PLANNING COMMISSION MEETING

MARCH 27, 2018
AGENDA
March 27, 2018
6:00 p.m.

A. ROLL CALL

B. MESSAGES

1. Chairperson’s Comments
2. Commissioner’s Comments
3. Communications to the Planning Commission
4. Citizen’s Comments – limited to three (3) minutes
   a. Agenda items not scheduled for public hearing
   b. Items other than those appearing on the agenda

5. Disclosure & Statement of Conflict of Interest

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 Commission member or citizen so requests. In the event of such request, the item is returned to the general agenda.

D. *MINUTES

2. *Minutes from February 27, 2018 Planning Commission Meeting.

F. PUBLIC HEARINGS (to begin at or after 6:00 p.m.)

1. RZ2018-004: A request by Rick Watson, on behalf of Stepping Stone Builders, Inc., to rezone approximately 3.45 acres from Two-Family Residential (TF) to Multiple-Family Residential (MF) or other appropriate zone. The proposed rezone includes parcel described as Lot B-5, Phase I, Eagle Estates Subdivision (located on Patriot Drive, south of NPHS Boulevard and west of Desert Eagle Loop). (Staff Contact: Manish Singh)
G. **APPEALS** (to begin at or after 6:00 p.m.)

1. **GR2018-085**: An appeal by Robert and Loa Hubbard of the denial of a request for affirmative recognition of legal nonconforming structure status (grandfather rights) for an existing structure with a nonconforming south front-yard setback of 16.1 feet instead of the required 20 feet in the General Commercial (GC) zone for the property on Tax Lot 4, Kolde Homestead (located at 208 Gaffney Road, on the north side of Gaffney Road, east of Noble Street and north of Airport Way). (Staff Contact: Stacy Wasinger)

H. **EXCUSE FUTURE ABSENCES**

I. **COMMISSIONER’S COMMENTS**

J. **ADJOURNMENT**

Any questions, please contact the Community Planning at 907-459-1260 or via email at: FNSBPC@fnsb.us
MINUTES

FEBRUARY 13, 2018
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 Mindy O’Neall, Chairperson.

A. ROLL CALL

MEMBERS PRESENT: Charles Whitaker Chris Guinn
                    Doug Sims Mindy O’Neall
                    Eric Muehling David Brandt
                    Wendy Presler Mike Stepovich
                    John Perreault

MEMBERS ABSENT & EXCUSED: Robert Peterson Pat Thayer

OTHERS PRESENT: Christine Nelson, Community Planning Director
                Stacy Wasinger, Planner
                Manish Singh, Planner
                Wendy Doxey, Assistant Borough Attorney
                Nicole Nordstrand, Recording Clerk

B. MESSAGES

1. Chairperson’s Comments

   Chair O’Neall communicated that conflicts of interests and disclosure will be called after each matter is read into the record, and drew attention to blue packets related to GR2017-152 that were admitted just prior to the meeting.

2. Commissioner’s Comments

   There were no comments by Commissioners.

3. Communications to the Planning Commission

   There was no communication to the Planning Commission.

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

   There were no comments by Citizens.

5. Disclosure & Statement of Conflict of Interest
C. * APPROVAL OF REVISED 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.

Chair O'Neall communicated that a request was received to withdraw CU2018-008 and proposed accepting the withdrawal and approve the agenda as amended removing CU2018-008.

Commissioner Muehling stated he wished to add a [sic] to the statement he read into the record for new business, third paragraph from the end should read: “The people who chose to go from current setbacks to reduced setbacks should provide their case”.

**MOTION:** To approve Agenda and Consent Agenda as Amended Commissioner Sims and seconded by Commissioner Presler.

PASSED WITHOUT OBJECTION

D. *MINUTES


E. QUASI-JUDICIAL HEARINGS

1. **CU2018-009:** A request by Tori Clyde, on behalf of the Ester Volunteer Fire Department and Fairbanks North Star Borough, for conditional use approval of a public utility and service use for a water storage and fill facility for emergency services in the Rural Estates 2 (RE-2) zone on Tract G, Cripple Creek II Subdivision, First Addition (located at 1457 Oboe Court, on the east side of Cripple Creek Road, the north side of Isberg Road, and south of the Parks Highway).

OATH ADMINISTERED

There were no disclosures or statements of conflict of interest.

The Applicant, Chief Tori Clyde, representing the Ester Volunteer Fire Department was present and indicated she would defer to staff to present first.

Ms. Stacy Wasinger provided a presentation of her staff report and recommendations on behalf of the Borough’s Planning Department and recommended approval with conditions listed in the Staff Report, with a modification to proposed condition 1.

Questions by Commissioners

Commissioner Muehling asked if the conditions specify hours of operation, and Ms. Wasinger responded they were not included in an effort not to hinder emergency services. Commissioner Muehling understood as to emergency services, and questioned if any thought had been given to the quarterly training and refill of the water tank. Ms. Wasinger pointed to condition #3, and deferred to the Applicant to elaborate on training schedule.
Commissioner Perreault inquired to the number of refill sites exist in the Borough and if there had been any complaints at any of the other sites, and Ms. Wasinger deferred to the Applicant.

Commissioner Sims asked if there was any feedback from any property owners who received notice, and Ms. Wasinger comments that there were 7 inquiries and expressed concern on what she could report of those inquiries.

Ms. Doxey cautioned that due to the quasi-judicial nature of the matter, reliance on hearsay testimony should be avoided since they are not under oath and available for questioning.

Commissioner Sims restated his question and asked if any response was received; either positive or negative, and Ms. Wasinger reported that generally speaking there was no concern although a few spoke concerning the depth of the water table and whether a well would be dug, and reported that did not factor into the consideration of meeting the conditional use criteria at this time.

Applicant’s Testimony

Applicant, Chief Tori Clyde, presented her presentation and testified as follows:

- Location is to provide water to a non-hydrant area in the subdivision.
- Subdivision has been identified as a zone of concern by the Division of Forestry.
- 2 acres of the 5 acre parcel will be utilized and the project entails tree removal, ground work, add power, dig a hole to place two (2) 15,000 gallon tanks underground, build a driveway and access road into the cul-de-sac, and add a small structure.
- Showed a slide of an overview of the area including the Parks Highway, and identified the red areas as zones of concern from Forestry and indicated those areas for mitigation of trees.
- Demonstrated how the emergency vehicles would access the sites.
- Showed other sites with similar refilling stations that currently exist.
- Showed a video of an emergency vehicle entering and exiting the area.

Questions by Commissioners

Commissioner Whitaker asked if there trucks actually pump the water or if the pump is located in the “pump house” and Chief Clyde responded they are looking at either pumping or drafting and explained the mechanics of each. Commissioner Whitaker clarified his understanding there would be two tanks for a total of 3,000 gallons, and Chief Clyde replied there would be two tanks for a total of 30,000 gallons, and explained the capacity of each water trucks.

Commissioner Muehling commented on the noise related to the operations; mentioning the beeping noise when the trucks back up, and wondered if each noise should be addressed or whether non-emergency response activities are permitted 7 a.m. to 9 p.m., and Chief Clyde replied that would not be a problem and offered that their training activities are Tuesday nights to 9 p.m., and mentioned that due to the cul-de-sac creation there will be no need for vehicles to back up.

Commissioner Perreault renewed his question on the number of sites currently in operations, and Chief Clyde indicated there are none in her fire service area, though there are others located in the Chena/Goldstream area and believed there to be four. Commissioner Perreault inquired how the tanks would be refilled, and Chief Clyde indicated at this time water would be brought in to fill the tanks. Commissioner Perreault asked if the primary use would be wildfire or residential response, and Chief Clyde stated it is to contain the spread of wildfire or structure fire.
Commissioner Guinn inquired if the presence of the storage tanks would change the ISO rating, and Chief Clyde communicated if the insurance companies continue to use the ISO as a rating to reduce property insurance then it certainly would reduce property insurance.

Commissioner Brandt queried on the lighting to be utilized on or around the facility, and Chief Clyde indicated it would be sensor-based lighting and then lighting from the vehicle.

Commissioner O'Neall stated there is a bit of a slope on Oboe to Isberg and asked if there is any concern, and Chief Clyde stated that it is rather flat and does not pose any concern.

Interested-Person Testimony Opened

Mr. Hal Meyer testified he fully supports the Ester Volunteer Fire Department and the proposed project, and stated his concern should the fire department decide to dig a well, and explained their efforts to gain water at their residence and fears that the draw down to fill 30,000 gallons may put a strain on their ability to draw water from their well.

Commissioner Whitaker inquired how many gallons per minute his well supplies and how many neighbors have wells. Mr. Meyer responded 3 – 5 gallons per minute, and at least a few of their nearby neighbors have wells and explained some issues associated with those wells.

Commissioner Brandt asked if he had any concerns about non-emergency hours of operation. Mr. Meyer reported they are far enough away and had no concerns regarding lighting or sound.

Interested-Person Testimony Closed

Applicant’s Rebuttal

The Applicant, Tori Clyde reiterated that the zone is an area of concern and having a refill station at this site is a true benefit to the Community.

Questions by Commissioners

Commissioner Muehling asked if the other fill stations are using wells or holding tanks. Chief Clyde responded that Ester Dome is a fill site and believes the one at Isberg and Chena Ridge is drawn from a well. Commissioner Muehling inquired of the advantages to one or the other, and Chief Clyde explained the traffic congestion with filling 30,000 gallons and long-term cost effectiveness on a well.

MOTION: To approve the Conditional Use Permit for a public utility or service use for a water storage fill facility for emergency services in the Rural Estate 2 (RE-2) zone on Tract G, Cripple Creek II Subdivision First Addition with three (3) conditions, and adopting the staff report and three (3) Findings of Fact in support of the approval by Commissioner Muehling and seconded by Commissioner Perreault.

MOTION: To amend to add an additional condition “non-emergency events are limited to the hours of 7:00 a.m. 9:00 p.m. by Commissioner Muehling and seconded by Commissioner Guinn.
Discussion on the Motion

**Commissioner Muehling** stated his intent is to show the neighbors that the sound problems would be mitigated unless there is an emergency.

**MOTION TO AMEND PASSED WITHOUT OBJECTION**

**Commissioner Sims** questioned Staff on whether or not the Applicant would need to come back if they were to add a well.

**Chair. O’Neall** reminded Commissioner Sims that the Body is in deliberations and that the time to asked questions has closed.

**Ms. Doxey** clarified the question, and replied that generally speaking, the Borough does not regulate ground water use, except for limited land use impacts, and stated a condition could be added to the effect compliance with ADEC requirements.

**Commissioner Sims** clarified his question was intended to address neighboring concerns of a well draw down and whether adding a well would constitute a substantial change requiring a review of the Conditional Use Permit.

**Ms. Doxey** restated that the Borough would not have any power to regulate since it is regulated by the State.

**Commissioner Guinn** communicated a potential well in the Chena Ridge area is not drawn from the same water source and opined it would be difficult to prove that the area would be dewatered, and stated the public purpose outweighs any concern at the moment on the potential well.

**Commissioner Muehling** communicated that a balance has to be struck; balancing the areas fire safety against the neighborhood’s desire to possibly protect their water levels. He stated that public safety appears paramount and will be supporting.

**ROLL CALL (main motion):**

Nine (9) in Favor: Guinn, Whitaker, Stepovich, Presler, Sims, Perreault, Brandt, Muehling, and O’Neall.

Zero (0) Opposed.

**MOTION PASSED**

2. **V2018-001:** A request by Heather Lambert from Somers & Associates, on behalf of Kelly and Lorna Shaw, for a setback variance of 13 feet +/- to the front-yard setback requirement of 20 feet in the Single-Family Residential 10 (SF-10) zone on Lot 46B, Arctic Orchard Subdivision (located at 1100 Poplar Drive, on the west side of Poplar Drive, between Teal Ave and Marian Luther Road).

**Commissioner Whitaker** disclosed he owns rental properties in the area and received a “dear property owner” letter. **Chair O’Neall** declared that automatically disqualified him from sitting on the matter.

[Commissioner Whitaker left the dais]
Commissioner Sims disclosed that his name appears on previously issued zoning and floodplain permits on the principal residence and has no additional information on what is here before the Body. Chair O’Neall inquired if he ever visited the site prior to issuance of those permits, and Commissioner Sims stated he had not, and accordingly Chair O’Neall determined there not to be any conflict.

OATH ADMINISTERED

The Applicant, Heather Lambert with Sommers & Associates, was present and clarified she is representing the potential buyer of the property, Lauren Little, who was also present and they indicated their deferment to staff presenting first.

Mr. Manish Singh provided a presentation of his staff report and recommendations on behalf of the Borough’s Planning Department, and recommended denial of the variance with seven (7) findings of fact listed in the Staff Report.

Questions by Commissioners

Commissioner Perreault asked for an explanation on the floodplain AE designation, and Mr. Singh explained AE designation is where the base flood elevation is known, and in an A designation the floodplain elevation is not known, and added his knowledge of a floodway elevation.

Commissioner Perreault pointed to Lot 41 at corner of Teal and Poplar sticks out into Poplar Drive and Poplar has two different widths and asked for an explanation. Mr. Singh explained the platting history as the possible cause for the variations.

Commissioner Muehling inquired if the garage was constructed without a construction permit. Mr. Singh confirmed the garage did not have a zoning permit, and added it does have a floodplain permit. Commissioner Muehling inquired on Mr. Singh’s statement that all criteria must be met.

Ms. Doxey confirmed that the requirement for all criteria to be met is both in Statutes and Code.

Commissioner Sims inquired if the other detached structures in the area which were found to appear to meet setbacks were based on a visual inspection and if there were any variances granted in the past on other properties, and Mr. Singh stated he relied on the aerial and measurement tools, and stated there is a lot size variance.

Commissioner Sims asked Mr. Singh to explain his statement “it meets the purpose of title 18, but not the intent”. Mr. Singh explained his analysis and referred to the description of intent and purpose stated in Title 18.

Commissioner Brandt stated that the northern setback follows the couture of the slough, and asked if there are additional setback requirements caused by the slough itself. Mr. Singh responded the setback is 5 feet in Title 18 and there is a recommendation from Fish and Game to retain vegetation in the setback.

Commissioner Guinn asked Mr. Singh to explain the diagram on page 140 of the packet on the various alternatives. Mr. Singh stated those are only two options he drew to show the garage could have been placed differently to meet the setbacks. Commissioner Guinn questioned the tightness of building in the alternative locations, and Mr. Singh indicated his drawings rely on the surveyed lines.
Commissioner Sims probed if any enforcement action is being taken to remove the two sheds in the right-of-way, and Mr. Singh replied not to his knowledge at the present time.

Commissioner Presler questioned if the property is within the City limits, and Mr. Singh stated it is just outside the City limits, so a building permit it not required, but a zoning and floodplain permit would have been required.

Ms. Heather Lambert asked Mr. Singh if an accessory building requires a permit. Mr. Singh replied that all new buildings require a permit.

Applicant's Testimony

Applicant, Heather Lambert, brought some materials for the Commissioner to consider. Chair O'Neall stopped her from handing out the materials until she had the opportunity to review.

[Brief at ease until 7:32 p.m. for Chair to review materials]

Chair O'Neall indicated admissibility of one packet of information pertaining to the property and photographs and ruled that the other two (2) packets were copies of State Statutes and FNSB Code which is information already under the Commission’s purview.

Ms. Lambert testified in doing her research she looked at the statutes, code, and analyzed her findings as follows:

- Goal 1 of Comprehensive Plan – recognize the foremost aspect of land use involving private property is the retention and maintenance of private property rights
- Goal 3 to protect natural systems – consider land development will toward areas where natural systems will be the least adversely affected
- Variance can be given if a special condition exits
- Advised that Title Companies are no longer requiring “as built” surveys as of January 15th
- Believes a special condition can be proven
- Stated situations listed in statute that allow for variances to be granted
- Drew attention to the FNSB All Data Report related to the flood elevation
- Pointed to lot size in its entirety versus with setbacks and placement of the sewer and water separation requirements
- Explained orientation of pictures, elevation, and vegetation

Ms. Lauren Little, the potential buyer of the property, testified as follows:

- Under contract to purchase property
- Not being sought to relieve pecuniary hardship
- Preserving vegetation along a Riparian area is critical
- Discussed base flood elevation and fill necessary
- Any other location would require relocation of the well and removal of vegetation
- Slough drove location of the garage
- Noted 66’ right-of-way on Poplar / normal right-of-way is less
- Setback does not interfere in any way to the right-of-way
- Water/septic on lot and required separation distance (including neighbors) drove location of the utilities and based on their location precludes access to the back of the lot
Ms. Lambert interjected that the amount of fill dirt that would have to have been brought in and the amount of vegetation it would have destroyed still would place it in a location that could flood. Ms. Lambert noted that she does not believe code requires a permit for an accessory building since the use of the property is not changing, and the previous owners were told it was not mandatory.

Questions by Commissioners

Commissioner Brandt stated that the application said the previous owner intended to place the building not in the setbacks which contradicts that placement in its location was the only option, and asked if a different shaped garage could have been built. Ms. Little confirmed it was not built in the location by accident, the previous owners did know they needed a variance at the time they built, and no surveyor has been able to locate the property corner that is not utilized. Commissioner Brandt asked if any thought was put into getting a portion of the right-of-way vacated to bring the property into compliance. Ms. Little responded that may be a future consideration due to challenges with public involvement and given the timeframe.

Commissioner Muehling referenced the photograph showing the drop off from the garage, and asked what the garage was constructed on. Ms. Lambert responded that it is 3/12’, and Ms. Little interjected that it is roughly the same elevation relative to the road and believes they dug down to get their foundation. Commissioner Muehling communicated that testimony indicates 5’ which is not substantial to warrant a special condition on the property. Ms. Little explained that there is not a lot of grade over the entire property, and there is a 50% grade at the location on the left-hand portion of the lot where the garage is located.

Interested-Person Testimony Opened

OATH ADMINISTERED TO KEVIN PETERMAN

Mr. Jerry Flodin testified he is the nearest property owner to the subject property. Mr. Flodin spoke in favor of granting the variance and testified that the garage is not an eyesore and it does not interfere or obstruct the roadway. He further testified that the Kelly and Lorna Shaw are very responsible people and spoke of their previous employers and would do the due diligence required to ensure they do what they are supposed to do.

Commissioner Perreault inquired if Mr. Flodin knew why the right-of-way on Poplar Drive is wide. Mr. Flodin indicated he did not know the reason.

Mr. Kevin Peterman testified he supports the variance and has driven the road on many occasions and echoed Mr. Flodin’s testimony, and is a property value increasing building.

Commissioner Muehling asked Mr. Peterman if there is a powerline easement. Mr. Peterman testified he does not know.

Interested-Person Testimony Closed

Rebuttal by Applicant

Ms. Little responded that the right-of-way started out as a section line easement.

Discussion ensued between Ms. Little and Commissioner Muehling about section line easements.
MOTION: To deny the setback variance of 13 feet +/- to the front-yard setback requirement of 20 feet in the SF-10 zone adopting the staff report and seven (7) Findings of Fact in support of denial by Commissioner Perreault and seconded by Commissioner Guinn.

Discussion on the Motion

Commissioner Muehling spoke of testimony by Staff and the Applicant about property rights and stated that property rights are very important and are protected by code and opined that denial of the proposed variance would not deprive the Applicant of the use of the property in a manner permitted to owners of property in the immediate area if the owner had properly measured for the setback. Commissioner Muehling communicated that the principal is that everyone follows the same rules and granting it would deny other property owners their property rights.

Commissioner Presler stated her agreement with Commissioner Muehling that property rights are at stake, however, Commissioner Presler stated her belief that there are special circumstances on the particular piece of property and the drop off to the slough and filling in the property up to the slough would damage the slough. Commissioner Presler opined that there are only a handful of properties along the slough and this property has special conditions that other property owners do not have.

Commissioner Sims stated he disagrees with Commissioner Muehling on the property rights assumption since that assumes all properties are the same. He communicated that slope influenced the siting of the garage in conjunction with the preexisting septic and well and radically limited where the garage could be placed. Commissioner Sims pointed out that Poplar Drive was granted a waiver to construct in 2000 by the Borough Platting Board and spoke of the reference to that issue and the Staff Report.

Mr. Guinn stated that the typography and shape of the lot, existing slough, all are factors in determining placement, and options are limited. He stated his support to grant the variance.

ROLL CALL:

One (1) in Favor: Muehling

Seven (7) Opposed: Stepovich, Presler, Sims, Perreault, Brandt, Guinn, and O’Neall.

MOTION FAILED

[Recessed for an at ease till 8:34 pm]

MOTION: To approve the variance with the following five (5) Findings of Fact:

1. The property has special topographical features and conditions that prevented building the garage elsewhere on the lot. The special features are the Chena Slough to the north, and a significant drop-off less than 13 feet from the structure. The flood map 10’ contours are not accurate enough to show the slough or the bank, but they are evident in staff and applicant photos.
2. The applicant did not create the need for the variance, and is not seeking the variance for pecuniary reasons.

3. Granting the variance will enable the applicant to enjoy property rights consistent with those of their neighbors. Other neighbors in the area have developed their properties with ancillary structures, some larger than this one.

4. Granting the variance is in keeping with the Comprehensive Plan. The structure does not impede right-of-way or public use of the road, and does not create a fire hazard.

5. The variance is for a residential use in a residential zone, and does not create a zoning conflict.

by Commissioner Presler and seconded by Commissioner Perreault.

Discussion on the Motion

Commissioner Presler indicated that the survey shows the property lines correctly, but lacks depth and does not show the banks of the Chena Slough and if you remove that area from buildable and observe the other setbacks, it leaves little room to build a garage.

Commissioner Perreault quantified that the primary reason he supports the variance is that he does not believe the maps to support staff report accurately show the buildable area and believes the AE flood area is a better analog for what is actually buildable on the property, and slope exits and is significant, and it does not impede any emergency travel or vehicle travel.

Commissioner Muehling stated that construction without special conditions and lack of due diligence is not a reason to allow a variance. He further stated that it is a .8 acre lot and other lots are 2 acres or larger, aside from shape and contour, well and septic, then there is not a place to build a garage.

Commissioner Perreault interjected that there is no finding in the motion about there not being another location to build a lot.

Commissioner Muehling stated he is still not in favor of granting an exception.

Ms. Doxey asked for discussion on why the Commission does not find it possible to build a driveway along the south property line to the proposed alternate location C.

Commissioner Brandt responded that the only way to get to the western portion of the lot would require driving over the septic or the well.

Ms. Doxey explained that development of the lot as far as placement of well and septic are generally not going to be special conditions unless that placement was necessitated by a special condition.

Commissioner Presler quantified that the assuming the well and septic were not there, they could build a garage at the location at C or a little south, it would still require installation of a well and septic which have to be 100 feet apart, it would still require driving on them to get on and off your property.
**Commissioner Perreault** stated that the plot shows a significant overlay of the flood area AE, and is a better analog of the buildable area, and the far west side of the lot does not have a significant area that is not part of the AE overlay.

Ms. Doxey requested more discussion on the reliance of the flood overlay on the northern property line, and explained her request.

**Commissioner Perreault** explained there is a significant swathe across the entire northern portion of the lot that is part of the overlay and in satellite photos, the house is a far up as it goes, and there is no room for placement of a garage and further detailed various placements that could not work.

Ms. Doxey sought clarification that the Commission was finding that there is not adequate space south of the AE overlay to build.

**Commissioner Perreault** interjected he is speaking of specifically to the west of the house.

Ms. Doxey clarified it is to the south of the AE overlay to the west of the house and is caused by the AE overlay.

**Commissioner Perreault** confirmed, and stated from the photos shown is consistent with the bank drop-off of the slough.

Ms. Doxey asked what evidence or testimony in the record that there is not buildable area in that place.

**Commissioner Perreault** confirmed not much as discussed in that area, but relying on testimony about the north and the aerial photos provided to extrapolate.

Ms. Doxey reminded the Commission that the decisions have to be based on substantial evidence in the record.

**Commissioner Perreault** stated that nothing he is basing his decision on is not as part of the Applicant’s submission or testimony or evidence.

**Commissioner Presler** drew attention to the 2nd picture on page 2 of the pictures presented by the Applicant which is taken from behind the garage shows that the slough comes to the south before turning north and encroaches on the property more than is shown on the All Data Report.

**Commissioner Muehling** communicated that finding of fact #2 that the Applicant stated they are not seeking this for pecuniary reasons, however, testified they are under contract to buy.

**Commissioner Presler** stated her understanding of the testimony was that it would cost them money if they did not get the variance when indeed it is going to cost them money since they are under contract.

**Commissioner Muehling** asked if there was testimony that they could get out of the contract if the variance is denied.

**Commissioner Presler** confirmed Ms. Little’s testimony was if it is granted, she would have to buy the house.
ROLL CALL:

Seven (7) in Favor: Stepovich, Presler, Sims, Perreault, Brandt, Guinn, and O’Neall

One (1) Opposed: Muehling.

MOTION PASSED

[Commissioner Whitaker returned to the dais]

F. APPEALS

1. GR2017-152: An appeal by Brian Reagin, DBA Sunshine Health Foods, of the denial of a request on behalf of Dan and Yvette Thompson, for affirmative recognition of legal nonconforming use status (grandfather rights) for an existing grocery store in the Two-Family Residential (TF) zone for the property on Lot 1 & 2, Block 18, Hamilton Acres Subdivision (located at 410 Trainor Gate Road, on the northeast side of Trainor Gate Road, south of Craig Avenue).

Chair O’Neall stated she needed to disclose a potential conflict with attorney Mr. Paskvan and handed the gavel to Vice Chair Muehling.

Acting Chair Muehling clarified that the attorney is a field of Commissioner O’Neall and questioned her as to giving more weight to testimony by the Applicant due to the relationship, trust the Applicant more, and ability to set aside relationship and base decision solely on the facts. Commissioner O’Neall stated she would not give more weight, nor trust the testimony of Applicant, and base her decision solely on the facts presented. Acting Chair Muehling determined no conflict exit.

OATH ADMINISTERED

The Appellant, Brian Reagin, was present along with Lennie Reagin, property owner Dan Thompson who was represented by attorney Joe Paskvan. Mr. Paskvan advised that they would defer to staff to present first.

Mr. Singh provided a presentation of his staff report and recommendation on behalf of the Borough’s Planning Department and recommended denial of the appeal and to uphold the administrative determination.

Questions by Commissioners

Commissioner Perreault asked if the blue-fronted packets are from the Applicant or Staff, and Mr. Singh responded they are from the Applicant and there are some duplicate records.

Commissioner Muehling asked if there was evidence that a business license existed at the time be evidence that the building was occupied. Mr. Singh stated that a business license could be evidence for a business. Commissioner Muehling clarified his question was that any business license registered to an address would constitute business activity. Ms. Nelson indicated it would be a factor that would be considered if there was a business license for a grocery store for that period of time. Further discussion ensured on whether or not a listing in the phone book would be evidence, and balancing conflicting information with assessor’s office. Mr. Singh clarified that when it became legal nonconforming in 1965, the period of allowable
vacancy was 12 month, in 1988 it was increased to be 36 months, then went back to be 12 months in 1997 and in 2011 it came back to 36 months. **Commissioner Muehling** reflected on the flood of 1967 and the significant impacts to the area and, at that time, rebuilding would require completion within 12 months. Ms. Nelson responded that is correct, and would have taken into consideration evidence if they had restarted operations and indicated there was 4-1/2 years where there is no evidence the store was in operation.

**Commissioner Stepovich** sought clarification that there was no evidence it was operated as a store from 1970 to 1974, and Ms. Nelson confirmed.

**Commissioner Sims** inquired if the property has ever been conforming in use, and Mr. Singh responded there has never been residential type use. **Commissioner Sims** asked why the differentiations between grocery store use and commercial use. Ms. Nelson responded that commercial is not a use it is a category, and explained specificity in code.

Ms. Doxey clarified the hornbook treaties on grandfather rights.

**Commissioner Sims** inquired how that narrows it down to a grocery store if the quality or character.

Ms. Doxey advised that code and general common law on this topic instructs to look at the use that was actually in effect at the time of the grandfathering and whether a changed used reflects the nature and purpose of the original use and whether there is a change in quality or character.

**Commissioner Whitaker** asked if there are any special circumstances that could extend the 12 or 36 month periods, and Mr. Singh read a portion of FNSBC 18.108.040.

Ms. Doxey clarified current provisions versus past provisions of code and clarified the time periods for applying historical versions of code. She stated that FNSBC 18.108.040 was not in code in 1965 or 1968; the period in question on this matter.

**Commissioner Whitaker** inquired if there was anything in code in 1968 that allowed for special circumstances.

Ms. Doxey pointed to page 378 of the packet, the City of Fairbanks code, and read the code related to special circumstances. She further communicated that nothing in code allowed for it until 1988.

**Commissioner Muehling** asked if there is any evidence that the Director extended that period. Mr. Singh replied there is no process in place.

Ms. Doxey clarified that the 1988 provision would only be applied to something that happened after the 1988 provision is implemented.

**Commissioner Muehling** read the multitude of businesses that have occupied the building over the years and surmised that they do not appear to have the same quality and character of a grocery store, and sought clarity on the issue really being that the building had been vacant for a period of time without operation of a grocery store. Mr. Singh summarized the applicable zoning codes and corresponding time period a building could be vacant and preserve their grandfather rights.
Commissioner Sims questioned if a zoning permit was issued for the ice cream parlor in 1975, and Mr. Singh indicated it was likely issued in error.

Commissioner Brandt stated the building is commercial in nature and has never been used as residential, and Mr. Singh agreed it has been utilized for different types of commercial uses over time, it has been vacant, and agreed it has never been residential. Discussion ensued on lack of conforming use since the Borough took over zoning and that it has always been taxed as a commercial building.

Chair O’Neall explained that D, E and G were submitted prior to the meeting for review, and had determined they would not be allowed prior to the meeting. She announced that after reviewing the statutes realized the information should be allowed, show she allowed them and had them handed out prior to the meeting.

Ms. Doxey asked if Exhibit F was submitted.

Chair O’Neall clarified addendums and some discussion ensued about why materials were not admitted.

Ms. Doxey drew attention to affidavits received.

Chair O’Neall discussed the affidavits and the manner in which they were received.

Ms. Doxey explained the issues related to the affidavit submitted by the Applicant and that it did not follow the property channels to allow for cross-examination while the other affidavit was submitted timely, it did not get distributed properly.

Discussion ensued about the proper methods and the correct way to correct this issue

MOTION: To set aside Rule 34 for Affiant Ronald Rafson by Commissioner Muehling and seconded by Commissioner Sims.

Commissioner Presler questioned why the Rule would be set aside for one and not the other one.

Mr. Paskvan explained that it came in one day after the seven day deadline and they were under the impression that all materials had to be submitted five days prior to the meeting and stated his belief that there would be zero prejudice in allowing both affidavits.

Neither party objected to admission of both affidavits.

MOTION: To amend Motion to include both affidavits by Commissioner Muehling and seconded by Commissioner Whitaker.

BOTH MOTIONS PASSED WITHOUT OBJECTION

[Recessed for an at ease till 9:47 pm]

Mr. Joe Paskvan spoke on behalf of the property owner, Dan Thompson and offered the following:
- Dan Thompson of Thomas Investments owns the property and has since the 1970s.
- Exhibits provided support the statements made in Exhibit A and reads as follows:
  - Building has always been a commercial building rented to many types of light commercial businesses
  - Was not built as a residence, it is not suited as a residence and is only usable as a light commercial property since the 1950s
  - It has always been taxed as a commercial property
  - Sunshine Health and Lucky Dog have occupied the premises for over 20 years
  - Sunshine Health is interested in buying the building which is why this grandfather issue arose
  - 1968 Lease with the Fairbanks North Star Borough School District as a storage for food and books
  - Tundra Northwest Construction Company partially occupied the building
  - Sandstrom Plumbing and Heating partially occupied the building
  - Mt. McKinley Paint and Decorating occupied portions of the building from 1972 – 1975 with the Fairbanks North Star Borough School District
  - In 1974, Dan Thompson, in looking at purchasing the building, personally observed a pallet of butter and books housed there by the FNSB School District
  - In 1975 Dan Thompson received a zoning permit from the FNSB for an ice cream parlor
  - Building was used for storage by Alaska Music Company and Lavetta Terry for restaurant equipment
  - In the late 1970s, a consulting engineering firm and photographic studio occupied the commercial structure
  - In 1981, the Fairbanks North Star Borough Planning approved the Fairbanks Native Association to operate a preschool on the premises
  - The Fairbanks North Star Borough Planning approved the use of the property as a veterinary clinic owned by Dr. VanPelt from 1982 - 1983
  - Dolores O’Mara, of the FNSB Planning and Zoning, told Dr. VanPelt that “setting up a business in your building would be acceptable upon completion of the included form” and “that you as owner may continue to lease to businesses on your grandfather rights”
  - Other businesses include dog training, ceramic studio, photo darkroom and studio, Davis Construction, second-hand store, Superette, Top of the World Productions by Greg and Cindy Knowles
  - Lucky Dog has occupied the premises from 1992 to the present
  - Sunshine Health has occupied the premises from 1995 to the present

Mr. Paskvan argued the Fairbanks North Star Borough written past of approval of the light commercial uses for these premises recognized the grandfather rights vested in the premises and at no time did the planning department represent there was a concern that the grandfather
rights of Thompson Investment are not valid or the uses that the FNSB approved were invalid uses. He further contended that of the 200+ letters sent to neighbors asking for them to come forward if they object and none were received, and only one protested before, Sarah Madison, who has since provided an affidavit indicating her support. In closing, Mr. Paskvan stated that the nature and purpose of this structure is leases to light commercial business as has been done since the 1950’s and building has been taxed and assessed as a commercial building, and a significant commercial investment has been made in the building over the past 4 – 5 years.

**Mr. Brian Reagin**, the Appellant, testified that Sunshine Health has served the community for over 33 years and have had no objection from the various customers the business serves. He talked about the history of the building and the destruction caused by the flood and of his desire to continue improving the building and continuing to serve the community.

**Mr. Paskvan** advised the Commission that when this matter was originally scheduled to be heard, Mr. Thompson was in the hospital and subsequently Denali Center for a couple of months which lends to Mr. Thompson’s desire to sell the property.

**Questions by Commissioners**

**Commissioner Sims** asked what Sunshine Health relied upon when making investments and Mr. Thompson invested in the building since it has always been commercial and did not see it changing and was trying to get it into good order to sell.

**Commissioner Muehling** stated that the characterization of the building does not match the zoning and asked Mr. Paskvan if he realized it, and Mr. Paskvan responded that at the time the building was constructed there was no zoning, and this building was included within the ordinances giving it grandfather rights and the Borough has said the building could be used for light commercial and points to Exhibit G – communication by Dr. VanPelt. **Commissioner Muehling** communicated issues related to rezoning and Mr. Paskvan indicated he has not explored that option. **Commissioner Muehling** asked what instrument he is referring to that the Borough approved other uses, and Mr. Paskvan again pointed to Dr. VanPelt’s approval to operate and pointed to Exhibit G and the Fairbanks Native Association approval by the Borough of the operation of a preschool. **Commissioner Muehling** compared the timelines and asked if Mr. Paskvan could acknowledge there were times when the building was not in use. Mr. Paskvan responded that in the forty years Mr. Thompson has owned the property, it has always been in use by light commercial operations, and there is an assignment of lease by the school district from 1968 through 1974. Further discussion on the Borough’s field notes on inspection.

**Commissioner Perreault** asked where Mr. Muehling was getting his information from.

**Commissioner Muehling** pointed to page 352 of the packet and read comments on the field card.

Clarification ensued on what documents are considered field cards.

**Ms. Doxy** directed the Commission to page 364 of the packet.

**Commissioner Perreault** questioned that there is no entry for 1969 on use. Mr. Paskvan stated that from the recorded documents, the Fairbanks North Star Borough School District commenced occupancy August 1, 1968 through its lease with Tundra Northwest Construction Company and that continued with materials observed in the premise to sometime in 1974. **Commissioner Perreault** asked who occupied the building in 1967, and Mr. Paskvan indicated...
that Harrison d/b/a Shoppers Mart and Polaris Superette, and then there was a foreclosure immediately followed by the flood.

Commissioner Muehling asked at what point did the grocery store change, and Mr. Paskvan stated he has not analyzed the 12 months/ 36 months, and argued that Sunshine Health is closer to grocery store than a preschool operation or a veterinary clinic and the point is that expanding uses/building are addressed in code, as long as they are of a comparable nature and use. Commission Muehling asked for an affirmative defense that allowed for the various uses and Mr. Paskvan pointed to 18.108.040 and read it, and related that there has always been store/operations in the building and it was blanketed in a residential zone when it was not built that way.

Commissioner Brandt asked for confirmation that it has never been used as a residential building, and Mr. Paskvan confirmed. Commissioner Brandt asked if anyone from the Borough has ever told Mr. Thompson that he cannot have a commercial building in this zone. Mr. Thompson replied “no”.

Commissioner Muehling pointed to page 345, zoning permits, and asked if the applicant considered the current zoning. Mr. Brian Reagan responded “negative”.

Commissioner Brandt asked if they obtained City building permits, and Mr. Thompson indicated he did and Mr. Brian Reagin also indicated he did as well. Commissioner Brandt asked if anyone from the City, Borough or State has ever brought up that the commercial operation is not allowed, and Mr. Brian Reagin indicated no one has ever said anything.

Mr. Lennie Reagin interjected that the field card forms used by the Borough are Marshal Shift which are only used for commercial buildings.

Ms. Nelson referenced Exhibit G – written statement of Dr. VanPelt, and asked if there is anything directly from Dolores O’Mara, and Mr. Paskvan stated not to his knowledge other than the documents from Dr. VanPelt’s attorney and Thompson Investments. Ms. Nelson asked if they had the form referenced in Dr. VanPelt’s statement, and Mr. Paskvan stated they did not. Ms. Nelson asked for a written documentation that grandfather rights existed. Ms. Nelson asked if they were aware that zoning permits have been required since 1968 and Mr. Thompson indicated he is aware.

[Brief at ease till 10:39 pm]

Chair O’Neall announced her decision to allow Appellant’s exhibits B & F.

Mr. Paskvan pointed to Exhibit B Yukon Title report the Assignment of Lease by the Fairbanks North Star Borough School District and number 24 Tundra Northwest Construction Company to the Small Business Administration, and number 22 and 23 are Sandstrom’s assignment of lease, and explained Exhibit A and other supporting materials to Exhibit A.

Ms. O’Neall asked for evidence in the record that supports the claim that the building was in use during the late 60’s and 70’s, and Mr. Paskvan referred to the Yukon Title Report and pointed out several real estate recordings during the late 60’s.

Ms. Doxey asked Mr. Paskvan to identify the “Book and Page number” listed on the top of the actual document supporting the index.
Mr. Paskvan stated it is Book 165 Page 64 number is 67-1344, Assignment of Dead of Trust, and pointed to Assignment of Lease at Book 27 Page 26, recording 68-10283. He pointed to the FNSB School District Lease dated August 1, 1968.

Commissioner Perreault questioned Exhibit F photograph of the FNSB zoning permit for the Ice Cream Parlor and asked for a summary.

Ms. Doxey asked for clarification for the record which document is being referenced.

Commissioner Perreault again as for a summary, and Mr. Paskvan testified it was to advance the issue of uses other than a grocery store as a conforming grandfather use of this property by submission of an ice cream parlor and Planning states it is issued in error and Thompson Investments argues it was not issued in error that it is an application that was approved because that is what the intended to do. Commissioner Perreault pointed to the Fairbanks Native Association February 23, 1981 letter to FNA, and the 2nd page, have highlights and asked Mr. Paskvan to explain and Mr. Paskvan explained that this information was included to show that a determination of grandfather rights was determined in 1981 based upon testimony before the Planning Commission.

Commissioner Muehling asked that since grocery store existed, there have only been two conditional use permits granted; ice cream parlor and preschool. Mr. Paskvan believes that Dr. VanPelt received approval, but could not locate documentation other than what has been provided and again pointed to the written documentation concerning Dr. VanPelt’s communication with Borough Planning.

Ms. Nelson clarified that the zoning permit for the ice cream parlor is signed by a City of Fairbanks Building Official and the only permits or grandfather rights on the property was the ice cream parlor and preschool.

Commissioner Brandt reflected on the zoning permit, and questioned if the City was responsible for zoning at that time.

Ms. Nelson indicated the City did not have zoning authority in 1975.

Discussion ensued to clarify dates of zoning authority.

Commissioner Muehling stated the current zoning is two-family residential and asked if there is any way to get an exemption, and Ms. Nelson replied it would require an amendment to code to change the definition of what is an allowable or permitted use.

Commissioner Guinn inquired about the time in the 70’s that the Assessor’s record appear to indicate the building was vacant and an assessor may have looked in the building and did not see any visible activity and commercial use was continuing, and Mr. Paskvan reflected on Exhibit G and read off the approved uses over the years.

Interested-Person Testimony Opened

No one present [with exception of the two Affidavits previously admitted]

Interested-Person Testimony Closed
MOTION: To deny the appeal and uphold the Administrative Hearing Officer decision to not affirm recognition of legal nonconforming use status (grandfather rights) for an existing grocery store in the Two-Family Residential (TF) zone for the property on Lot 1 & 2, Block 18, Hamilton Acres Subdivision, adopting the staff report dated November 20, 2017 and the Administrative Hearing Officer decision dated October 13, 2017 by Commissioner Muehling and seconded by Commissioner Guinn.

Discussion on the motion

Commissioner Muehling communicated that no one has been questioning whether all the uses have been conforming, does that constitute an acquiescence of the uses by the FNSB, and there is evidence of disuse of the property as a grocery store for a period of time.

Commissioner Stepovich stated he felt the same originally, but the Borough has consistently taxed at a commercial rate and there should have been some due diligence on the part of the FNSB.

Ms. Doxey clarified that the Borough’s taxation does not factor into the determination that has to be made by the Planning Commission and advised the taxation is outside the scope.

Commissioner Brandt stated the fact that it has been taxed at a commercial rate all this time proves it is a commercial building and always has been. He further communicated that zoning was done around this building and a rezone at this point would allow for a marijuana facility to go into the neighborhood and local owned businesses like this is good for the community, and Borough has some responsibility as it turned a blind eye to zoning violation while collecting taxes at a commercial rate.

Commissioner Sims echoed Commissioner Brandt’s statements and offered that the quality and character of the use is the same and compatible with surrounding land use and never been any indication by the Borough that any of the commercial uses were in violation of legal nonconforming status.

Ms. Doxey surmised that the Commission is viewing indications in the record that there was clearly a commercial use and taxes and requested discussion on whether it was a legal commercial use during time periods being referenced.

Commissioner Sims offered that there were no protests made.

Ms. Doxey stated that the Staff or Borough not recognizing a code violation does not change the fact that it is a violation.

Commissioner Presler opined that there has been testimony and written documents from a Planning Commission Meeting discussing grandfather rights to the property and expressed concern with being asked to take assessor notes as gospel.

Ms. Doxey reflected on the written documents as minutes from a Planning Commission meeting and if the Commission as a body was considering a conditional use permit and the issue of grandfather rights came up, the Commission might inquire to satisfy the conditional use process and the Planning Commission may not have even had the ability to consider grandfather rights.

Commissioner Presler continued that the property has a long history of various light commercial uses with City and Borough acknowledgement of those uses and the Commission should have
latitude on what documents should be allowed to be considered and noted that not one person appeared to protest, and who is served by denying it.

**Commissioner Perreault** continued on from Commissioner Presler point, and stated there is evidence that the disuse period is less than 12 months and has been used commercially continuously other than that period of January 1968 to August 1968. He further communicated that one cannot pick and choose some documents and not others and pointed out that the minutes reference grandfather rights stated "research was done to establish it" and it was not a move made by the citizen body.

**Ms. Doxey** reflected that it sounded like there is no problem with the fact that grandfather rights existed at one time. **Commissioner Perreault** confirmed. **Ms. Doxey** asked for discussion on when the Shoppers Market ceased.

**Commissioner Perreault** stated it appears to be 1967 or 1968.

**Ms. Doxey** stated for the record that there is an assessor’s field card submitted by staff which shows the property vacant from 1968.

**Commissioner Perreault** interjected that there are 2 lots in questions and that is for one of the lots.

**Commissioner Presler** interjected that that gap does not exist on the other lot

Discussion ensued about which lots are being identified.

**Commissioner Stepovich** clarified that page 358 is the vacant lot and page 362 shows there is a use.

**Ms. Doxey** identified that on page 362 staff’s citation to the date of 1-9-68 which says building vacant and in poor condition.

**Commissioner Perreault** responded that on page 358 the other card indicates on 10-2-68 it is a vacant lot and on 6-30-70 the building previously located on Lot 2 is on this lot and the one on page 362 as Lot 1.

**Commissioner Presler** interjected that the picture from 1968 clearly showed a building.

**Ms. Doxey** communicated that both field cards clearly state vacancy in 1968.

**Commissioner Perreault** stated that Lot 1 is a vacant lot as the building was moved to Lot 2, and agree that on 1-9-68 the building was listed as vacant, however, by August of 68 or at the latest November of 68 there are leases by commercial interest for this building.

**Ms. Doxey** asked to be directed to evidence in the record that established that the lease demonstrated use of the property. **Ms. Doxey** further inquired if the Commission is rejecting the evidence that the lot and the building were vacant based upon a lease.

**Commissioner Perreault** responded that on 10-2-68, Lot 2 was vacant because by January of 1968 the building had been moved to Lot 1.

**Commissioner O’Neall** reflected on Exhibit A indicating the various real property transactions occurring on the subject property in 1968 and shows occupancy from 1968 to 1972.
Commissioner Brandt added that from testimony, the Borough was leasing the building from 1972.

Ms. Doxey stated for the record that the Commission is accepting the evidence referenced that Chair O'Neall referenced and the testimony in conjunction over the contradictory evidence offered by Staff.

Commissioner Perreault stated that Staff is referencing that it appears vacant in January of 1968 and it is either vacant or being used for another purpose through 1974. Commissioner Perreault stated his belief that it was vacant for less than 12 months and people took lease of it in less than one year.

Ms. Doxey stated that she wanted to clear up the vacancy issue first, and pointed to the City Directories provided by the Applicant that indicated in 1969 and 1970 the address was vacant and does the Commission give any weight to those documents.

Commissioner O'Neall stated that there is contradictory evidence that the North Star Borough School District leased for food items and general storage between 1968 and 1970.

Commissioner Brandt stated that in 1970 that the building is being used in a warehouse which is a commercial use and would not necessary have a phone.

Ms. Doxey summarized Commissioner Perreault's statement that from January – August of 1968 the building appeared vacant and are relying on the evidence submitted by the applicant that the building was in use, at a minimum by the Borough School District warehouse after that time and through 1970. Commissioner Perreault confirmed.

Ms. Doxey shifted to the exploring the similarity of uses. She explained code related to changes in zoning code and uses.

Commissioner Muehling stated that charactering all the uses as light commercial is not the same as considering whether each subsequent use reflected the nature and purpose and quality and character of previous use.

Commissioner Perreault contended that they are and stated that throughout all the owners and various businesses it has remained a neighborhood establishment locally owned and cater to the neighborhood.

Commissioner Guinn added that the grandfather rights and commercial uses versus more specific uses was being administered by the Borough in a very broad interpretation and that was why all these businesses were allowed to remain and somewhere along the way the Borough changed.

Commissioner Brandt stated that the building itself does not fit into a two-family zone which it was forced into at no fault of its own; it has always been a commercial building.

Commissioner Sims added that the grocery store has a certain behavior associated with it while subsequent occupants, professional businesses, have their behavior, and feels they are less impactful than a grocery store.

Ms. Doxey cautioned using “less impactful” in analyzing uses.
Commissioner Muehling explained that allowing a business to go from grocery to warehouse is not considering zoning.

Commissioner Perreault called for the previous question.

ROLL CALL:

One (1) in Favor: Muehling

Eight (8) Opposed: Sims, Perreault, Brandt, Guinn, Whitaker, Stepovich, Presler, and O’Neall

MOTION FAILED

MOTION: To extend meeting until 12:30 a.m., by Commissioner Presler and seconded by Commissioner Perreault.

PASSED WITHOUT OBJECTION

MOTION: To approve the appeal and recognize the legal nonconforming use status for the existing grocery store in the Two-Family Residential zone for the property on Lot 1 and Lot 2, Block 18, Hamilton Acres Subdivision by Commissioner Perreault and seconded by Commissioner Presler.

[Brief at ease till 12:05 am]

Commissioner Perreault read his Findings of Fact in support of approval.

1. Subject property has a history of commercial uses prior to zoning in 1965 and has not been in a conforming residential use subsequently.

2. Planning Commission minutes from 1981 provided by applicant state grandfather rights were clarified and established by the FNSB.

3. There has been no prior indication from the FNSB that the commercial uses were in violation of a legal-nonconforming-use status.

4. The State of Alaska business licenses and City of Fairbanks Health and Sanitation Certificates have consistently recognized commercial use of the property.

5. The property has been assessed as commercial since its construction.

6. Uses of the subject property have been compatible with the neighborhood and similar in character, such as a grocery store, dance studio, veterinary clinic, and school warehouse. The uses have been small, neighborhood-scale business compatible with adjacency to a residential neighborhood.

7. The Commission finds no evidence of vacancy greater than 12 months. Leases, records of ownership, and testimony of applicant demonstrated occupancy.
MOTION: To amend motion to adopt the seven (7) Findings of Fact by Commissioner Perreault and seconded by Commissioner Presler.

PASSED WITHOUT OBJECTION

Commissioner Muehling communicated his discomfort with the process taken and questioned some of the findings of fact, specifically number 3, stated as a Commission the law should be looked at and followed.

Commissioner O'Neall commented she is in favor of the motion and felt as members of the community, sitting as a body, to look at evidence and history and to consider what is best for the community.

Ms. Doxey reminded the Commission that when sitting as a body in a quasi-judicial capacity, you have an ethical code based obligation to apply the facts you find to the law as it stands.

Commissioner O'Neall stated the body is upholding the law as intended.

ROLL CALL:

Eight (8) in Favor: Whitaker, Stepovich, Presler, Sims, Perreault, Brandt, Guinn and O'Neall

One (1) Opposed: Muehling

MOTION PASSED

G. NEW BUSINESS

1. Staff Reports – Discussion on potential restructuring staff report format to include an expanded summary section. (Christine Nelson and Staff)

Mr. Singh gave a brief presentation on a new style of staff reports that will be coming in the future, and some discussion ensued amongst the Commission.

J. EXCUSE FUTURE ABSENCES

Commissioner Peterson is excused from the February 27, 2018 meeting and Commissioner Sims will be excused from the March 27, 2018 meeting.

K. COMMISSIONER’S COMMENTS

Commissioner Muehling reported on the FMATS Technical Meeting he had intended.

Clerk reminded Commissioners to file their APOC by March 15, 2018.

Ms. Nelson offered updates on the Salcha-Badger plan and the Downtown Plan.

L. ADJOURNMENT

There being no further business, the meeting was adjourned at 12:23 a.m., on Wednesday, February 14, 2018.
MINUTES

FEBRUARY 27, 2018
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 6:03 p.m. by Mindy O'Neall, Chairperson.

A. ROLL CALL

MEMBERS PRESENT:   Wendy Presler    Chris Guinn
                   John Perreault   Doug Sims
                   Charles Whitaker Patricia Thayer
                   David Brandt     Eric Muehling
                   Mindy O'Neall

MEMBERS ABSENT & EXCUSED:  Robert Peterson     Mike Stepovich

OTHERS PRESENT:    Christine Nelson, Community Planning Director
                   Manish Singh, Planner
                   Wendy Doxey, Assistant Borough Attorney
                   Nicole Nordstrand, Recording Clerk

B. MESSAGES

1. Chairperson's Comments

   There were no comments by the Chair.

2. Commissioner's Comments

   There were no comments by Commissioners.

3. Communications to the Planning Commission

   There was no communication to the Planning Commission.

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

   There were no comments by Citizens.

5. Disclosure & Statement of Conflict of Interest

   Chair O'Neall reminds Commission that she will ask before each case being heard.
C. **APPROVAL OF REVISED 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 approve Agenda and Consent Agenda by **Commissioner Thayer** and seconded by **Commissioner Perreault**.

   **PASSED WITHOUT OBJECTION**

   **MOTION:** To Amend Motion to approve Agenda and noting minutes are not available by **Commissioner Muehling** and seconded by **Commissioner Whitaker**.

   **PASSED WITHOUT OBJECTION**

D. **MINUTES**

   1. *Minutes from the February 13, 2018 Meeting were unavailable and removed from the Agenda.

E. **QUASI-JUDICIAL HEARINGS**

   1. **CU2018-010:** A request by Grant Anderson, DBA Fox Creek LLC, on behalf of KGM LLC, for conditional use approval of a marijuana cultivation facility, indoor large in the General Use 1 (GU-1) zone on TL-3103, Section 31, T2N-R1E, F.M. (located at 2304 Old Elliott Highway, on the west side of Elliott Highway, between Old Chatanika Trail and Old Steese Highway N).

   *There were no disclosures or statements of conflict of interest.*

   **OATH ADMINISTERED**

   The Applicant, Grant Anderson was present and indicated he would defer to staff to present first.

   **Mr. Manish Singh** provided a presentation of his staff report and recommendations on behalf of the Borough’s Planning Department and recommended approval with three (3) conditions listed in the Staff Report.

   **Questions by Commissioners**

   **Commissioner Perreault** asked if there is a precedent to drawing a 500 foot line to the boundary of the Lions property. **Mr. Singh** discussed code requirements and intent of the Assembly and discussed the outer boundary utilized and explained the manner in which distance is measured.

   **Commissioner Guinn** questioned whether the building itself is not in a floodplain, and **Mr. Singh** indicated it is completely in a floodplain. **Commissioner Guinn** drew attention to the Steese Fire Chief’s comments of severe icing on the building and asked if that should be a concern. **Mr. Singh** indicated that it was noted, but no concerns were expressed.
Commissioner Sims asked if a playground actually exists and Mr. Singh stated he did not investigate further since it is not within 500 feet.

Applicant’s Testimony

The Applicant, Grant Anderson, testified as follows:

- Noted that Assembly’s and public’s concerns is Fox Springs
- Existing septic is being reconstructed with drawings and are currently with ADEC
- AMCO will not release the license until ADEC approves
- Willing to install whatever ADEC requires
- Owner of property adjacent to Fox Springs and has right of first refusal if DOT&PF sells
- Have a well behind Fox Springs and is willing to test if necessary
- Has been in discussion with Friends of Fox Springs
- Changed layout to avoid Army Corp of Engineer

Questions by Commissioners

Commissioner Muehling asked what expertise or experience related to engineering and sizing of carbon filter system that is adequate. Mr. Anderson replied that their HVAC is contracted out and noted that they have a year and a half of experience with no complaints from neighbors. Commissioner Muehling asked Mr. Anderson to describe his irrigation system and how runoff will be handled. Mr. Anderson explained wastewater as a self-contained system and described the process.

Commissioner Sims asked if he has experienced an off ice. Mr. Anderson responded that they have owned the property since summer and have heard about the ice issues and indicated his understanding that the previous owner made some changes and noted it has not been present this year so far.

Commissioner O’Neall questioned whether a contingency plan is in place in the event of a flood. Mr. Anderson explained the plants are not on the floor, affluent is contained in tanks and they have a closed loop system.

Commissioner Sims inquired if the building was a former aircraft hanger. Mr. Anderson responded in the affirmative.

Interested-Person Testimony Opened

Ms. Christine Robert was determined by the Chair not to have interested-person standing.

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 Commissioner Guinn and seconded by Commissioner Presler.

Discussion on the Motion

Commissioner Guinn stated his support for the conditional use permit and believes the fox Springs concerns have been addressed and deferred to ADEC and noted it is in an appropriate area.
Commissioner Presler echoed Commissioner Guinn’s statements and added the applicant testified he is working with ADEC and stated his willingness to install a holding tank or whatever ADEC will require and has familiarity with running a marijuana operation and Applicant lives on the property.

Commissioner Muehling communicated that the Applicant has the owner’s approval, satisfied buffer requirements, and appears to have satisfied air quality and water quality with wastewater plan.

ROLL CALL:

Nine (9) in Favor: Perreault, Brandt, Thayer, Guinn, Whitaker, Presler, Sims, Muehling, and O’Neall.

Zero (0) Opposed.

MOTION PASSED

[Brief at ease to 6:55 pm]

2. CU2018-011: A request by Gary Evans, DBA Grass Station 49, on behalf of David Lanning and Morgan Evans, for conditional use approval of a retail marijuana store in the General Use 1 (GU-1) zone on TL-221, Section 2, T1S-R2W, F.M. (located at 2502 Parks Highway, on the north side of Parks Highway, on the west side of Java Lane).

Commissioner Presler disclosed that she is a long-time friend of Mr. Lanning. Chair O’Neill questioned Commissioner Presler on matters that may impact her decision-making on the matter. Ms. Doxey questioned Commissioner Presler on the nature of their relationship. Commissioner Presler stated it started as a professional relationship and considers him to be a mentor professionally and became friends throughout the years. Ms. Doxey stated that Commissioner Presler is an engineer and asked if Mr. Lanning is also an engineer, and Commissioner Presler stated he is. Ms. Doxey asked if Mr. Lanning is expected to testify in his capacity as an engineer on this matter, and Commissioner Presler said she does not expect that, and Ms. Doxey inquired if Mr. Lanning were to testify in his capacity as an engineer would more weight be given to his testimony due to his being a mentor, Commissioner Presler responded she would. Chair O’Neill at the advice of counsel ruled a conflict exists.

[Commissioner Presler left the dais]

Commissioner Sims disclosed that he has known Mr. Lanning professional over the course of his employ at the FNSB. Chair O’Neill echoed the questions by Ms. Doxey previously. Chair O’Neill ruled no conflict exists.

Commissioner Guinn disclosed he knows Mr. Lanning professionally and Mr. Evans is the son of a colleague and noted he does not personally know Mr. Evans and if, in the future, he were asked to appraise the building, he would consider bidding on it to a local financial institution. Chair O’Neill inquired if he has an existing relationship with Mr. Lanning and Commission Guinn stated he does not.

Ms. Doxey inquired of Mr. Evans, due to Commissioner Guinn’s relationship with his mother, if he would give more weight to his credibility or testimony, and Commissioner Guinn responded he would not. Ms. Doxey inquired of Mr. Lanning the same question and Commissioner Guinn stated he
would not. Ms. Doxey then asked if Commissioner Guinn felt he could be fair and unbiased in deciding the matter and Commissioner Guinn stated he could. Chair O’Neall ruled no conflict exists.

OATH ADMINISTERED

The Applicants, Dave Lanning and Gary Evans were present and indicated their deferment to staff presenting first.

Mr. Manish Singh provided a presentation of his staff report and recommendations on behalf of the Borough’s Planning Department, and recommended approval with three (3) conditions the Staff Report.

Questions by Commissioners

Commissioner Muehling questioned how Mr. Singh would characterize a parking lot where traffic is not buzzing by rather is pulling in, doors opening and closing, headlights, radios playing compared to the comparison used of the Parks Highway. Mr. Singh stated it was not the only consideration and pointed to pages 116 and 117 of the packet and explained his analysis. Further discussion ensued related to traffic and noise associated with residential versus a focused use and the nearby transfer station and that any commercial business operation is not regulated by hours of operation in the GU-1 zone.

Commissioner Thayer asked for further explanation on the math involved in determining the parking required based upon the projected 100 trips per day. Mr. Singh explained the GU-1 has no parking requirements so used GC zoning requirements for considering health, safety and welfare and explained parking proposed by the Applicant. Further discussion ensued about pickup/delivery location and Mr. Singh described his understanding and deferred to the Application to explain level of delivery.

Commissioner Thayer asked if the property line could be more clearly defined for safety to avoid any overflow into the right-of-way.

Ms. Doxey stated the Borough does not typically enforce property lines between property owners and there could be encroachments and it is not the purview of the Commission to regulate. She further stated if the Commission could articulate a basis for requiring a fence or some other marker of the property line specific to the use a condition could be required.

Commissioner Thayer explained her safety concern with parking in the public right-of-way.

Ms. Doxey explained if there is evidence that there could be a safety issue by using the right-of-way for parking, she recommended that the proposed condition be more general.

Mr. Singh commented that the email from DOT specifically mentioned previous property owner which is a very different type of business and explained this marijuana retail business has customers who stay for a very short period.

Commissioner O’Neall inquired if the Borough vehicle in the photo on page 134 is parked in the right-of-way. Mr. Singh responded he is unsure as the parking lot was not plowed.

Commissioner Thayer asked for the distance from the building to the property line. Mr. Singh estimated approximately 30 feet and parking spaces are 9 feet wide.
Commissioner O’Neall asked what the shaded areas on the site plan mean, and Mr. Singh respond that his understanding is gravel, but deferred to Mr. Lanning.

Commissioner Muehling questioned how an invisible property line could be protected and if DOT would be willing to place barriers. Mr. Singh deferred to the Applicant and DOT and indicated DOT has enforcement capability.

Applicant’s Testimony

The property owner, Dave Lanning, testified as follows:

- Purchased property knowing it could meet all requirements for a retail marijuana operation
- Described surveys of lots and how lines are defined
- Described history of lots 10 and lots 11
- Explained proposed lot situation and layout
- Described legal requirements vs. practical access
- Explained negative impact of using Java Lane
- Offered to install jersey barriers, rocks, grass to alleviate parking in the right-of-way and have assured DOT they will keep their customers out of right-of-way
- No impact of noise generation compared to 10,000 vehicles traveling the Parks Highway daily
- Drawings have been sent to the State Fire Marshal
- Described floor plan and DEC approval

Mr. Gary Evans, the proposed business operator, testified as follows:

- Outlined layout of the retail area, packaging and storage
- Explained deliveries and location
- Processed 265 lbs of marijuana at existing location and yielded only 1.5 lbs of solid waste
- Explained the investments made to their 1321 Cushman Street retail location and noted they have had no complaints
- Announced the opening of their 665 Rainbow Drive opening in May.

Mr. Lanning summarized that they can meet the three (3) conditions and has no issues with them.

Questions by Commissioners

Commissioner Whitaker asked if motion detection lighting or lower level kelvin lighting could be considered for the Northside of the building where the cabins are located. Mr. Gary Evans explained that the State requires lighting at all entrances and they elected to have lighting at all times to be able to see what is happening and explained the lights are pointed downwards with minimal light pollution. Discussion ensued on quality of camera images and utilizing lower level kelvin lighting.

Commissioner Sims communicated his support of utilizing barriers to define parking area and noted parking looked really tight and asked for the separation distance of the proposed facility to Java Lane. Mr. Lanning indicated it is approximately 120 – 140 feet. Discussion ensued about alternative layout and the practicality of there being more than six parking spaces.
Commissioner Muehling questioned what kind of easement exists and Mr. Lanning stated it is his desire to incorporate a use easement into a future platting project and explained minimum requirements of an easement.

Commissioner Muehling asked what created the easement. Mr. Lanning stated a desire of the owner of the cabin lot to not have all the previous owners have their stuff on the lot.

Commissioner O'Neall questioned if the exit on the Eastside is open to the public. Mr. Lanning replied that it is just for employee side of sales area and detailed the accessibility to the general public.

Commissioner O'Neall asked hypothetically if DOT had a project would there be no access via Java Lane, and Mr. Lanning replied that may be the case and theorizes that DOT may want to widen it in the future to make it a controlled access. Discussion ensued about the mitigating the safety hazards with the bike path and access via Java Lane and traffic flow.

Commissioner Muehling asked if they intend to have a lighted sign, and Mr. Evans explained the state requirements for signage.

Interested-Person Testimony Opened

Mr. Kyle Ramieriz testified of his concerns, as follows:

- Owner of 2415 Maria Street; a rental and primary residence
- Proposed operation is located directly across from a school bus stop
- Concerned with potential increase in crime
- Frequent power outages for lengthy periods of time resulting in loss of surveillance
- Odor
- Potential loss of rental income due to families not wanting to be in close proximity to a marijuana retail store
- Concerned with hours of operation
- Nearby transfer site will be utilized as a hot spot for using their product
- Traffic flow on the Parks Highway and increase in accident rates
- Access off Parks Highway related to speed of travel and no turn lanes

Questions by Commissioners

Commissioner Muehling inquired if the transfer station off the Parks Highway, and Mr. Ramieriz responded it is off of Little Shot. Commissioner Muehling asked how this business is similar or different than access to other roads in the area and Mr. Ramieriz replied that there are no other businesses are only residential and explained the residents’ familiarity with the area.

Commissioner Brandt asked if the school bus stop is at Nash. Mr. Ramieriz replied that is correct. Commissioner Brandt asked if there is a lot of kids, and Mr. Ramieriz stated there is a good amount of children present.

Commissioner O'Neall asked how the bus uses the road to pick up and drop off students, and Mr. Ramieriz explained that the bus driver expands the stop sign and makes sure traffic is stopped prior to releasing students.

Interested-Person Testimony Closed
Rebuttal by Applicant

Mr. Mason Evans offered the following rebuttal testimony:

- Co-owner of Grass Station 49 with his brother Gary Evans
- Zero complaints of noise or odor at existing location which is open 24/7
- Past business at the proposed location is an eyesore and was basically a junkyard
- Building will be developed into a clean professional looking building with landscaping to the DOT standards
- High-end security system that will directly point towards the bus stop which increases safety to that area
- Single-handedly combating the “black market” sales
- It is a cash only business, but no cash is left on sight as they have security that moves money away from the site
- Catering to the residence of the area, so it will not be adding 100 more vehicles per day
- Industry is heavily regulated by the State
- Exiting the property there is a large right-of-way allowing for a view shed for a few hundred feet.

Questions by Commissioners

Commissioner Guinn inquired what happens to the product when you close. Mr. Evans explained it is placed in secured storage with heavily guarded security gates in the interior as well as exterior doors and the security system immediately notifies the authorities and five cell phones.

Commissioner Brandt asked how often alarms have gone off at the Cushman location, and Mr. Evans replied they have had zero alarms due to theft and it has not been tripped.

Commissioner Muehling asked what the effect would be on business if hours were limited to 10:00 pm. Mr. Evans explained that they are bringing this store to cater to the residence and a lot of their clientele are nightshift workers. Mr. Evans further explained that the hours are primarily driven to allow employees to have an 8 hour shift for a 40 hours work week.

MOTION: To approve the Conditional Use Permit for a commercial retail marijuana store with three (3) conditions, and adopting the staff report and three (3) Findings of Fact in support of the approval by Commissioner Thayer and seconded by Commissioner Whitaker.

Discussion on the Motion

Commissioner Thayer communicated that there was a lot of discussion about the health, welfare and safety, and the public comment to the school bus drop off and pick up directly across the highway with a 300 foot right-of-way for bus allowing for a buffer. She further commented that odor at existing location has not been an issue. She stated while she understood the concern of potential lost rentals, it meets all the health, safety and welfare concerns and stated her intent to support approval.

Ms. Doxey clarified there is no condition concerning odor.

Commissioner Guinn stated his support of approval though expressed concern with the hours of operation.
Commissioner Brandt stated he would support limiting hours and is especially concerned with 65 residences nearby and stated he cannot support a marijuana establishment going into a residential neighborhood. He further expressed concern with traffic turning in and out of the business.

Commissioner Whitaker commended Applicants for cleaning up an eyesore. He further stated there are lots of other commercial operations (Gold Hill Liquor, Blue Loon) with direct access from the Parks Highway without incident.

Commissioner Muehling communicated that the Applicant’s property is on an interstate type highway, so no access through a residential area, there is adequate buffer distances, DEC will have no issue with aboveground water and sewer and does not believe this would add significantly more traffic on the Parks Highway nor is access to this property any different then access to other businesses and properties along the highway. He further communicated they have met the minimum parking requirement, and there has been no testimony to support limiting hours of operation.

Commissioner Sims stated he is comfortable with conditions imposed related to parking and stated he took exception to the classification that the area is residential since the majority of the area is general use and explained the history of the area development.

MOTION: To amend the Motion to add a condition to limit hours of operation from 9 am to 10 pm by Commissioner Guinn and seconded by Commissioner Muehling.

Discussion ensued about the motion and its intended purpose.

MOTION: To amend the Motion to Amend to limit hours of operation for public use by Commissioner Guinn and seconded by Commissioner Sims.

Discussion on the Motions

Commissioner Muehling stated while it is zoned GU, there is a residential character to the area and limiting the hours to 10 pm would be appropriate.

Commissioner Thayer indicated she cannot support limiting the hours where there are businesses along the highway within a half mile radius that are open until midnight and it is not this Body’s job to tell them how to operate.

Commissioner O’Neall stated her agreement with Commissioner Thayer and noted too it is not within the purview of the Commission and that over 100 DPO letters were sent out and there was no response to staff and only one interested person appeared, and other businesses are open until 2 am.

Commissioner Sims spoke in favor of the amendment and stated that the former business at the location did not stay open till midnight and shorter hours of operation is less impactful to the residential character of the neighborhood.

Commissioner Brandt stated despite the GU zoning, it has developed into a residential neighborhood and limiting hours would respect the neighbors.

Commissioner O’Neall communicated that imposing hours of operation using neighbors as a basis is not fair since they did not come forth with their concerns.
ROLL CALL (Motion to Amend Motion to Amend):

Seven (7) in Favor: Guinn, Whitaker, Sims, Perreault, Brandt, Muehling and O’Neall

One (1) Opposed: Thayer.

MOTION PASSED

Ms. Doxey asked for further discussion and explained that to be legally supportable a condition cannot be arbitrary and a test to determine would be whether a similarly situated business that was not subject to this conditional use process would have the condition or if this use can be distinguished from that similarly situated other business. She asked if there is a reason this particular use requires limitations on the hours of operation that a bar or another similar use would not have.

Commissioner Sims offered that to the west the distillery operates and closes early, and noted the Blue Loon further down the road in the same zoning and no limitation to hours. He stated his belief the nature of the use and that it is a conditional use permit it allows for limitations.

Commissioner Guinn echoed Commissioner Sims’ comments.

Ms. Doxey clarified that further discussion needs to be had on what is it about this use and the land use impacts of this use that require limiting hours of operation in a way different then a similar use, such as a bar, that could go into this location and potentially have similar land use impacts.

Commissioner Guinn offered that limiting the hours would prevent a lot of traffic coming and going late at night.

Ms. Doxey expressed concern that if a bar was to go in on this property, since it is GU-1, it could operate until midnight or later and have all of the same impacts that Commissioner Guinn just indicated. She further communicated the Body has no ability to regulate those uses and those impacts for that bar, similarly situated business owner on this same lot, there is concern that this permit holder is being treated arbitrarily.

Commissioner Guinn stated that if a bar asked for a conditional use permit he would feel the same way in limiting the hours.

Commissioner Muehling stated that the suggested midnight closing by the Applicant is also arbitrary and businesses throughout the Borough close at various time. He stated when we talk about this property and its surroundings and its surroundings are characterized as residential.

Commissioner O’Neall countered that the Applicant testified it is not arbitrary that it is an established business practice.

Commissioner Brandt added that this particular marijuana establishment requires a conditional use permit which gives the ability to add conditions versus a business that does not require a conditional use permit such as a bar. He stated his belief it is the least that should be done for the neighbors.
Commissioner Thayer respected what is being said, she stated by imposing this condition treating this Applicant different then another business that could go in this location and the Body could not impose any restrictions.

Commissioner O’Neall added that she agrees with Commissioner Thayer and the implications being imposed on the residence in the area that will be affected by less hours of operation.

Commissioner Brandt mentioned that of all the property owner letters that were sent out that are renters and are going to be impacted which is why there may be why there are not more people here.

Commissioner Muehling discussed arbitrary versus non-arbitrary.

Commissioner Sims stated he looked up the hours of operation for Ursa Major.

Ms. Doxey interjected that Commissioners cannot offer testimony if it is not in the record.

Commissioner Sims stated hours are limited by State law and the Commission has the ability to limit hours of operation as a means to mitigate the effect of the use on surrounding properties.

ROLL CALL (Motion to Amend):

Four (4) in Favor: Brandt, Guinn, Sims and Muehling
Four (4) Opposed: Perreault, Thayer, Whitaker and O’Neall

MOTION FAILED

ROLL CALL (Main Motion):

Seven (7) in Favor: Guinn, Whitaker, Sims, Perreault, Thayer, Muehling and O’Neall
One (1) Opposed: Brandt.

MOTION PASSED

[Brief at ease till 9:21 pm]

[Commissioner Presler returned to the dais]

F. LEGISLATIVE

1. ORDINANCE NO. 2018-06: An Ordinance Amending Chapter 18.104 FNSBC Regarding Notification of Rezoning, Conditional Uses, And Variances And Amending Procedures For Rezoning And Conditional Use Permits (Sponsor: Assembly Member Roberts)

There were no disclosures or statements of conflict of interest.

Assembly Member Lance Roberts was present and explained the intent and basis for his proposed ordinance:
• To address controversial uses in residential neighborhoods
• He received a list of all conditional use permits that have been denied to see what type of controversial uses were denied
• The proposed ordinance was developed to address controversial uses in what effectively are residential neighborhoods and would allow property owners the opportunity to rezone
• Explained the timeframe for a conditional use beats the timeframe for a rezone by at least thirty (30) days
• General public is not educated on zoning and the processes available to them to change their zoning: most people do not know the zoning on their property and what it entails
• Explained the change would provide a thirty (30) stay on a conditional use permit to allow property owners the opportunity to file an “notice of intent to rezone”
• Allows property owners to be more proactive
• No change in the scope of who could apply for a rezone
• Purpose is to let the property owners make the decision on controversial land issues (gun ranges, marijuana operations, etc.) and allow them to maintain the character of their neighborhoods, such as the Shannon Park neighborhood by rezoning
• Alternatives such as supplemental regulations are based on the current zoning
• Gives all neighborhoods the ability to decide to rezone when an issue arises

Questions by Commissioners

Commissioner Perreault asked why someone should wait to rezone when they have the ability to do so now; not when someone purchases property and they do not like what their neighbor is going to do. Assemblymember Roberts replied that they should rezone proactively, and noted most people do not have the level of knowledge to understand the things that could show up in their neighborhood, and this will give them the opportunity to get educated on what their rights are.

Commissioner Perreault counted that someone purchasing the property has done their homework to know where they can do something and why are their private property rights subservient to other people in that area? Assemblymember Roberts responded that sometimes people will make a deal to buy a piece of property based on the zoning getting changed or the conditional use permit being granted.

Commissioner Muehling expressed his concern with “standing” and it now allows for any person to be able to request a rezone and asked why it is not the same as having standing like the conditional use permits have? Assemblymember Roberts explained it is not a change to the current language for the rezone.

Commissioner Muehling followed up by communicating that the purpose of a conditional use is to give flexibility in the zoning where there are gray areas for allowances and expressed concern with attempting to fix a problem which is not broken. Assemblymember Roberts replied that the Commission only imposes conditions on those uses that have been prescribed by the Assembly as being an allowed conditional uses. He followed up with saying of the six (6) residential zones marijuana establishments are not allowed at all. He noted that it is not something that is completely variable that the Commission can make exceptions wherever it wants only if the Assembly has established a policy for allowing the conditional use.
Commissioner Muehling expressed concern that the proposed ordinance does not require the applicant to state what they intend to rezone to. Assemblymember Roberts explained that a complete rezone application must be filed no later than 30 days after filing their “intent to rezone” and is necessary to allow them to work with Planning Staff to determine the best zone. Commissioner Muehling asked what is trying to be fixed. Assemblymember Roberts explained it is to fix the fact that there is not enough knowledge and educating property owners.

Commissioner Presler questioned the number of days that could potentially result if multiple notices of intent are received.

Ms. Doxey explained that a notice of intent to rezone must be filed within the initial 30 day period and if they waited until the 30th day, the maximum delay for that process is 60 days.

Commissioner Sims asked what kind of research has been done to look at the neighborhoods around the Borough and be more proactive. Assemblymember Roberts commented that when the Borough has done a couple of rezones which were done with lots of public meetings and it would be more preferable to do covenants, though that process may not be feasible or too costly, and a long time in the works while this proposed ordinance gives immediate relief.

Commissioner Muehling stated that this is disadvantaging the process of conditional uses which has been working. Assemblymember Roberts replied the proposed ordinance may potentially slow down the process and opined that it does not work as one might think due to the inability of the Borough to do enforcement on conditional use permits. He further stated there was a fundamental misunderstanding that the Commission could make the decision not to allow these contentious uses versus the reality of approving it with conditions.

Staff’s Presentation

Ms. Christine Nelson summarized the concerns about incompatible use issues that had been heard from the community over the last several years and how the current code requirements in the conditional use criteria or supplemental regulations addressed those concerns. She expressed the following:

- The conditional use process currently takes up to 90 days
- Rezones must go to 3 Assembly meetings subsequent to the Planning Commission meeting in order to reach a decision while conditional uses do not, thereby creating a timing issue
- Delay in processing conditional use applications unduly disadvantages those seeking a conditional use
- Land use and economic development goals in the Comprehensive Plan do not support this approach in the proposed ordinance to balancing neighborhood concerns with conditional use permit requests
- Land use goals address preserving and maintaining private property rights, but are silent on establishing priorities or preferences amongst property owners’ individual property rights
- The proposed ordinance stymies and reverses the streamlining procedures that have been working well
- A primary and critical need for business is certainty of process and establishing this level of uncertainty is not advantageous to business or economic development in the community
• Community Planning recently advocated for the current public notice distances as a result of concerns expressed by the community and recommends keeping them at 1,000/2,000 feet
• The number of notices would double since the notice of the pending conditional use would need to be sent out and then later, notice of public hearing for the conditional use must be sent
• Lack of enforcement on previous conditional use cases is largely due to the lack of specific conditions written to enable enforcement in the past which has changed over the last 3 years to more specificity of conditions today
• Summarized the process of how a conditional use and rezone applications would be processed
• The decision time on a conditional use permit would increase from 90 days to a minimum of 155 days and up to 185+ days while an applicant is waiting on a stay and potentially a rezone decision
• Due to limited Community Planning resources, conditional use permit applications could not be worked on during the pending “stay” period until a rezone decision is made and the case is scheduled for a public hearing date
• The Regional Comprehensive Plan includes direction for adopting better criteria for specific uses which is not currently supported in zoning code
• There are other solutions which could balance private property rights more effectively, including:
  o Reevaluating zones for appropriate uses and updating code to address what should be allowed in zones as the community changes
  o Supplemental regulations for potentially incompatible uses
  o More specific conditional use criteria
  o Proactively rezone

Questions by Commissioners

Commissioner Brandt asked what the timeframe for some of those solutions and are they being actively worked. Ms. Nelson replied that research is being conducted on how other communities have addressed compatibility issues through conditional use criteria and supplemental regulations and indicated it could be 4 - 5 months, and explained staffing issues and the priorities of new ordinances with the Mayor.

Commissioner O’Neall asked if a working group has been considered to address some of these issues. Ms. Nelson explained she would expect a working group or subcommittee to be established to work through these issues in the future.

Commissioner Muehling sought clarification on the timing and number of days and expressed concern filing a “notice of intent to rezone” could be a tactical measure to prevent a property owner from ever getting a conditional use permit.

Discussion ensued about the method for counting the initial thirty (30) days and then the thirty (30) days that would follow to allow for the filing of a completed rezone application.

Public Testimony Opened

No one present

Public Testimony Closed
Rebuttal

Assemblymember Roberts stated his agreement with the solutions suggested by Ms. Nelson, and recognized that with time constraints and staffing, it could be a long time in materializing. He further stated the proposed ordinance would be a temporary fix and allow people the ability to rezone and maintain the character of their neighborhoods.

Commissioner O’Neall asked if he would entertain a sunset date.

Assemblymember Roberts indicated he would.

Commissioner O’Neall suggested a one year period, to which Assemblymember Roberts felt that would be too short of a period of time.

MOTION: To recommend that the FNSB Assembly approve Ordinance No. 2018-06 by Commissioner Presler and seconded by Commissioner Thayer.

Discussion on the Motion

Commissioner Presler opined this allows people in neighborhoods potentially affected by conditional use applications to affect the outcome and stated most people are not aware of the process and many are taken by surprise and personally does not believe it is up to the Commission or the Borough deciding which GU-1 areas need to be rezoned.

Commissioner Brandt stated his agreement with Commissioner Presler, and communicated that it is not a perfect solution, but would be a band aid until the Planning Department can do the larger fix.

Commissioner Sims indicated the proposed ordinance has good and bad concepts, especially how it induces more citizen involvement, but delays a legitimate conditional use permit application, and feels a sunset clause would be beneficial.

Commissioner Thayer stated she does not believe it is a perfect fix by any means, but is a start and with a sunset clause could be effectuated immediately allowing time to develop long-term solution and it creates more awareness and education.

Commissioner Whitaker quantified he is not supportive as it stifles potential businesses that have done their due diligence and invested time and money ensuring all paperwork is in place and then a delay is caused and a rezone proceeds, the owner then locates a different property, same thing happens which causes delays way beyond 60 days.

Commissioner Perreault indicated he will not vote to approve this ordinance due to it being reactionary rezoning and that is not the best way to do land use planning or zoning which should be a deliberative and thoughtful process. He further stressed that this should include a property interest and the reaction cannot come from outside the 2,000 foot and the bottom line is there are people paying attention and they are motivated for and against things which can hinder the process and should not be making a way for uninterested parties who have an outside reason.

Commissioner Guinn communicated he agrees with everything that has been said, and supplemented to it on his belief that Ms. Nelson’s comprehensive approach is the best way to
go, but noted it would take years and so much effort. He commented that the proposed ordinance is not comprehensive and wind up being patch work.

Commissioner Muehling reiterated his concern with “standing” and is contrary to interested-persons within a defined radius affected by the outcome. He further communicated that education is the key, but we need education now, this new ordinance will need to be communicated and it is not happening now, and right now everyone has the option to apply for a rezone at any time. He stated a sunset clause as well as a change to who has standing would have to be added before he would support it.

Commissioner Brandt communicated that this only affects someone buying land that they may or may not get a conditional use permit, and noted that if the proposed ordinance passes, it would discourage people from buying land in a largely developed residential area.

Commissioner Sims expressed concern that it lets controversy and conflict determine land use patterns through zoning rather than being more proactive in implementing the Comprehensive Plan through zoning.

Commissioner Brandt agreed with Commissioner Sims statement and expressed that this is a short-term fix on a process that would take two years, to alleviate tearing neighborhoods apart.

Commissioner O’Neall took issue with the statement that “this Commission is tearing neighborhoods apart” with decision on conditional use permits.

Commissioner Brandt interjected that he meant the “situation” not the Commission, rather the whole marijuana operations going into residential neighborhoods.

Commissioner O’Neall stated that by default of the decision and the authority of the body speaks to how we make decisions, and there are times the Body has had to list out specifics to create a basis for how and why the decision has been reached. She stated her agreeance that rezoning is more of a reactionary solution that invokes emotion to prevent something and there has been a lot of discussion in the community about cannabis and if they are concerned about it at all, they have the power to change it now under current code.

[Brief at ease from 10:55 – 11:02 pm]

Chair O’Neall stated, in the interest of time, that Commissioners limit their comments to one per person to express their concerns.

**MOTION:** To amend the motion to add a recommendation to the Assembly to add at line 100 after the word “persons”....“who receive a notice of an application for a conditional use permit and”....by Commissioner Muehling and seconded by Commissioner Whitaker.

Ms. Doxey clarified line 100 would read if amended: “B. Notice of Intent to Initiate a Rezone. Any person or persons who receive a notice of an application for a conditional use permit and who wish to initiate a rezone may file a Notice of Intent to Initiate a Rezone prior to submitting a complete application.

Commissioner Muehling communicated his basis for the amendment establishing that only those persons receiving a DPO should have standing to file a notice of intent to rezone.
Commissioner Perreault stated his support.

Commissioner Presler questioned whether it solves anything because language in code currently allows for anyone to file for a rezone.

Ms. Doxey clarified that code does allow for anyone to apply for a rezone and noted the requirement that they have 51% of the property owners in the area sign off on the rezone request.

Commissioner Brandt stated it does not change the fact that anyone outside of this process can apply for a rezone and only those people in the area would receive the DPO.

Ms. Doxey indicated if amended it would change in that only those receiving DPOs would be able to file a Notice of Intent to Rezone and clarified anyone not receiving a DPO could file a Notice of Intent to Rezone if just would not effectuate a stay.

Commissioner Perreault communicated that what is trying to be accomplished is that anyone can file a request to rezone which is useful when the Borough does the filing to allow for the process to move forward. He stated he supports preventing outside interests from affecting what a neighborhood is trying to accomplish for themselves.

Commissioner Presler stated that Ms. Doxey's clarification is that only those receiving the DPOs can effectuate the Notice of Intent which is helpful.

Discussion ensued about the process for moving forward with a recommendation to the Assembly.

Commissioner Muehling stated that modifying this document sends the appropriate message to the Assembly on limiting who can file a rezone.

Commissioner Brandt questioned the distance for the DPO letters for this ordinance being cut in half and would it change for just the notice of intent or all DPOs.

Ms. Doxey clarified the distances would change all DPO letters would be 500 and 1,000 feet.

Ms. Nelson further clarified it is the same distance for all DPO letters; conditional uses, variances, etc.

ROLL CALL (Motion to Amend):

Nine (9) in Favor: Guinn, Whitaker, Presler, Sims, Perreault, Brandt, Thayer, Muehling, O’Neall

Zero (0) Opposed.

MOTION PASSED

MOTION: To amend Motion to maintain the current distance for DPO notification by Commissioner Muehling and seconded by Commissioner Brandt.

Commissioner Muehling stated the process has been working.
Commissioner Brandt stated the only reason given was to save money, and staff indicated it would not be an issue, and believe the more notification the better.

Commissioner Guinn stated from an education perspective, the more DPOs are sent out, the more people are aware of zoning.

ROLL CALL (Motion to Amend):

Nine (9) in Favor: Sims, Perreault, Brandt, Thayer, Guinn, Whitaker, Presler, Muehling and O’Neall

Zero (0) Opposed.

MOTION PASSED

Commissioner Perreault called for the question.

ROLL CALL (Main Motion):

Three (3) in Favor: Brandt, Thayer and Presler

Six (6) Opposed: Perreault, Guinn, Whitaker, Sims, Muehling and O’Neall.

MOTION FAILED

G. EXCUSE FUTURE ABSENCES

Commissioner Peterson is excused from the March 27, 2018 meeting and Commissioner Sims will be excused from the March 27, 2018 meeting.

H. COMMISSIONER’S COMMENTS

Commissioner Guinn reported on the RE/RR setback subcommittee and indicated they would be meeting again in the future.

Commissioner Muehling applauded the Borough’s mapping tools utilized at the RE/RR subcommittee meeting

Commissioner Sims spoke on the ease of administration on the RE/RR setbacks and the impacts to the department with exceptions to the rules versus a carte blanche approached.

Commissioner O’Neall thanked the Commission for their dialog.

I. ADJOURNMENT

There being no further business, the meeting was adjourned at 11:25 p.m.
STAFF REPORT

RZ2018-004

WITHDRAWN
Hello Christine,

As instructed by you, I double checked with Mr. Watson and he wants to continue with his withdrawal request (see below).

Thanks,
Manish

-----Original Message-----
From: kkwatson.mosquitonet@gmail.com [mailto:kkwatson.mosquitonet@gmail.com]
Sent: Wednesday, March 07, 2018 1:49 PM
To: Manish Singh
Subject: Re: Stepping stone

Yes. Please withdraw application.

Rick

Sent from my iPhone

> On Mar 7, 2018, at 1:47 PM, Manish Singh <MSingh@fnsb.us> wrote:
> 
> Do you want to continue with withdrawal?
> 
> Thanks,
> Manish
> 
> 
> ---- Original Message ----
> From: kkwatson.mosquitonet@gmail.com [mailto:kkwatson.mosquitonet@gmail.com]
> Sent: Wednesday, March 07, 2018 1:46 PM
> To: Manish Singh
> Subject: Re: Stepping stone
>
> I understand. Changing to mf Chang’s my setbacks on my single family houses. Duplexes will be fine
> 
> Rick
> 
> Sent from my iPhone
>

> >> On Mar 7, 2018, at 1:38 PM, Manish Singh <MSingh@fnsb.us> wrote:
>> 
>> >> Dear Mr. Watson,
>> >> 
>> >> Thank you for your email and for the request to withdraw your rezone application. I checked with my director and she advised to write this email to you to educate you about the proposed MF zone.
>> >> 
>> >> With the proposed MF zone, all the uses allowed in the existing TF zone will also be allowed. In simple words,
with the approved MF zone, if you decide that you do not want to construct the five 8-plexes (i.e. multi-family dwellings), you can still construct duplexes. However, if you decide not to pursue this rezone to MF, the existing TF zone will not allow five 8-plexes (i.e. multi-family dwellings). The MF zone will give you the flexibility of building duplexes and/or multi-family dwellings. The existing TF zone does not offer this flexibility.

>>
>> My director wanted to you to understand that MF zone allows all the uses allowed in TF as well. She also wanted to double check if you still want to withdraw your application? Let me know if you have any question for me.
>>
>> Thanks,
>> Manish
>>
>> Manish Singh, AICP
>> Planner II
>> Department of Community Planning
>> 907-459-1225 / msingh@fnsb.us
>>
>> Fairbanks North Star Borough
>> 907 Terminal Street
>> Fairbanks, AK 99701
>>
>> -----Original Message-----
>> From: kkwatson.mosquitonet@gmail.com [mailto:kkwatson.mosquitonet@gmail.com]
>> Sent: Wednesday, March 07, 2018 1:06 PM
>> To: Manish Singh
>> Subject: Stepping stone
>>
>> I have decided not to pursue changing zoning. I feel there are too many multiplex going in to make it work out.
>>
>> Thx
>> Rick
>>
>> Sent from my iPhone
STAFF REPORT

To: Fairbanks North Star Borough Planning Commission

From: Stacy Wasinger, Planner III

Date: March 27, 2018 Planning Commission Meeting

Subject: Appeal of GR2018-085: An appeal by Robert and Loa Hubbard of the denial of a request for affirmative recognition of legal nonconforming structure status (grandfather rights) for an existing structure with a nonconforming south front-yard setback of 16.1 feet instead of the required 20 feet in the General Commercial (GC) zone for the property on Tax Lot 4, Kolde Homestead (located at 208 Gaffney Road, on the north side of Gaffney Road, east of Noble Street and north of Airport Way).

I. EXECUTIVE SUMMARY

This item is an appeal of the denial of a request for affirmative recognition of legal nonconforming structure status (grandfather rights) for an existing structure with a nonconforming south front-yard setback of 16.1 feet instead of the required 20 feet in the General Commercial (GC) zone. Pursuant to FNSBC 18.108.030(C), appeals of Administrative Hearing Officer decisions on legal non-conforming use status are heard de novo by the Planning Commission.

Staff Recommendation: The Department of Community Planning recommends DENIAL of the appeal and upholding the Administrative Hearing Officer's decision based on twenty-two (22) Findings of Fact.

<table>
<thead>
<tr>
<th>Property Information</th>
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<tr>
<td>Applicant</td>
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<td>Property Owner</td>
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<td>PAN</td>
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<tr>
<td>Lot Size</td>
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<tr>
<td>Existing zoning</td>
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<td>Existing land use</td>
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</tbody>
</table>
II. BACKGROUND

An application for affirmation recognition of legal non-conforming structure status (grandfather rights) was submitted on December 5, 2017 to the Community Planning Department because the existing building does not meet the current General Commercial (GC) front-yard minimum required setback of 20 feet (Exhibit 1). The existing building has a non-conforming south front-yard of 16.1 feet. All owners of nearby lots or land within 1,000 feet of the subject property were notified of the hearing by mail as required by FNSBC 18.108.030 (C) (Exhibit 2).

A public Administrative Hearing was held on January 4, 2018. The property owner/applicants, Mr. and Ms. Hubbard, as well as their surveyors, were present and testified. The existing structure was taken down to the foundation and reconstructed in 2017 because of concerns about the structural soundness of the building. The owners obtained building permits but did not obtain a zoning permit prior to work being done on the structure. The City of Fairbanks did not require a zoning permit to issue the building permit, as is their normal practice. The public Administrative Hearing was continued to January 18, 2018 to allow additional testimony or submittal of any additional evidence to clarify how the building was changed in 2017. The property owner, Ms. Hubbard, attended that hearing telephonically due to illness. The primary issue of discussion was whether the work done to the building in 2017 was an alteration or reconstruction. Staff received Law Department guidance on previous interpretations and legal background of non-conforming uses (Exhibit 3). No additional evidence was submitted at that hearing but it was discussed during the hearing that FNSB Community Planning would obtain a copy of the demolition and building permits from the City of Fairbanks, and Community Planning subsequently did so.

Following the hearing, the FNSB Administrative Hearing Officer issued a determination on January 31, 2018 that the south front-yard setback of the existing building does not have an affirmative recognition of grandfather rights in the GC zone (Exhibit 4). The structure in question was demonstrated to have undergone a change of use from a bar to an insurance office in 2017. The applicant contended that the changes made to the building were repairs or alterations. The staff recommendation was that because the walls were taken down completely, the 2017 changes were demolition and reconstruction not included in the grandfather rights section of Title 18, pursuant to FNSBC 18.108. The Hearing Officer weighed the interpretation of modification or alteration and demolition and based the decision on the following information:

1. The original structure built in 1969 may have had legal non-conforming status.

2. Removal of all four walls to the foundation in 2017 does not meet the definition of alteration or the expansion allowed pursuant to FNSBC 18.108.040(A).

3. The changes made to the structure in 2017 included demolition to the foundation and substantial reconstruction.
4. Borough code does not expressly provide for reconstruction, restoration, or replacement of legal non-conforming structures that have been destroyed or demolished.

The request to affirm grandfather rights was denied because legal non-conforming status pertains to “[a]ny nonconforming building…which existed lawfully” prior to the adoption of the zoning ordinance “or any lawful building…which has become nonconforming upon the adoption of the ordinance codified in this title or any subsequent amendment.” The grandfather rights criteria were not met because the zoning regulations were in place on the parcel in 2017, when the changes to the building were made. Notice of the Hearing Officer’s decision and findings of fact were provided to the applicant on January 31, 2018 via email and mailed hard copy.

On February 15, 2018 the applicant appealed the Administrative Hearing Officer’s decision stating that “[t]he original building has grandfather rights and due to the alteration made to the building we feel that we should be allowed to maintain GF rights on the location being 3.9 feet into the setback which was placed after the foundation was established in 1968. We have not altered the footprint or changed anything at all” (Exhibit 5).

III. APPLICABLE CRITERIA

FNSB Title 18, Chapter 18.108 governs legal non-conforming (grandfathered) uses and lots and the affirmative recognition of grandfather rights process.

FNSB 18.108.020: Any nonconforming building, use or lot which existed lawfully prior to the effective date of the ordinance codified in this title or any lawful building, use or lot which has become nonconforming upon the adoption of the ordinance codified in this title or any subsequent amendment thereto may be continued, subject to the restrictions in this chapter.

FNSB 18.108.040: Except for agricultural buildings and livestock, and any other agricultural activities, any nonconforming building, use or lot which does not conform with the regulations of the zoning district in which it is located shall be subject to the following restrictions which shall be interpreted to the extent allowable by law in a manner that ensures that property owners are not deprived of reasonable use of their property:

A. Nonconforming Buildings.

1. A nonconforming building may be enlarged or altered as long as the enlargement or alteration does not create a new nonconformity of this code, except that expansion is permitted within the standards that were in place when the zone changed.
IV. STAFF ANALYSIS

The subject parcel contains a building previously used as a bar, known as “The Comet Club”, in the General Commercial (GC) zone (Figure 1). This request for affirmative recognition of grandfather rights application is for the south front-yard along Gaffney Road, which does not comply with GC zoning setbacks because it has an existing setback of 16.1 feet instead of the required 20 feet (Exhibit 6).

FNSBC 18.04.010 Definitions states that a nonconforming building means “a building the size, dimension, or location of which was lawful prior to the adoption, revision or amendment to this title, but fails by reason of the adoption, revision or amendment to conform to the present requirement of the zoning district in which it is located”.

Figure 1: Plot Plan Dated 10/16/17, Showing Setbacks (Note: The plot plan was provided by the applicant and digital annotations were made by Community Planning staff.)

The property was annexed into the City of Fairbanks corporate limits on August 24, 1954. The subject parcel was zoned General Residential at that time. The General Residential zone established a minimum required 15 foot front-yard setback (Exhibit 7).
City of Fairbanks building permit records reflect that a bar and residence existed at this site on November 4, 1957 (Exhibit 8). At that time, the City of Fairbanks had both zoning and building authority within City limits. The front portion of the property was zoned Business I (BS-I) in 1959 (Exhibit 9). At time of zoning, the BS-I zone had a minimum required street-yard setback of 35 feet from the centerline of Gaffney Road (Exhibit 10).

The subject parcel was described by deed in its current configuration on October 27, 1967 (Exhibit 11). The front lot line was established in its current lot configuration on or before that date, establishing the front-yard setback. FNSB aerial photography from 1967 shows a structure on the subject parcel (Exhibit 12). The location of that structure is different than the footprint of the current building. The City of Fairbanks issued permits for a new “retail” building in October of 1967 (Exhibit 13).

The subject parcel was zoned Business (BS) with the adoption of Ordinance No. 67-34 on March 28, 1968. The BS zone had a zero foot minimum required street yard setback (Exhibit 14). The FNSB Assessor record reflects in a note that they “picked up a new building” during a site inspection on January 9, 1969 (Exhibit 15). At that time, the required front-yard setback was zero feet. FNSB aerial photography shows that the structure on the subject parcel in 1974 was different than the structure shown on the parcel in 1967 (Exhibit 12). The structure built in 1969 is in the same location as the structure shown in the May 2017 aerial photograph except for the 8.2 foot by 4.4 foot entry, which was removed in 2017. The building was in compliance with setback requirements in 1969.

Ordinance No. 70-18, adopted on June 11, 1970, removed the BS zone and established the Business I (BS-I) and Business II (BS-II) zones. The subject parcel was zoned BS-II, which established a 20 foot street yard setback (Exhibit 16). With the BS-II zone, the front-yard street setback of 11.7 feet to the entry that existed at that time but does not currently exist and 16.1 feet to the rest of the structure became non-conforming.

The subject property was rezoned to General Commercial (GC) with the adoption of Ordinance No. 88-010, effective on April 25, 1988. The required front yard setback remained 20 feet (Exhibit 17). On April 25, 1988, FNSBC 18.56.020 stated that “any nonconforming building, structure, use, or lot which existed lawfully prior to the effective date of this ordinance or any lawful building, structure, use, or lot which has become nonconforming upon the adoption of this ordinance or any subsequent amendment thereto, may be continued, subject to the restrictions in this chapter…”

On October 4, 2017, the applicant obtained a demolition permit from the City of Fairbanks to remove the existing building down to the foundation. The roof and the walls were subsequently removed but the foundation remained intact (Exhibit 18). The site plan supplied by the applicant demonstrates that the 8.2 foot by 4.4 foot entry was removed with the reconstruction in 2017. This portion of the structure was closer to the property line but after its removal, the closest portion of the building to the south front property line was 16.1 feet (11.7 feet to the removed entry and 4.4 feet of the entry). On November 9, 2017, the applicant obtained a building permit from the City of Fairbanks to construct a “new” commercial building on the existing foundation. The building permit
states that the proposed use of the structure will be insurance offices (Exhibit 19). The City of Fairbanks did not require a FNSB zoning permit or zoning compliance letter for the reconstructed structure or the proposed new use before issuance of the permits.

No FNSB zoning permit has been issued for the proposed new use of the building. New exterior walls were constructed in the same location on the foundation as was located for the previous building. The building was not expanded beyond the footprint of the previous building as a result of the reconstruction of the roof and walls.

FNSBC 18.108.040(A)(1) states that a “non-conforming building may be enlarged or altered as long as the enlargement or alteration does not create a new non-conformity of this code.” FNSBC 18.04.010 Definitions states that “alteration” means “any change in size or shape of a building”. The terms “enlargement”, “demolition”, “re-construction”, “restoration” and “replacement” are not defined In Title 18. The applicant stated that “the alteration of this building has not caused any increase in footprint and has not enlarged the building. The original construction as foundation, sewer and plumbing is being used. Construction of a building includes much more than the above ground structure and the foundation is the key to all buildings.”

Affirmative recognition of grandfather rights pursuant to FNSBC 18.108 requires a structure to have been established “lawfully” under the regulations in place at the time it was constructed. Pursuant to FNSBC 18.108.020, legal non-conforming status can only be affirmed if the structure “has become nonconforming upon the adoption of the ordinance codified in this title or any subsequent amendment thereto.” It was not an amendment to Title 18 or adoption of any other ordinance that made this structure non-conforming. The structure built in 1968 to 1969 may have had legal non-conforming status as it pertained to the front-yard setback because the required setback was zero feet when it was constructed. Borough code does not expressly provide for reconstruction, restoration or replacement of a non-conforming building that has been destroyed or demolished. The changes made to the subject building in 2017 included demolition of the building to the foundation and rebuilding new walls and the roof, which constitutes substantial reconstruction; these changes are not considered to be an “alteration” of the existing building. Because the walls and roof of the existing building were removed and subsequently replaced in 2017 after the 20 foot minimum front-yard setback was established on June 11, 1970, the subject building does not have an affirmative recognition of legal non-conforming structure status (grandfather rights) for the south front-yard setback of 16.1 feet instead of the required 20 feet in the General Commercial (GC) zone.

**Community Planning Recommendation**

Community Planning recommends that the Planning Commission DENY the Appeal and UPHOLD the FNSB Administrative Hearing Officer’s decision.

**V. RECOMMENDED FINDINGS OF FACT**

1. This grandfather rights application is for a commercial structure previously utilized as a bar on the subject lot in the General Commercial (GC) zone. This structure
does not comply with GC zoning setbacks because it has a south front-yard setback of approximately 16.1 feet instead of the required 20 feet.

2. FNSBC 18.04.010 Definitions states that a nonconforming building means “a building the size, dimension, or location of which was lawful prior to the adoption, revision or amendment to this title, but fails by reason of the adoption, revision or amendment to conform to the present requirement of the zoning district in which it is located”.

3. The property was annexed into the City of Fairbanks corporate limits on August 24, 1954. The subject parcel was zoned General Residential at that time. The General Residential zone established a minimum required 15 foot front-yard setback.

4. The front portion of the property was zoned Business I (BS-I) in 1959. At time of zoning, the BS-I zone had a minimum required street-yard setback of 35 feet from the centerline of Gaffney Road.

5. City of Fairbanks building permit records reflect that a bar and residence existed at this site on November 4, 1957. At that time, the City of Fairbanks had both zoning and building authority within City limits.

6. The subject parcel was described by deed in its current configuration on October 27, 1967. The front lot line was established in its current lot configuration on or before that date.

7. FNSB aerial photography from 1967 shows a structure on the subject parcel.

8. The City of Fairbanks issued permits for a new “retail” building in October of 1967.

9. The subject parcel was zoned Business (BS) with the adoption of Ordinance No. 67-34 on March 28, 1968. The BS zone had a zero foot minimum required street-yard setback.

10. FNSB Assessor record reflects in a note that they “picked up a new building” during a site inspection on January 9, 1969. At that time, the required front-yard setback was zero feet.

11. FNSB aerial photography shows that the structure on the subject parcel in 1969 was different than the structure shown on the parcel in 1967. The structure built in 1969 is in the same location as the structure shown in the May 2017 aerial photograph.

12. Ordinance No. 70-18, adopted on June 11, 1970, removed the BS zone and established the Business I (BS-I) and Business II (BS-II) zones. The subject parcel was zoned BS-II, which established a 20 foot street-yard setback. With the BS-II zone, the front-yard street setback of 16.1 feet became non-conforming.

13. The subject property was rezoned to General Commercial (GC) with the adoption of Ordinance No. 88-010, effective on April 25, 1988. The required front yard setback remained 20 feet.
14. On April 25, 1988, FNSBC 18.56.020 stated that “any nonconforming building, structure, use, or lot which existed lawfully prior to the effective date of this ordinance or any lawful building, structure, use, or lot which has become nonconforming upon the adoption of this ordinance or any subsequent amendment thereto, may be continued, subject to the restrictions in this chapter…”

15. On October 4, 2017, the applicant obtained a demolition permit from the City of Fairbanks to remove the existing building down to the foundation. The roof and the walls were subsequently removed but the foundation remained intact.

16. On November 9, 2017, the applicant obtained a building permit from the City of Fairbanks to construct a “new” commercial building on the existing foundation. The building permit states that the proposed use of the structure will be insurance offices. The City of Fairbanks did not require a FNSB zoning permit or zoning compliance letter for the reconstructed structure or the proposed new use before issuance of the building permit.

17. No FNSB zoning permit has been issued for the proposed new use of the building.

18. Insurance offices are an allowed use in the GC zone.

19. New exterior walls were constructed in the same location on the foundation as was located for the previous building. The building was not expanded beyond the footprint of the previous building as a result of the reconstruction of the roof and walls.

20. FNSBC 18.108.040(A)(1) states that a “non-conforming building may be enlarged or altered as long as the enlargement or alteration does not create a new non-conformity of this code.” FNSBC 18.04.010 Definitions states that “alteration” means “any change in size or shape of a building”. The terms “enlargement”, “demolition”, “re-construction”, “restoration” and “replacement” are not defined in Title 18.

21. Borough code does not expressly provide for reconstruction, restoration or replacement of a non-conforming building that has been destroyed or demolished.

22. The changes made to the subject building in 2017 included demolition of the building to the foundation and rebuilding new walls and the roof, which constitutes substantial reconstruction; these changes are not considered to be an “alteration” of the existing building.

Draft Motion

I move to deny the appeal and uphold the Administrative Hearing Officer decision denying recognition of legal nonconforming structure status (grandfather rights) for the existing building with a nonconforming south front-yard setback of 16.1 feet instead of the required 20 feet in the General Commercial (GC) zone.
Building existing in 2014 prior to the demolition in 2017

Building without roof on September 20, 2017, view from the road
Roof debris stored behind the building on September 20, 2017

Building under reconstruction, new walls on November 13, 2017
Building under reconstruction, new roof on November 15, 2017

Building after reconstruction, on November 17, 2017
Picture Packet:
Photos from FNSB Assessing Database
(Appeal of GR2018-085)

Building after reconstruction, on December 5, 2017

Building after reconstruction, workers finishing roof on December 11, 2017
Picture Packet:
Photos from FNSB Assessing Database
(Appeal of GR2018-085)

Building after reconstruction, new windows on December 22, 2017
**APPLICATION FOR AFFIRMATIVE RECOGNITION OF GRANDFATHER RIGHTS STRUCTURE/SETBACK**

**File No. GB2018-085**  
**Fee: $25**

<table>
<thead>
<tr>
<th><strong>Applicant:</strong></th>
<th><strong>Property Owner:</strong></th>
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<tbody>
<tr>
<td><strong>Contact Name:</strong> Robert and Loa Hubbard</td>
<td><strong>Name:</strong></td>
</tr>
<tr>
<td><strong>Business Name:</strong></td>
<td><strong>Mailing Address:</strong></td>
</tr>
<tr>
<td><strong>Mailing Address:</strong> 417 Caffrey Rd</td>
<td><strong>City, State Zip:</strong></td>
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<tr>
<td><strong>City, State Zip:</strong> Fairbanks AK 99701</td>
<td><strong>Phone:</strong></td>
</tr>
<tr>
<td><strong>Phone:</strong> 907-388-2972</td>
<td><strong>Cell:</strong> Same</td>
</tr>
<tr>
<td><strong>E-mail:</strong> <a href="mailto:loalarm@allstate.com">loalarm@allstate.com</a></td>
<td><strong>E-mail:</strong></td>
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<tr>
<th><strong>Property Information:</strong></th>
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<tbody>
<tr>
<td><strong>Property Description:</strong> Lot 4 KDE Homestead Townsite</td>
</tr>
<tr>
<td><strong>Street Address:</strong> 208 Caffrey Rd</td>
</tr>
<tr>
<td><strong>Parcel Account Numbers (PAN):</strong> 800349</td>
</tr>
<tr>
<td><strong>Date structure was created, if known:</strong> 1968</td>
</tr>
</tbody>
</table>

Briefly describe non-conformity as it relates to structure/setback(s):  
(3.9 ft) Building location is 16.1’ to edge of property.

☑ If grandfather rights for the structure setback are not affirmed, I am requesting consideration of Amnesty Relief if I qualify under FNSBC 18.116.030 eligibility criteria and I agree to pay the additional fee of $25 (staff decision) or $175 (Administrative Hearing) as applicable.

I certify that the information included in this application is to the best of my knowledge true and correct. I understand the determination is appealable to the Planning Commission and this decision is appealable to the Board of Adjustment.

**APPLICANT SIGNATURE:**  
**DATE:** 12/1/2017

**OWNER SIGNATURE (if different):**  
**DATE:**

If the applicant is not the sole property owner, written consent of all property owners must be provided pursuant to FNSBC 18.198.030(A).

Please send my Notice of Decision by the following: ☑ mail  ✗ email

---

*Fairbanks North Star Borough is subject to the Alaska Public Records Act, AS 40.25 et seq. and this document may be subject to public disclosure under state law.*

*Revised 6/17/2017*

*March 27, 2018*
Manish,

I have authorized Lea Hubbard to file an application for grandfather rights on 2056 Gaffney Rd. for our zoning permit.

Thanks, Manish!

Bob Hubbard

Bob Hubbard

12-5-17
Nonconforming Structure Grandfather Rights Narrative

1. The original structure was built in 1968. There was a small section added to the west corner at some point before we purchased the property in 2013. The structure was never damaged, however the interior walls were all heavily damaged by smoke from 40 years of cigarettes. The current use of the structure will be an Insurance office. The structure will be used as an office for the very first time in its existence as it has historically been bar.

2. See site plan provided by 3Tier Alaska.

3. See historical documentation on file with FNSB.

As long as our building is located in the exact same location as the former building, we believe that the grandfather rights should be granted. Based on Title 18 A, the alteration of this building has not caused any increase in footprint and has not enlarged the building. The original construction as foundation, sewer and plumbing is being used. Construction of a building includes much more than the above ground structure and the foundation is the key to all buildings. We are using the original foundation and footprint. We are requesting that the grandfather rights be granted as we are not enlarging or changing the original building except for the alteration of new walls and roof. With the cigarette smoke damage on the interior structure, and the age of the roof, we believe that replacing them with new wood was the safest way to proceed. We do not believe that we have hindered our grandfather rights to proceed with completing the alterations of this property. The change in appearance will be a positive addition to the City of Fairbanks and it will be a positive reflection of commerce located just outside of the Army Base.
Hi Loa,

It was nice talking to you on phone today. As discussed, variances are rare and very difficult to obtain. I am glad you had the opportunity to understand the application and Planning Commission hearing criteria. While I prepared for the phone conversation with you, I came across some property/zoning history. I hope that the following information will help you in putting an application together –

1. FNSB adopted their zoning regulations with Ord. 67-34 on March 28, 1968. All properties within Kolde Homestead Subdivision were zoned “Business (BS)”. Business (BS) zone had a zero feet minimum street yard depth (currently known as front-yard setback) requirement.
2. FNSB Assessing Field Card estimates that the building (currently demolished) was constructed in 1968. A note made by the assessor after an inspection on January 6, 1969 states “picked up new building”. Please find attached the Assessing Field Card.
3. Ord. 70-18, adopted on June 11, 1970, removed the Business (BS) zone from the Borough code and added Business I (BS-I) and Business II (BS-II) zones. Business I (BS-I) and Business II (BS-II) zones (currently known as General Commercial (GC) zone) established front-yard setback requirements.

Let me know if you have any questions for me.

Thanks,
Manish

Manish Singh
Planner II
Department of Community Planning
907-459-1225 / msingh@fnsb.us

Fairbanks North Star Borough
907 Terminal Street
Fairbanks, AK 99701
The following submittals are required to describe the nonconforming building(s) or structure(s):

**NONCONFORMING STRUCTURE:**

1. Provide a written narrative that may address any of the following:
   a. When was the structure built?
   b. Following initial construction, was an addition ever added? If so, when and where?
   c. Was the structure ever damaged? If so,
      - When and to what extent? and
      - How long before rebuild or repairs?
   d. What is the current use of the structure? and
      - Has the structure always been used in this manner?

2. Attach a mortgage location survey or a site plan **drawn to scale** that depicts the subject property, including:
   a. Scale at which site plan is drawn (for example 1" = 20')
   b. North arrow
   c. All property lines and their dimensions
   d. Location, type (i.e. house, garage, shop, shed, carport etc.) and dimensions of all existing structures. Label all structures and additions with the date of construction
   e. Location, type and dimensions of any proposed structures and/or additions
   f. Setback distances of all existing and proposed structures and/or additions from all property lines, except in General Use (GU) zones
   g. Names of adjacent roads
   h. Existing and/or proposed driveways
   i. Floor plan, if applicable to the non-conforming structure

3. Sign the **Affirmative Recognition of Grandfather Rights Affidavit** form included in this application packet.

Items which may accompany either the Grandfather Rights and/or the Amnesty Relief application can include, but are not limited to:

- [ ] Power of Attorney Documentation
- [ ] FNSB Assessing Department Records
- [ ] Certified Plot Plans
- [ ] Deeds
- [ ] Receipts, (i.e. Construction, Rental Records, Retail Sales, etc.)
- [ ] Utility Bills
- [ ] Affidavits
- [ ] Building Permits
- [ ] Photographs, Imagery
- [ ] Other Records and Documentation
AFFIRMATIVE RECOGNITION OF GRANDFATHER RIGHTS AFFIDAVIT

STATE OF ALASKA

FOURTH JUDICIAL DISTRICT

I, _______________________________ being duly sworn, under penalty of perjury, depose and state that:

1. I have submitted the attached application for Affirmative Recognition of Grandfather Rights (GR_2018-036) for a nonconforming building or structure at 200 Gaffney Rd.

2. The information submitted in this application and supporting materials is, to the best of my knowledge, true and complete.

3. I have first-hand knowledge that this property has Grandfather Rights, specifically: The Building was built in 1968, before the 1970 Ordinance, see Narrative Provided.

4. I understand that the decision is appealable in accordance with 18.108.030 C

5. I understand Grandfather Rights, if affirmed, are subject to restrictions outlined in 18.108.

STATE OF ALASKA
NOTARY PUBLIC

B. Hamilton
My Commission Ending with Office

Signature

617 Gaffney Rd
Fairbanks, AK 99701

(Name and Address of Affiant)

SUBSCRIBED AND SWORN TO BEFORE ME on this 5 day of December, 2017

Commission Expires

Date Received: ______________________ Received By: ______________________

Fairbanks North Star Borough

Fairbanks North Star Borough is subject to the Alaska Public Records Act, AS 40.25 et seq. and this document may be subject to public disclosure under state law. Revised 8/7/2017

Planning Commission 77 March 27, 2018
AMNESTY RELIEF AFFIDAVIT

STATE OF ALASKA

) ss.

FOURTH JUDICIAL DISTRICT )

I, __________________________________________ being duly sworn, under penalty of perjury, depose and state that:

1. I have submitted the attached application for Amnesty Relief (AM__________) for a nonconforming building or lot.

2. The information submitted in this application and supporting materials is, to the best of my knowledge, true and complete.

3. I affirm that the violation for which I seek affirmative recognition of amnesty meets the requirements of Title 18.116.

4. I understand that the decision is appealable in accordance with 18.116.040 C

________________________________________
Signature

________________________________________
(Name and Address of Affiant)

SUBSCRIBED AND SWORN TO BEFORE ME on this __________ day of __________, 20____

______________________________
Notary Public in and for Alaska

______________________________
Commission Expires

Date Received: ______________________ Received By:

______________________________
Fairbanks North Star Borough

Fairbanks North Star Borough is subject to the Alaska Public Records Act, AS 40.25 et seq. and this document may be subject to public disclosure under state law.
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Planning Commission 81 March 27, 2018
MEMORANDUM

TO: Community Planning staff
FROM: Jill S. Dolan
DATE: January 10, 2018
SUBJECT: Guidance on Replacing Nonconforming Structures

I have been asked to provide a summary of the law on the right of a property owner to replace a legal, nonconforming building with a new building.

Generally, the protection of vested rights in a nonconforming structure that existed when zoning changed does not extend to later construction unless specifically allowed by law. Chapter 18.108 FNSBC, Nonconforming (Grandfathered) Uses and Lots, provides that a nonconforming building which has become nonconforming upon the adoption of the zoning ordinance may be continued, subject to the restrictions in that chapter. A nonconforming building is subject to the following restriction: "A nonconforming building may be enlarged or altered as long as the enlargement or alteration does not create a new nonconformity of this code, except that expansion is permitted within the standards that were in place when the zone changed." The Title 18 definition of "alteration" means any change in size and shape of a building. Borough code does not expressly provide for reconstruction or restoration of a building that has been destroyed.

An ordinance that permits the alteration or extension of a building that is being put to a nonconforming use generally does not authorize its reconstruction. Total

1 Ordinarily, the right to continue a nonconforming use does not authorize the erection of a new building or other structure, or the replacement of an existing one by another. 101A Corpus Juris Secundum, Zoning and Land Planning § 200.
2 FNSBC 18.108.020.
3 FNSBC 18.108.040.
4 See 101A Corpus Juris Secundum, Zoning and Land Planning § 201 ("An applicable ordinance may provide for repair and restoration although an ordinance that permits the
destruction of a structure, whether by the owner’s design or by accident, may terminate a nonconforming use and the owner’s right to continue that use likewise ceases.\textsuperscript{5}

Borough code authorizes a legal, non conforming building to continue and for that building to be altered or expanded.\textsuperscript{6} However, once that building is demolished, it does not continue as it no longer exists. There is nothing in code that authorizes reconstruction or replacement, and a new building cannot be constructed that does not conform to the code.\textsuperscript{7} It is therefore necessary to determine whether the building is being enlarged or altered, or whether it has been demolished or destroyed and is being replaced, to determine whether it may be continued.\textsuperscript{8}

\textsuperscript{5} *Id.* Note that the treatises generally refer to buildings as a nonconforming use, while FNSBC 18.04.010 separately defines nonconforming buildings and nonconforming uses. The underlying principles that apply to nonconformities are generally the same.

\textsuperscript{6} Alteration is defined as changing the size and shape of a building, and does not include reconstruction.

\textsuperscript{7} The Alaska Supreme Court has recognized the general policy that nonconforming uses are to be restricted and terminated as quickly as possible. *Kelly Supply Co. v. City of Anchorage*, 516 P.2d 1206, 1210 (Alaska 1973).

\textsuperscript{8} The Department of Community Planning provided a Department Policy, 89-1, and a legal memorandum dated June 7, 1990, which are attached. The policy and memorandum concern a prior version of code, and additionally focused on nonconforming uses, not nonconforming structures. The policy states that “enlarge” or “alter” also means “replace” and provides an example that a nonconforming building that burns to the ground may be rebuilt at the original location. I can find no legal support for a determination that enlarge or alter means replace, and the policy appears to confuse the concept of abandonment of nonconforming uses with the continuation of nonconforming structures. It is therefore my opinion that this portion of the policy is invalid and should not be followed. Discussions with staff indicate that they have not interpreted current code in this manner.
FAIRBANKS NORTH STAR BOROUGH
DEPARTMENT OF COMMUNITY PLANNING
DIVISION OF PLANNING AND ZONING

Subject: NONCONFORMING USES, STRUCTURES, AND BUILDINGS
Author: Mark T. Biernacki
Policy Number: 89-1
Effective Date: 09-19-88
Revision Date:

NARRATIVE

The recently revised Title 18 has an amended version of regulations pertaining to nonconforming uses and buildings. Further interpretation of those regulations has become necessary.

BACKGROUND

On April 25, 1988, the Borough Assembly adopted a revised Title 18, the zoning ordinance. Section 18.56.030, regarding restrictions on nonconforming uses and buildings, requires continual interpretation by Planning and Zoning Division staff. Conflicting interpretations have resulted.

PROBLEM

Section 18.56.030A1 states "A nonconforming building or structure may be enlarged or altered". Section 18.56.030B1 states "A building, structure, or premises devoted to or designed for, in whole or in part, a nonconforming use may be enlarged or altered".

These provisions can be, and have been, interpreted differently. Typical questions encountered are:

1. Can a nonconforming building or structure be enlarged or altered even if said enlargement or alteration results in violations of the code?
2. What does enlarge or alter mean? Can a nonconforming building or structure be replaced?
3. Can a nonconforming use be enlarged or altered even if the use is not permitted in the zoning district in which it is located?
4. Can a nonconforming use change to another use which is also not permitted in the zoning district in which it is located.

POLICY

The Planning and Zoning Division will administer Section 18.56.000 of the zoning ordinance in the following manner. In general, any expansion or change to a nonconforming building or use resulting in a violation of Title 18 is not permitted.

1. A nonconforming building or structure may be enlarged or altered as long as said enlargement or alteration does not result in a new violation of the code.

EXAMPLE: A nonconforming building is placed 10 feet from the front property line instead of the required 20 feet. Any future addition to that structure is permitted as long as it meets the 20 foot setback requirement as well as all other requirements of the code.
2. "Enlarge" and "alter" also mean "replace".

EXAMPLE 1: The owner of a nonconforming mobile home desires to replace it with a newer and bigger mobile home. This is permitted as long as the new mobile home is in place within 36 months of removing the old mobile home.

EXAMPLE 2: A nonconforming building burns to the ground. It was placed 10 feet from the front property line instead of the required 20 feet. The building may be rebuilt at the original location as long as it is done within 36 months.

3. A nonconforming use may be enlarged or altered.

EXAMPLE: A bar is considered a nonconforming use in the zone in which it is located. The owner of the bar wants to construct an addition to increase the bar's floor space and seating capacity. This is permitted as long as other code requirements are met (setbacks, parking, etc).

4. A nonconforming use can not change to another use which is not permitted in the zone in which it is located.

EXAMPLE 1: A fabric store is located in the Two-Family zone and is considered a nonconforming use in that zone. The fabric store goes out of business. The new owner or tenant of the building cannot establish a new use, say a car wash or a gas station, which is also not permitted in the Two-Family zone.

EXAMPLE 2: A fabric store is located in the Two-Family zone and is considered a nonconforming use in that zone. The fabric store goes out of business. It is permitted for the new owner or tenant to establish a new fabric store as long as they do so within 36 months of the closing of the original fabric store.

SUPPLEMENTAL INFORMATION

1. Title 18, Chapter 18.56.000

APPROVED: [Signature] 9-19-88
Director

APPROVED: [Signature] 9/19/68
Manager
MEMORANDUM

TO: Bernardo Hernandez
FROM: John Connors
DATE: June 7, 1990

SUBJECT: Application of FNSB 18.56.030(B) to the enlargement/alteration of nonconforming uses

You have asked for an opinion on whether the Planning Department's policy for interpreting FNSB 18.56.030(B), governing nonconforming (grandfathered) uses, is a correct application of that ordinance. FNSB 18.56.010-030 was adopted by the Assembly in April 1988 as part of the revised Title 18. FNSB 18.56.010, entitled Purpose specifies:

The purpose of this chapter is to provide for the regulation of nonconforming buildings, structures, uses, and to specify these circumstances and conditions under which they shall be allowed to continue as legal nonconforming uses and lots.

FNSB 18.56.030 (B) entitled Nonconforming Uses provides in part:

A building, structure, or premises devoted to or designed for, in whole or part, a nonconforming use may be enlarged or altered.

The Planning Department's interpretation of FNSB 18.56.030(B) is presented in the two page policy document, identified as #89-1, dated 9/19/88. Page 2 of this document, under subpart 3 states: A nonconforming use may be enlarged or altered. An example of a
tavern is offered which is a nonconforming use in the zone where it is situated. The policy statement indicates that the tavern would be allowed to construct an addition to increase the floor space and seating capacity, provided other code requirements such as setbacks and parking were satisfied.

Discussion

The stated policy underlying FNSB 18.56.010-030 is to identify circumstances and conditions under which nonconforming structures, lots or uses may be legally allowed to continue. Policy #69-1, subpart 3 specifies that a nonconforming use may be enlarged or altered. This appears to be a correct interpretation of FNSB 18.56.030(B).

Not addressed in your memo, but referenced in the above written policy statement, is the companion issue of whether a nonconforming use can change to another use which is also not permitted in the zoning district where it is located. FNSB 18.56.010 et seq. does not specifically address this question. The above referenced policy statement does interpret the code as forbidding such a change. (subpart 4, p.2). I believe this interpretation is also correct.

I note in passing that FNSB 18.56.010-030 is somewhat of an aberration from typical municipal ordinances governing nonconforming uses. Generally, the purpose behind a statute or ordinance authorizing nonconforming uses is to prevent injustice from forcing retroactive compliance with new regulations. It is a basic maxim of Anglo-Saxon justice that retroactive legislation is strongly disfavored. Ordinances regulating nonconforming uses typically seek to protect vested property rights while establishing guidelines for the eventual elimination of nonconforming uses.
The anomaly present in the current FNSB ordinance is that it allows for the expansion of nonconforming uses. Former FNSB 18.40.010 forbade the expansion of nonconforming uses unless they were part of a development plan approved by the Borough. Further, the current ordinance provides that vested rights to continue nonconforming uses only lapse after they have been discontinued for a period of thirty-six (36) months. The prior ordinance provided for their expiration after a one year lapse in use. The Municipality of Anchorage denies any increase in the size of an area of land occupied by a use which became nonconforming upon the passage of more restrictive zoning. A one year lapse in use is sufficient for vested rights in the nonconforming use to expire.

As you know, nonconforming uses are generally disfavored because they reduce the effectiveness of zoning ordinances, depress property values, and contribute to urban blight. Accordingly, zoning provisions which allow nonconforming uses should be strictly construed, and zoning provisions restricting nonconforming uses should be liberally construed. (Hartley v. Colorado Springs, 764 P. 2d 1216 (Colo. 1988). In Kelly Supply Co., Inc v. City of Anchorage, 518 P. 2d 1206 (AK 1973), the Alaska Supreme Court held that generally nonconforming uses are to be restricted and terminated as quickly as possible. In Stephen and Sons v. Municipality of Anchorage, 885 P. 2d 96, 102 (AK 1994), the Supreme Court ruled that the mere intention or hope of a property owner to extend the nonconforming use over an entire tract of land is insufficient to secure a vested right to use the entire parcel for the nonconforming purpose. The intent must be objectively manifested by the present operations.

The enabling legislation which empowers FNSB as a second class borough to enact landuse regulations is found under the present A.S. 29.35.180, A.S. 29.40.040, entitled Land Use Regulation.
provides that in accordance with a comprehensive plan adopted under A.S. 29.40.030 and in order to implement the plan, the Assembly, by ordinance, shall adopt or amend provisions governing the use and occupancy of land that may include, but are not limited to:

2. Land use permit requirements designed to encourage or discourage specified uses and construction of specified structures or to minimize unfavorable effects of uses and construction of structures,
3. measures to further the goals and objectives of the comprehensive plan.

The Assembly's determination to broaden the rights of property owners to continue and expand nonconforming uses would appear to comply with the enabling legislation, assuming no activity is allowed which is absolutely detrimental to the Borough's Comprehensive Plan.

Conclusion

I believe that the written policy directive #88-1 is a correct interpretation of present FNSB ordinances pertaining to the regulation of nonconforming land uses. Please let me know if you have any further questions on this issue.
NOTICE OF DECISION RE: GR2018-085

January 31, 2018

Robert and Loa Hubbard
617 Gaffney Road
Fairbanks, AK 99701

Property Description: Lot 4, Kolde Homestead
Property Address: 208 Gaffney Road
PAN: 0080349

Issue: GR2018-085: A request by Robert and Loa Hubbard for affirmative recognition of legal nonconforming building status (grandfather rights) for an existing structure with a nonconforming south front-yard setback of 16.1 feet instead of the required 20 feet in the General Commercial (GC) zone for the property on Lot 4, Kolde Homestead Subdivision (Located at 208 Gaffney Road)

Determination: Not Affirmed (denied) for south front-yard setback

After public administrative hearings on January 4, 2018 and January 18, 2018, the Fairbanks North Star Borough (FNSB) Administrative Hearing Officer DID NOT AFFIRM (denied) your request for affirmative recognition of legal nonconforming structure status (grandfather rights) for an existing structure with a nonconforming south front-yard setback of 16.1 feet instead of the required 20 feet in the General Commercial (GC) zone. The FNSB Administrative Hearing Officer adopted the staff report and the following Findings of Fact in support of this decision:

1. This application is for a commercial structure utilized as a bar on the subject lot in the General Commercial (GC) zone. This structure does not comply with GC zoning setbacks because it has a south front-yard setback of approximately 16.1 feet instead of the required 20 feet.

2. FNSBC 18.04.010 Definitions states that a nonconforming building means "a building the size, dimension, or location of which was lawful prior to the adoption, revision or amendment to this title, but fails by reason of the adoption, revision or amendment to conform to the present requirement of the zoning district in which it is located".

3. The property was annexed into the City of Fairbanks corporate limits on August 24, 1954. The subject parcel was zoned General Residential at that time. The General Residential zone established a minimum required 15 foot front-yard setback.

4. The front portion of the property was zoned Business I (BS-I) in 1959. At time of zoning, the BS-I zone had a minimum required street-yard setback of 25 feet from the centerline of Gaffney Road.

5. City of Fairbanks building permit records reflect that a bar and residence existed at this site on November 4, 1957. At that time, the City of Fairbanks had both zoning and building authority within City limits.
6. The subject parcel was described by deed in its current configuration on October 27, 1967. The front lot line was established in its current lot configuration on or before that date.

7. FNSB aerial photography from 1967 shows a structure on the subject parcel.

8. The City of Fairbanks issued permits for a new "retail" building in October of 1967.

9. The subject parcel was zoned Business (BS) with the adoption of Ordinance No. 67-34 on March 28, 1968. The BS zone had a zero foot minimum required street yard setback.

10. FNSB Assessor record reflects in a note that they "picked up a new building" during a site inspection on January 9, 1969. At that time, the required front-yard setback was zero feet.

11. FNSB aerial photography shows that the structure on the subject parcel in 1969 was different than the structure shown on the parcel in 1967. The structure built in 1969 is in the same location as the structure shown in the May 2017 aerial photograph.

12. Ordinance No. 70-18, adopted on June 11, 1970, removed the BS zone and established the Business I (BS-I) and Business II (BS-II) zones. The subject parcel was zoned BS-II, which established a 20 foot street yard setback. With the BS-II zone, the front-yard street setback of 16.1 feet became non-conforming.

13. The subject property was rezoned to General Commercial (GC) with the adoption of Ordinance No. 88-010, effective on April 25, 1988. The required front yard setback remained 20 feet.

14. On April 25, 1988, FNSBC 18.56.020 stated that "any nonconforming building, structure, use, or lot which existed lawfully prior to the effective date of this ordinance or any lawful building, structure, use, or lot which has become nonconforming upon the adoption of this ordinance or any subsequent amendment thereto, may be continued, subject to the restrictions in this chapter..."

15. On October 4, 2017, the applicant obtained a demolition permit from the City of Fairbanks to remove the existing building down to the foundation. The roof and the walls were subsequently removed but the foundation remained intact.

16. On November 9, 2017, the applicant obtained a building permit from the City of Fairbanks to construct a "new" commercial building on the existing foundation. The building permit states that the proposed use of the structure will be insurance offices. The City of Fairbanks did not require a FNSB zoning permit or zoning compliance letter for the reconstructed structure or the proposed new use before issuance of the building permit.

17. No FNSB zoning permit has been issued for the proposed new use of the building.

18. New exterior walls were constructed in the same location on the foundation as was located for the previous building. The building was not expanded beyond the footprint of the previous building as a result of the reconstruction of the roof and walls.

19. FNSBC 18.108.040(A)(1) states that a "non-conforming building may be enlarged or altered as long as the enlargement or alteration does not create a new non-conformity of this code." FNSBC 18.04.010 Definitions states that "alteration" means "any change in size or shape of a building". The terms "enlargement", "demolition", "re-construction", "restoration" and "replacement" are not defined in Title 18.

20. The applicant stated that "the alteration of this building has not caused any increase in foot print and has not enlarged the building. The original construction as foundation, sewer and plumbing is
being used. Construction of a building includes much more than the above ground structure and the foundation is the key to all buildings."

21. Borough code does not expressly provide for reconstruction, restoration or replacement of a non-conforming building that has been destroyed or demolished.

22. The changes made to the subject building in 2017 included demolition of the building to the foundation and rebuilding new walls and the roof, which constitutes substantial reconstruction; these changes are not considered to be an "alteration" of the existing building.

Because the walls and roof of the existing building were removed and subsequently reconstructed in 2017 after the 20 foot minimum front-yard setback was established on June 11, 1970, the subject building does not have an affirmative recognition of legal non-conforming structure status (grandfather rights) for the south front-yard setback of 16.1 feet instead of the required 20 feet in the General Commercial (GC) zone under Chapter 16.108, Nonconforming (Grandfathered) Uses and Lots.

This decision does not grant or provide any variances or exceptions to any other Fairbanks North Star Borough or state regulations, building codes, ordinances or statutes.

The issuance of this notice is an administrative decision and is appealable within fifteen (15) days from the date of this notice to the Fairbanks North Star Borough Planning Commission. An appeal application may be filed with the Community Planning Department office.

Sincerely,

D. Christine Nelson, AICP
FNSB Administrative Hearing Officer

DCN/sw
APPEAL APPLICATION

File No. Appeal of CR2018-085

FEES: $200 application

Appellant:
Name: Robert and Loa Hubbard
Mailing Address: 617 Gaffney Rd, FBK, AK 99701
Phone: 907-358-2972
E-mail: loa.hallwell@att.net

Appellant is:
☐ The property owner or applicant from the decision being appealed
☐ An interested person or a person aggrieved
☐ A member of the public appealing a trail dedication
☐ A representative (e.g. an attorney) of one of the above parties

(please indicate which category of party you represent; include your name and contact information)

APPEAL TYPE:
☐ Title 18 Administrative Variance
☐ Amnesty Relief
☐ Legal Non-Conforming (Grandfather Rights)
☐ Title 15 Floodplain Management Regulations
☐ Other:
☐ Quick Plat
☐ Preliminary Plat
☐ Title 17 Variance
☐ Trail Dedication
☐ Street Naming of Public Roads

Appeal Information:
Case Number: CR2018-085
Date of Decision’s Mailing for Case Being Appealed: 01/31/2018

Specific Grounds or Reasons for Appeal (attach additional sheets as needed):
The original building has grandfather rights and due to the alterations made to the building we feel that we should be allowed to maintain grandfather rights on the addition being 4.9 feet into the setback which was placed after the foundation was established in 1968. We have not altered the footprint or changed anything at all.

APPELLANT SIGNATURE: [Signature]
DATE: 02/15/2018

Fairbanks North Star Borough is subject to the Alaska Public Records Act, AS 40.25 et seq. and this document may be subject to public disclosure under state law.
PNSB ZONING = GENERAL COMMERCIAL
FRONT YARD SETBACK= 20'
SIDE YARD SETBACK= NOT REQUIRED
REAR YARD SETBACK= NOT REQUIRED

LEGEND
P.U.E. = PUBLIC UTILITY EASEMENT
(C) = CALCULATED BEARING AND/OR DISTANCE
(BEARING & DIST.) = RECORD DATA IN PARENTHESES
HBO= HEAD BOLT OUTLET

NOTE

ALLSTATE SITE PLAN
LOT 4, KOLDE HOMESTEAD
A PORTION OF LOT 12, SECTION 10,
T.15S., R.1W. F.M., ALASKA
(BOOK 282, PAGE 370)
FAIRBANKS RECORDING DISTRICT

PROJECT:
OWNERS:
ROBERT & LOA HUBBARD
PO BOX 84258
FAIRBANKS, AK 99708

DRAWN:
RCH

CHECKED:
JRR

SCALE:
1"=20'

DATE OF SURVEY:
9/11/2017

DATE OF DRAWING:
10/16/2017

3 TIER--Alaska, Corp.
P.O. Box 71940 432 Lignite Avenue
Fairbanks, AK 99707-1940
(907) 456-5895

FIELD BOOKS
1705-69
1706-83
March 27, 2018
ORDINANCE NO. 437

ZONING CODE
CITY OF FAIRBANKS, ALASKA
(As Amended)

Planning and Zoning Commission
Fairbanks, Alaska
September - 1955
2. Churches may exceed this height by permission of the Board of Adjustment after an opinion from the Planning and Zoning Commission that such an exception to this requirement will be consistent with the purpose and scope of this Ordinance.

ARTICLE II-B GENERAL RESIDENTIAL ZONE

Section 3820. Use. (As amended by Ordinances 477 and 488)

The following uses are permitted in the General Residential Area:

1. Single family dwellings
2. Two family dwellings
3. Accessory buildings, such as are ordinarily appurtenant to single and two-family dwellings, including one private garage of not more than three (3) car capacity.
4. The offices of physician, dentist, or other professional person when located in his or her dwelling(s), also home occupations in addition to domestic occupation engaged in by individuals within their dwellings, when no window or other display is made, and no sign other than one not exceeding two (2) square feet in area and bearing the name and occupation of the occupant and located no closer to the front property line than three (3) feet.
5. The renting of rooms for lodging purposes only for the accommodation of not to exceed four (4) persons in a single family dwelling.
6. Signs not exceeding six (6) square feet in area pertaining to the leasing, rental or sale of buildings or premises are permitted provided the sign is erected flat against the building or twenty (20) feet from street frontage.
7. Nothing herein contained shall be deemed to prohibit the use of unoccupied property for gardening.
8. Uninhabited trailers may be stored provided that all other requirements of this article are complied with. (See Ordinance No. 613 for regulation of trailers.)
9. Churches and schools shall be allowed only after receiving a favorable endorsement by the Planning and Zoning Commission that such uses will not be inconsistent with the purpose and scope, Section 3801 of Ordinance No. 437, and final approval by the City Council.
Section 3821. Front Yard. (As amended by Ordinance No. 477)

In General Residential Zone, interior lots shall have a minimum front yard of fifteen (15) feet, provided, however, that:

1. Corner lots shall provide a minimum front yard of fifteen (15) feet from the street line on the narrow side of a corner lot and seven and one-half (7 1/2) feet on the street line along the long side of such corner lot.

2. Eaves and cornices, steps, platforms and porches having no roof covering and not over thirty-six (36) inches high may extend into a front yard.

3. When forty (40) per cent or more of all lots on one side of a street between two intersecting streets has been built up at the time of passage of this Ordinance with dwellings having a front yard of less depth than established by this section, the average of such varying depths shall be the minimum.

Section 3822. Side Yard. (As amended by Ordinance No. 477)

In the General Residential Zone there shall be a side yard of not less than five (5) feet in width on each side of a building, provided, that:

1. Eaves and cornices may extend over the required side yard for a distance of not more than two (2) feet.

2. Accessory buildings may be built to the inside line of the lot or property if the area over such building is not used for living or dwelling purposes.

Section 3823. Rear Yard. (As amended by Ordinance No. 477)

In the General Residential Zone there shall be a rear yard having a minimum depth of twenty (20) feet, except that on a lot which does not extend from street to street, a rear yard of not less than three (3) feet is permissible; provided that:

1. Eaves and cornices may extend over the required rear yard for a distance of not more than two (2) feet.

Section 3824. Set-back Required. (As amended by Ordinance No. 477)

A minimum distance of thirty (30) feet is required between the center line of Barnett Street and the face of any building on either side of such street.
Section 3825. Site Area. (As amended by Ordinances 475 and 477)

In the General Residential Zone no building shall hereafter be erected or increased in building area on a lot which provides less than 3,750 square feet of area, or a minimum width of forty (40) feet or cover more than 35% of an inside lot or 45% of a corner lot, exclusive of accessory buildings for a dwelling or place of human habitation; provided that:

1. Where a lot or lots of official record at the time of enactment of the Ordinance do not provide the minimum site area or width as above stipulated, the owner may request from the Planning and Zoning Commission a waiver of the site area, minimum width and/or yard requirements of this ordinance; whereupon the Planning and Zoning Commission shall determine if such waiver or waivers would be consistent with the purpose and scope, Section 3801, of this ordinance, and if found to be in keeping with said section, the Planning and Zoning Commission shall make a finding and grant those waivers consistent with said section.

Section 3826. Height Limit. (as amended by Ordinance No. 477)

No building shall hereafter be erected or increased in building area within the General Residential Zone to exceed a height of thirty-five (35) feet, from front sidewalk grade, nor more than two (2) stories except that:

1. Churches may exceed this height by permission of the Board of Adjustment after an opinion from the Planning and Zoning Commission that such an exception to this requirement will be consistent with the purpose and scope, Section 3801, of this Ordinance.

Article II-C Multiple Residential Zone

Section 3827. Uses. (As amended by Ordinance No. 477 and 735)

The following uses are permitted in a Multiple Residential Zone:

1. Any use permitted in the Restricted Residential Zone or the General Residential Zone.

2. All dwellings, apartment houses, and boarding and lodging houses without stores.

3. Clubs or fraternal societies except those that chief activity of which is a service customarily carried on as a business.

4. Hospitals, sanitariums and clinics.
**BUILDING PERMIT**

**CITY OF FAIRBANKS, ALASKA**

**Office of the Building Official**

Permission is hereby granted to [Name], to erect a building on Lot No. [Lot Number] Block [Block Number] in the City of Fairbanks, Alaska, to be used as [Building Use].

This permit is issued on the express condition that the work shall conform in all respects to the statements certified to in the application for such permit, and that all work shall be done in accordance with Ordinances of the City of Fairbanks, Alaska, and the Territory of Alaska pertaining to the construction of buildings.

Street Address: 208 [Street Name]

Attention is particularly called to the cutting up of streets, making main sewer connections, driveways and curbs. Permit for such construction from the City of Fairbanks, Alaska.

Form 200.1

[Signature]
Building Inspector
ORDINANCE NO. 437

FAIRBANKS ZONING CODE
(As Amended)

City of Fairbanks

Fairbanks, Alaska

January, 1959
6. Any building constructed to house such use or any such use to be subject to the same height limit and yard and lot requirements as those imposed on the structures within a restricted residential zone.

Automobile storage and parking space shall be provided to the ratio of three (3) square feet of parking space per each one (1) square foot of store front area. The parking area shall be suitably paved or surfaced and appropriate bays and barrier guards provided.

EXHIBIT 10

CLASS 1 and 2 Business Zone

The following uses are permitted in Class 1 and 2 Business Zone:

- Uses permitted in the Residential Zones
- Uses allowed regulations of the residential zones are complied with;
- Private homes, boarding homes, lodging houses, hotels, and family motel courts;
- Small stores and shops, bakeries, restaurants in conjunction above;
- Social institutions, offices, public buildings;
- Laissez, educational and charitable institutions;

- Private garages, car stations, parking and the car lots, ensuring that lots for public garage shall have private areas for off-street parking equal to the capacity of the garage;
- Street space sufficient for the accommodation of public vehicles, whichever is the greater;
- Churches, convents, schools, recreational establishments;
- Paper and printing establishments;
- Publishing houses.
Section 3832 = Yard

In Business Zones, no yard is required except as follows:

1. Where a Business Zone Borders upon a Residential Zone with no intervening street or alley, a minimum yard of five (5) feet is required between such zones.

2. Where the business is of a drive-in nature such as garages, gasoline stations, etc., a minimum front set-back from the property line of twenty (20) feet is required.

Section 3833 = Set-Back Required (As amended by Ordinances 510, 562, 725, and 744)

All buildings hereafter constructed or reconstructed shall be set back so that the faces of the building shall be at least thirty (30) feet from the center line of Noble Street, Barnette Street, and on the south side of Third Avenue between Cushman Street and Lacey Street, and not less than twenty-five (25) feet from the center line of all other streets in the business zones, except the following, which shall have a set-back requirement as indicated.

a. Not less than 35 feet from the centerline of Cushman Street at its intersection with the north boundary of the light industrial zone as the same is shown on that certain map and plat of South Fairbanks, as approved February 23, 1955, by the Planning and Zoning Commission and on file in the office of the City Engineer as a part of the public records of the City of Fairbanks, to 12th Avenue.

b. Not less than 35 feet from the centerline of Gaffney Road from its intersection with the west boundary of Ladd Field Military Reservation to its intersection with Cushman Street on the west.

c. Not less than 30 feet from the centerline of Airport Way from its intersection with Cushman Street to its intersection with Gillam Way.

d. Not less than 30 feet from the centerline of 14th Avenue from its intersection with Gaffney Road to its intersection with Cushman Street.
QUITCLAIM DEED

The Grantors, JAMES REED and MABLE REED, of Fairbanks, Alaska, for and in consideration of $10.00 convey and quitclaim to DOROTHY L. (CARTER HALL) KUHNS, of Fairbanks, Alaska, all interest which we have, if any, in the following described real estate to-wit:

That portion of Lot Twelve (12) of Section Ten (10), Township 1 South, Range 1 West, Fairbanks Meridian, described as follows: BEGINNING at a point on the far edge of the right of way of the Richardson Highway where same is intersected by the Westerly line of the Berry Homestead, which point bears South 00° East 456.38 feet from the common corner of Section 10, 11, 14 and 15 of Township 1 South, Range 1 East of the Fairbanks Meridian, thence in a westerly direction along the said Richardson Highway 99.95 feet; thence North 25°05’ East 177 feet; thence North 63°11’ West 12 feet to the Northeast corner of said parcel of land at the Section line; thence South 2.4 East 200 feet along said Section line to the place of beginning;

located in the State of Alaska.

DATED at Fairbanks, Alaska, this 23rd day of October, 1967.

[Signature]
James Reed, Grantor

[Signature]
Mable Reed, Grantor

STATE OF ALASKA
FOURTH JUDICIAL DISTRICT

THIS IS TO CERTIFY that on this 23rd day of October, 1967, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared JAMES REED and MABLE REED, to me personally known to be the identical individuals mentioned in and who executed the within and foregoing instrument, and they acknowledged to me that they signed and sealed said instrument as their own free and voluntary act and deed for the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year in this certificate first above written.

[Signature]
FNSB GIS aerial imagery, 1967 (flood)

EXHIBIT 12

FNSB GIS aerial imagery, 1974
# Plumbing & Mechanical Application and Permit

**CITY OF FAIRBANKS**

**BUILDING DEPARTMENT**

**CITY HALL, FAIRBANKS, ALASKA**

**P 1913**

**DATE:** 10-25-62

**OWNER:**... (Name and Address)

**LOT:**... (Lot Number)

**ZONING:**... (Zoning Category)

**DESCRIPTION OF WORK**

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**TOTAL:** 9.00

**APPROVAL**

**SIGNATURE**

**DATE**

**WATER SERVICE**

**REGUL. SALE, IN.WASTE**

**REGUL. IN DOMESTIC**

**DOMESTIC TEST**

**WASTE TEST**

**FIXTURES**

**FINAL**

**PLUMBER**

**CONTRACTOR'S NAME**

**FIRM APPROVED AND ISSUED BY**

**EXHIBIT 13**

*Please read the application and permit the contents hereof, the same is true and correct and agree that this work will be done in accordance with all State, County, and City Laws and Ordinances.*

*Signature of Permittee or Agent*

**CONTROL COPY**
ORDINANCE NO. 67-34

AN ORDINANCE AMENDING THE FAIRBANKS NORTH STAR BOROUGH CODE OF ORDINANCES, TITLE 49, BY DELETING CHAPTER 15, FAIRBANKS ZONING; CHAPTER 20, UNIVERSITY AVENUE ZONING; AND CHAPTER 25, MUSKOX ZONING; AND CODIFYING THE FOLLOWING ORDINANCE AS CHAPTER 15, FAIRBANKS NORTH STAR BOROUGH CODE OF ORDINANCES.

WHEREAS, the Fairbanks North Star Borough Planning Commission has caused to be prepared a proposed Planning and Zoning Ordinance for the Fairbanks North Star Borough, has held public hearings on said proposed ordinance, and has recommended to the Fairbanks North Star Borough Assembly that the Ordinance be adopted,

NOW, THEREFORE, BE IT ORDAINED by the Assembly of the Fairbanks North Star Borough, Alaska, that the Fairbanks North Star Borough Code of Ordinances be amended by deletion of Chapters 15, 20, and 25, Title 49, and by adding Chapter 15, Title 49, as noted on the following pages, annexed Exhibit A.

PASSED AND APPROVED this 28th day of March, 1969.

ATTEST:

[Signature]

Clarks of the Assembly

[Signature]
Sec. 49.15.050. **Zone Boundaries.**

(i) Business Zone.

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<tr>
<td>All</td>
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That area bounded on the north by Third Street, on the west by the Steese highway, and on the south and east by Circle Avenue in Graehl;
### SCHEDULE C

**GEOMETRICAL STANDARDS FOR LOTS**

<table>
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<tr>
<th>ZONE</th>
<th>Maximum Building Area (% of Lot Area)</th>
<th>Minimum Lot Area (Square Feet)*</th>
<th>Minimum Street Yard Depth (Feet)</th>
<th>Minimum Interior Yard Depth (Feet)</th>
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<tr>
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<td>10,000</td>
<td>25</td>
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<tr>
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<td>4,000</td>
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<tr>
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* A lot shall be of such shape as to encompass a rectangular area of at least twenty feet by forty feet exclusive of required yards.

** Except that building is permitted up to one interior lot line or each of two intersecting interior lot lines.
<table>
<thead>
<tr>
<th>1. Foundation</th>
<th>Type</th>
<th>Extent</th>
<th>Type</th>
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<td>2. Basement</td>
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<td>Flat</td>
<td>Roof</td>
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<tr>
<td>3. Frame</td>
<td>Proof</td>
<td>Post and Beam</td>
<td>Sash, Tilt</td>
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<td>4. Occupancy</td>
<td>Construction</td>
<td>Building Exteriors</td>
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**SECTION IV: OPERATIONS AND PROCEDURES**

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<tr>
<td>5. Building cost and quality</td>
<td>Inspection</td>
<td>Material</td>
<td>Exterior</td>
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<td>6. Exterior wall</td>
<td>Calcuilation</td>
<td>Exterior</td>
<td>Exterior</td>
<td></td>
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<tr>
<td>7. Size of故事</td>
<td>Calculation</td>
<td>Exterior</td>
<td>Exterior</td>
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</tr>
<tr>
<td>8. Average floor area</td>
<td>Exterior</td>
<td>Exterior</td>
<td>Exterior</td>
<td></td>
</tr>
<tr>
<td>9. Average perimeter</td>
<td>Exterior</td>
<td>Exterior</td>
<td>Exterior</td>
<td></td>
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<tr>
<td>10. Age and condition</td>
<td>Exterior</td>
<td>Exterior</td>
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**SECTION II: BUILDING AREA CALCULATION**

<table>
<thead>
<tr>
<th>1. CLASS SQUARE FOOT COST</th>
<th>2. SQUARE FOOT REFINEMENTS</th>
<th>3. TOTAL QUANTITIES</th>
<th>4. TOTAL COSTS</th>
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<tbody>
<tr>
<td></td>
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**REMARKS:**
- 9-28-72 - Read to Council on 9-28-72
- 11-14-72 - Runoff - No Approve
- Current Value - No Approve
- 9-19-73 - Remarks - 3-15-73
- Changes - Recommend using 3-15-73 on
- 9-27-73 - Runoff - No Approve
- 12-29-73 - Approval (Ref.)

**See back of form for drawings.**
# Commercial Valuation Form

**Owner:** Sullivan, Dorothy Comber  
**Building Address:** Court Club

## Date Built

- Est. Built: 1943
- Reproduction: 10,300 $ 16.36
- Depreciated: 8,800 $ 44.09

## Section

- Sec. 43

## Size

<table>
<thead>
<tr>
<th>Floor</th>
<th>S</th>
<th>Perimeter</th>
<th>Area</th>
<th>Use</th>
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</thead>
<tbody>
<tr>
<td>Bmt</td>
<td>20' x 30'</td>
<td>100' L</td>
<td>100' x 30'</td>
<td></td>
</tr>
<tr>
<td>1st</td>
<td>20' x 30'</td>
<td>100' L</td>
<td>100' x 30'</td>
<td>Opera Apartment</td>
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<tr>
<td>2nd</td>
<td></td>
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</tr>
</tbody>
</table>

## Foundation

- Wood Framing: 2 x 4
- Wood Floor: 2 x 4

## Excavation

- Foundation: 45 cm
- Area: 20 m²

## Fill

### Foundation

- Wood Filling: 2 x 4
- Area: 40 m²

## Floors

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## Ceilings

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<tr>
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<td></td>
<td></td>
</tr>
<tr>
<td>2nd</td>
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</tr>
<tr>
<td>Floor</td>
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<tr>
<td>--------</td>
<td>-------</td>
<td>---------</td>
</tr>
<tr>
<td>Bsmt</td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
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<td>2nd</td>
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**Interior**

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<tr>
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**Plumbing**

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**Heating**

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<tbody>
<tr>
<td>Oil, Hot, Air</td>
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**Electrical**

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**Exterior Walls**

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<tr>
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### Planning Commission

**March 27, 2018**

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**Roof**

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**Factors**

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<tr>
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**M & S**

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Local

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Arch. Fee

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**Total value from other sections**

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<th></th>
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<tr>
<td>11546</td>
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**Total Reproduction Cost**

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**Depreciation**

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<tr>
<td>10%</td>
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**Value for 1967 Tax Roll**

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<tbody>
<tr>
<td></td>
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<td>4900</td>
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**Condition**

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<td></td>
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**Old Bldg destroyed by Flood.**

Page 3 of 3
<table>
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<th>DESCRIPTION:</th>
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<tr>
<td>INFLUENCES</td>
<td>(+) or [-]</td>
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<td>Topography</td>
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<td>Drainage</td>
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<td>Access</td>
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<td>Irreg. Med.</td>
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<table>
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<tr>
<th>YEAR</th>
<th>UNIT AREA</th>
<th>UNIT PRICE</th>
<th>BASIC VALUE</th>
<th>(+) or [-]</th>
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<td>1983</td>
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<table>
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<th>YEAR</th>
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<td>63930</td>
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REMARKS:

PICTURE:
<table>
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<th>YEAR</th>
<th>OWNER</th>
<th>ASSESSED VALUATION</th>
<th>REASON FOR CHANGE</th>
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<td></td>
<td></td>
<td>Land</td>
<td>Molls.</td>
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<td>1965</td>
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<tr>
<td>1966</td>
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<td>1967</td>
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<tr>
<td>1969</td>
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<td>1971</td>
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<tr>
<td>1972</td>
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<td>1973</td>
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<td>1975</td>
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<td>34,100</td>
<td>19,050</td>
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<tr>
<td>1982</td>
<td>&quot; &quot;</td>
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<td>4,900</td>
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REMARKS:

3-1-65 No change. C.H. 6-61
2-8-64 No change. C.H. 6-61
2-8-67 New building in front of R1
2-9-67 Remodeling and front of R1
1-18-67 Remodeled R1.25
1-6-69 Picked up new building R1.25
AUDIT: 6.38.20.68
6.38.20.68 M.F. Local and current until C.G.6-30-74
12-1-74 - Resumed. No changes. R1.25.1977.25
6-15-76 - Revised. No changes. R1.25.1977.25

[Image of place picture here]

PICTURE:
ORDINANCE 70-18

AN ORDINANCE AMENDING THE FAIRBANKS NORTH STAR BOROUGH CODE OF ORDINANCES, TITLE 49, REVISING SECTION 49.15.020, DEFINITIONS; SECTION 49.15.040, ZONE ABBREVIATIONS; SECTION 49.15.090, PERMITTED SIGNS; SECTION 49.15.090, GEOMETRICAL STANDARDS FOR LOTS; SECTION 49.15.130, OFF-STREET PARKING; SECTION 49.15.180, DEVELOPMENT STANDARDS, SCHEDULES A, B, C, AND D; SECTION 49.15.220, AMENDMENTS; SECTION 49.15.230, HEARINGS; SECTION 49.15.240, BOARD OF APPEALS; AND SECTION 49.15.250, APPEALS.

WHEREAS, the Fairbanks North Star Borough Planning Commission, after two years experience with the existing zoning ordinance, recognizes certain deficiencies and inequities in that ordinance; and

WHEREAS, there is a need to revise existing zones, and add new zones in order to more competently meet the needs and requirements of a rapidly changing community; and

WHEREAS, the Planning Commission after study and discussion, has prepared ten new zones to be incorporated into the current zoning ordinance, has prepared thirteen new land use categories to be incorporated, and has prepared subsidiary modifications within the ordinance so as to accurately reflect these additions and,

WHEREAS, the Planning Commission has prepared revisions in certain procedural clauses of the zoning ordinance which will permit more efficient processing of zone change requests;

WHEREAS, the Planning Commission recommends the said revisions be adopted; and

NOW, THEREFORE, BE IT ORDAINED by the Fairbanks North Star Borough Assembly:

That the Fairbanks North Star Borough Code of Ordinances, Section 49.15.020, DEFINITIONS be amended by deleting the words which are in brackets and by adding the words which are underlined; Section 49.15.040, ZONE ABBREVIATIONS be amended by deleting the words which are in brackets and by adding the words which are underlined; Section 49.15.090, PERMITTED SIGNS be amended by deleting the words which are in brackets and by adding the words which are underlined; Section 49.15.090, GEOMETRICAL STANDARDS FOR LOTS be amended by deleting the
### Schedule C

**Geometrical Standards for Lots**

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<th>Maximum Building Area (% of Lot Area)</th>
<th>Minimum Lot Area (Square Year)</th>
<th>Minimum Street Yard Depth</th>
<th>Minimum Interior Yard Depth</th>
<th>Maximum Building Height (Year)</th>
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<td>50</td>
<td>50</td>
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<tr>
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<td>50</td>
<td>3 story</td>
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<td>80,000</td>
<td>35</td>
<td>35</td>
<td>2 story</td>
</tr>
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<td>2 story</td>
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<td>2½ story</td>
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<td>40</td>
<td>4,000</td>
<td>20</td>
<td>15 **</td>
<td>3 story</td>
</tr>
<tr>
<td>Multiple Residential I</td>
<td>55</td>
<td>5,000</td>
<td>20</td>
<td>10 **</td>
<td>3 story</td>
</tr>
<tr>
<td>Multiple Residential II</td>
<td>55</td>
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<td>20</td>
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<td>3 story</td>
</tr>
<tr>
<td>Residential-Office</td>
<td>65</td>
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<td>20</td>
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</tr>
<tr>
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<td>40</td>
<td>10</td>
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</tr>
<tr>
<td>Business I</td>
<td>80</td>
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<td>35</td>
<td>0</td>
<td>4 story</td>
</tr>
<tr>
<td>Business II</td>
<td>90</td>
<td>5,000</td>
<td>20</td>
<td>0</td>
<td>4 story</td>
</tr>
<tr>
<td>Business III</td>
<td>100</td>
<td>1,600</td>
<td>0</td>
<td>0</td>
<td>Unlimited</td>
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<tr>
<td>Air Industrial Park</td>
<td>60</td>
<td>15,000</td>
<td>30</td>
<td>15</td>
<td>3 story</td>
</tr>
<tr>
<td>Light Industrial I</td>
<td>80</td>
<td>20,000</td>
<td>35</td>
<td>0</td>
<td>3 story</td>
</tr>
<tr>
<td>Light Industrial II</td>
<td>90</td>
<td>10,000</td>
<td>35</td>
<td>0</td>
<td>5 story</td>
</tr>
<tr>
<td>Heavy Industrial</td>
<td>100</td>
<td>5,000</td>
<td>10</td>
<td>0</td>
<td>Unlimited</td>
</tr>
<tr>
<td>Unrestricted Use</td>
<td>100</td>
<td>None</td>
<td>None</td>
<td>None</td>
<td>Unlimited</td>
</tr>
</tbody>
</table>

* A lot shall be of such shape as to encompass a rectangular area of at least twenty feet by forty feet exclusive of required yards.

** Except that building is permitted up to one inchier lot line or each of two intersecting interior lot lines if under common ownership and simultaneous development.
MEMORANDUM

TO:      Holder of Fairbanks North Star Borough Code of Ordinances

FROM:    Kenneth W. Anderson, Borough Clerk

SUBJECT: Revisions to Code of Ordinances, Supplement No. 2

Attached are revision sheets to your Code of Ordinances covering
Ordinances through 70-47, November 25, 1970. Please remove old sheets and insert
new as directed.

For future reference, we recommend that you save the original pages or
charts replaced by supplement number two. Although the Fairbanks North Star
Borough does not furnish a separate binder in which to place the originals, a
binder containing the pages saved may be necessary to protect the pages.

<table>
<thead>
<tr>
<th>Index</th>
<th>Remove Old Pages</th>
<th>Insert New Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Title 3, Chapter 5</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Title 11</td>
<td>3, 4</td>
<td>3, 4</td>
</tr>
<tr>
<td>Title 11, Chapter 10</td>
<td>Assembly Members sheet 1 through 9 1 through 7</td>
<td></td>
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<tr>
<td>Title 18, Chapter 5</td>
<td>-</td>
<td>1 through 4</td>
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<td>Title 29, Chapter 5</td>
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<td>Title 38, Chapter 5</td>
<td>-</td>
<td>1 through 3</td>
</tr>
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<td>Title 45, Chapter 5</td>
<td>-</td>
<td>1 through 3</td>
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<td>Title 47, Chapter 5</td>
<td>Assembly Members sheet 1 through 3 1 through 3</td>
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<tr>
<td>Title 49, Chapter 15</td>
<td>20 through 60</td>
<td>20 through 59</td>
</tr>
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<td>Title 49, Chapter 20</td>
<td>61, 62</td>
<td>-</td>
</tr>
<tr>
<td>Title 49, Chapter 25</td>
<td>63 through 65</td>
<td>-</td>
</tr>
<tr>
<td>Title 69, Chapter 5</td>
<td>1, 2, 4 through 18</td>
<td>1, 2, 4 through 18</td>
</tr>
<tr>
<td>Title 69, Chapter 10</td>
<td>19 through 28</td>
<td>19 through 28</td>
</tr>
<tr>
<td>Title 73, Chapter 15</td>
<td>-</td>
<td>8 through 11</td>
</tr>
</tbody>
</table>

PLACE IN FRONT OF CODE
Sec. 49.15.050. Zone Boundaries.

(m) Business II Zone.

<table>
<thead>
<tr>
<th>LOTS</th>
<th>BLOCKS</th>
<th>SUBDIVISIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>All 4, 5, 6, 7, 8A, 8B, 9</td>
<td>65</td>
<td>Fairbanks Townsite</td>
</tr>
<tr>
<td>2D, 2B, 3A, 3B, 4A, 5A, 6B, 5C, 5D, 6, 7, 8</td>
<td>76</td>
<td>Fairbanks Townsite</td>
</tr>
<tr>
<td>1A, 1B, 2, 3, 4, 5A, 5B, 6A, 7B</td>
<td>85</td>
<td>Fairbanks Townsite</td>
</tr>
<tr>
<td>1A, 1B, 2A-1, 2A-2, 2B-1, 2B-2, 3A-1, 3A-2, 3B-2, 4A-1, 4A-2, 4B, 5A, 7A, 7B, 7C, 8, 9, 10A, 10B</td>
<td>95</td>
<td>Fairbanks Townsite</td>
</tr>
<tr>
<td>6, 7, 8, 9</td>
<td>212</td>
<td>Fairbanks Townsite Gateway</td>
</tr>
<tr>
<td>All 1 through 10</td>
<td>1</td>
<td>Gateway</td>
</tr>
<tr>
<td>20, 21</td>
<td></td>
<td>Gateway</td>
</tr>
<tr>
<td>All 1, 2, 3, 23, 24</td>
<td>6</td>
<td>Gateway</td>
</tr>
<tr>
<td>1, 2, 3, 23, 24, 25</td>
<td>7</td>
<td>Gateway</td>
</tr>
<tr>
<td>All 1, 2</td>
<td>All</td>
<td>Gerson</td>
</tr>
<tr>
<td>All 10, 11, 12, 13, 14</td>
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<td>Graehl Townsite</td>
</tr>
<tr>
<td>All 22</td>
<td></td>
<td>Kolde Homestead</td>
</tr>
<tr>
<td>All 23 - 31</td>
<td>22</td>
<td>Lemeta</td>
</tr>
<tr>
<td>All 23</td>
<td>All</td>
<td>North Addition</td>
</tr>
<tr>
<td>1 through 12</td>
<td>1</td>
<td>To Fairvest</td>
</tr>
<tr>
<td>All 1, 2, 3, 24, 25</td>
<td>6</td>
<td>Rickert</td>
</tr>
<tr>
<td>1 through 6A</td>
<td>13</td>
<td>Rickert</td>
</tr>
<tr>
<td>1 through 24</td>
<td>20</td>
<td>Rickert</td>
</tr>
<tr>
<td>19, 20, 21, 22</td>
<td>21</td>
<td>Rickert</td>
</tr>
<tr>
<td>9 - 12</td>
<td>3</td>
<td>Riverside Park</td>
</tr>
<tr>
<td>All 4, 5</td>
<td>9</td>
<td>Riverside Park</td>
</tr>
<tr>
<td>7 - 19</td>
<td>All</td>
<td>Sutherland</td>
</tr>
</tbody>
</table>

That area bounded on the north of Third Street, on the west by the Steese Highway, and on the south and east by Circle Avenue in Graehl.

That part of the SE 1/4 of Section 9, T1S, R11W, Fairbanks Meridian described as follows: Beginning at a point on the south line of Section 9, T1S, R11W, Fairbanks Meridian that is approximately 967 feet west of the southeast corner, Section 9, T1S, R11W, Fairbanks Meridian; thence north 825 feet to the south right-of-way line of Airport Way; thence west along the right-of-way line of Airport Way 600 feet; thence south 825 feet to the south line Section 9; thence east 600 feet to the point of beginning.

Beginning at the intersection of the south right-of-way line of Airport Way and west right-of-way line of Coulee Street; thence
ORDINANCE NO. 88-010

A ZONING ORDINANCE PROVIDING REGULATIONS TO PROMOTE THE PUBLIC HEALTH, SAFETY, AND WELFARE, BY CLASSIFYING THE BOROUGH INTO DIFFERENT DISTRICTS AND REGULATING THEREIN THE LOCATION, CONSTRUCTION, RECONSTRUCTION, ALTERATION, AND USE OF BUILDINGS, STRUCTURES, AND LAND.

BE IT ORDAINED by the Assembly of the Fairbanks North Star Borough:

Section 1. Classification. This ordinance is not of a general and permanent nature and shall not be codified.

Section 2. Title 18, Fairbanks North Star Borough Code of Ordinances, is hereby repealed and replaced by Title 18, Fairbanks North Star Borough Code of Ordinances, as set forth in Exhibit A hereto.

Section 3. The official Borough zoning map shall be amended as provided for in the zoning ordinance text.

Section 4. Effective Date. This ordinance shall be effective on April 25, 1988.


ATTEST:

[Signature]

Presiding Officer

[Signature]

Clerk of the Assembly
### 16.04.060 Severability

If any section or part hereof is for any reason declared unconstitutional or invalid, the validity of the remaining portions hereof shall not be affected.

### 18.04.070 Implementation

Upon adoption of this Ordinance, the following changes shall be made to the Official Zoning Map. Land zoned Q, Holding prior to the adoption of this Ordinance, shall become zoned to the largest contiguous zoning district. Grandfathering of all land uses shall take precedent when a conflict arises.

<table>
<thead>
<tr>
<th>Zoning Districts in Effect Prior to the Adoption of this Ordinance</th>
<th>Shall Be Changed To</th>
<th>Zoning Districts and/or Overlay Zones as Provided by this Ordinance</th>
</tr>
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<tr>
<td>OR, Outdoor Recreation..................................................................</td>
<td>OR, Outdoor Recreation</td>
<td></td>
</tr>
<tr>
<td>CA-40, General Agriculture...................................................</td>
<td>RA-40, Rural and Agricultural</td>
<td></td>
</tr>
<tr>
<td>CA-20, General Agriculture...................................................</td>
<td>RA-20, Rural and Agricultural</td>
<td></td>
</tr>
<tr>
<td>CA-10, General Agriculture...................................................</td>
<td>RA-10, Rural and Agricultural</td>
<td></td>
</tr>
<tr>
<td>CA, General Agriculture..........................................................</td>
<td>RA-5, Rural and Agricultural</td>
<td></td>
</tr>
<tr>
<td>RE-LAI, Rural Estate....................................................................</td>
<td>RE-4, Rural Estate</td>
<td></td>
</tr>
<tr>
<td>RE-1, Rural Estate.....................................................................</td>
<td>RE-2, Rural Estate</td>
<td></td>
</tr>
<tr>
<td>RE-LAI, Rural Estate I..................................................................</td>
<td>RE-4, Rural Estate with MHS, Mobile Home Subdivision Overlay</td>
<td></td>
</tr>
<tr>
<td>REI-LAI, Rural Estate I..................................................................</td>
<td>RE-4, Rural Estate with MHS, Mobile Home Subdivision Overlay</td>
<td></td>
</tr>
<tr>
<td>RR-LAI, Rural Residential.........................................................</td>
<td>RE-2, Rural Estate</td>
<td></td>
</tr>
<tr>
<td>RR-LAI, Rural Residential.........................................................</td>
<td>RE-2, Rural Estate</td>
<td></td>
</tr>
<tr>
<td>RR-LAI, Rural Residential I.......................................................</td>
<td>RE-2, Rural Estate with MHS, Mobile Home Subdivision Overlay</td>
<td></td>
</tr>
<tr>
<td>RR-LAI, Rural Residential I.......................................................</td>
<td>RE-2, Rural Estate with MHS, Mobile Home Subdivision Overlay</td>
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</tr>
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<td>RR-LAI, Rural Residential ..........................................................</td>
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<td>RR, Rural Residential</td>
<td></td>
</tr>
<tr>
<td>RR-LAI, Rural Residential ..........................................................</td>
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<td></td>
</tr>
<tr>
<td>RI-1, Restricted Residential I....................................................</td>
<td>SF-20, Single-Family Residential</td>
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<tr>
<td>RI-1L, Restricted Residential II..................................................</td>
<td>SF-10, Single-Family Residential</td>
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<td>TF, Two-Family Residential</td>
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</tr>
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</tr>
<tr>
<td>Code</td>
<td>Description</td>
<td></td>
</tr>
<tr>
<td>-------</td>
<td>---------------------------</td>
<td></td>
</tr>
<tr>
<td>NS</td>
<td>Neighborhood Shopping</td>
<td></td>
</tr>
<tr>
<td>BS1</td>
<td>Business I</td>
<td></td>
</tr>
<tr>
<td>BSII</td>
<td>Business II</td>
<td></td>
</tr>
<tr>
<td>BSIII</td>
<td>Business III</td>
<td></td>
</tr>
<tr>
<td>Al</td>
<td>Air Industrial Park</td>
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</tr>
<tr>
<td>LI-I</td>
<td>Light Industrial I</td>
<td></td>
</tr>
<tr>
<td>LI-II</td>
<td>Light Industrial II</td>
<td></td>
</tr>
<tr>
<td>HI</td>
<td>Heavy Industrial</td>
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<td>ML</td>
<td>Mineral Lands</td>
<td></td>
</tr>
<tr>
<td>UU</td>
<td>Unrestricted Use</td>
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</tr>
<tr>
<td>CC</td>
<td>General Commercial</td>
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</tr>
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<td>Central Business District</td>
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</tr>
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<td>Light Industrial</td>
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</tr>
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<td>HI</td>
<td>Heavy Industrial</td>
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<td>UU</td>
<td>Unrestricted Use</td>
<td></td>
</tr>
<tr>
<td>CU-1</td>
<td>General Use</td>
<td></td>
</tr>
</tbody>
</table>
Chapter 18.56.000
NONCONFORMING (GRANDFATHERED) USES AND LOTS

Sections:
18.56.010 Purpose
18.56.020 Authority to Continue
18.56.030 Restrictions

18.56.010 Purpose

The purpose of this chapter is to provide for the regulation of nonconforming buildings, structures, uses, and lots, and to specify these circumstances and conditions under which they shall be allowed to continue as legal nonconforming uses and lots.

18.56.020 Authority to Continue

Any nonconforming building, structure, use, or lot which existed lawfully prior to the effective date of this Ordinance or any lawful building, structure, use, or lot which has become nonconforming upon the adoption of this Ordinance or any subsequent amendment thereto, may be continued. Any change in ownership of such a building, structure, use, or lot does not void grandfather rights.

18.56.030 Restrictions

Except for agricultural buildings, structures, and livestock, and any other agricultural activities, any nonconforming building, structure, use, or lot, which does not conform with the regulations of the zoning district in which it is located shall be subject to the following:

A. Nonconforming Buildings and Structures.
   1. A nonconforming building or structure may be enlarged or altered.

B. Nonconforming Uses.
   1. A building, structure, or premises devoted to or designed for, in whole or in part, a nonconforming use may be enlarged or altered.
   2. In the event that a nonconforming use of a building, structure, or premises, or part thereof, is discontinued for any reason for a period of thirty-six (36) months, the subsequent use of the same building, structure, or premises, or part thereof, shall thereafter be in conformance with the zoning district in which it is located. The Director of the Department of Community Planning, with the concurrence of the Borough Assembly, may extend this thirty-six (36) month period to allow relief from emergencies or other extenuating circumstances which are outside the control of the landowner.

C. Nonconforming Lots.
   1. In any zoning district, a lot, which was lawfully subdivided and recorded prior to the adoption of this Ordinance or any subsequent amendment thereto, and that because of said adoption or amendment fails to meet the minimum lot size requirements of the zoning district in which it is located, shall be considered as a useable lot.
# EXHIBIT 17

## APPENDIX A

### GEOMETRIC STANDARDS

<table>
<thead>
<tr>
<th>Zoning District</th>
<th>Front Yard</th>
<th>Side Yard</th>
<th>Rear Yard</th>
<th>Maximum Building Height</th>
<th>Minimum Lot Size</th>
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<tbody>
<tr>
<td>OR</td>
<td>50</td>
<td>25</td>
<td>25</td>
<td>Unlimited</td>
<td>None (^1)</td>
</tr>
<tr>
<td>RA-40</td>
<td>35</td>
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<td>10</td>
<td>Unlimited</td>
<td>40 acres</td>
</tr>
<tr>
<td>RA-20</td>
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<td>Unlimited</td>
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</tr>
<tr>
<td>RA-10</td>
<td>35</td>
<td>10</td>
<td>10</td>
<td>Unlimited</td>
<td>10 acres</td>
</tr>
<tr>
<td>RA-5</td>
<td>35</td>
<td>10</td>
<td>10</td>
<td>Unlimited</td>
<td>5 acres</td>
</tr>
<tr>
<td>RF-4</td>
<td>35</td>
<td>10</td>
<td>10</td>
<td>Unlimited</td>
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<tr>
<td>RF-2</td>
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<td>10</td>
<td>10</td>
<td>Unlimited</td>
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<td>RE-4</td>
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<td>25</td>
<td>25</td>
<td>Unlimited</td>
<td>160,000 sq. ft.</td>
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<td>RE-2</td>
<td>35</td>
<td>25</td>
<td>25</td>
<td>Unlimited</td>
<td>80,000 sq. ft.</td>
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<tr>
<td>RR</td>
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<td>25</td>
<td>25</td>
<td>Unlimited</td>
<td>40,000 sq. ft.</td>
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<td>20</td>
<td>5</td>
<td>10</td>
<td>Unlimited</td>
<td>20,000 sq. ft.</td>
</tr>
<tr>
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<td>5</td>
<td>10</td>
<td>Unlimited</td>
<td>10,000 sq. ft.</td>
</tr>
<tr>
<td>SF-5</td>
<td>20</td>
<td>5</td>
<td>10</td>
<td>Unlimited</td>
<td>5,000 sq. ft.</td>
</tr>
<tr>
<td>TF</td>
<td>20</td>
<td>5</td>
<td>5</td>
<td>Unlimited SFR 5,000 sq. ft.</td>
<td>Duplex 3,500 sq. ft./ unit</td>
</tr>
<tr>
<td>MF</td>
<td>20</td>
<td>10</td>
<td>10</td>
<td>Unlimited SFR 5,000 sq. ft.</td>
<td>Duplex 3,500 sq. ft./ unit</td>
</tr>
<tr>
<td>MFD</td>
<td>20</td>
<td>10</td>
<td>20</td>
<td>Unlimited SFR 5,000 sq. ft.</td>
<td>Duplex 3,500 sq. ft./ unit</td>
</tr>
<tr>
<td>LC</td>
<td>20</td>
<td>0</td>
<td>0</td>
<td>Unlimited</td>
<td>None (^1)</td>
</tr>
<tr>
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<td>0</td>
<td>Unlimited</td>
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<td>CBD</td>
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<td>0</td>
<td>0</td>
<td>Unlimited</td>
<td>None</td>
</tr>
<tr>
<td>LI</td>
<td>20</td>
<td>0</td>
<td>0</td>
<td>Unlimited</td>
<td>None (^1)</td>
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<td>HI</td>
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<td>Unlimited</td>
<td>None (^1)</td>
</tr>
<tr>
<td>ML</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>Unlimited</td>
<td>None (^1)</td>
</tr>
<tr>
<td>GU-1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>Unlimited</td>
<td>40,000 sq. ft.</td>
</tr>
</tbody>
</table>

\(^1\) Except as may be required by the State of Alaska Department of Environmental Conservation in areas where community sewer and water are unavailable.
EXHIBIT 18

Permit NO. D-10-17-012576
Permit Type: Demolition Permit
Work Classification: Commercial
Project Name: Demolition
Issue Date: 10/4/2017
Expires:

Project Address
208 Gaffney Road
Fairbanks, AK

Parcel
0080340

Subdivision
Townsite

Legal Description
PTN LOT 4 KOLDE HOMESTEAD

Owner Information

Owner: LOA HUBBARD
Address: 617 Gaffney Road, Fairbanks, AK
Phone: 474-8022

Contractor(s)
BOB & LOA HUBBARD
Contact Number: 474-8022

Contact Number 2:
Fax:

Special Conditions / Details
Demolition of Comet Club/Allstate

Valuation: $0.00
Total Sq Feet: 0

Fees Due

<table>
<thead>
<tr>
<th>Fees Due Amount</th>
<th>Total</th>
<th>Amt Paid</th>
<th>Amt Due</th>
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<tbody>
<tr>
<td>Total:</td>
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<td>$0.00</td>
<td>$0.00</td>
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</tbody>
</table>

Required Inspections:
For Inspections call: 1 (907) 459-8720

Inspection

Approved By: C Clooten
Date: 
Fast Track: No

Proposed Use:
Scope of Work:
Conditions:

NOTICE

Borough Copy

Separate permits are required for building, electrical, and plumbing work.
This permit becomes null and void if work or construction authorized in not commenced within 180 days or if construction or work is stopped and no inspections are made for a period of 365 days at any time after work is commenced.

I hereby certify that I have read and examined this application and know the same to be correct. All provisions of laws and ordinances governing this type of work will be complied with whether specified herein or not. The granting of a permit does not presume to give authority to violate or cancel the provisions of any law regulating construction, setbacks, payments or the performance of construction. I agree that the work will be described above per the approved plans, specifications and conditions further set forth by the building department. It is the duty of the applicant to ensure that the work is exposed and accessible until approved by the building official as specified in the international building code.

Signature of Owner, Contractor, or Authorized Agent
Date

Print Name and Title (Owner and Contractor)
Date

Original

Tuesday, January 23, 2018
Planning Commission

131
March 27, 2018
### Planning Commission

**Project Address**

<table>
<thead>
<tr>
<th>Parcel</th>
<th>Subdivision</th>
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</thead>
<tbody>
<tr>
<td>208 Gaffney Road</td>
<td>Townsite</td>
</tr>
</tbody>
</table>

**Legal Description**

**LOT 4 KOLDE HOMESTEAD**

**Owner Information**

<table>
<thead>
<tr>
<th>Owner Name</th>
<th>Owner Address</th>
<th>Phone</th>
<th>Cell Phone</th>
</tr>
</thead>
<tbody>
<tr>
<td>LOA HUBBARD</td>
<td>617 Gaffney Road, Fairbanks, AK</td>
<td>474-8002</td>
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</tr>
</tbody>
</table>

**Contractor(s)**

<table>
<thead>
<tr>
<th>Contractor(s)</th>
<th>Contact Number</th>
<th>Contact Number 2</th>
<th>Fax</th>
</tr>
</thead>
<tbody>
<tr>
<td>BOB &amp; LOA HUBBARD</td>
<td>474-8002</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Special Conditions / Details**

- **Valuation:** $200,000.00
- **Total Sq Feet:** 1,792
- **Sprinklered Building Complete**
- **Superstructure, 2015 IBC Compliance, (14) Design Occupant Load, Existing Foundation.**

**Required Inspections:**

- **Fire Inspections:** 1 (907) 459-6720

**Proposed Use:** INSURANCE OFFICES

**Scope of Work:** CONSTRUCT COMPLETE SUPERSTRUCTURE ON EXISTING TO-GRADE FOUNDATION; SITEWORK, FINISHES; ELECTRICAL, PLUMBING, ME

**Conditions:** 2015 IBC COMPLIANCE; PLUMBING, ELECTRICAL, MECHANICAL/FIRE SPRINKLER PERMITS.

---

### Notice

**Separate Permits are Required for Building, Electrical, and Plumbing Work**

This permit becomes null and void if work or construction authorized is not commenced within 180 days or if construction or work is stopped and no inspections are made for a period of 366 days at any time after work is commenced.

I HEREBY CERTIFY THAT I HAVE READ AND EXAMINED THIS APPLICATION AND KNOW THE SAME TO BE CORRECT. ALL PROVISIONS OF LAWS AND ORDINANCES GOVERNING THIS TYPE OF WORK WILL BE COMPLIED WITH WHETHER SPECIFIED HEREBIN OR NOT. THE GRANTING OF A PERMIT DOES NOT PERMIT TO GIVE AUTHORITY TO VIOlate OR CANCEL THE PROVISIONS OF ANY LAW REGULATING CONSTRUCTION, SETBACKS, EASEMENTS OR THE PERFORMANCE OF CONSTRUCTION. I AGREE THAT THE WORK WILL BE DESCRIBED ABOVE FOR THE APPROVED PLANS, SPECIFICATIONS AND CONDITIONS FURTHER SET FORTH BY THE BUILDING DEPARTMENT. IT IS THE DUTY OF THE APPLICANT TO INSURE THAT THE WORK IS EXPOSED AND ACCESSIBLE UNTIL APPROVED BY THE BUILDING OFFICIAL AS SPECIFIED IN THE INTERNATIONAL BUILDING CODE.

---

** Borough Copy **

Original

**Signature of Owner, Contractor, or Authorized Agent**

Date: Tuesday, January 23, 2018

Print Name and Title (Owner and Contractor): Planning Commission

Date: March 27, 2018

---

**EXHIBIT 19**

**Permit NO:** CB-11-17-012664

**Issue Date:** 11/9/2017

**Expires:** 05/08/2018
APPLICATION
MATERIAL
SUBMITTED ON

December 5, 2017
for GR2018-085
APPLICATION FOR AFFIRMATIVE RECOGNITION OF GRANDFATHER RIGHTS STRUCTURE/SETBACK

File No. **FR2018-085** Fee: $25

Applicant:
Contact Name: Robert and Loa Hubbard
Business Name: 
Mailing Address: 617 Gaffney Rd
City, State Zip: Fairbanks AK 99701
Phone: 907-388-2972
E-mail: loacarroll@allstate.com

Property Owner:
Name: 
Mailing Address: 
City, State Zip: 
Phone: 
Cell: same
E-mail: 

Property Information:
Property Description: Lot 4 Koide Homestead Townsite
Street Address: 208 Gaffney Rd
Parcel Account Numbers (PAN): 080349
Date structure was created, if known: 1968
Existing Use(s): Bar
Zoning District: GC

Briefly describe non-conformity as it relates to structure/setback(s):

☐ If grandfather rights for the structure setback are not affirmed, I am requesting consideration of Amnesty Relief if I qualify under FNSBC 18.116.030 eligibility criteria and I agree to pay the additional fee of $25 (staff decision) or $175 (Administrative Hearing) as applicable.

I certify that the information included in this application is to the best of my knowledge true and correct. I understand the determination is appealable to the Planning Commission and this decision is appealable to the Board of Adjustment.

APPLICANT SIGNATURE: ____________________________ DATE: 12/1/2017

OWNER SIGNATURE (if different): ______________________ DATE: 

If the applicant is not the sole property owner, written consent of all property owners must be provided pursuant to FNSBC 18.108.030(A).

Please send my Notice of Decision by the following: ☐ mail ☐ email
Manish,

I have authorized Lea Hubbard to file an application for grandfather rights on 2056 Gaffney Rd. for our zoning permit.

Thanks Manish!

Rob Hubbard
12-5-17
Nonconforming Structure Grandfather Rights Narrative

1. The original structure was built in 1968. There was a small section added to the west corner at some point before we purchased the property in 2013. The structure was never damaged, however the interior walls were all heavily damaged by smoke from 40 years of cigarettes. The current use of the structure will be an Insurance office. The structure will be used as an office for the very first time in its existence as it has historically been bar.

2. See site plan provided by 3Tier Alaska.

3. See historical documentation on file with FNSB.

As long as our building is located in the exact same location as the former building, we believe that the grandfather rights should be granted. Based on Title 18 A, the alteration of this building has not caused any increase in footprint and has not enlarged the building. The original construction as foundation, sewer and plumbing is being used. Construction of a building includes much more than the above ground structure and the foundation is the key to all buildings. We are using the original foundation and footprint. We are requesting that the grandfather rights be granted as we are not enlarging or changing the original building except for the alteration of new walls and roof. With the cigarette smoke damage on the interior structure, and the age of the roof, we believe that replacing them with new wood was the safest way to proceed. We do not believe that we have hindered our grandfather rights to proceed with completing the alterations of this property. The change in appearance will be a positive addition to the City of Fairbanks and it will be a positive reflection of commerce located just outside of the Army Base.
Hi Loa,

It was nice talking to you on phone today. As discussed, variances are rare and very difficult to obtain. I am glad you had the opportunity to understand the application and Planning Commission hearing criteria. While I prepared for the phone conversation with you, I came across some property/zoning history. I hope that the following information will help you in putting an application together –

1. FNSB adopted their zoning regulations with Ord. 67-34 on March 28, 1968. All properties within Kolde Homestead Subdivision were zoned “Business (BS)”. Business (BS) zone had a zero feet minimum street yard depth (currently known as front-yard setback) requirement.
2. FNSB Assessing Field Card estimates that the building (currently demolished) was constructed in 1968. A note made by the assessor after an inspection on January 6, 1969 states “picked up new building”. Please find attached the Assessing Field Card.
3. Ord. 70-18, adopted on June 11, 1970, removed the Business (BS) zone from the Borough code and added Business I (BS-I) and Business II (BS-II) zones. Business I (BS-I) and Business II (BS-II) zones (currently known as General Commercial (GC) zone) established front-yard setback requirements.

Let me know if you have any questions for me.

Thanks,
Manish

Manish Singh
Planner II
Department of Community Planning
907-459-1225 / msingh@fnsb.us

Fairbanks North Star Borough
907 Terminal Street
Fairbanks, AK 99701
SUBMITTALS

The following submittals are required to describe the nonconforming building(s) or structure(s):

NONCONFORMING STRUCTURE:

1. Provide a written narrative that may address any of the following:
   a. When was the structure built?
   b. Following initial construction, was an addition ever added? If so, when and where?
   c. Was the structure ever damaged? If so,
      - When and to what extent? and
      - How long before rebuild or repairs?
   d. What is the current use of the structure? and
      - Has the structure always been used in this manner?

2. Attach a mortgage location survey or a site plan drawn to scale that depicts the subject property, including:
   a. Scale at which site plan is drawn (for example 1" = 20’)
   b. North arrow
   c. All property lines and their dimensions
   d. Location, type (i.e. house, garage, shop, shed, carport etc.) and dimensions of all existing structures. Label all structures and additions with the date of construction
   e. Location, type and dimensions of any proposed structures and/or additions
   f. Setback distances of all existing and proposed structures and/or additions from all property lines, except in General Use (GU) zones
   g. Names of adjacent roads
   h. Existing and/or proposed driveways
   i. Floor plan, if applicable to the non-conforming structure

3. Sign the Affirmative Recognition of Grandfather Rights Affidavit form included in this application packet.

Items which may accompany either the Grandfather Rights and/or the Amnesty Relief application can include, but are not limited to:

- Power of Attorney Documentation
- FNSB Assessing Department Records
- Certified Plot Plans
- Deeds
- Receipts, (i.e. Construction, Rental Records, Retail Sales, etc.)
- Utility Bills
- Affidavits
- Building Permits
- Photographs, Imagery
- Other Records and Documentation
STATE OF ALASKA

) ss.

FOURTH JUDICIAL DISTRICT

I, __________________________, being duly sworn, under penalty of perjury, depose and state that:

1. I have submitted the attached application for Affirmative Recognition of Grandfather Rights (GR 2018-005) for a nonconforming building or structure at 2000 Garnery Rd.

2. The information submitted in this application and supporting materials is, to the best of my knowledge, true and complete.

3. I have first-hand knowledge that this property has Grandfather Rights, specifically: "The building was built in 1968, before the 1970 Ordinance. See Narrative Provided."

4. I understand that the decision is appealable in accordance with 18.108.030 C

5. I understand Grandfather Rights, if affirmed, are subject to restrictions outlined in 18.108.

STATE OF ALASKA
NOTARY PUBLIC
B. Hamilton
My Commission Ending with Office

Signature
LOA HUBBARD
617 GARNERY RD
FAIRBANKS, AK 99701

(Name and Address of Affiant)

SUBSCRIBED AND SWORN TO BEFORE ME on this 5 day of December, 2017

Commission Expires

Date Received: __________________________ Received By: __________________________

Fairbanks North Star Borough
AMNESTY RELIEF AFFIDAVIT

STATE OF ALASKA )
 ) ss.
FOURTH JUDICIAL DISTRICT )

I, ____________________________, being duly sworn, under penalty of perjury, depose and state that:

1. I have submitted the attached application for Amnesty Relief (AM__________) for a nonconforming building or lot.

2. The information submitted in this application and supporting materials is, to the best of my knowledge, true and complete.

3. I affirm that the violation for which I seek affirmative recognition of amnesty meets the requirements of Title 18.116.

4. I understand that the decision is appealable in accordance with 18.116.040 C

________________________________
Signature

________________________________
(Name and Address of Affiant)

SUBSCRIBED AND SWORN TO BEFORE ME on this _______ day of ____________, 20____

Notary Public in and for Alaska

Commission Expires

__________________________________________

Date Received: _________________________ Received By: _________________________

Fairbanks North Star Borough
FNSB ZONING = GENERAL COMMERCIAL
FRONT YARD SETBACK = 20'
SIDE YARD SETBACK = NOT REQUIRED
REAR YARD SETBACK = NOT REQUIRED

LEGEND
P.U.E. = PUBLIC UTILITY EASEMENT
(C) = CALCULATED BEARING AND/OR DISTANCE
(BEARING & DIST.) = RECORD DATA IN PARENTHESIS
HBO = HEAD BOLT OUTLET

NOTE
THE VERTICAL DATUM SHOWN HEREON IS FROM THE X-BOLT ON A FIRE HYDRANT LOCATED AT 12TH AVE. & NOBLE STREET. THE TBM ELEVATION HAS A(recorded) ELEVATION OF 135.975 METERS, NAVD 1988 WITH THE CITY OF FAIRBANKS. WHICH HAS BEEN CONVERTED TO 446.11 FEET NAVD 1988.

ALLSTATE SITE PLAN
LOT 4, KOLDE HOMESTEAD
A PORTION OF LOT 12, SECTION 10, T.I.S., R.1W. F.M., ALASKA
(PER BOOK 282, PAGE 370)
FAIRBANKS RECORDING DISTRICT

OWNERS:
ROBERT & LOA HUBBARD
PO BOX 84252
FAIRBANKS, AK 99708

3 TIER—Alaska, Corp.
P.O. Box 71940 432 Ignite Avenue
Fairbanks, AK 99707–1940
(907) 456–5895

DRAWN: JCH
CHECKED: JRR
DATE OF SURVEY: 9/11/2017
DATE OF DRAWING: 10/16/2017

SCALE: 1" = 20'

NOTE: 141.39' = 50.69'
APPEAL
APPLICATION
SUBMITTED ON

February 15, 2018
FAIRBANKS
Planning Commission
March 27, 2018
Fairbanks North Star Borough
Department of Community Planning
907 Terminal Street/P.O. Box 71267
Fairbanks, Alaska 99707-1267
(907) 459-1260 Fax: (907) 205-5169
planning@fnsb.us

APPEAL APPLICATION

File No. Appeal of #2018-085

FEES: $200 application

Appellant:
Name: Robert and Loa Hubbard
Mailing Address: 617 Gaffney Rd Fbks, AK 99701
Phone: 907-388-2972 Cell: Same
E-mail: loacarwell@att.com

Appellant is:
☒ The property owner or applicant from the decision being appealed
☐ An interested person or a person aggrieved
☐ A member of the public appealing a trail dedication
☐ A representative (e.g. an attorney) of one of the above parties
(please indicate which category of party you represent; include your name and contact information)

APPEAL TYPE:
☒ Title 18 Administrative Variance
☐ Title 15 Floodplain Management Regulations
☐ Other:

Quick Plat
☐ Preliminary Plat
☐ Title 17 Variance
☐ Street Naming of Public Roads
☐ Trail Dedication

Appeal Information:
Case Number: #2018-085
Date of Decision’s Mailing for Case Being Appealed: 01/31/2018

Specific Grounds or Reasons for Appeal (attach additional sheets as needed):
The original building has Grandfather Rights and due to the alterations made to the building we feel that we should be allowed to maintain Grandfather rights on the building being 3.9 feet into the setback which was placed after the foundation was established in 1968. We have not altered the footprint or changed anything at all.

APPELLANT SIGNATURE: /s/ Robert Hubbard DATE: 02/15/2018

Fairbanks North Star Borough is subject to the Alaska Public Records Act, AS 40.25 et seq. and this document may be subject to public disclosure under state law.
WRITTEN AGENCY COMMENTS

Appeal of GR2018-085
Good morning, Stacy,

I sent the below information out to the City Building, Fire, and Engineering Departments. I received no comments/concerns back.

D. Danyielle Snider, CMC
City Clerk | City of Fairbanks
800 Cushman Street | Fairbanks, Alaska 99701
P 907.459.6774 | F 907.459.6710
dsnider@fairbanks.us

---

Good morning,

FNSB Community Planning has received an appeal of the denial of an affirmative recognition of legal non-conforming structure (grandfather rights) status application. The application request was made to affirm grandfather rights for the front-yard setback of 16.1 feet instead of the required 20 feet in the General Commercial zone. The grandfather rights were not affirmed after public Administrative Hearings on January 4 and January 18, 2018. Appeals of Administrative Hearing Officer decisions are heard de novo by the Planning Commission. This appeal is currently scheduled to be heard at the March 27, 2018 Planning Commission meeting.

The subject property is Lot 4, Kolde Homestead (208 Gaffney Road). We are sending this application to you because it is within City limits, and for any comments you may have. We can include these comments in the staff report to the Planning Commission. Attached to this email are the appeal application, the GR2018-085 determination letter, and the site plan/survey submitted by the applicant as part of the GR2018-085 application.

If you have any questions, please don’t hesitate to contact me. If possible, please return any comments by Friday, March 2, 2018. Please feel free to forward this email to anyone else that might be appropriate to comment.

Thanks,
Stacy

Stacy Wasinger
Planner III | FNSB Community Planning
swasinger@fnsb.us
907-459-1262

Fairbanks North Star Borough
DEAR PROPERTY OWNER

“INTERESTED PERSONS”

APPEAL OF

GR2018-085
GATEWAY, BLOCK: 01, LOT: UMB03
Fairbanks Community Food
Bank Service Inc
725 26th Ave
Fairbanks, AK 99701

GATEWAY, BLOCK: 02, LOT: UMB01
Fairbanks Llc
8015 SE 28th St Ste 201
Mercer Island, WA 98040

FAIRBANKS TOWNSI, BLOCK: 127, LOT: PARK
Fairbanks North Star Borough
Land Management
PO BOX 71267
Fairbanks, AK 99707

GATEWAY, BLOCK: 06, LOT: 03
Family Trust
C/o Keturi Raymond C
1403 Lacey St Unit A
Fairbanks, AK 99701

GATEWAY, BLOCK: 09, LOT: 11
Flater Edwin
PO BOX 81446
Fairbanks, AK 99708

GATEWAY, BLOCK: 07, LOT: 18
Foxx Joellen K
853 Congressional Dr
Fairbanks, AK 99709

GATEWAY, BLOCK: 06, LOT: 11
Friendship Baptist Mission
1465 Lacey St
Fairbanks, AK 99701

GATEWAY, BLOCK: 09, LOT: 06
Galbraith Angeline
1435 Eielson St
Fairbanks, AK 99701

GATEWAY, BLOCK: 08, LOT: 05
Gardella Joyce
Gardella Denis R
1527 Noble St
Fairbanks, AK 99701

1S 1W, SEC: 11, TAXLOT: 1121
General Services Admin
United States of America
C/o Financial Mgmt 10p-af
Gsa Center
Auburn, WA 98001

GATEWAY, BLOCK: 07, LOT: 22
Gillmore Jeffrey
1414 Eielson St
Fairbanks, AK 99701

FAIRBANKS TOWNSI, BLOCK: 122, LOT: 06A-2
Greater Fairbanks Community
Hospital Foundation Inc
1650 Cowles St Flr 5
Fairbanks, AK 99701

GATEWAY, BLOCK: 07, LOT: 06
Hall Joe W
1425 Noble St
Fairbanks, AK 99701

GATEWAY, BLOCK: 06, LOT: 07
Helms Vida
1433 Lacey St
Fairbanks, AK 99701

KOLDE HOMESTEAD, LOT: 04&
Hubbard Robert
Hubbard Loa
617 Gaffney Rd
Fairbanks, AK 99701

GERSON, LOT: 07
Husband Brandice Q
1242 Log Cabin Ct
Fairbanks, AK 99701

GATEWAY, BLOCK: 08, LOT: 20
Ienello Michael James
5734 Pilgrim Ave
Hanahan, SC 29410

GATEWAY, BLOCK: 08, LOT: 21
Ienello Michael
5734 Pilgrim Ave
Hanahan, SC 29410

GATEWAY, BLOCK: 05, LOT: 02
Jolly Acres Llc
PO BOX 58585
Fairbanks, AK 99711

GATEWAY, BLOCK: 07, LOT: 13
Jpmorgan Chase Bank
National Association
800 State Hwy 121 Byp Fl 2
Lewisville, TX 75067

FAIRBANKS TOWNSI, BLOCK: 127, LOT: 07A
Keating Bobby L
Zevan Keating Alice K
307 12th Ave
Fairbanks, AK 99701

GATEWAY, BLOCK: 07, LOT: 12
Kennedy Kal K
Kennedy Toni L
2175 Broadmoor Ave
Fairbanks, AK 99709

GATEWAY, BLOCK: 02, LOT: 11
Kuzmich Vitali V
PO BOX 72758
Fairbanks, AK 99707

GATEWAY, BLOCK: 08, LOT: 03
Lamb Kenneth C
1515 S Noble St
Fairbanks, AK 99701

SUTHERLAND, LOT: 09
Larson Locksmith & Sec Inc
1249 Noble St
Fairbanks, AK 99701

KOLDE HOMESTEAD, LOT: 07&
Last Frontier Investments Llc
3324 Koba Way Box 1
Fairbanks, AK 99709

SUTHERLAND, LOT: 03&
Laughlin James M
Laughlin Beth E
379 Hillside Dr
Fairbanks, AK 99712