

**FNSB ADMINISTRATIVE HEARING  
APRIL 18, 2019 10:30 AM  
ACTION MEMO**

**APPLICATIONS**

*Preliminary Applications*

1. **GR2019-099:** A request by Ed Burger for affirmative recognition of legal nonconforming structure status (grandfather rights) for an existing single-family residence with a nonconforming basement in Rural Residential zone with Groundwater Damage Protection overlay (RR/GWP) for the property on Lots 5 and 6, Block 01, Burgerville Subdivision (Located at 2797 Eddie Lane, on the north side of Bumpy Road, east of Templeton Street). **(Staff Contact: Kristina Heredia)**

**Audio Track 1**

**Findings of Fact:**

After two public administrative hearings (April 4, 2019 and April 18, 2019), the FNSB Administrative Hearing Officer **AFFIRMED (approved)** your request for affirmative recognition of legal nonconforming structure status (grandfather rights) for an existing crawlspace in the Groundwater Damage Protection (GWP) overlay zone. The Hearing Officer did **NOT AFFIRM (denied)** legal nonconforming structure status (grandfather rights) for mechanical and electrical equipment in the crawlspace.

The FNSB Administrative Hearing Officer adopted the staff report and the following Findings of Fact in support of this determination:

- 1.FNSB Title 18 was amended by Ordinance No. 94-088 establishing a GWP overlay zone to *“prohibit construction of buildings or structures below the natural elevation of the ground surface,”* adopted February 10th, 1995. At that time, the overlay was not applied to any specific properties.
- 2.The intent of the GWP overlay was to minimize property damage associated with groundwater flooding by preventing construction below the ground surface.
- 3.Ordinance No. 94-088 stated that *“any new construction or any additions to existing buildings or structures below natural elevation of the ground surface is prohibited, except as permitted in this subsection. The placement of foundations, footings or other support structures below the natural elevation of the ground surface is permitted.”*
- 4.Ordinance No. 99-055 applied the GWP overlay zone to the subject property adopted September 16th, 1999. The same language about construction

below natural grade remained in effect. At that time, the subject property was vacant.

5. On August 15, 2002, the FNSB Department of Community Planning issued zoning permit number 14415 for the construction of a two-family residence on the subject property. The approved zoning permit noted the existing RR/GWP zoning and stated "no basements or daylight basements."
6. The FNSB Assessor Field Card shows a final site visit to the subject property on January 31, 2005, and a note that the structure was complete.
7. According to the zoning permit and Assessor's records, a "family of two residence" was constructed between 2002 and January 2005.
8. The grandfather rights application, affidavit, an undated photo and subsequent documents submitted by the applicant indicate that an unfinished crawlspace exists below natural grade.
9. At the time of construction, FNSBC 18.48.070(B) prohibited construction below the ground surface, except for "*foundations, footings and other support structures.*" This prohibition included mechanical and electrical equipment below grade, since that is not a foundation, footing or other support structure.
10. During the period of September 1999 to March 2005, the FNSB Community Planning Department interpreted crawlspaces to be "foundations or support structures."

The Department's interpretation of FNSBC 18.48.070 took into account the prevalent and common use of crawlspaces in standard construction practices in the area and assumed groundwater damage would be minimized if below grade space was not finished, habitable living space.

FNSB records show no specific limitations to the height of crawlspaces.

11. On April 12, 2019, after the initial administrative hearing, the applicant submitted a detailed construction drawing of the crawlspace showing over five (5) feet of "*foundations, footing and other support structures*" below the natural grade. A prior (undated) photo of the crawlspace shows that it is currently unfinished and uninhabitable.
12. Ordinance No. 2005-21, adopted March 24, 2005, clarified and codified GWP requirements by adding definitions of "basement" and "crawlspace" to Title 18. Any foundation that had an interior wall height of more than four (4) feet was defined as a basement and was prohibited.

Crawlspaces of four (4) feet in height or less were allowed, provided that they "*shall not be used for mechanical and electrical equipment or storage purposes of any kind below the surface of the natural elevation of the exterior ground surface*" (FNSBC 18.92.070). This prohibition was intended to

further protect against property damage that could occur as a result of groundwater flooding.

13. The subject crawlspace conformed to the GWP regulations at the time of construction because:
  - A. It was constructed at over five (5) feet in height between 2002 and January 2005, after Ord. No. 1999-055 applied the GWP overlay zone to the subject property, but before Ord. No. 2005-21 became effective.
  - B. During this time, crawlspaces were discouraged below the natural grade, but allowed with no height restrictions, as *"foundations, footings and other support structures,"* PROVIDED that they were unfinished, uninhabitable space.
  - C. According to the applicant, the subject crawlspace remains unfinished and uninhabitable space.
14. There is sufficient evidence supporting that the crawlspace predated the 2005 code change that caused the nonconformance. However, the mechanical and electrical equipment below grade does not conform to the GWP regulations at the time of construction; such equipment was prohibited by FNSBC 18.48.070(B) and is not included in the exception for *"foundations, footings and other support structures."*

**The residence with an over 5-foot high crawlspace was constructed between 2002 and January 2005. This was after Ord. No. 1999-055 applied the GWP overlay zone to the subject property, but before Ord. No. 2005-21 was adopted. During this time, crawlspaces of any height were discouraged, but allowed with no height restrictions, as "foundations, footings or other support structures," PROVIDED that they were unfinished, uninhabitable space.**

**The subject crawlspace remains unfinished and uninhabitable space. Therefore, the existing residence has affirmative recognition of legal non-conforming building status (grandfather rights) as it pertains to the crawlspace in the Groundwater Damage Protection (GWP) overlay zone under Chapter 18.108, Nonconforming (Grandfathered) Uses and Lots.**

**However, the subject crawlspace includes mechanical and electrical equipment below grade which was prohibited at the time of construction. Therefore, the existing residence does not have affirmative recognition of legal non-conforming building status (grandfather rights) as it pertains to this equipment in the crawlspace in the Groundwater Damage Protection (GWP) overlay zone under Chapter 18.108, Nonconforming (Grandfathered) Uses and Lots.**

**Affirmed (approved) for the existing crawlspace**  
**Not affirmed (denied) for mechanical/electrical equipment**

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.

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**2. GR2019-093:** A request by Nicolas Sulkosky for affirmative recognition of legal nonconforming use status (grandfather rights) for four attached dwelling units (four-plex) in the Two-Family Residential (TF) zone for the property on Lot 2A, Block 100C, Fairbanks Townsite (located at 1155 Eighth Avenue). **Staff Contact: Bridget Hamilton**

## **Audio Track 2**

### **Findings of Fact:**

After a public administrative hearing on April 4, 2019 and continued to April 18, 2019, the FNSB Administrative Hearing Officer **DID NOT AFFIRM (denied)** affirmative recognition of legal nonconforming use status (grandfather rights) for four existing attached dwelling units (a four-plex) in the Two-Family Residential (TF) zone. The FNSB Administrative Hearing Officer adopted the staff report and the following Findings of Fact in support of this determination:

1. The subject parcel contains four existing attached multiple-family dwelling units (four-plex) in the TF zone. The four-plex use of the parcel doesn't comply with the TF zoning because multiple-family dwelling units are not a permitted use in the TF zone.
2. Lot 2, Block 100C, Fairbanks Townsite was created with the recording of a plat for Block No. 100, Tract "E" and Part of Tract "F", All in Fairbanks Townsite on May 23, 1945 (FRD1945\_97465\_001). There was no zoning in the Town of Fairbanks at that time.
3. The property was zoned Residential with the adoption of Ordinance No. 384 in February 1946. Duplexes and apartment houses were permitted in the Residential zone with a "special permit from the Commission after public hearing." Search of the City of Fairbanks Building Department records do not provide evidence of a "special permit" being issued for a duplex or apartment house on the subject property.
4. On February 18, 1949, the City of Fairbanks enacted a new zoning code with the adoption of Ordinance No. 437. Four attached multiple-family dwelling

units (four-plex) was not a permitted use in the Residential zone.

5. On July 23, 1963, the City of Fairbanks Building Department issued a Plumbing Permit for a "Mult. Dwelling" structure. The number of plumbing fixtures indicate that there were four (4) dwelling units.
6. On August 6, 1963 the City Building Department issued an Electrical Permit for a multiple dwelling structure on the subject property on August 6, 1963. The permit references "Apt 1", "Apt 3", and "Apt #4". The electrical permit included a site plan labeling the structure as a "4 unit apt".
7. Search of the City of Fairbanks Building Department records do not provide evidence of a "building permit" being issued for an apartment house on the subject property.
8. The FNSB Assessor Field Card estimates that the four attached multiple-family dwelling units (four-plex) were constructed in 1963. The Field Card includes a photograph dated May 16, 1966 of the subject structure.
9. On March 28, 1968, the Fairbanks North Star Borough established a comprehensive zoning ordinance with the adoption of Ordinance. 67-34. The subject property was zoned General Residential (R2). Four attached multiple-family dwelling units (four-plex) were not a permitted use in the General Residential zone.
10. The subject parcel was rezoned from General Residential (R2) to Two-Family Residential (TF) when Ord. 88-010 came in effect on April 25, 1988. Four attached multiple-family dwelling units (four-plex) were still not a permitted use in TF zone.
11. No FNSB zoning permit was issued for this parcel.
12. Based on FNSB Assessing Records and City Building Department Records, it appears that the structure was built as four attached multiple-family dwelling units (four-plex) in 1963, after February 1946 when multiple-family housing was not an allowed use.

**Because the four attached multiple-family dwelling units (four-plex) use was established in 1963, after the City of Fairbanks enacted a zoning code on February 18, 1949 prohibiting multiple-family dwellings in the Residential zone, the subject parcel does not have affirmative recognition of legal non-conforming use status (grandfather rights) for four attached dwelling units (four-plex) use in the Two-Family Residential (TF) zone under Chapter 18.108, 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.

### **NOT AFFIRMED (DENIED)**

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**3. GR2019-087:**A request by Lee Drotzur for affirmative recognition of legal nonconforming use status (grandfather rights) for four attached dwelling units (four-plex) in the Light Industrial (LI) zone for the property on Lot 2A-1, Rahoï Subdivision (located at 3224 Lakeview Drive). **Staff Contact: Bridget Hamilton**

#### **Audio Track 3**

#### **Findings of Fact:**

After a public administrative hearing on April 4, 2019 which was continued to April 18, 2019, the FNSB Administrative Hearing Officer determined that Lot 2A-1, Rahoï Subdivision (located at 3224 Lakeview Drive) **does not have** affirmative recognition of legal non-conforming use status (grandfather rights) for four attached dwelling units in the Light Industrial (LI) zone under Chapter 18.108, Nonconforming (Grandfathered) Uses and Lots. The FNSB Administrative Hearing Officer adopted the following Findings of Fact in support of this determination:

1. Lot 2A-1, Rahoï Subdivision currently contains four existing attached multiple-family dwelling units (four-plex) in the LI zone. The four-plex use of the parcel does not comply with the LI zoning because multiple-family dwelling units are not a permitted use in the LI zone.
2. According to FNSBC 18.72.020(A) the LI zone allows a "permanent home to be used as a dwelling unit by the owner or by a watchman, caretaker, manager and family when located on the premises where they are employed in such capacity" as a permitted use.
3. The applicant stated that the current commercial tenant on the subject property, who is the resident of one of the dwelling units, will be moving; eliminating any commercial or industrial use of the property and thereby making that residential use nonconforming. There was no evidence provided demonstrating how long the commercial tenant had occupied the property or inhabited the residential dwelling unit.
4. There was no evidence submitted showing that any of the other three (3)

dwelling units are occupied by “the owner or by a watchman, caretaker, manager and family” employed on the premises.

5. Lot 2, Rahoï Subdivision was created with the recording of a plat for the Subdivision of Section 23, T1S, R1W FM on July 14, 1955. There was no zoning in unincorporated areas at that time.
6. The FNSB Assessing Field Card estimates that the subject structure was constructed in 1959. The Field Card includes a photograph of the subject structure dated October 11, 1963. The Field Card contains no information documenting that more than one dwelling unit was in existence at that time. There are references to an apartment in the second floor living space.
7. A comparison of aerial photography taken in 1967 and in 2017 shows that the footprint of the subject structure has not changed since 1967.
8. Lot 2, Rahoï Subdivision was zoned Unrestricted Use (UU) with the adoption of Ordinance No. 67-34 on March 28, 1968. The UU zone had no use restrictions.
9. The subject property was rezoned from UU to Multiple Residential II (R3-II) when Ordinance No. 71-11 was adopted on May 18, 1971. The Multiple Residential II zone allowed for residential structures “containing more than two dwelling units.”
10. The subject property was rezoned from Multiple Residential II (R3-11) to Multiple-Family Residential (MF) when Ordinance No. 88-010 came into effect on April 25, 1988. Multiple-family dwellings were permitted in the MF zone with not less than two-thousand (2,000) square feet of lot area per dwelling unit. Although the subject property could have met the minimum lot size requirement for four (4) dwelling units at that time, no documentation was provided to demonstrate that more than one dwelling unit existed prior to April 25, 1988.
11. Lot 2A, Rahoï Subdivision was created with the recording of the Replat of Lot 2 Rahoï Subdivision on October 22, 2002. This platting action created Lots 2A and 2B from the original Lot 2 of Rahoï Subdivision.
12. An FNSB Property Historical Detail Report from 2003 describes the subject structure as “Multi. Residential” but does not indicate how many dwelling units were in existence in 2003. The Assessor’s Field Card did not document more than one dwelling unit at that time.
13. According to a letter submitted by the applicant, Lee Drotzur, there were three dwelling units existing in the subject structure when he began the purchase process for the property in September 2006. No evidence was submitted to verify that statement.
14. On November 9, 2006, the property owner at the time, Urban Rahoï, submitted a rezone application to the FNSB Community Planning Department. According to the narrative submitted with the rezone application, the purpose of rezoning from Multiple Family Residential/Mobile Home Subdivision Overlay

(MF/MHS) to Light Industrial (LI) was to make “the existing non-conforming uses (outdoor storage, auction building, and warehouse)” conforming. The presence and number of any existing dwelling units were not mentioned in the rezone application.

15. On December 12, 2006 the Planning Commission recommended approval to rezone approximately 4.2 acres from Multiple Family Residential/Mobile Home Subdivision Overlay (MF/MHS) to Light Industrial (LI) on Lot 2A, Raho Subdivision. In the staff report, Community Planning staff described the existing land uses as “Auction Company, Taxi Dispatch.” The presence and number of any existing dwelling units were not addressed in the staff report.
16. Lot 2A, Raho Subdivision was rezoned from Multiple Family Residential/Mobile Home Subdivision Overlay (MF/MHS) to Light Industrial (LI) with the adoption of Ordinance No. 2007-001 on January 25, 2007. The LI zone permitted a “permanent home to be used as a dwelling unit by the owner or by a watchman, caretaker, manager and family when located on the premises where they are employed in such capacity” (FNSBC 18.38.020). No evidence has been provided to demonstrate that any dwelling units on the property were utilized for the housing of employees at that time. Dwelling units not associated with the housing of the owner or employees on the property became nonconforming at this time.
17. Lot 2A-1, Raho Subdivision was created with the recording of the Replat of Lot 2-A Raho Subdivision on March 1, 2007. This platting action created a lot line dividing Lot 2A of Raho Subdivision into Lot 2A-1 and Lot 2A-2. The subject building was located on Lot 2A-1.2
18. A Statutory Warranty Deed recorded June 21, 2007 shows the sale of Lot 2A-1, Raho Subdivision by Urban and Vienna Raho to Lee Drotzur.
19. According to the applicant, there were three existing dwelling units in the subject structure when he completed the purchase of the property in June of 2007 and that a fourth unit was added later.
20. On March 17, 2016 the appraiser notes describe the subject structure as changing from retail space to living area having a total of four units.
21. No permits were found to have been issued by the FNSB Community Planning Department for attached multiple-family dwelling units on the subject property.
22. FNSB 18.108.020 Authority to continue states “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. Any change in ownership of such a building, use or lot does not void grandfather rights.”

23. FNBC 18.108.040(B)(4) Restrictions states "In the event that a nonconforming use of a building or premises, or part thereof, is discontinued for any reason for a period of 36 months, the subsequent use of the same building or premises, or part thereof, shall thereafter be in conformance with the zoning district in which it is located."
24. Ordinance 97-013, adopted April 24, 1997, established a 12-month discontinuation period for non-conforming uses. Ordinance 2010-55, adopted February 2, 2011, changed the discontinuation period to 36 months.
25. No evidence has been submitted to demonstrate that the one residential use documented to exist prior to January 25, 2007 has been continuously occupied and has not been discontinued for 12 months during the period of January 25, 2007 to February 3, 2011, or for 36 months during the period of February 24 2011 to present in accordance of the requirements of FNBC 18.108.040(B)(4).

**Because there are documented records of only one dwelling unit being lawfully created prior to the parcel being rezoned to Light Industrial (LI) on January 25, 2007, which prohibits multiple-family residential use; and because no evidence was submitted to demonstrate the periods of time when the one dwelling unit was occupied after January 25, 2007 and whether those tenants were the owner, a watchman, caretaker, or manager employed on the premises; and because no evidence was submitted demonstrating that two of the attached dwelling units were lawfully created prior to January 25, 2007; and because the fourth dwelling unit was added after the Light Industrial (LI) zone was already in place; the subject parcel DOES NOT HAVE affirmative recognition of legal non-conforming use status (grandfather rights) for four attached dwelling units use in the Light Industrial (LI) zone under Chapter 18.108, 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.

**NOT AFFIRMED (DENIED)**

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