

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

APPLICATIONS

Preliminary Applications

1. Quick Plats

- a. **RP039-19 (Cripple Creek II Subdivision)** A request by 3-Tier Alaska, LLC, on behalf of the Fairbanks North Star Borough Division of Land Management, to replat Tract D, Cripple Creek II Subdivision, a total of approximately 292.1 acres, into four tracts ranging in size from 49.8 to 96.5 acres. The property is located within the W½ Section 25 and Section 36, T1S, R3W FM on Cripple Creek Road and Sonata Drive. **Staff Contact: George Stefan**

Audio Track 1

CONDITIONS OF APPROVAL

Staff recommends preliminary approval for the replat of Tact D, Cripple Creek II Subdivision with the following conditions:

- b. GVEA shall have a maximum of 30 calendar days to review and comment on the final plat.
- c. GCI, ACS, Ester Volunteer Fire Service Area, and Cripple Creek Road Service Area shall have a maximum of 10 calendar days to review and comment on the final plat.
- d. A note shall be placed on the final plat which states, "Direct lot access onto Cripple Creek Road is prohibited. Access to Tract D-1 from Cripple Creek Road is restricted to the 100ft wide section line easement corridor."
- e. A note shall be placed on the final plat which states, "Any new driveway or roadway accessing onto a Service Area road will require a driveway permit from Rural Services prior to construction."

FINDINGS OF FACT

Staff further recommends adoption of the following findings of fact:

- a. Constructed road access is not required for this subdivision as provided by FNSBC 17.56.020(D) because:
 - i. Tracts D-1, D-2, D-3, and D-3 are all over 40 acres in size.

- ii. The applicant's surveyor has shown that roads can be constructed practically and economically within both 100ft wide section line easement corridors, which lie along the south and west subdivision boundaries.
- b. 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.
- c. This plat request does not deny legal and physical access to any lot or tract.
- d. This plat does not vacate a public road, trail, public area or any easements.
- e. This plat does not alter a dedicated street or right-of-way or require dedication.
- f. This plat request does not require road construction or improvement because of FNSBC 17.56.020(D).
- g. This plat request does not require a variance from a subdivision regulation.
- h. With the four 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.

- a. **SD35-19/RP043-19 Schaible Subdivision** A request by Stutzmann Engineering Associates, Inc., on behalf of the University of Alaska, to replat Lot 1, Salisbury & Schaible Property and TL-3042, by combining them into one lot of approximately 4.54 acres. The property is located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 30, T1N, R1W FM, on Yankovich Road, Gold Dust Drive, and Chatanika Drive. **Staff Contact: Daniel Welch**

Audio Track 2

CONDITIONS OF APPROVAL

Staff recommends preliminary approval of Schaible Subdivision with the following conditions:

1. GVEA shall have a maximum of 30 calendar days to review and comment on

- the final plat.
2. ACS 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 "Direct lot access onto Yankovich Road is prohibited."
 4. The plat shall remove the apostrophe so that the label reads "Farmers Loop Road."

FINDINGS OF FACT

Staff further recommends adoption of the following 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 Inst. No. 186.466 or Plat No. 74-65W FRD.
 - ii. The request does not increase the number of lots. The request combines two lots into one.
 - iii. The request does not create a new violation of the design and public improvement requirements of Title 17.
 - iv. Because the Schaible House has been demolished, 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 a major collector road. Condition 3 satisfies this requirement.
- c. Yankovich Road is a major collector road.
 - i. The plat does not propose or rely on direct lot access onto Yankovich Road.
 - ii. Yankovich Road is maintained by ADOT&PF.
- 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 other than public utility easement.
- 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.
- h. This plat request does not require a variance from a subdivision regulation.
- i. With the four 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. RP044-19 (Phillips Subdivision 2nd Addition) A request by Stutzmann Engineering Associates, Inc., on behalf of Warwick Glass Studio, LLC, to replat Lot 9, Phillips Subdivision 2nd Addition, a total of approximately 41,000 square feet, into two lots of approximately 15,260 square feet and 25,740 square feet. The property is located within the NW¼ NE¼ Section 8, T1S, R1W FM, on Horner Court. Staff Contact: Daniel Welch

Audio Track 3

CONDITIONS OF APPROVAL

Staff recommends preliminary approval for the replat of Lot 9, Phillips Subdivision, Second Addition with the following conditions:

1. GVEA and GHU shall have a maximum of 30 calendar days to review and comment on the final plat.
2. ACS shall have a maximum of 10 calendar days to review and comment on the final plat.
3. A note shall be placed on the final plat which states "Lots created by this plat may not be further subdivided until such time as legal and constructed road access meeting FNSB Title 17 standards is available to the boundary of the lot proposed to be resubdivided."

FINDINGS OF FACT

Staff further recommends adoption of the following findings of fact:

- a. The plat relies on Horner Court, a local road, for legal and constructed access.
- b. The request relies on FNSBC 17.56.020.G, a road construction exemption, to allow for Horner Court to satisfy the constructed access requirements of Title 17.
- c. The plat is applicable to use the road construction exemption of FNSBC 17.56.020.G because:
 - i. The plat is creating five or fewer lots. The plat is creating two lots.

- ii. The roadway is located completely outside of the replat boundary and within the legal right-of-way established by Plat No. 2003-28.
- iii. Condition 3 satisfies the requirement to note that further subdivision is prohibited until such time a legal, constructed access is provided.
- 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.G.
- 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.

2. Grandfather Rights

- a. GR2019-144:** A request by John Milton for affirmative recognition of legal nonconforming use status (grandfather rights) for a single-family residence and a multi-family residence (six-plex) in the Two Family (TF) zoning district, for the property located on Lot 1, Block 21, Hamilton Acres (401-403 E Street), east of the intersection of E Street and Eureka Avenue. **Staff Contact: Kristina Heredia**

AUDIO TRACK 4

FINDINGS OF FACT

1. Lot 1, Block 21, Hamilton Acres Subdivision – Middle East Portion Subdivision currently contains one single-family residence and one multi-family residence with five dwelling units and a storage room.
2. The subject lot was created with the recording of a plat for Hamilton Acres Middle East Portion on April 27, 1949 (FRD_1949_112417_001).

3. FNSB Assessor records estimate that the multi-family residence and the single-family home were constructed in 1955. There was no zoning designation for this property in 1955.

4. Hamilton Acres Subdivision was annexed into the City of Fairbanks on October 1, 1965.

5. The property was zoned General Residential (R2) at the time of annexation in 1965. Single-family and two-family dwellings were permitted in this zone; multi-family residences with more than two dwelling units were not allowed. The multi-family residence became nonconforming with this zoning change.

6. Aerial photography of the subdivision shows the structures in their current footprints and dimensions in 1967.

7. The subject property was rezoned from R2 to Restricted Residential (R1) on March 28, 1968 with the adoption of Ord. 67-34. The R1 zone did not allow residential structures containing more than one dwelling unit. The single family dwelling remained conforming and the multi-family residence remained non-conforming.

8. FNSB Assessor records noted on October 8, 1968 that "All units rented and remodeled to some extent".

9. Ordinance 69-16 adopted on June 26, 1969 removed all of the Middle East Portion of the Hamilton Acres Subdivision from the Restricted Residential (R1) zone and placed the subject property in the General Residential (R2) zoning district. The R2 zone did not allow residential structures containing more than two dwelling units. The single family dwelling remained conforming and the multi-family residence remained non-conforming.

10. FNSB Assessor records notes for June 13, 1972 stated "Int. insp. Apt. #3 burned. All apts. vacant and bldg. being used for stg. [storage] only".

11. The subject property was rezoned from General Residential (R2) to Two-Family Residential (TF) when Ordinance No. 88-010 became effective on April 25, 1988. The TF zone does not allow residential structures containing more than two dwelling units.

12. Over 50 years, FNSB Assessor records repeatedly refer to 5 units contained in the multi-family residence including, but not limited to:

- a. The field card from the 1970's includes a site plan showing 5 units with the exterior doors delineated.
- b. Notes for the September 29, 1988 site inspection referenced an "interior inspection" of the "5-plex".
- c. A note dated June 26, 1990 that the "5-plex now fully rented".
- d. A note in August 1998 that there was a "5-plex".
- e. FNSB Assessor photos taken in 1999, 2006, 2011, 2015, and 2016 show five exterior doors on the front façade.
- f. A note in August 2016 that there are "5-units" and "6 elec meters".

13. Currently, pursuant to FNSBC 18.108.040(B)(4), a non-conforming use may be continued so long as it is not "*discontinued for any reason for a period of 36 months.*" The discontinuation period for non-conforming uses has varied between 12 months and 36 months since zoning was established for this property in 1965.

14. The FNSB Assessor records makes note on March 6, 1992 that there was "fire damage" to the structure.

15. The applicant said that he was not the property owner at the time, but stated that there was a fire in "unit 6" in the early 1990's and that unit has been used for storage since then.

16. FNSB Assessor records for August 2016 noted the "end unit unrentable".

17. FNSBC 18.04.010 defines "use" as "the purpose for which land and/or a building is arranged, designed, intended, occupied, or maintained".

18. FNSBC 18.04.010 defines "use, non-conforming" as "a use which was lawfully established prior to the adoption, revision or amendment of this title, but which fails, by reason of such adoption, revision or amendment, to conform to the present requirements of the zoning district in which it is located."

19. The subject building was designed, arranged and intended to be utilized as a multi-family residence containing more than two dwelling units, which made the building non-conforming after October 1, 1965.

20. Although all of the dwelling units have been vacant for periods of varying length due to recurring fire damage, building deterioration, and other factors, the building has been routinely occupied by residential tenants and the property owners have repeatedly renovated the subject building over the last five decades to maintain its use as multi-family residential dwelling units.

21. Since the buildings were constructed in 1955, the single-family dwelling and the five dwelling units in the multi-family residence have not been discontinued from their intended use as defined by FNSBC 18.04.010 for a period longer than the varied discontinuation periods specified in FNSB code.

Because the applicant did not provide sufficient proof that the 6th dwelling unit in the multi-family residence legally existed prior to October 1, 1965; and because the applicant stated that the end unit has been used as storage since the fire in 1990's, the 6th dwelling unit is not affirmed for legal non-conforming status.

However, because the single-family dwelling and the multi-family residence with 5 dwelling units (five-plex) legally existed on Lot 1, Block 21, Hamilton Acres Subdivision prior to October 1, 1965 when the parcel was annexed into the City of Fairbanks, and subsequently zoned General Residential (R2) which prohibited any residential structure containing more than two dwelling units; and because the 5 dwelling units in the multi-family residence have not been discontinued for a length of time exceeding the discontinuation period specified in borough code since 1965; the subject parcel has affirmative recognition of legal non-conforming use status (grandfather rights) for a single-family dwelling and a multi-family building with 5 dwelling units in the Two-Family (TF) zoning district under Chapter 18.108, Nonconforming (Grandfathered) Uses and Lots.

Affirmed (approved) for a single-family residence and a multi-family residence with five dwelling units. **Not affirmed (denied)** for a sixth dwelling unit in the multi-family residential building.

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.