

**FNSB ADMINISTRATIVE HEARING
JUNE 20, 2019 10:30 AM
ACTION MEMO**

APPLICATIONS

Preliminary Applications

1. Quick Plats

- a. RP038-19 (McCloud Subdivision)** A request by 3-TIER Alaska, LLC, on behalf of Wesley & Dione Beaty, to replat Lot 6, Block 6, McCloud Subdivision, a total of approximately 4.05 acres, by vacating the 30-foot wide public utility easement along the western boundary of the property. The request does not alter any lot lines or create new lots. The property is located within the W $\frac{1}{2}$, NW $\frac{1}{4}$, Section 20, T2N, R2W FM, on McCall Street. **Staff Contact: Daniel Welch**

Audio Track 1

CONDITIONS OF APPROVAL

Recommendation: Staff recommends preliminary approval for the replat of Lot 6, Block 6, McCloud 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. Access Note 1 shall be replaced with a note stating "Any new or modification to an existing driveway onto a Service Area road will require a driveway permit from Rural Services."

FINDINGS OF FACT

Findings of fact: Staff further recommends adoption of the following findings of fact:

- a. The purpose of the replat is to vacate a 30-foot wide Public Utility Easement.

- b. The replat does not alter any lot lines.
- c. FNSBC 17.52.050 exempts this platting application from the design and public improvements requirements of Title 17 because:
 - 1. Lot 6, Block 6, McCloud Subdivision was legally created with the recording of Plat No. 83-35 FRD.
 - 2. The request does not increase the number of lots.
 - 3. The request does not create a new violation of the design and public improvement requirements of Title 17.
 - 4. The request does not increase the non-conformity of any lot under this or any other FNSB title.
- d. The affected utility agencies have no objections to vacation of a portion of the Public Utility Easement.
- e. The lots rely on roads maintained by the McCloud Road Service Area.
- 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

- a. **GR2019-121:** A request by Julie Nichols for affirmative recognition of legal nonconforming use status (grandfather rights) for three existing attached dwelling units (triplex) in the Two-Family Residential (TF) zone for the property described as Lot 3, Block 16, Middle East Portion of Hamilton Acres (Located at 309 Dunbar Avenue). **(Staff Contact: Kristina Heredia)**

Audio Track 2, Audio Track 3

FINDINGS OF FACT

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

1. Lot 3, Block 16, Hamilton Acres Subdivision – Middle East Portion Subdivision contains a building containing three dwelling units (triplex).
2. Lot 3, Block 16, Hamilton Acres Subdivision – Middle East Portion was created with the recording of a plat on April 27, 1949.
3. FNSB Assessor records indicate that the structure was originally constructed with 3 dwelling units. Construction of the structure is estimated to have begun in 1953.
4. Hamilton Acres Subdivision – Middle East Portion was annexed into the City of Fairbanks with Resolution No. 432 effective on October 1, 1965.
5. Aerial photography of the subdivision from 1967 shows the structure in its current footprint.
6. Fairbanks North Star Borough (FNSB) adopted their zoning ordinance with Ordinance No. 67-34 on March 28th, 1968. The subject parcel was zoned Unrestricted Use (UU). Residential structures containing more than two dwelling units were a permitted use in the UU zone.
7. The subject property was rezoned from UU to Restricted Residential (R1-II) when Ordinance No. 69-16 was adopted on June 26, 1969. The R1-II zone did not permit residential structures containing more than two dwelling units. The three-family dwelling (triplex) became non-conforming at this time.
8. The subject property was rezoned from Restricted Residential (R1-II) to General Residential (R2) when Ordinance No. 86-046 was adopted on July 24, 1986. The triplex remained non-conforming.
9. 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 for residential structures containing more than two dwelling units. The three-family dwelling unit remained non-conforming.
10. FNSB ArcMap records indicate that grandfather rights for a triplex were previously approved for this property in 1995, but the decision document

could not be located.

11. Currently, FNSBC 18.108.040(B)(4) states that a non-conforming use may be continued so long as is it not “discontinued for any reason for a period of 36 months.” Previously, for intervals of time since March 28, 1968, the discontinuation period has been 12 months.
12. There are no records, or testimony provided, that indicate that any of the three dwelling units have been discontinued in use for a period longer than 12 months since the triplex use began in 1953.

AFFIRMED (APPROVED)

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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- b. GR2019-132:** A request by Michael Helean for affirmative recognition of legal nonconforming use status (grandfather rights) for a junkyard in the Rural Agricultural zoning district with Groundwater Damage Protection Overlay (RA-5/GWP), for the property located at TL-2212, Section 22, T2S-R2E (located at 3135 Old Richardson Highway) **(Staff Contact: Kristina Heredia)**

Audio Track 4

FINDINGS OF FACT

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

1. 2S 2E, Sec: 22, Tax Lot 2212 currently contains a junkyard.
2. Aerial photography from 1938 shows that the property was vacant land at that time.
3. The subject property was classified for taxation purposes by the Assessor’s Office in 1964 as “used as industrial property, mostly cleared”. The Assessor’s notes do not specify what type of use was occurring on the property at that time.

4. FNSB Assessor's records note that a liquor store was located on the property from December of 1964 until August 1968. The August 15, 1968 site inspection noted inspections of both the liquor store and the concrete block garage building.
5. Fairbanks North Star Borough (FNSB) adopted their zoning ordinance with Ordinance No. 67-34 on March 28th, 1968. The subject parcel was zoned Unrestricted Use (UU). UU had no restrictions on use.
6. The 1968 FNSB zoning code (Title 49, Chapter 15) described "Automobile Wrecking" as "Dismantling of motor vehicles or trailers; storage or sale of wrecked vehicles or of parts from dismantled, partially dismantled, or wrecked vehicles".
7. The subject property was rezoned from UU to General Agriculture (GA) when Ordinance No. 71-24 was adopted on September 9, 1971. The zoning ordinance in effect at that time did not permit "Refining of Petroleum or Petroleum Projects, Junk or Automotive Wrecking Yard, Smelting" in the GA zoning district.
8. Aerial photography from 1978-1979 shows several structures and what appears to be a small number of vehicles on the subject property.
9. The subject property was rezoned from General Agriculture (GA) to Rural Agriculture (RA-5) when Ordinance No. 88-010 became effective on April 25, 1988. The junkyard remained non-conforming.
10. FNSB Assessor's records include photographs dated November 9, 1994 and November 29, 1995 showing a fenced area containing several vehicles.
11. FNSB Assessor's records first noted a salvage yard on the subject property during a July 26, 2001 site inspection.
13. Aerial photography from 2017 clearly shows the junkyard in its current location.
14. The applicant bears the burden of proof to demonstrate that the junkyard use was in existence prior to September 9, 1971, when the subject property was rezoned to the General Agricultural zone which prohibited a junk or automotive wrecking yard use.
15. The applicant provided no evidence demonstrating the operation of a junk or automotive wrecking yard use prior to September 9, 1971, other than three affidavits.
16. In the affidavit received on June 12, 2019 from Mr. William Starkey, he stated that he purchased several items from the junkyard in 1965 while he

was working as the Army's purchasing agent at Fort Wainwright. Mr. Starkey did not attend the June 20, 2019 hearing or provide contact information by which he could be reached during the hearing to answer questions regarding his statement.

17. Two other affidavits submitted testifying to the existence of the junkyard did not address the applicable time period of September 1971.
18. Pursuant to FNSBC 18.108.040(B)(4), a non-conforming use may currently be continued so long as it is not "discontinued for any reason for a period of 36 months." Previously the time period for discontinuation of a legal non-conforming use has been 12 months.
19. The applicant also bears the burden of proof to demonstrate that the junk or automotive wrecking yard use, if legally established, was not discontinued for 12 or 36 months as applicable in Title 18, after September 9, 1971.
19. The applicant provided previous property ownership information but did not provide any evidence of continuous operation of a junk or automotive wrecking yard use since September 9, 1971.

NOT AFFIRMED (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.

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- c. **GR2019-133:** A request by Leon Kotsch for affirmative recognition of legal nonconforming structure status (grandfather rights) for an existing two-family attached dwelling with attached carport with a nonconforming 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 (located at 4024 Teal Avenue) **(Staff Contact: Bridget Hamilton)**

Audio Track 5

FINDINGS OF FACT

The FNSB Administrative Hearing Officer adopted the staff report and the

following Findings of Fact in support of this determination:

1. An as-built plot plan, dated April 30, 2019, provided with the application shows that the property is developed with a two-family dwelling with an attached garage and attached covered carport on the east side of the structure.
2. The existing two-family dwelling with attached carport 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.
3. 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.
4. Lot 33, Block B was created with the recording of a plat of Birch Estates Subdivision Portion on December 22, 1969 (FRD1969_12452_001).
5. The property was rezoned from UU to General Residential (R2) with the adoption of Ordinance No 70-23 on August 13, 1970. At the time, the minimum interior yard setback for the General Residential zone was 15 feet "except that building is permitted up to one interior lot line of each of two intersecting interior lot lines if under common ownership and simultaneous development."
6. Ownership information provided in FNSB Assessor's Field Cards reflects that in 1971, lots 33 and 34, Block B were under the common ownership of Hebb & Narodick Construction Co. Inc.
7. An Assessor's Field Card note for 4024 Teal Avenue, dated October 21, 1971, reflects that the subject residence was estimated to be completed in December 1971.
8. The FNSB Assessor's Field Card reflects that in 1972, Lots 33 and 34, Block B had different owners and were no longer under the common ownership.
9. According to the FNSB Assessor's Field Card, a 14' x 22' deck existed as of July 19, 1978 in the location of the subject carport. The deck did not conform to the 15-foot minimum side-yard setback requirement and became non-conforming at that time.
10. Lot 33, Block B was purchased by Robert and Barbara Hall in 1981. Their son, Harold Eugene Hall, provided a photograph of a deck overtop the subject carport. Mr. Hall estimates that this photo was taken during the early to mid-1980s.
11. During the administrative hearing, testimony was received from the next

door neighbor that the previous property owner, Robert Hall constructed the carport.

12. The Assessor's Field Card includes a note dated June 16, 1989 stating that the Assessor's staff "picked up" the deck over carport for taxation purposes.
13. No zoning permits were found to have been issued by the FNSB Community Planning Department for development on the subject property.
14. No documentation has been provided to support that the carport was constructed simultaneously with the construction of the residence in 1971.
15. 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.
16. After 1971, construction of a carport with a side yard setback of less than 5 feet would not have been permitted since Lots 33 and 34, Block B were no longer under common ownership and in simultaneous development.

NOT AFFIRMED (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.