

## FNSB ADMINISTRATIVE HEARING

May 16, 2019 10:30 AM

### ACTION MEMO

#### APPLICATIONS

##### Preliminary Applications

1. **SD028-19 Valparaiso:** A request by Stutzmann Engineering Associates, Inc., on behalf of Felix Krause and Silke Schiewer, to subdivide ASLS 97-12, a total of approximately 21.6 acres into three lots ranging in size from 1.4 to 10.3 acres. The property is located within the SE¼ Section 34, T2N, R1W, FM (located on Goldstream Road). **Staff Contact: George Stefan**

#### Audio Track 1

#### CONDITIONS

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

1. GVEA shall have a maximum of 30 working days to review and comment on the final plat.
2. ACS and GCI shall have a maximum of 10 working days to review and comment on the final plat.
3. The access note shall be revised to state, "Access from Lot 1 onto Goldstream Road is restricted to the public access easement along the lot's west boundary. Direct lot access from Lot 2 onto Goldstream Road is restricted to a single access point. Access from Lot 3 onto Goldstream Road is restricted to the section line easement. Any modification to an existing driveway onto Goldstream Road will require an Alaska Department of Transportation driveway permit."
4. Prior to final plat approval the existing direct lot access from Lot 3 onto Goldstream Road shall be physically blocked or removed such that access is not possible.

#### FINDINGS OF FACT:

Staff further recommends adoption of the following findings:

- a. 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." Conditions #3 and #4 satisfy this.

- b. This plat request does not alter a dedicated street or right-of-way or require road dedication.
- c. This plat request does not require road construction or improvement.
- d. This plat request does not require a variance from a subdivision regulation.
- e. This plat request does not deny legal and physical access to any lot or tract.
- f. This plat does not vacate a public road, trail, public area or any easements other than a public utility easement.
- g. 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.

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- 2. **GR2019-064:** A request by William E. Fisher Jr. for affirmative recognition of legal nonconforming structure status (grandfather rights) for an existing two-family attached dwelling with an outdoor stairway and deck with a nonconforming east side-yard setback of 5 feet +/-, and, south side-yard setback of 5 feet +/-, and a west rear-yard setback of 0 feet instead of the required 10 feet each in the Multiple-Family Residential (MF) zone for the property described as Lot 20W, Block 24, Rickert Homestead Subdivision (Located at 915 Sixteenth Avenue). **(Staff Contact: Bridget Hamilton)**

#### **Audio Track 2**

After a public administrative hearing on May 16, 2019, the FNSB Administrative Hearing Officer **AFFIRMED (approved)** your request for affirmative recognition of legal nonconforming structure status (grandfather rights) for an existing two-family attached dwelling with a nonconforming west rear-yard setback of 0 feet +/- and south side-yard setback of 5 feet +/- instead of the required 10 feet each in the Multiple-Family Residential (MF) zone.

The FNSB Administrative Hearing Officer determined that Lot 20W, Block 24, Rickert Homestead Subdivision (located at 915 16th Avenue) **DOES NOT HAVE affirmative recognition** of legal nonconforming structure status (grandfather rights) for a partially enclosed stairway and a deck with a nonconforming east side-yard of 5 feet +/- instead of the required 10 feet each in the Multiple-Family Residential (MF) zone.

## **FINDINGS OF FACT**

The Fairbanks North Star Borough Department of Community Planning adopted the following Findings of Fact in support of this determination:

1. Lot 20W, Block 24 contains a two-family attached dwelling with a partially enclosed stairway and a deck on the east side of the structure. The subject structure does not comply with the MF zone standards because the east side-yard, south side-yard, and west rear-yard do not meet the minimum yard requirements of 10 feet each.
2. FNSBC 18.04.010 classifies "lot lines along alleys and designated controlled access facilities" as rear lot lines. Because the west property line of 20W, Block 24 is along an alley, it is classified as a rear lot line. The north property line that fronts Sixteenth Avenue is classified as the front lot line. Any lot line which is not a front or rear lot line is defined as a side lot line.
3. The 2001 surveyed plot plan appears to demonstrate that the west rear-yard setback is 0 feet +/-, the south side-yard is 5 feet +/- and the east side-yard is 5 feet +/--. No additional evidence was provided by the applicant to further clarify the existing setback distances.
4. Lot 20, Block 24 was created with the recording of a plat for Rickert Homestead Subdivision on November 4, 1944 (FRD1944\_96332). Lot 20 was 8,667.5 square feet in size. There was no zoning in unincorporated areas at that time.
5. The FNSB Assessing Field Card reflects that the Assessor's staff estimated the year of construction for residence to be 1950.
6. Lot 20W, Block 24 is described in a deed recorded in Book 50, Page 87 on September 26, 1951. Lot 20W was 2,889 square feet in size in 1951. There was no zoning in unincorporated areas at that time.
7. Rickert Homestead Subdivision was annexed into the City of Fairbanks on August 24, 1954. The subject property was zoned General Residential (R2) at this time. The General Residential zone had a minimum side-yard

setback requirement of five (5) feet. The minimum rear-yard setback requirement for Lot 20W, Block 24 was three (3) feet. The west rear-yard setback of 0 feet +/- became nonconforming at this time.

8. Aerial imagery taken on August 15, 1967 shows the subject residence before an addition was constructed on the eastern side of structure.

9. On March 28, 1968, the Fairbanks North Star Borough (FNSB) adopted their zoning regulations with the adoption of Ord. 67-34 increasing the side and rear-yard setback requirements to 15 feet "except that building was permitted up to each of two intersecting interior lot lines." FNSBC 49.15.020 defined interior lot line as "a line separating a lot from another lot or from an alley." The subject structure's south side-yard of 5 feet +/- and west rear-yard of 0 feet +/- remained conforming at this time.

10. On September 29, 1969 the City of Fairbanks approved a garage addition on the east side of the subject structure with a setback of fifteen (15) feet. The City of Fairbanks noted that the proposed addition had Planning & Zoning, Building, and Structural approval.

11. On June 23, 1971, the Assessor's staff noted the garage addition was added to the east side of the residence. The FNSB Assessing Field card includes a photograph dated June 23, 1971 of the residence with the garage addition.

12. On September 14, 1972, the zoning designation on the subject property changed from R2 to Multiple Residential I (R3-I) with the adoption of Ordinance No. 72-24. The Multiple Residential I (R3-I) zone had a minimum interior-yard setback requirement of 10 feet. The subject structure's south side-yard of 5 feet +/- and west rear-yard of 0 feet +/- became non-conforming at this time.

13. The subject parcel was rezoned from Multiple Residential I (R3-I) to Multiple-Family Residential (MF) when Ordinance No. 88-010 went into effect on April 25, 1988. The minimum side-yard setback requirement for the MF zone remained 10 feet.

14. In August 1995, the FNSB Community Planning Department and City of Fairbanks approved the construction of an open stairway and deck with a setback of 8 feet on the east side of the subject residence. Title 18 allowed for open stairways and decks "greater than two and one-half (2 ½) feet in height may project a distance of not more than twenty (20) percent into the required yard." This exception permitted an open stairway to have a setback of 8 feet in a zone where the required setback is normally 10 feet. The

proposed site plan for the stairway met the setback exception allowance of 8 feet.

15. The plot plan dated September 30, 2001 shows that the stairway has an east side-yard setback of 5 feet +/- which is more than twenty (20) percent into the required yard of 10 feet and is be nonconforming.

16. An FNSB Assessing photograph taken in 2009 shows that an area under the stairway on the east side of the subject structure has been enclosed which does not conform with the setback exception for open stairways and decks greater than two and one-half (2 ½) feet in height.

**AFFIRMED (approved) for west rear-yard and south side yard setbacks  
NOT AFFIRMED (denied) for east side-yard**

**Because the subject structure's south side-yard of 5 feet +/- and west rear-yard of 0 feet +/- conformed to the required setbacks prior to the adoption of Ordinance No. 72-24 on September 14, 1972, the subject structure has legal nonconforming status (grandfather rights) as it pertains to the south side-yard and west rear-yard in the Multiple-Family Residential (MF) zone under Chapter 18.108, Nonconforming (Grandfathered) Uses and Lots.**

**Because the stairway on the east side of the subject structure has been partially enclosed and appears to be greater than the allowed twenty (20) percent exception into the required side yard, the enclosed stairway does not have legal nonconforming structure status (grandfather rights) as it pertains to the east side-yard in the Multiple-Family Residential (MF) 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.

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- 3. GR2019-116:** A request by Wayne Pepler for affirmative recognition of legal nonconforming structure status (grandfather rights) for an existing two-family

attached dwelling with a nonconforming east side-yard setback of 2.7 feet +/-, instead of the required 5 feet in the Two-Family Residential (TF) zone for the property described as Lot 7, Block 24, Aurora Subdivision (Located at 1814 Carr Avenue). **(Staff Contact: Kristina Heredia)**

### **Audio Track 3**

After a public administrative hearing on May 16, 2019, the FNSB Administrative Hearing Officer AFFIRMED (approved) affirmative recognition of legal nonconforming use status (grandfather rights) for an existing single-family residence with a nonconforming east side-yard setback of 2.7 feet +/- instead of the required 5 feet in the Two-Family (TF) zoning district. The FNSB Administrative Hearing Officer adopted the staff report and the following Findings of Fact in support of this determination:

### **FINDINGS OF FACT**

1. Lot 07, Block 24, Aurora Subdivision contains one single-family residence. This residence does not comply with the TF zone standards because it does not meet the east side-yard of 2.7 feet +/- does not meet the setback requirement of five (5) feet.
2. The FNSB Assessor Field Card notes that the original single-family residence was constructed in 1944. The field card shows a picture of the original residence, dated July 5, 1988.
3. Lot 07, Block 24, Aurora Subdivision was created with the recording of a plat for Revision "A" of the Aurora Subdivision on July 18, 1952.
4. 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 setback requirements.
5. The Aurora Subdivision was annexed into the City of Fairbanks on March 9, 1970.
6. Blocks 1-41 of the Aurora Subdivision were rezoned to General Residential (R2) via Ordinance No. 70-46, adopted on December 11, 1970. The R2 zoning district required side yard setbacks of fifteen feet. At this time, the subject property became non-conforming.
7. On April 19, 1988, Title 18 was amended by Ordinance No. 88-010, which changed the zoning districts and their setbacks. The R2 zone became the Two-Family Residential (TF) zone and the side yard setbacks were reduced to five feet. The east side-yard setback remained non-conforming.
8. On August 31, 2007 a zoning permit was issued from Community Planning for the removal of the Quonset hut and the construction of a new single-family

residence on the same foundation. A site plan was attached to the zoning permit showing the non-complying east-side yard setback.

9. FNSBC Section 18.108.040.A(1) states that “a nonconforming building may be enlarged, altered, or reconstructed on an existing permanent foundation as long as this does not create a new nonconformity of this code”.

10. The construction of the single-family dwelling on the existing foundation did not create a new non-conformity of Title 18.

11. The structure’s east side-yard setback has not been altered since it was constructed in 1944.

### **AFFIRMED (Approved)**

**Because the original permanent foundation legally existed prior to December 11, 1970 when the parcel was zoned General Residential (R2), the subject structure has affirmative recognition of legal non-conforming use status (grandfather rights) for the east side-yard setback of 2.7 feet +/- instead of the required 5 feet in the Two-Family zoning district 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.

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- 4. GR2019-117:** A request by Leonard Hanson for affirmative recognition of legal nonconforming use status (grandfather rights) for one ground floor single-family dwelling unit and a duplex (two-family attached dwelling units) above a garage in the Central Business District (CBD) zone, which does not allow ground floor residential without a conditional use permit, for the property on Lot 4, Block 1, Brandt Subdivision (located at 340 Driveway Street). **(Staff Contact: Kristina Heredia)**

### **Audio Track 6**

### **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 04, Block 1, Brandt Subdivision contains one single-family residence located on the ground floor and one two-family residence, with both residences located above a garage.
  2. FNSB Assessor records estimate that the single-family residence was constructed in 1936, and the two-family residence was constructed in 1950.
  3. Lot 04, Block 1, Brandt Subdivision was created with the recording of a plat in September, 1946.
  4. The Brandt Subdivision was annexed into the City of Fairbanks on August 15, 1952. There was no zoning on the subject property prior to annexation into the city.
  5. At the time of annexation the subject property was zoned Residential by the City of Fairbanks, through their Zoning Ordinance (Ordinance No. 437) which had been adopted in 1949. Single-family residences and two-family residences were permitted uses in the Residential zoning district
1. 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 General Residential (R2). Single-family residences and two-family residences were permitted uses in the R2 zoning district.
  2. The subject property was rezoned from R2 to Residential Office when Ordinance No. 71-16 became effective on June 10, 1971. The Residential Office zone permitted residential uses on the ground floor (single-family and two-family), as well as multiple dwelling units on the same lot.
  3. The subject property was rezoned from Residential Office to Business III (BS-III) when Ordinance No. 86-016 became effective on March 13, 1986. At that time, FNSBC Title 18 did not permit residential uses except for owner-manager for supervisory purposes in the BS-III zone. The two residences became non-conforming at this time.
  4. The subject property was rezoned from BS-III to Central Business District (CBD) when Ordinance No. 88-010 became effective on April 25, 1988. The CBD zone does not allow residential uses on the ground floor nor the secondary dwelling structure in its specific configuration on this lot. The two residences remained non-conforming.
  5. Pursuant to FNSBC 18.108.040(B)(4), a non-conforming use may be continued so long as is it not "discontinued for any reason for a period of 36 months."

6. There is no indication in FNSB records that the single-family residential use has been discontinued in use for a period longer than 36 months since it was constructed in 1936.
7. There is no indication in FNSB records that the two-family residential use has been discontinued in use for a period longer than 36 months since it was constructed in 1950.

### **AFFIRMED (Approved)**

**Because the ground floor single-family dwelling and the duplex above the garage legally existed on the subject property prior to March 13, 1986 when the parcel was zoned Business III, the subject parcel has affirmative recognition of legal non-conforming use status (grandfather rights) for a ground floor single-family dwelling and two-family attached dwelling above a garage in the Central Business zoning district 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.*

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5. **GR2019-124:** A request by Glenn Hollett for affirmative recognition of legal non-conforming structure status (grandfather rights) for an existing single-family residence with a nonconforming basement in the General Use (GU-1) zoning district with Groundwater Damage Protection Overlay (GU-1/GWP) for the property located on Lot 9, Block B, Olympic Subdivision (Located at 3260 Plato Way). **(Staff Contact: Kristina Heredia)**

### **POST PONED TO A CERTAIN DATE OF 6/20/19**

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