

FNSB ADMINISTRATIVE HEARING
August 15, 2019 10:30 AM
ACTION MEMO

APPLICATIONS

Preliminary Applications

1. Quick Plats

a. RP042-19 (North Pole Plaza) A request by Bennett Engineering, on behalf of Ranch 88, LLC and NPO, LLC, to replat Lots 8 and 9, North Pole Plaza. The purposes of the replat are to: 1) abandon the right of Lot 8 to directly access the existing 40ft wide common driveway access easement along its western boundary, and 2) create a driveway access easement across a portion of Lot 9 for the benefit of Lot 8. The property is located within the W $\frac{1}{2}$ NE $\frac{1}{4}$ Section 9, T2S, R2E, FM and accessed from N Santa Claus Lane and Finell Drive. **Staff Contact: George Stefan**

Audio Track 1

CONDITIONS OF APPROVAL

1. GVEA shall have a maximum of 30 calendar days to review and comment on the final plat.
2. Plat Note #1 shall be revised to state, "The purposes of this replat are to 1) Abandon the right of Lot 8 to directly access the existing 40' common driveway access easement along its western boundary, and 2) create a driveway access easement across a portion of Lot 9 for the benefit of Lot 8."
3. A note shall be placed on the final plat which states, "Direct access onto the Richardson Highway is prohibited."

FINDINGS OF FACT

- a. FNSBC 17.52.050 exempts a platting application from the design and public improvements requirements of Title 17 provided that the lots were legally created, the request does not increase the number of lots, a new violation of the design and public improvement requirements of Title 17 is not created, and it does not increase the non-conformity of any lot under this or any other FNSB title. This replat request meets the requirements of FNSBC 17.52.050.
- b. This replat request is for the purpose of rectifying a FNSB Title 18 front lot line setback violation.
- c. FNSBC 17.56.010(F) states, "Direct lot access onto a major collector road or arterial shall not be allowed unless topography allows no reasonable

alternative. Where double-frontage lots are platted, lots shall not access onto major collector or arterial roads unless topography allows no reasonable alternative. Restricted access shall be noted on the plat." Condition #3 satisfies this.

- d. This plat request does not deny legal and physical access to any lot or tract.
- e. This plat does not vacate a public road, trail, public area or any easements.
- f. This plat does not alter a dedicated street or right-of-way or require dedication.
- g. This plat request does not require road construction or improvement because of FNSBC 17.56.020(D).
- h. This plat request does not require a variance from a subdivision regulation.
- i. With the three conditions recommended by staff, this subdivision request meets the applicable requirements of Title 17.

APPROVED

Appeal of this decision must be made in writing within ten (10) working days of the decision. Request an appeal form from the Community Planning Department at 459-1260 or 907 Terminal Street, Fairbanks, AK 99701.

- b. **RP002-20 (Slater Subdivision)** A request by 3-TIER ALASKA, LLC, on behalf of Victor and Margaret Humphrey, to replat Lots 14, 15, and 16, Block 'K' of Slater Subdivision, a total of approximately 21,432 square feet, by shifting common lot lines resulting in three lots ranging in size from approximately 6,403 to 7,579 square feet. The request does not create additional lots. The property is located within the SE¼ SW¼ Section 11, T1S, R1W FM, on Slater Drive and Island Drive. **Staff Contact: Daniel Welch**

Audio Track 2

CONDITIONS OF APPROVAL

1. GVEA, GHU, and the City of Fairbanks shall have a maximum of 30 calendar days to review and comment on the final plat.
2. ACS and GCI shall have a maximum of 10 calendar days to review and comment on the final plat.
3. A note shall be added to the plat stating "Any new driveway or modification of an existing driveway shall require a permit from the City of Fairbanks."

FINDINGS OF FACT

- a. This request cannot benefit from FNSBC 17.52.050 because it increases the non-conformity of a Title 18 requirement.

- i. The plat increases the setback non-conformity of the shed located on proposed Lot 15-A
- b. Slater Drive and Island Drive South are local roads maintained by the City of Fairbanks.
- c. FNSBC 17.08.050(B) states “Whenever the requirements of this title differ from the requirements of any other laws, ordinances, or lawfully adopted regulations, the most restrictive or that imposing the highest standard shall govern.”
 - i. City of Fairbanks road construction standards exceed and are more restrictive than Title 17 road construction standards.
- d. This request does not require the dedication of a 20-foot radius corner rounding per FNSBC 17.56.100(C)(2).
- e. The proposed lots can access a community sewer and water system.
- f. This plat request does not deny legal and physical access to any lot or tract.
- g. This plat does not vacate a public road, trail, public area or any easements other than public utility easement.
- h. This plat does not alter a dedicated street or right-of-way or require dedication.
- i. This plat request does not require road construction or improvement.
- j. This plat request does not require a variance from a subdivision regulation.
- k. With the three conditions recommended by staff, this subdivision request meets the applicable requirements of Title 17.

APPROVED

Appeal of this decision must be made in writing within ten (10) working days of the decision. Request an appeal form from the Community Planning Department at 459-1260 or 907 Terminal Street, Fairbanks, AK 99701.

- c. **RP003-20 (Underwood Subdivision)** A request by 3-TIER ALASKA, LLC, on behalf of DJD Enterprises, Patsy H. Underwood Trust, and Underwood Enterprises LLC to replat Lots 1 and 2, Underwood Subdivision, a total of approximately 3.344 acres, by shifting the common lot line, resulting in two lots of approximately 0.431 acres (18,767 square feet) and 2.913 acres. The request does not create additional lots. The property is located within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 4, T1S, R1W FM, on College Road. **Staff Contact: Daniel Welch**

Audio Track 3

CONDITIONS OF APPROVAL

- 1. GVEA and GHU shall have a maximum of 30 calendar days to review and comment on the final plat.

2. ACS and GCI shall have a maximum of 10 calendar days to review and comment on the final plat.

3. A note shall be added to the plat stating "Access onto College Road is under the jurisdiction of the Alaska Department of Transportation. Any change to existing driveways onto College Road must be issued a driveway permit from the Alaska Department of Transportation. New direct lot access onto College Road is prohibited."

FINDINGS OF FACT

- a. FNSBC 17.52.050 exempts this platting application from the design and public improvements requirements of Title 17 because:
 - i. The lots were legally created by Plat No. 2001-84.
 - ii. The request does not increase the number of lots.
 - iii. The request does not create a new violation of the design and public improvement requirements of Title 17.
 - iv. The request does not increase the non-conformity of any lot under this or any other FNSB title.
- b. FNSBC 17.56.010.F prohibits direct lot access onto arterial roads.
- c. College Road, an arterial road, is maintained by ADOT&PF.
- d. Plat No. 2001-84 allowed for direct lot access onto College Road for both lots.
- e. The proposed lots can access a community sewer system along College Road.
- f. This plat request does not deny legal and physical access to any lot or tract.
- g. This plat does not vacate a public road, trail, public area or any easements other than public utility easement.
- h. This plat does not alter a dedicated street or right-of-way or require dedication.
- i. This plat request does not require road construction or improvement.
- j. This plat request does not require a variance from a subdivision regulation.
- k. With the three conditions recommended by staff, this subdivision request meets the applicable requirements of Title 17.

APPROVED

Appeal of this decision must be made in writing within ten (10) working days of the decision. Request an appeal form from the Community Planning Department at 459-1260 or 907 Terminal Street, Fairbanks, AK 99701.

2. Grandfather Rights

GR2019-153 Continued from 8/1/19 Administrative Hearing

- a. **GR2019-153** A request by Gene Therriault & Jo Kuchl for affirmative recognition of legal nonconforming structure status (grandfather rights) for an existing single-family residence with attached two-car garage and deck with a nonconforming north rear-yard setback of 4.5 feet +/- instead of the required 5 feet and a south front-yard setback of 19 feet +/- instead of the required 20 feet in the Two-Family Residential (TF) zone for the property described as Lots 3 & 4, Block T, University West Subdivision Portion No. 5 located at 4694 Palo Verde Avenue. **Staff Contact: Nancy Durham**

Audio Track 4

FINDINGS OF FACT

1. An as-built plot plan, dated August 22, 2015, provided with the application shows that the property contains a single-family residence with attached two-car garage and deck, a workshop with deck and shed. The subject structure for this case is the single-family residence with attached garage and deck.
2. Legal non-conforming structure status was applied for because the single-family residence with attached garage and deck on the subject property did not comply with the Two-Family Residential (TF) zone since it had a north rear-yard setback of 4.5 feet +/- instead of the required 5 feet and a south front-yard setback of 19 feet +/- instead of the required 20 feet.
3. On December 5, 1974, Ordinance No. 74-48 zoned the subject property General Residential (R2) with a front-yard setback of 20 feet (Ordinance No. 70-18). Prior to this rezone, the property had been zoned Unrestricted Use (UU) with no setback requirements (Ordinance No. 67-34).
4. Lots 3 & 4, Block T were created with the recording of plat FRD1978_240_001 for University West Subdivision Portion No. 5 on December 18, 1978.
5. FNSB Assessor records reflect that Assessor's staff inspected the property on January 15, 1982 and noted a "new structure". A photograph in the FNSB Assessor Field Card, dated January 15, 1982, shows the subject single-family residence with attached garage and deck. The single-family residence with attached garage and deck did not meet the south front-yard setback of 20 feet at this time.
6. On April 25, 1988, Ordinance No. 88-010 rezoned the subject property to TF where the front-yard setback requirement remained 20 feet.
7. No zoning permits have been issued by FNSB Department of Community Planning for the single-family residence with attached garage and deck, the workshop with attached deck or the shed.

8. At the administrative hearing on August 15, 2019, the applicant submitted a new survey dated August 13, 2019 showing the north rear-yard setback of 5 feet and a south front-yard setback of 18.7 feet +/- . The north rear-yard setback complies with the setback requirement of 5 feet. The south front-yard setback does not meet the 20 foot required setback by 1.3 feet.

DENIED

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.

Further information can be obtained from FNSB Community Planning at 459-1260 or 907 Terminal Street, Fairbanks, AK 99701.

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- b. **GR2019-154:** A request by Tomas Valencia for affirmative recognition of legal nonconforming use status (grandfather rights) for a multi-family residence (triplex) in the Single-Family (SF-10) zoning district for property located at Lot 14, Block 24, Hamilton Acres (located at 224 Farewell Avenue) (**Staff Contact: Kristina Heredia**).

Audio Track 5

FINDINGS OF FACT

1. Lot 13, Block 24, Hamilton Acres Subdivision – North West Portion Subdivision is developed with one structure containing three dwelling units (triplex). FNSB Assessor records list the structure as a triplex.
2. Lot 13, Block 24, Hamilton Acres Subdivision – North West Portion Subdivision was created with the recording of a plat on August 13, 1952. There was no zoning in unincorporated areas at that time.
3. The subject property was annexed into the City of Fairbanks with City Ordinance No. 1365, effective September 28, 1965, and zoned as Residential. The Residential zone did not permit any structure containing more than two dwelling units.
4. When FNSB adopted their zoning ordinance on March 28, 1968 via Ordinance No. 67-34, the property was rezoned to General Residential (R2). R2 zoning did not permit any structure containing more than two dwelling units.
5. The subject property was rezoned from General Residential to Restricted Residential (R1) when Ordinance No. 69-16 was adopted on June 16, 1969. The

R1 zone did not permit residential structures containing more than one dwelling unit.

6. The zoning designation on the subject property changed from Restricted Residential (R1) to Restricted Residential II (R1-II) with the adoption of Ordinance No. 70-18 on June 11, 1970. The R1-II zone did not permit residential structures containing more than one dwelling units.

7. A City of Fairbanks Building Permit for construction of a new structure was applied for on November 14, 1977, with an Occupancy Group of "Single".

8. FNSB Assessor records estimate that the structure was constructed in 1978, and listed it as a Building Type as "Single".

9. The subject property was rezoned from Restricted Residential II to Single-Family Residential 10 (SF-10) when Ordinance No. 88-010 became effective on April 25, 1988. The SF-10 zone does not allow for residential structures containing more than one dwelling unit.

10. A City of Fairbanks building permit (B-5467) to "turn garage into family room" was applied for on May 23, 1996. The building permit was issued to the property owner, Michael Cook, and listed the Occupancy Group of the building as R-3, which is single-family or two-family occupancy classification.

11. A City of Fairbanks plumbing permit stating "change garage into family room and utility room. Add plumbing for washer in utility" was applied for on May 29, 1996.

12. An FNSB Zoning Permit (#25724) for a new attached garage was issued on October 20, 1999.

13. A City of Fairbanks Building Permit (B-7132) for a "18' X 26' garage attached to house" was applied for on October 10, 2000.

14. FNSBC 18.04 states the definition of a dwelling unit "means a room or group of rooms constituting all or part of a dwelling which are arranged, designed, used or intended for use exclusively as living quarters for one family, including washing, sleeping, cooking and eating facilities."

15. Testimony provided by the property owner during the public hearing stated that each of the three dwelling units had a kitchen with cabinets, full-size stove and full-size refrigerator.

16. No building permits have been located or other records submitted to document the construction of two additional dwelling units, including kitchens, within the existing single-family residence.

17. The property owner bears the burden of proof that the triplex use was lawfully established prior to the change in the zoning code that made the use non-conforming.

18. The property owner did not meet his burden of proof because no evidence was provided that the triplex was established prior to September 28, 1965 when

the property was annexed into the City of Fairbanks and zoned as Residential, which did not permit any structure containing more than two dwelling units.

DENIED

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.

Further information can be obtained from FNSB Community Planning at 459-1260 or 907 Terminal Street, Fairbanks, AK 99701.

- c. **GR2020-005:** A request by John Tanner for affirmative recognition of legal nonconforming use status (grandfather rights) for a multi-family residence (four-plex) in the Two-Family (TF)) zoning district for property located at Lot 13, Block 01, Bunnell Park 1 (located at 717 Waves Road) (Staff Contact: Kristina Heredia).

Audio Track 6

FINDINGS OF FACT

19. Lot 13, Block 1, Bunnell Park Portion No. 1 is currently developed with one structure containing four dwelling units (four-plex).
20. Lot 13, Block 1 was created with the recording of a plat for Bunnell Park Portion No. 1 on January 13, 1959. There was no zoning in the unincorporated areas at that time.
21. Fairbanks North Star Borough (FNSB) adopted their zoning ordinance with the adoption of Ordinance No. 67-34 on March 28th, 1968. The subject parcel was zoned Unrestricted Use (UU). The UU zone had no limit on the number of dwelling units allowed per lot.
22. FNSB Assessor records estimate that the structure was constructed in 1973. A field card note dated November 6, 1973 identifies the structure as a "2 story duplex," when an interior inspection was conducted.
23. The subject property was rezoned from UU to General Residential (R2) with the adoption of Ordinance No. 74-48 on December 5th, 1974. Duplexes were a permitted use in the R2 zoning district, but structures containing more than two dwelling units were not allowed.
24. The subject property was rezoned from General Residential (R2) to Two-Family

Residential (TF) when Ordinance No. 88-010 went into effect on April 25th, 1988. Duplexes continued to be a permitted use in the TF zoning district, but structures containing more than two dwelling units continued to be prohibited.

25. The applicant provided an appraisal report dated January 28, 2008 which identifies the structure as having four units.
26. Evidence has not been provided demonstrating exactly when prior to January 28, 2008, and after November 6, 1973, the duplex was converted to a four-plex.
27. FNSB Assessor records indicate that the owner informed the Borough of the change in use from a duplex to a four-plex during a site inspection on August 11, 2011.
28. The applicant bears the burden of proof that the four-plex use was lawfully established prior to the change in the zoning code that made the use non-conforming.
29. The applicant did not meet his burden of proof because no evidence has been provided that the duplex was converted to a four-plex prior to December 5th, 1974, when any structure containing more than two dwelling units was not permitted on the property.

DENIED

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.

Further information can be obtained from FNSB Community Planning at 459-1260 or 907 Terminal Street, Fairbanks, AK 99701.