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 6:04 p.m. by Mindy O’Neall, Chair.

A. **ROLL CALL**

MEMBERS PRESENT: John Perreault, Mike Stepovich, Robert Peterson, Eric Muehling, Charlie Whitaker, Chris Guinn, Doug Sims, Mindy O’Neall

OTHERS PRESENT: Christine Nelson, Director of Community Planning, Ben Jaffa, Asst Borough Attorney, Donald Galligan, Transportation Planner, George Stefan, Platting Officer, Michelle Gutierrez, Clerk, Kielecia Coker, Clerk

B. **MESSAGES**

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

None

Disclosure & Statement of Conflict of Interest

None

C. **APPROVAL OF AGENDA AND CONSENT AGENDA**

Motion to approve the agenda and consent agenda made by Commissioner Guinn and seconded by Commissioner Muehling. Carried without objection or roll call vote.

D. **MINUTES**

Minutes from March 26, 2019. Approved.

E. **QUASI-JUDICIAL HEARING**

**OATH ADMINISTERED**

**VR2019-001:** A request by Marsha Woods on behalf of Golden Heart Utilities for a highway setback variance of 14 feet to allow a 6 foot front yard setback in the General Commercial (GC) zone which requires a 20 foot front yard setback. (located at 32 Timberland Drive, Lot 4A, Block 3 Timberland Subdivision at the Steese Highway and College Road intersection). **(Staff Contact: Donald Galligan)**

Donald Galligan presented the staff report. Based on the staff analysis, the Department of Community Planning recommended approval.
Questions by Commissioners

Commissioner Sims asked if this is being done after the fact.

Mr. Galligan answered that it is being done after the fact and staff has discussed ways to avoid having retroactive variances brought to the Commission.

Applicant Testimony

Steven Brooks testified as follows:
- The applicants had nothing more to add and staff did a good job.
- This issue should have resolved before now, but it is out of his department.

Marsha Woods testified as follows:
- The project closeout cannot be completed with the federal highways until the Variance is applied for, which is why the issue is being brought before the Planning Commission at this time.

Questions by Commissioners

Commissioner Peterson asked if the issue is that the applicants would be paid by feds if this variance was not approved.

Mr. Brooks replied that they had already been paid, but that if closeout is not complete, they will have to return the money.

Ms. Woods replied that closeout would mean platting approval, which is contingent on the variance.

Commissioner Muehling asked what DOT’s position was on the hazard of the proximity of the building to traffic.

Mr. Brooks replied adding that the engineers planned the design with the building’s proximity to the street in mind, and there were no concerns during the design phase.

Public Testimony Opened

None

Public Testimony Closed

Mr. Jaffa reminded the Chair that, as this is a quasi-judicial matter, it is a requirement that interested persons can testify. He believed that the applicant had another member of DOT testifying who is also an interested person. He wished to confirm that this member of the audience was an interested person.

Ms. Woods answered that the property owner signed the application and provided an owner’s authorization.

MOTION: I move to approve the requested setback variance of 14 feet to allow a front yard setback of 6 feet in the General Commercial zone which has a minimum front yard setback requirement of 20 feet with one (1) condition, and adopting the staff report and seventeen (17) Findings of Fact in support of the decision by Commissioner Guinn.
Discussion ensued among Clerk and Commissioner Guinn regarding incorrect wording.

MOTION FAILED FOR LACK OF SECOND

Discussion ensued among Clerk and Commissioner Guinn.

MOTION: I move to APPROVE the setback variance of 14 feet to the front-yard setback requirement of 20 feet in the General Commercial zone adopting the staff report and seventeen (17) Findings of Fact in support of the approval by Commissioner Guinn seconded by Commissioner Perreault.

Discussion ensued. Several Commissioners expressed support of the variance approval.

ROLL CALL

Eight in Favor: Sims, Perreault, Guinn, Whitaker, Peterson, Stepovich, Muehling, O’Neall

Zero Opposed:

MOTION PASSED

Condition
1. Owner's authorization is required for the variance approval to be valid. AKDOT & PF shall provide a copy of such written authority to the Fairbanks North Star Borough Community Planning Department.

Findings of Fact
1. This land was originally platted on August 14th 1951. The lot was not located within the incorporated city limits of Fairbanks. There was no zoning in unincorporated areas at this time.

2. Zoning of General Use (GU-1) was first established on the subject lot in 1988 by the adoption of Ordinance No. 88-010.

3. Ordinance 2001-66 rezoned this property from GU-1 to General Commercial on October 25, 2001. At that time the lot conformed to required minimum setbacks.

4. On May 22, 2001 the subject lot conformed to Title 18 requirements subsequent to the replat and prior to the 2015 Right-of-Way take.

5. The lot was annexed into the City of Fairbanks Corporate limits on July 1 2010.

6. In 1977 the State of Alaska passed AS 35.30.020 which requires DOT to comply with local planning provisions including obtaining variances if required.

7. The acquisition of 505 square feet of right-of-way in 2015 by DOT for the College Road Right Turn Lanes project caused the lot to become non-conforming for the front yard setback adjacent to College Road. To gain compliance with local planning regulations a variance for setback is required.

8. The special condition requiring a variance was the non-conformity of the 6 foot front yard setback resulting from a right-of-way acquisition by the State of Alaska.

9. One other special condition on the lot is the existence of three front yards, each requiring a 20 foot setback.
10. The proposed variance conforms to the intent and purpose of this title and of other ordinances and Alaska Statutes because it is consistent with the FNSB Comprehensive Plan Transportation and Infrastructure Goal 1 "To have a safe, efficient, multi-modal transportation system that anticipates community growth"; and with Land Use Goal 1 Strategy 3, which protects private property rights; and it promotes the public health, safety, and welfare by improved safety and access from College Road on to the Steese Highway.

11. Public health, safety, and welfare are enhanced with the approval of this variance to allow the construction of the College Road Right Turn Lanes project as this improvement alleviates roadway backups through the Old Steese Highway intersection with College Road, which was an unsafe situation.

12. All State of Alaska variance criteria (AS 29.40.040(b)) have been met by the applicant. (1) The property owner did not cause the condition that required the variance; (2) the variance will not permit a use that is prohibited in the General Commercial Zone; and (3) the variance is not sought only to relieve pecuniary hardship or inconvenience.

13. FNSBC 18.104.070 allows the Planning Commission to grant variances to the numerical standards of Title 18 that are the direct result of right-of-way acquisition for highway projects.

14. The subject property is developed with a utility building which contains water pumping infrastructure which is an allowed use in the General Commercial zone. In the immediate area to the north across College Road is the Cornerstone Mall, to the west is the Carpenter’s Apprentice Training School. To the south is the Brotherhood of Carpenters Local and a residential home, and to the east across the Steese Highway is The Gas Line, a filling station, convenience store, and car wash combination of services.

15. Neighboring property owners have developed their properties with a variety of commercial uses. With the approved variance, the property owner will be able to continue to use the existing property for the current utility use or for a number of other uses allowed in the General Commercial zone, as the surrounding properties have been allowed.

16. Denial of the proposed variance would deprive the applicant the use of their property in a manner as permitted to the owners of properties in the immediate area because denial of the variance would require DOT to purchase the entire parcel, thereby depriving the current owners of its use. The 6 foot front yard setback does not comply with Title 18 requirements without a variance.

17. The proposed variance is needed for the building setback to be in compliance with Title 18 as the result of property acquisition by DOT for the College Road Right Turn Turn Lane project.

**VR2019-002:** A request by Martin Shurr, Chief of Right-of-Way, ADOT&PF Northern Region on behalf of Farthest North Girl Scout Council for a lot size variance to the 40,000 square feet minimum lot size in the General Use-1 (GU-1) zone. The lot is 21,707 square feet (located at 431 Old Steese Highway). (Staff Contact: Donald Galligan)

Donald Galligan presented the staff report. Based on the staff analysis, the Department of Community Planning recommended approval.

**Questions by Commissioners**
Commissioner Muehling questioned why the variance was being brought before the Commission now.

Mr. Galligan answered that DOT is going back to clean up their files and the staff discussed how to avoid this in the future.

Commissioner Muehling clarified that in 1999 when DOT acquired the 172 feet was when DOT should have applied for the variance.

Mr. Galligan confirmed that was correct.

Commissioner Muehling inquired as to whether the procedure would be different today.

Mr. Galligan said no. This would be brought before the Commission prior to construction.

Chair O'Neall asked for more information on Mr. Galligan's previous statement that if the variance was denied, the DOT would need to purchase the building and that the Girl Scout Council would have to move.

Mr. Galligan affirmed that this is the case because the building could not be sold legally without the variance if a bank needed to be involved. If the Girl Scouts didn't want to move, they would need to purchase the property with cash.

Applicant Testimony

- Mr. Brooks added that a Permit Officer would be needed to make sure this was done on the proper timeline, and that if the variance was denied the Girl Scouts would need to move.

Questions by Commissioners

Commissioner Peterson questioned whether that was actually the case.

Mr. Brooks commented that it would be cheaper to purchase the property with cash than to return money to the federal highway department.

Commissioner Peterson asked whether this was more than a file cleanup and if it was mostly financial in nature.

Mr. Brooks mentioned that this was a part of a federal closeout checklist. If they do not meet the permitting deadline, the DOT will need to return the money.

Commissioner Peterson remarked that since the State bought the property from the Girl Scouts, this should have been done in a more timely manner.

Mr. Brooks agreed and said this needed to be corrected.

Public Testimony Opened

None

Public Testimony Closed

MOTION: To approve the requested lot size variance of 535 sq. ft. to a legal nonconforming lot to allow a lot of 21,707 sq. ft. in the GU-1 zone which has a minimum lot size requirement of 40,000 sq. ft. with one (1) condition,
adopting the staff report and fourteen (14) Findings of Fact in support of the decision by Commissioner Perreault seconded Commissioner Sims.

Discussion ensued. Some Commissioners mentioned that this should have been done previously, but that there was no reason to deny the variance.

ROLL CALL

Eight in Favor: Sims, Perreault, Guinn, Whitaker, Peterson, Stepovich, Muehling, O’Neall

Zero Opposed:

MOTION PASSED

Condition
1. Owner’s authorization is required for the variance approval to be valid. AKDOT & PF shall provide a copy of such written authority to the Fairbanks North Star Borough Community Planning Department.

Findings of Fact
1. This land was originally platted on May 7, 1940. There was no zoning for this property in 1940.

2. The lot was formed into its present configuration by July 2, 1999 when the purchase of 172 square feet of right-of-way for the widening of the Old Steese Highway took place.

3. When the lot was initially zoned in 1968 it was zoned as Unrestricted Use (UU) and did not have a minimum lot size requirement.

4. In 1977 the State of Alaska passed AS 35.30.020 which requires DOT to comply with local planning provisions including obtaining variances if required.

5. On April 19, 1988 the zoning changed from UU to General Use-1 (GU-1) which established a minimum lot size of 40,000 square feet and made the parcel a legal non-conforming lot.

6. The acquisition of 172 square feet of right-of-way for the Old Steese Highway Widening project, and 363 square feet of right-of-way for the College Road Right Turn Lanes project increased the non-conformity of the existing substandard-sized lot, so compliance with local planning regulations required a variance for lot size.

7. The special condition requiring a variance was the increased non-conformity of an existing substandard-sized lot was created by the State of Alaska.

8. The proposed variance conforms to the intent and purpose of this title and of other ordinances and Alaska Statutes because it is consistent with the FNSB Comprehensive Plan Transportation and Infrastructure Goal 1 “To have a safe, efficient, multi-modal transportation system that anticipates community growth”, Land Use Goal 1 Strategy 3, protects private property rights, and promotes the public health, safety, and welfare by improved safety and access from College Road on to the Steese Highway.

9. The minimum lot size requirement in the GU-1 zone was based on allowing adequate area and separation for well and wastewater systems on site. The subject parcel is connected to City of Fairbanks water and sewer. The acquisition of a small corner has no effect on either of these systems as this is an urban parcel and does not negatively impact public health, safety, and welfare.
10. FNSBC 18.104.070 allows the Planning Commission to grant variances to the numerical standards of Title 18 that are the direct result of right-of-way acquisition for highway projects.

11. The subject property is developed with a commercial building which contains the Farthest North Girl Scouts of America. In the immediate area to the north across the Steese Highway is the VIP Cleaners and a commercial strip mall, to the west is the REI store, Aarons Rentals, and FMH Home Medical. To the south is the Carpenter’s Apprentice Training School, and to the east across College Road is the Cornerstone Mall.

12. Neighboring property owners have developed their properties with a variety of commercial uses. With the approved variance the current property owner will be able to continue to use the existing property for the current Girl Scout use or for a number of allowed uses in the GU-1 zone, as the surrounding properties have been allowed.

13. Denial of the proposed variance would deprive the applicant the use of their property in a manner as permitted to the owners of properties in the immediate area. Denial of the Variance would require DOT to purchase the entire parcel, thus depriving the current owners of its use. The undersized lot does not comply with Title 18 requirements without a variance.

14. The proposed variance is needed in order for the lot to be in compliance with Title 18 as the result of property acquisition for the College Road Steese Highway projects.

F. APPEALS

Appeal of VR021-19: An appeal of the Platting Board’s decision to deny variance VR021-19, made by 3 Tier-Alaska, LLC, on behalf of the heirs and devisees of James Edson Moody. Variance VR021-19 was a request to waive the requirement for construction of the subdivision road’s 30ft landing at its intersection with the Richardson Highway (FNSBC 17.56.060.A.4). The variance was part of the Moody Subdivision request to subdivide a portion of Gov’t Lot 2, Section 13 T7S R5E, a total of approximately 3.53 acres, into two lots of 0.92 acre and 2.61 acres. The property is located within the NW¼ Section 13, T7S R5E, FM. (Staff Contact: George Stefan)

George Stefan presented the staff report. Based on the staff report, the Department of Community Planning and Platting recommended denial.

Questions by Commissioners

Commissioner Guinn asked if DOT was involved in the discussion regarding the angle of the design road.

Mr. Stefan answered that DOT’s requirement was that Tract A shall not have direct lot access onto the Richardson Highway. There was no official comment on the angle of approach, but DOT did want to ensure the section line easement be used for subdivision access, not direct lot access.

Commissioner Perreault wished to clarify the specifics of the design road.

Mr. Stefan responded that there was a minimum curve radius that needed to be adhered to, along with other design requirements. The submitted proposal did not meet the exact requirements, but the applicant attempted a best-fit by keeping the design road as close to 90 degrees as possible while still meeting title and keeping the road within the section line easement corridor.

Commissioner Perreault asked if road design was initially submitted by applicant.
Mr. Stefan responded yes and clarified that this variance is not about the road design, but the variance was simply in regards to constructing what is required by title - a minimum 30 foot landing at the location of the highway.

**Commissioner Perreault** questioned if the variance is to use the existing entrance to highway.

Mr. Stefan confirmed this was the case, and that the variance is also to defer construction so the applicant can use the existing constructed landing in the meantime.

**Commissioner Perreault** mentioned this was a lot of fuss just to build an apron 60 feet away from the existing apron.

Mr. Stefan agreed.

**Commissioner Perreault** asked to whom the resolution would go.

Mr. Stefan said the decision would be a resolution of the Planning Commission’s action taken, but the applicant could then appeal the decision to the Superior court.

Mr. Jaffa interjected that the resolution would be typical of a motion to approve, but the resolution would essentially be the final decision of this body.

**Commissioner Perreault** clarified that he wished to know if any appeal would go to the Superior Court.

Mr. Jaffa confirmed.

**Commissioner Guinn** asked Legal if the courts could act on a resolution.

Mr. Jaffa mentioned that courts can act on any actions taken by local government. If the process is followed, and that if there was nothing specific in code about appeal procedure, then naturally the appeal would go to court.

**Commissioner Sims** questioned if Title 17 was requiring that a separate apron be built 65 feet away that goes nowhere.

Mr. Stefan confirmed. Per the meeting with the Platting Board, one can be eligible for the construction exemption, however you can’t apply for a variance for an exemption.

**Chair O’Neall** asked if this was a condition of the approval of the exemption.

Mr. Stefan confirmed yes. The landing would need to be inspected and approved prior to plat approval.

**Commissioner Muehling** questioned if the design road was entirely within the applicant’s property.

Mr. Stefan replied that the edge of the road does fall slightly outside the boundary. The road design is such that nothing falls outside of the section line easement corridor.

**Questions by Applicant**

Ms. Hicks questioned Mr. Stefan as to whether or not public health, welfare and safety were taken into account when he initially analyzed the variance.
Mr. Stefan said yes, and any Title 17 variance requires this as a mandatory requirement.

**Applicant’s Testimony**

Appellant 3-Tier Alaska presented evidence. Appellant presented witnesses Mr. David Hewko, personal representative for the James E. Moody Estate, and Ms. Paula Hicks and Mr. Steve Lowry, Land Surveyors at 3-Tier Alaska.

Mr. David Hewko gave some historical perspective on the subdivision. The lot was subdivided due to Mr. Moody’s will providing about an acre of property with a cabin to a couple. This was the reason for the subdivision. He did not believe the apron being moved 65 feet would make any difference due to this.

Ms. Paula Hicks testified that they are appealing the Platting Board’s decision to deny the variance and mentioned that within the Platting Board staff report, staff originally recommended approval of the variance. She claimed that Title 17 variances state that the Platting Board may modify requirements of the Title, and there is no reason why a variance should not be able to be granted for a driveway entrance. She referenced a previous project she had worked on where she was granted a variance for a similar case without objection, and the Platting Board’s interpretation of the code is what is in error.

Mr. Steve Lowry, Surveyor at 3-Tier Alaska, said variances exist because of the constitution. If one is not allowed a variance, they can sue. If the Borough does not allow parts of title to allow for a variance, they are putting themselves at risk. The Platting Board is in direct opposition to the code in Title 4 and Title 17.

**Questions by Commissioners**

**Commissioner Peterson** asked if the applicant believes the design road is safer than the new landing proposed by the Platting Board.

Mr. Lowry confirmed that he believes so. He also mentioned that if the lot were to be further subdivided in the future, they would be required to build the new access and landing regardless.

Discussion ensued between Commissioners and applicant.

**Commissioner Guinn** questioned how the previous case that was mentioned by Ms. Hicks could act as precedence.

The witnesses responded that the exact same situation happened in that case, and that a variance was granted.

Discussion ensued between **Chair O’Neall, Commissioner Muehling**, and witnesses regarding the fact that the design road is conceptual at this time.

**Questions by Staff**

Discussion ensued between Mr. Stefan and applicant.

**MOTION:** To approve Resolution No. 2019-01, a resolution upholding the Platting Board decision of February 20, 2019 to deny the variance request to waive the requirement for construction of the Moody subdivision road’s 30 ft landing at its intersection with the Richardson Highway by **Commissioner Muehling** seconded **Commissioner Perreault**.
Discussion ensued among Commissioners.

**Chair O'Neall** questioned Mr. Jaffa about where in code it was mentioned that a variance to a variance could not be approved.

Mr. Jaffa stated that this was a legal opinion. It was a condition to an exemption, not a variance to a variance. If one is seeking to exempt oneself from the requirements of Title 17, then one cannot still adhere to the variance process. There is nothing specific in code that he found that states that one cannot apply for a variance from an exemption. He urges the Planning Commission develop a record in order to create a precedent if they wish to reverse the Platting Board’s decision.

Discussion ensued among Commissioners. Several Commissioners mentioned that denying the variance meant that a new apron would need to be built and a functional apron would need to be destroyed.

**ROLL CALL**

One in Favor: **Muehling**

Seven Opposed: **Sims, Perreault, Guinn, Whitaker, Peterson, Stepovich, O'Neall**

**MOTION FAILED**

Discussion ensued among Commissioners.

Mr. Jaffa mentioned that the Commission could draft a new resolution during this meeting.

Discussion ensued among Commissioners.

**MOTION:** To postpone date certain by **Commissioner Guinn**.

**MOTION FAILED FOR LACK OF SECOND**

Discussion ensued among Commissioners and Mr. Jaffa.

[Commission took a brief at ease.]

**MOTION:** To approve Resolution 2019-01 with amendments by **Commissioner Perreault** seconded **Commissioner Whitaker**.

Discussion ensued among Commissioners and Mr. Jaffa regarding procedures on the motion.

[Commission took a brief at ease.]

**MOTION WITHDRAWN BY COMMISSIONER PERREULT, SECONDED AND WITHOUT OBJECTION**

**MOTION:** To approve a complete Resolution 2019-01 by **Commissioner Perreault** seconded **Commissioner Whitaker**.

Discussion ensued among Commissioners. The new complete Resolution 2019-01 would reverse the Platting Board’s decision to deny the variance.
Commissioner Perreault stated that the Commission is exempting the applicant from building a new landing because there is already an existing landing. This is because it is impractical and unnecessary to do so at this time.

Chair O’Neall clarified that when a road is constructed, a new landing will need to be constructed and that the existing landing will need to be removed.

Commissioner Perreault confirmed that this is correct. The variance states that the new landing does not need to be constructed until the design road is put in.

Chair O’Neall added that there would be no way for the current homes to be accessed if the current landing is destroyed and a new one put in, without the road being built.

Discussion ensued among Commissioners.

Mr. Jaffa stated for the record that this motion is contrary to advice from the Fairbanks North Star Borough Attorney’s Office.

Discussion ensued among Commissioners and Mr. Jaffa.

ROLL CALL

Eight in Favor: Sims, Perreault, Guinn, Whitaker, Peterson, Stepovich, Muehling, O’Neall

Zero Opposed:

MOTION PASSED

Please find the decision by the Planning Commission as described in Resolution 2019-01 to include findings of fact in the posted April 9, 2019 Planning Commission Full Meeting Packet on the FNSB website.

G. EXCUSE FUTURE ABSENCES

None

H. COMMISSIONER’S COMMENTS/COMMUNICATIONS

Commissioner Perreault reported on FMATS.

Discussion ensued among Commissioners regarding FMATS.

Ms. Nelson mentioned that the May 14, 2019 meeting could be cancelled due to no new business. She requested Commissioners reach out to anyone from North Pole who might be interested in joining the Commission.

Commissioner Muehling spoke on the Accessory Structures Subcommittee.

Commissioners recognized Michelle Gutierrez for her hard work and dedication.

Ms. Nelson requested Commissioners bring any quasi-judicial discussion items to her attention if they wished discuss at the next meeting.

I. ADJOURNMENT

There being no further business, the meeting was adjourned at 9:24 p.m.