

FNSB ADMINISTRATIVE HEARING

May 2, 2019 10:30 AM

ACTION MEMO

APPLICATIONS

Preliminary Applications

1. **GR2019-106:** A request by Frank L. Zimmerman for affirmative recognition of legal nonconforming structure status (grandfather rights) for an existing single-family residence with a crawlspace used for mechanical and electrical equipment in the Groundwater Damage Protection (GWP) overlay zone for the property described as Lot 6, Lupine Acres Subdivision (Located at 3088 Lupine Court). **(Staff Contact: Manish Singh)**

Audio Track 1, 2, and 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. On October 20, 1978, FNSB Department of Community Planning issued a zoning permit (ZP-7313) for the single-family residence on the subject property.
2. The FNSB Assessor Field Card reflects that the single-family residence was constructed in 1978.
3. 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.
4. The intent of the GWP overlay was to minimize property damage associated with groundwater flooding by preventing construction below the ground surface.
5. 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."* This prohibition included

mechanical and electrical equipment below grade, since such equipment is not a foundation, footing or other support structure.

6. 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.
7. Ordinance No. 2005-21, adopted March 24, 2005, clarified and codified GWP requirements by adding definitions of "basement" and "crawl space" 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.
8. Ordinance No. 2005-21 allowed crawlspaces of four (4) feet in height or less, 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.

The crawlspace contains mechanical and electrical equipment consisting of a heat-recovery ventilator unit and a water pressure tank. The single-family residence with the crawlspace does not comply with the GWP overlay zone because it is used for mechanical and electrical equipment.

9. The applicant provided photographs of the heat-recovery ventilator unit showing that it was installed in the crawlspace on September 16, 1995. This was prior to adoption of Ordinance No. 99-055 which applied the GWP overlay zone to the subject property.
10. At the hearing, the applicant provided photographs of a water pressure tank and plumbing pipes along with a written assertion that the piping and a tank were original to the 1978 house. They acknowledged that the tank was replaced more recently, but showed that it was likely in the same location in the crawlspace.
11. The subject crawlspace conformed to the GWP regulations at the time of construction because:
 - A. A water pressure tank and associated plumbing piping was installed in 1978, with the tank later being replaced in the same location. This was prior to the GWP overlay taking effect.
 - B. A heat-recovery ventilator unit was installed in 1995, also prior to the GWP overlay taking effect.
 - C. The crawlspace used for mechanical and electrical equipment was constructed before Ord. No. 1999-055 applied the GWP overlay zone to the subject property and before Ord. No. 2005-21 became effective.

12. There is sufficient evidence supporting that the crawlspace and mechanical and electrical equipment predated the GWP regulations including the 2005 code change that caused the nonconformance.

The single-family residence with crawlspace was constructed in 1978. The crawlspace began being used for mechanical and electrical equipment at the time of construction for the water pressure tank and plumbing and in 1995 for the heat-recovery ventilator unit. This was before Ord. No. 1999-055 applied the GWP overlay zone to the subject property and before Ord. No. 2005-21 was adopted.

Therefore, the existing single-family residence with crawlspace used for mechanical and electrical equipment 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.

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.

APPROVED

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. RP031-19 (Bentley Trust Property 1st Addition):** A request by 3-TIER Alaska, LLC, on behalf of Harman's Properties of Fairbanks, LLC, to replat Lots B-1 and B-2, Bentley Trust Property 1st Addition, a total of approximately 1.28 acres into two lots of approximately 35,000 and 21,000 square feet each. The request only adjusts the common lot line between lots and does not create any additional lots. The property is located within the NE¼ SE¼ Section 3 T1S R1W FM, on Bentley Trust Road and College Road. **Staff Contact: Daniel Welch**

Audio Track 4

CONDITIONS OF APPROVAL

Staff recommends preliminary approval for the Replat of Lots B-1 and B-2, Bentley Trust Property, 1st Addition with the following conditions:

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 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 that stating "A driveway permit is required for the City of Fairbanks for any new or modification to an existing driveway onto Bentley Trust Road."
4. A note shall be added to the plat stating "All parcels within this replat are required to connect to existing sewer and water facilities in accordance with the City of Fairbanks Ordinances."
5. A note shall be added to the plat stating "Direct lot access onto College Road from Lot B-1-A is prohibited."

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 Plat No. 99-79 FRD.
 - 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. College Road, a major collector road, is maintained by ADOT&PF.
- c. Bentley Trust Road is maintained by the City of Fairbanks.
- d. The proposed lots are located within the City of Fairbanks.
- e. Plat Note 7 from Plat No. 99-79 FRD restricts direct access onto College Road.
- f. Plat Note 11 from Plat No. 99-79 FRD requires all parcels within the subdivision to connect to existing sewer and water facilities in accordance with City of Fairbanks Ordinances.
- g. This plat request does not deny legal and physical access to any lot or tract.
- h. This plat does not vacate a public road, trail, public area or any easements other than public utility easement.
- i. This plat does not alter a dedicated street or right-of-way or require dedication.

- j. This plat request does not require road construction or improvement.
- k. This plat request does not require a variance from a subdivision regulation.
- l. With the five 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) days of the decision. Request an appeal form from the Community Planning Department.

- 3. RP032-19 (Kessel and Pearl Creek Subdivisions):** A request by 3-TIER Alaska, LLC, on behalf of Cortland and Constance Zachel, and Judy Wilson to replat Lot 2 of Kessel Subdivision and the Charles Wilson Lot (TL-2) of Pearl Creek Subdivision, a total of approximately 7.25 acres into two lots of approximately 2.58 and 4.78 acres each. The request only adjusts the common lot line between lots and does not create any additional lots. The property is located within the NW¼ SE¼ Section 19 T1N R1W FM, on Musk Ox Trail. **Staff Contact: Daniel Welch**

Audio Track 5

CONDITIONS OF APPROVAL

Staff recommends preliminary approval of this replat 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.

FINDINGS OF FACT

Staff further recommends adoption of the following findings:

- 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 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 two 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) days of the decision. Request an appeal form from the Community Planning Department.

- 4. SD027-19 Stenberg's Apple Valley Subdivision:** A request by Design Alaska, Inc. on behalf of Stanley J. Stenberg, to subdivide the entire south half of section 23, (320 acres) T2N, R1W, FM into two tracts. Tract A into 1/16 section of land and Tract B the remainder of 280 acres. This property is the south ½ of section 23, T2N, R1W, FM West of the Elliott Highway and south of Old Murphy Dome Road. **Staff Contact: Julie Kotila/Daniel Welch**

Audio Track 6

CONDITIONS OF APPROVAL

Staff recommends preliminary approval for Stenberg's Apple Valley Subdivision with the following conditions:

1. The FNSB Trails Coordinator shall review the final plat prior to its recording.
2. A note shall be added to the final plat which states, "The Eldorado Creek Trail is designated in the Fairbanks North Star Borough Recreational Trail Plan

as trail number I-B1, also known as the "Big Eldorado Creek Loop Trail." Consult the trail plan for more information."

3. A note shall be added to the final plat which states, "Prior to modification or construction of a driveway within the Old Murphy Dome Road right-of-way, an approved driveway permit is required from FNSB."

FINDINGS OF FACT

Staff further recommends adoption of the following findings of fact:

- a. This plat is exempt from road construction as codified in FNSBC 17.56.020(D) because:
 - i. Both subdivision tracts are 1/16 section in size or larger.
 - ii. The applicant demonstrated that the proposed access of the Eldorado Creek Trail can be constructed practically and economically within the 100ft wide right-of-way.
- b. This plat has a multi-use trail recognized as a #I-B1 according to the FNSB Comprehensive Recreation Trail Plan and is required to show its location, width, name and type or purpose of the easement per FNSBC 17.48.010(D)(5-7).
- c. This plat request does not alter a dedicated street or right-of-way or require dedication.
- d. This plat request does not require road construction or improvement.
- e. This plat request does not require a variance from a subdivision regulation.
- 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.
- h. 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) days of the decision. Request an appeal form from the Community Planning Department.

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