FAIRBANKS NORTH STAR BOROUGH PLANNING COMMISSION

MINUTES
March 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 6:01 p.m. by Mindy O’Neill, Chairperson.

A. ROLL CALL

MEMBERS PRESENT:   Mike Stepovich  Chris Guinn
                    John Perreault  Charles Whitaker
                    David Brandt  Eric Muehling
                    Mindy O’Neill

MEMBERS ABSENT & EXCUSED:  Robert Peterson  Wendy Presler
                            Patricia Thayer  Doug Sims

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

B. MESSAGES

1. Chairperson’s Comments

   Chair O’Neill reminded the Commission of the Body’s purpose and read directly from FNSB Code, and asked the Body to limit its questions to relevant issues.

2. Commissioner’s Comments

   There were no comments by Commissioners.

3. Communications to the Planning Commission

   Ms. Christine Nelson advised that the April 10th Planning Commission meeting has been canceled since there were no new applications received.

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

   There were no comments by Citizens.

5. Disclosure & Statement of Conflict of Interest

   There were no disclosures or statements 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Chair O’Neall communicated the item which had been withdrawn from the Agenda; RZ2018-004.

**MOTION:** To approve Agenda and Consent Agenda by Commissioner Muehling and seconded by Commissioner Guinn.

PASSED WITHOUT OBJECTION

D. *MINUTES*

1. *Minutes from the February 27, 2018 Meeting.

E. APPEALS

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: Stacy Wasinger)

The Applicant, Loa Hubbard, was present and deferred to Staff to present first.

**Ms. Stacy Wasinger** provided a presentation of her Staff Report and findings of fact on behalf of the Borough’s Planning Department and recommended denial of the appeal and to uphold the administrative determination.

**Questions by Commissioners**

**Commissioner Muehling** asked if the alteration of the building did not cause any increase in the building, and Ms. Wasinger confirmed and noted it may have decreased it through the removal of the entry way. **Commissioner Muehling** asked if the building is changed by height would it affect setback requirements, and Ms. Wasinger stated it would not. **Commissioner Muehling** queried that once the building was demolished it lost any grandfather rights available, and Ms. Wasinger stated that is the department’s interpretation of code. Discussion ensued on code definition for alteration.

**Commissioner Brandt** pointed to that portion of Borough Attorney Jill Dolan’s memo (page 84 and 85) third paragraph and stated he was unable to find anything in code supporting her statement, and inquired if it is merely an opinion. Ms. Nelson explained that unless expressly stated and allowed by code, it is not allowed, and explained the lack of definitions in grandfather rights.

**Ms. Doxey** added that Ms. Nelson’s explanation was accurate and further offered additional information and examples.
Commissioner Brandt inquired about the document on page 86 and 87 of the packet and read the portion on page 87 at number 2, example 2, and indicated his belief that the subject matter is similar to what he just read. Ms. Nelson explained that the memo was a former department interpretation where code expressly allowed it.

Ms. Doxey explained that the document on page 86 and 87 is a policy interpretation back in 1988 by the Department based upon an old version of code, and does not appear to have undergone legal analysis and now that it has there is no legal support for the policy conclusions.

Commissioner Brandt communicated that the policy has been in existence all this time until this case arose.

Ms. Doxey stated the Community Planning Department would need to be queried as to whether or not they were implementing the policy.

Ms. Nelson responded that a legal analysis trumps a policy and stated it may have been common practice in the past to create policies without undergoing legal review, and conveyed that the does not make it accurate.

Commissioner O'Neall asked for Staff to explain the practice between the Borough and City of Fairbanks on zoning and building permits. Ms. Wasinger explained that if there is a new use a zoning permit is required under Title 18 and generally the City will send people to the Borough or recommend they come to the Borough to ensure the use is permitted and surmised of her uncertainty if that happened in the present case and the Planning Department did not issue a zoning permit in the present case. Ms. Nelson interjected that typically the City does require the Borough to sign off and explained that what the City may consider a new use for zoning may not mesh with what the Borough considers a new use and there is no building code requirement that requires them to ensure the Borough has issued a zoning permit.

Commissioner O'Neall followed up by asking if there is a charge for either a zoning or building permit. Ms. Nelson responded there is a charge for building permits by the City and zoning permits are free.

Commissioner Guinn commented that if the Applicant came to the zoning department and explained the situation and Staff provided erroneous information and wondered if there is a record of the Applicant contacting Community Planning. Ms. Wasinger directed the Commission to page 138 which is an email from another Planner to the Applicant and stated her belief that to her knowledge that constitutes the first contact.

Commissioner Brandt inquired as to when the building became an issue and wondered if it had just been a roof replacement would that have caused an issue and probed as to the point, percentage, it does not become allowed and stated there is nothing in the packet stating it is not or allowed. Ms. Nelson stated that Borough code does not attach a percentage, and in this case a roof may not have been considered a replacement of the structure because the walls are still in place and explained that once the walls are brought down to the foundation, the building does not exist.

Ms. Doxey read the definition of building from FNSBC.

Commissioner Brandt questioned whether they could have built on to the existing building, and Ms. Wasinger replied affirmatively and noted so long as it did not create a new
nonconformity. Discussion ensued on the setback requirements and standards in place at the time.

Ms. Doxey asked for clarification on when Community Planning believes grandfather rights would have attached. Ms. Nelson confirmed that the 1970 setback requirements are when it became legal nonconforming.

Commissioner Brandt asked if the building burnt down then it would not have been able to be rebuilt. Ms. Nelson responded affirmatively.

Mrs. Loa Hubbard testified as follows:

- Born in Fairbanks
- 2014 purchased an Allstate Insurance Agency
- 2014 opportunity arose to purchase the old Comet Club building at 208 Gaffney
- Purchased from Richard Lundhagen who had owned it since 1975
- Intent was to move Allstate office to that location
- Owner-financed purchase resulting in no formal appraisal or bank involvement
- Proud and honored to own a piece of property that has been a landmark in Fairbanks for the past 50 years
- During the design phase for the remodel, knew that the bathrooms, kitchen, boiler room, main door and the windows would remain in place
- Utilities have been kept alive for three (3) years
- Questions arose by architect and City why not replace the entire building
- No question roof needed replacement
- Discussion ensued on the condition of the exterior walls as they were painted plywood and in desperate need of repair
- When the wall was opened it was discovered there were holes thought to be caused by vehicle collisions
- Base plates on the southeast were rotten and had to be replaced
- Plan was to provide 2x8 to the walls for excellent insulation and more environmentally friendly. Placement was going to be on the inside to avoid increasing the footprint, but there was a structural issue
- City’s engineer recommended replacing walls to accomplish desired thickness
- City issued permits - roof came off, walls came down and new walls were installed along with a new roof within a 2 week period
- Around same time as construction, reviewed permit packet information and realized a zoning permit was required
- Denied a zoning permit due to the setback requirements
- Applied for Grandfather Rights with the Borough and was denied due to a determination of too many changes to be considered an alteration
- There is no definition for alteration – subject to opinion of Community Planning Staff
- Attempted to apply for a variance and was advised by the Director of Community Planning to appeal the grandfather rights decision
- At no point has the Borough or the City questioned the project
- At no time has a cease and desist been ordered
- Advised by Staff at the Planning Department that the appeal process should not have any impact on the project and to carry on with construction
- Ready for occupancy this weekend
- No traffic safety issues – office use minimal to that of the former occupancy as a bar
- AT&T is only occupant beyond building
• Desires building be compliant with the Borough and City
• Situation holds no financial baring
• Significantly increased the value of the building
• Cleaned up an eyesore
• Improved public safety – vagrants and homeless were frequent visitors
• Replaced roof which if hadn’t, probably would have collapsed because of the snow weight
• Opportunity for more growth on the east side of Fairbanks
• Presence of Allstate Office will be beneficial to the surrounding business which have been supportive from the beginning
• Created a beautiful addition to Fairbanks outside of Fort Wainwright’s main gate
• Welcome addition to the economic growth in the community

Questions by Commissioners

Commissioner Brandt clarified if it was the City’s engineer that recommended replacement of the exterior walls, and Mrs. Hubbard clarified it was the City’s structural engineer and further explained the original plan and explained her compliance with the City’s recommendations and explained the design which utilized features from the original building to serve her purpose to utilize it as an office building.

Commissioner Whitaker asked what the timing was of the take down versus construction or the length of time before new walls were going up. Mrs. Hubbard stated that the walls came down and within a week/week and a half the new walls came back up.

Commissioner O’Neall asked if she received any paperwork or information that the building may have grandfather rights when she purchased the building, and Mrs. Hubbard responded that she did not and that the only report they ran was a title search and there were no liens on the property.

Public Testimony Opened

Ms. Rochelle Larson testified that she is the owner of Larson’s Locksmith at 1249 Noble on the corner and knows about grandfather rights. She indicated her understanding was that because Mrs. Hubbard built on the existing foundation and did not expand any further into the setback it would be a non-issue, and stated her general support for the project and the improvement to the surrounding area.

Mr. Scott Bucher offered his support for Mrs. Hubbard’s building and testified that his family has owned the property that is occupied by a used car lot and his lot is for sale and Mrs. Hubbard’s building may help increase the property values in the area. He further testified that he has not heard anything that would give credence that anything she is doing to the property would be a health, safety and welfare issue and common sense tells you it will be a much better building then what was there.

Commissioner Muehling commented they were looking at common sense and looking at code and the Commission is trying to find a balance between the two. He further thanked Mr. Bucher for his testimony.

Public Testimony Closed
MOTION: 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; and adopting the staff report and twenty-two (22) findings of fact in support of the decision by Commissioner Muehling and seconded by Commissioner Guinn.

Discussion on the Motion

Commissioner Muehling communicated that the findings of fact are that the demolition goes way beyond the definition of alteration and noted that definitions are important to the Commission’s charge. He stated that even if the definition was “substantial alteration” it would be difficult to stretch that to include demolition, and in future matters, this decision could set a standard. He expressed confliction due to seeing a new building on the same footprint which is the common sense aspect.

Commissioner Guinn stated his agreement with Commissioner Muehling and apologized to the Applicant and expressed hope it can be resolved in some type of other matter.

Commissioner Brandt communicated that the issue is the definitions or lack of definitions and stated the building was not demolished; it was rebuilt and the vast majority of the cost of a commercial structure is going to be the ground work, putting in a driveway, running the water and sewer and electric, foundation, all these items did not change and questioned what point it becomes a problem. He commented that the Masonic Temple was demolished. This building was methodically rebuilt and these individuals received City of Fairbanks permits and followed the engineer’s instructions and at no point did anyone object, including the Borough who were out there taking pictures at the time of the construction. He stated he would be voting no.

Commissioner Muehling stated that 18.104.040 [sic] defines alteration and is defined as meaning “any change in size or shape of a building” and communicated that the building was not changed in size or shape; it was razed to the ground.

Commissioner Whitaker communicated he liked what Commissioner Brandt conveyed and stated that if the Comet Club was rebuilt one wall at a time, one roof at a time, and piecemalled out, there would not be a problem.

Commissioner Brandt stated that the kitchen and bathrooms and plumbing have all remained the same and the Applicant only did exactly what the City engineer told them to do and they did not alter the footprint except to bring it more into compliance by removing the entrance and echoed Mr. Whitaker’s comment about doing it wall by wall. He reflected on the policy from 1988 which has not been retracted and would have allowed for replacement in the event of a fire without issue and questioned one person’s opinion/interpretation until now.

Commissioner Perreault communicated his belief that it is a “Ship of Theseus” problem and noted the point made that several parts of the foundation, plumbing and inherent structures that are the underpinning of any aboveground structures were kept in place and noted Ms. Dolan’s memo “…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.” Commissioner Perreault stated it is where the line must be drawn and asking the question since all walls were removed at once, is that level a teardown, in the Commission’s opinion, as an august body, to say this a brand new ship or is it the same ship with may parts replaced all at once. He then
touched on common sense that a new building is a good thing then stated common sense then says establishing a precedent will happen based on the decision in this matter.

Commissioner Stepovich commented that it is all subject to interpretation and echoed Commissioner Perreault’s statement on setting precedence.

Commissioner Stepovich questioned the practice of telling someone they are losing their grandfather rights, but the Community Planning Department recommends them to appeal it even though they recommend against it.

Ms. Doxey indicated the question is not of a legal nature and not something she can answer.

ROLL CALL:

Four (4) in Favor: Guinn, Perreault, Muehling and O’Neall

Three (3) Opposed: Brandt, Whitaker and Stepovich.

MOTION PASSED

G. EXCUSE FUTURE ABSENCES

Commissioner O’Neall is excused from the April 24, 2018 meeting.

H. COMMISSIONER’S COMMENTS

Commissioner Guinn reported he would have appreciated to have more definitions to work with tonight in making matters more clear.

Commissioner Muehling communicated that strict interpretation is not always easy and does not always feel right.

Commissioner Stepovich commented that if an Applicant goes to Community Planning and they recommend do not go for a variance because you are going to get denied or appeal the grandfather rights, and questioned them always holding a position against it or for it.

Ms. Doxey indicated her expectation for the department would be they give an Applicant the options and may give an initial assessment of the outset of the likelihood of success.

Ms. Nelson commented that Community Planning plays many roles and educating property owners is essential to giving them their options and what their probability of success in the matter.

Commission Brandt stated his wish for the Borough and the City to work together to prevent these types of things from happening in the future.

Discussion ensued on whether measures could be established between the Borough and the City to work cooperatively on building and zoning permits, including cooperation with the Assessing Office. Ms. Nelson communicated she would look into the matter and bring an update back to the Commission.

I. ADJOURNMENT
There being no further business, the meeting was adjourned at 7:23 p.m.