



NOTICE OF DECISION RE: GR2018-085

January 31, 2018

Robert and Loa Hubbard
617 Gaffney Road
Fairbanks, AK 99701

Property Description: Lot 4, Kolde Homestead
Property Address: 208 Gaffney Road
PAN: 0080349
Issue: **GR2018-085:** A request by Robert and Loa Hubbard for affirmative recognition of legal nonconforming building status (grandfather rights) for an existing structure with a nonconforming south front-yard setback of 16.1 feet instead of the required 20 feet in the General Commercial (GC) zone for the property on Lot 4, Kolde Homestead Subdivision (Located at 208 Gaffney Road)

Determination: **Not Affirmed (denied)** for south front-yard setback

After public administrative hearings on January 4, 2018 and January 18, 2018, the Fairbanks North Star Borough (FNSB) Administrative Hearing Officer **DID NOT AFFIRM (denied)** your request for affirmative recognition of legal nonconforming structure status (grandfather rights) for an existing structure with a nonconforming south front-yard setback of 16.1 feet instead of the required 20 feet in the General Commercial (GC) zone. The FNSB Administrative Hearing Officer adopted the staff report and the following Findings of Fact in support of this decision:

1. This application is for a commercial structure utilized as a bar on the subject lot in the General Commercial (GC) zone. This structure does not comply with GC zoning setbacks because it has a south front-yard setback of approximately 16.1 feet instead of the required 20 feet.
2. FNSBC 18.04.010 Definitions states that a nonconforming building means “a *building the size, dimension, or location of which was lawful prior to the adoption, revision or amendment to this title, but fails by reason of the adoption, revision or amendment to conform to the present requirement of the zoning district in which it is located*”.
3. The property was annexed into the City of Fairbanks corporate limits on August 24, 1954. The subject parcel was zoned General Residential at that time. The General Residential zone established a minimum required 15 foot front-yard setback.
4. The front portion of the property was zoned Business I (BS-I) in 1959. At time of zoning, the BS-I zone had a minimum required street-yard setback of 25 feet from the centerline of Gaffney Road.
5. City of Fairbanks building permit records reflect that a bar and residence existed at this site on November 4, 1957. At that time, the City of Fairbanks had both zoning and building authority within City limits.

6. The subject parcel was described by deed in its current configuration on October 27, 1967. The front lot line was established in its current lot configuration on or before that date.
7. FNSB aerial photography from 1967 shows a structure on the subject parcel.
8. The City of Fairbanks issued permits for a new “retail” building in October of 1967.
9. The subject parcel was zoned Business (BS) with the adoption of Ordinance No. 67-34 on March 28, 1968. The BS zone had a zero foot minimum required street yard setback.
10. FNSB Assessor record reflects in a note that they “picked up a new building” during a site inspection on January 9, 1969. At that time, the required front-yard setback was zero feet.
11. FNSB aerial photography shows that the structure on the subject parcel in 1969 was different than the structure shown on the parcel in 1967. The structure built in 1969 is in the same location as the structure shown in the May 2017 aerial photograph.
12. Ordinance No. 70-18, adopted on June 11, 1970, removed the BS zone and established the Business I (BS-I) and Business II (BS-II) zones. The subject parcel was zoned BS-II, which established a 20 foot street yard setback. With the BS-II zone, the front-yard street setback of 16.1 feet became non-conforming.
13. The subject property was rezoned to General Commercial (GC) with the adoption of Ordinance No. 88-010, effective on April 25, 1988. The required front yard setback remained 20 feet.
14. On April 25, 1988, FNSBC 18.56.020 stated that *“any nonconforming building, structure, use, or lot which existed lawfully prior to the effective date of this ordinance or any lawful building, structure, use, or lot which has become nonconforming upon the adoption of this ordinance or any subsequent amendment thereto, may be continued, subject to the restrictions in this chapter...”*
15. On October 4, 2017, the applicant obtained a demolition permit from the City of Fairbanks to remove the existing building down to the foundation. The roof and the walls were subsequently removed but the foundation remained intact.
16. On November 9, 2017, the applicant obtained a building permit from the City of Fairbanks to construct a “new” commercial building on the existing foundation. The building permit states that the proposed use of the structure will be insurance offices. The City of Fairbanks did not require a FNSB zoning permit or zoning compliance letter for the reconstructed structure or the proposed new use before issuance of the building permit.
17. No FNSB zoning permit has been issued for the proposed new use of the building.
18. New exterior walls were constructed in the same location on the foundation as was located for the previous building. The building was not expanded beyond the footprint of the previous building as a result of the reconstruction of the roof and walls.
19. FNSBC 18.108.040(A)(1) states that a *“non-conforming building may be enlarged or altered as long as the enlargement or alteration does not create a new non-conformity of this code.”* FNSBC 18.04.010 Definitions states that “alteration” means *“any change in size or shape of a building”*. The terms “enlargement”, “demolition”, “re-construction”, “restoration” and “replacement” are not defined In Title 18.
20. The applicant stated that *“the alteration of this building has not caused any increase in foot print and has not enlarged the building. The original construction as foundation, sewer and plumbing is*

being used. Construction of a building includes much more than the above ground structure and the foundation is the key to all buildings.”

21. Borough code does not expressly provide for reconstruction, restoration or replacement of a non-conforming building that has been destroyed or demolished.
22. The changes made to the subject building in 2017 included demolition of the building to the foundation and rebuilding new walls and the roof, which constitutes substantial reconstruction; these changes are not considered to be an “alteration” of the existing building.

Because the walls and roof of the existing building were removed and subsequently reconstructed in 2017 after the 20 foot minimum front-yard setback was established on June 11, 1970, the subject building does not have an affirmative recognition of legal non-conforming structure status (grandfather rights) for the south front-yard setback of 16.1 feet instead of the required 20 feet in the General Commercial (GC) 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.

Sincerely,



D. Christine Nelson, AICP
FNSB Administrative Hearing Officer

DCN/sw