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 or other location. The meeting was called to order at 7:05 p.m. by Eric Muehling, Acting Chair.

A. **CALL TO ORDER AND ROLL CALL**

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

Commissioners Absent & Excused: Mike Kenna

OTHERS PRESENT: Annmarie Billingsley, Asst. Attorney  
                Christine Nelson, Community Planning Director  
                Kellen Spillman, Deputy Director  
                Kristina Heredia, Planner III  
                Sharon Wittenkeller, Clerk

B. **MESSAGES**

Citizen’s Comments – limited to three (3) minutes – None.

Communications to the Board – None.

Disclosure & Statement of Conflict of Interest

**Commissioner Whitaker** stated he received a DPO letter regarding the appeal for GR2019-133. **Commissioner Muehling**, determined there was a conflict of interest based on the answers given by **Commissioner Whitaker**. **Commissioner Whitaker** did not participate in the appeal.

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

Motion to approve the re-ordered agenda and consent agenda made by **Commissioner Perreault** and seconded by **Commissioner Guinn**. Carried without objection or roll call vote.

D. **MINUTES**

Minutes from August 13, 2019 approved on consent.

E. **NEW BUSINESS**

Planning Commission Elections
Elections held for the seat of Chair

**Votes**
Commissioner Muehling six votes
Commissioner Perreault one vote

Commissioner Muehling is the new Chair

Elections held for the seat of Vice-Chair

**Votes**
Commissioner Perreault received all 7 votes

Commissioner Perreault is the new Vice-Chair

Commissioner Whitaker was excused for a conflict of interest for the remainder of the meeting.

F. **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).

**Oath Administered**

**Interested Persons**

Maria Billings stated she is the next-door neighbor to Mr. Kotsch. She spoke in support of Mr. Kotsch and his appeal. She had no objection to the carport.

Christine Nelson presented the staff report. Cecily Manning from the Borough’s Assessing office was present. She clarified and answered questions for the assessing portion of the report. Based on the staff report, the Department of Community Planning recommended **DENIAL** of the appeal and to uphold the Administrative Hearing Officer decision.

**Questions by Commissioners**

**Commissioner Perreault** asked what “manual” was referring to in the assessor’s notes from July 14, 1978.

Ms. Manning stated it refers to the appraisal manual used for evaluation, i.e. as per the manual, or as per described office policy.
Ms. Nelson further clarified that the note does not reference a deck. It was previously interpreted and read as deck by Community Planning staff, which was incorrect.

Ms. Manning read sections of assessor’s notes at the request of Commissioner Perreault for further clarification.

**Commissioner Abbey** asked what year the carport was picked up for taxation.

Ms. Manning stated that on June 16th, 1989, it went on the tax roll for 1990.

**Commissioner Abbey** asked prior to 1989, when was the most recent survey completed.

Ms. Manning stated it was reviewed on May 8, 1979.

**Commissioner Guinn** asked if there is a requirement that an assessor should at least drive by a property every certain number of years.

Ms. Manning replied that there is somewhat of a requirement that properties are reviewed every 4 years. She further noted that if a card does not have a date stamp it does not mean that it was not reviewed or driven by.

**Questions by the Appellant**

Mr. Kotsch asked about compliance of the other setbacks on the property.

Ms. Nelson stated, the west setback is currently in compliance with the 5 foot side yard setback in the TF Zone, but beyond that, no specific research was conducted since that was not the Grandfather Rights applied for. A deck that was thought to be constructed where the carport was in 1978, but that was a misinterpretation of the assessor’s records. It has been clarified that there was no deck there in 1978.

Mr. Kotsch asked about a drawing in an assessor’s field card.

Ms. Nelson pointed out the line drawing of the layout of the house, garage, and deck.

Ms. Manning stated the drawing is not from a specific date as it has changed over time.

Mr. Kotsch asked for taxation purposes was the carport was not picked up until 1989?

Ms. Nelson stated that was correct.

**Questions by Interested Persons**

Ms. Billings asked if Joyce was listed as an owner.
Ms. Nelson replied she is listed from 1976-1980 as the owner.

Mr. Kotch further asked if there was a field card with the dimensions of the front outside deck on the building currently.

Ms. Manning stated they may have them in old records, the current records are electronic.

**Appellant’s Testimony**

Appellant Leon Kotsch stated in summary he did not have testimony or evidence to support the claim that the carport was built when it would have been in compliance.

**Commissioner Guinn** asked Mr. Kotsch if he was present during the Grandfather Rights work session and if he was aware, there are other options to pursue such as variance.

Mr. Kotsch replied he is aware and understands there are further costs associated with it.

**Commissioner Sims** asked when the property was purchased.

Mr. Kotsch replied he closed on the property on June 6, 2019.

**Commissioner Sims** further inquired if anyone mentioned the non-conforming status.

Mr. Kotsch stated no.

**Commissioner Sims** asked Mr. Kotsch to describe the structural integrity of the carport.

Mr. Kotsch stated the carport could be taken down without taking the garage down. He further explained it has been repaired in the past and does have some work that could be done on it.

**Commissioner Muehling** asked Mr. Kotsch if he had a bank loan and if the lender required a plat.

Mr. Kotsch stated yes, he had a lender and they did require a plat.

**Commissioner Muehling** asked if there was an appraisal and were there any comments on the non-compliant setbacks.

**Mr. Kotsch** stated there were no comments about the carport being out of compliance.
**MOTION**: I move to deny the appeal and uphold the Administrative Hearing Officer’s decision denying affirmative recognition of legal nonconforming structure status (grandfather rights) for an existing carport attached to an existing two-family attached dwelling and garage, with an east side-yard setback of zero (0) +/- feet instead of the required 5 feet in the Two-Family Residential (TF) zone, and adopting the appeal staff report dated August 27, 2019 and sixteen (16) Findings of Fact in support of this decision by **Commissioner Fisher** and seconded by **Commissioner Sims**.

**Discussion**

**Commissioner Fisher** stated her sympathies for the appellant’s situation. She stated she did not see any facts allowing them to approve Grandfather Rights. She encouraged Mr. Kotsch to go through the amnesty or variance process to legalize the non-conforming status.

**Commissioner Sims** stated his sympathies for the purchasing process leading to this situation. He further stated he did not see any evidence that would allow them to go contrary to the motion. He noted Mr. Kotsch could do nothing about the situation, but could remove the carport if or when he wanted to sell the property.

**Commissioner Guinn** stated he didn’t see any way to approve the Grandfather Rights, encouraged Mr. Kotsch to pursue one of the other options mentioned.

**Commissioner Abbey** thanked Mr. Kotsch for using the public process. She further noted if he does pursue amnesty or a variance she suggested he highlight the fact that he went through the process which may reflect positively in the new process.

**Commissioner Muehling** stated his understanding of the situation, and see no facts that can support the appeal.

**ROLL CALL**
Six in Favor: Sims, Perreault, Guinn, Abbey, Fisher, Muehling
Zero Opposed

**MOTION CARRIED**

**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.

G. EXCUSE FUTURE ABSENCES
The absence of Commissioner Perreault is excused September 10, 2019. Commissioner Perreault is will be absent from the September 4, 2019 FAST Planning meeting, Commissioner Fisher will attend in his absence.
H. COMMISSIONER’S COMMENTS/COMMUNICATIONS

Chairperson’s Comments

Commissioner Muehling thanked staff for the Grandfather Rights work session.

Commissioner’s Comments – None.

Communications to the Commission

Ms. Nelson reminded the Commission the September 24th meeting is cancelled. Ms. Nelson noted there may or may not be an appeal to an amnesty case for October 8th. The Commission agreed to hold the meeting if there is an item or to cancel the meeting if there are no items.

I. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:20 p.m.