disclosed that he supported the appeal, and has practiced law in Fairbanks for 20 years and has represented Mr. Cornwall on legal matters in the past, but is here on his own behalf. He testified that the subject property has not caused him any problems over the years, and stated that the property owner did what one would expect a responsible owner to do, and it is grossly unfair, some 50 years later, to punish the current property owner when the original property owner did everything one would expect a reasonable person to do.

**Mr. Laurence Irving** testified his residence is directly across Eighth Avenue from the subject property. He stated he has a few concerns: (1) He does not want to see perpetuation of a multi-family development because it denigrates the value of his residential property, (2) It is a perpetuation of zoning and non-conforming uses of property, (3) Lack of off-street parking.

**Mr. James Randall** testified that the building in conflict does have a concrete foundation and all the buildings are being updated to meet current building codes, and there is off-street parking for two of the buildings and the others have street parking on Sixth Avenue.
Interested Person Testimony Closed

Mr. Peterson sought clarity on if the City has issued permits related to the renovations.

Mr. Brasier responded affirmatively.

Mr. Peterson inquired how the property is listed on the current building permits.

Mr. Brasier responded that he has not looked at the permits to know that detail.

Ms. O’Neall noted the approaching midnight hour.

Applicant’s Rebuttal

Mr. Brasier stated that the building is being inspected by City of Fairbanks regularly.

Questions by Commissioners

There were no questions by Commissioners.

MOTION: To deny the appeal and uphold the Administrative Hearing Officer decision to not affirm recognition of legal nonconforming use statue (grandfather rights) for an existing four-plex building in the Two-Family Residential (TF) zone for the property on Lot 2E, Block 99, Fairbanks Townsite, adopting the staff report and eight (8) findings of fact by Mr. Guinn and seconded by Mr. Peterson.

Discussion on the Motion

Mr. Guinn commented that in 1964, housing was so tight that the “powers that be” probably allowed anything to be built. He further stated that 50 years later it is difficult to know what happened and what is an appropriate solution, and that it has been a four-plex for 50 years, to not allow it to be sold seems ridiculous. He indicated his uncertainty of how he would vote.

Mr. Brandt addressed the off-street parking by pointing to page 581 of the meeting packet, a letter from the City of Fairbanks Clerk, stating the City had not concerns and the only comments received were from City Engineer, Jackson Fox, who stated the engineering department manages the right-of-way on Eighth Avenue and no complaints have been received in the past ten years about the multi-family residents regarding parking or any other roadway issues. Mr. Brandt further stated that it was built properly at the time with correct permits, and it has not been an issue for 53 years, as such should not be an issue today.

Mr. Perreault stated he will not support the motion primarily because he does not believe not granting grandfather rights to the mistake does not seem to “hold water” since the mistake was made repeatedly; it was a pattern of behavior of a public official at the time, and while it may not match the zoning, it was not simply a paperwork mistake.

Ms. Doxey reminded the Commission of the standards, cautioned the Commission of basing its determination on anything related to the property’s potential sale and financing issues, and discussed necessary development of the record concerning differences between zoning and building permits.
Discussion ensued concerning potential politics and other issues 50+ years ago and the role of the Commission related to the laws concerning grandfather rights.

ROLL CALL (Motion to Deny)

Three (3) in Favor: Mr. Guinn, Mr. Peterson, and Ms. O’Neall

Five (5) Opposed: Mr. Stepovich, Mr. Perreault, Mr. Brandt, Mr. Whitaker, and Ms. Presler.

(Me. O’Neall originally voted “No”, but changed her vote)

MOTION FAILED

MOTION: To postpone GR2017-171 to the next meeting on September 19, 2017 by Mr. Whitaker and seconded by Ms. Presler.

ROLL CALL (Motion to Postpone)

Eight (8) in Favor: Mr. Stepovich, Mr. Perreault, Mr. Brandt, Mr. Guinn, Mr. Whitaker, Mr. Peterson, Ms. O’Neall, and Ms. Presler.

Zero (0) Opposed:

MOTION PASSED

H. EXCUSE ABSENT MEMBERS

Ms. Presler communicated that Ms. Thayer’s absence is excused for this meeting and the meeting on September 19, 2017 due to work reasons. Mr. Muehling’s absence on September 19, 2017 is excused.

I. COMMISSIONER’S COMMENTS

There were no comments by Commissioners.

J. ADJOURNMENT

There being no further business, the meeting was adjourned at 11:59 p.m.