Please refer to Planning Commission Rule #25: Any action taken during this meeting is subject to reconsideration during this meeting or at the next. A request for reconsideration at the next meeting must be submitted in writing by a Planning Commissioner (who voted on the prevailing side) by the close of business the day following the meeting.

Roll Call, Opening Statements, Agenda and *Consent Agenda.

Commissioners Present:   Chris Guinn  Doug Sims
                          John Perreault  Kerynn Fisher
                          Eric Muehling  Toni Abbey
                          Charles Whitaker – excused before adjournment

Commissioners Absent & Excused:  Mike Kenna

APPROVAL OF THE AGENDA AND CONSENT AGENDA

*MINUTES


Audio Track 1

RE-ORDERED AGENDA APPROVED WITHOUT OBJECTION– NEW BUSINESS WENT BEFORE APPEAL

CONSENT AGENDA APPROVED WITHOUT OBJECTION

APPEALS

1. GR2019-133: An appeal by Leon Kotsch of the denial of a request for affirmative recognition of legal nonconforming building status (grandfather rights) for an existing carport attached to an existing two-family dwelling with an east side-yard setback of 0 feet instead of the required 5 feet in the Two-Family Residential (TF) zone for the property described as Lot 33, Block B, Birch Estates Subdivision (Located at 4024 Teal Avenue).

Audio Track 1
**FINDINGS OF FACT**

1. The existing carport attached to the two-family dwelling and garage on the subject property does not comply with Two-Family Residential (TF) zone because it has an east side-yard setback of 0 feet instead of the required 5 feet.

2. The property was zoned Unrestricted Use (UU) with the adoption of Ordinance No. 67-34 on March 28, 1968. There was no minimum setback requirement for the UU zone.

3. Lot 33, Block B was created with the recording of a plat of Birch Estates Subdivision Portion on December 22, 1969.

4. The property was rezoned from UU to General Residential (R2) with the adoption of Ordinance No 70-23 on August 13, 1970. The minimum side (interior) yard setback for the General Residential zone had already been established as 15 feet “except that building [was] permitted up to one interior lot line of each of two intersecting interior lot lines if under common ownership and simultaneous development.”

5. Ownership information provided in FNSB Assessor’s records reflects that in 1971, Lots 33 and 34, Block B were under common ownership of Hebb & Narodick Construction Co. Inc.

6. Assessor’s records note that the subject residence was estimated to be completed in December 1971.

7. Lots 33 and 34, Block B were sold to different owners on June 22, 1972.

8. Assessor’s records note no change to the original structure during exterior site inspections of the structure in 1973, 1975 and 1976.

9. Lot 33, Block B was purchased by Robert and Barbara Hall in 1981.

10. Testimony received during the administrative hearing from the next door neighbor stated that Robert Hall constructed the carport on their common property line.

11. Assessor’s records dated June 16, 1989 state that Assessor’s staff “picked up” the deck over carport for taxation purposes.

12. No zoning permits were issued by the FNSB Community Planning Department for development on the subject property.

13. No documentation has been provided to support that the carport was constructed simultaneously with the construction of the residence in 1971.

14. On April 25, 1988, Ord. No. 88-010 rezoned the subject property to TF. The minimum side-yard setback requirement for the TF zone was 5 feet. The subject carport remained nonconforming.
15. After June 22, 1972, construction of any structure with a zero (0) foot side yard setback would not have been permitted since Lots 33 and 34, Block B were no longer under common ownership and in simultaneous development.

16. The property owner bears the burden of proof to demonstrate that the carport is legal non-conforming. The property owner has not met his burden of proof because he has not provided evidence that the carport was lawfully established prior to the sale of Lot 33 separately from Lot 34 in June 1972.

GR2019-133 APPEAL DENIED (GRANDFATHER RIGHTS DENIED)
[SIX IN FAVOR / ZERO OPPOSED]

Further information may be obtained from FNSB Department of Community Planning at 459-1260