

## FNSB ADMINISTRATIVE HEARING

April 15, 2021 9:00 AM

### ACTION MEMORANDUM

At the April 15, 2021 Administrative Hearing, the following case was heard and decisions rendered.

#### Quick Plats

**RP037-21 Peger Commercial Park / Phipps** A request by Stutzmann Engineering Associates, Inc., on behalf of McKinley Investments, LLC, McKinley Development, Inc., and Irish Luck, LLC, to replat Lot 1B and Lot 3A, Peger Commercial Park and Lot 1 Phipps Subdivision, a total of approximately 6.77 acres, into three lots ranging in size from 1.07 to 4.13 acres. The property location is within the NE $\frac{1}{4}$  SE $\frac{1}{4}$  Section 17, T1S, R1W, FM on Picket Place. The Administrative Hearing Officer approved the preliminary plat with the following conditions:

1. GVEA, ADOT&PF, ACS, GCI, IGU, GHU, and the University FD shall have a maximum of 30 calendar days to review and comment on the final plat.

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

- A. The request qualifies as a quick plat because it meets all the requirements of FNSBC 17.16.010(A)(I), "A movement or elimination of lot lines resulting in no more than four lots."
- B. The plat is creating three lots from three lots.
- C. FNSBC 17.52.050 exempts this platting application from the design and public improvements requirements of Title 17 because:
  - i. The request only involves lots that have been approved by the relevant platting authority when created.
  - ii. The lots were legally created by Plat No. 2005-113 and Plat No. 2000-117.
  - iii. The request does not result in an increase in the number of lots.
  - iv. The application does not create a new violation of the design and

public improvement requirements of Title 17.

- v. The proposed replat does not increase the non-conformity of any lot under this or any other FNSB title, including lot size.
- D. For the new Type II flag lot, Lot 181, the applicant's registered professional has met the requirements of FNSBC 17.56.010(H)(2) by demonstrating:
- i. The flag stem is a minimum of 40 feet wide.
  - ii. A borough-standard road can be constructed in the flag stem in the event of a future dedication. The flag stem is 50ft in width to accommodate a future Local 2 road.
  - iii. The depth to width ratio for the lot complies with this title.
- E. This plat request does not require a variance from a subdivision regulation.
- F. This plat request does not require road construction or improvements.
- G. This plat request does not deny legal and physical access to any lot or tract.
- H. This plat request does not vacate a public road, trail, public area, or any easements.
- I. This plat request does not alter a dedicated street or right-of-way or require dedication.

With the adopted conditions, this subdivision request meets the applicable requirements of Title 17.

### **Approved**

Appeal of this decision must be made in writing to the Community Planning Department within ten (10) working days of the decision.

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**RP035-21 Skylight Heights Subdivision First Addition** A request by 3-Tier Alaska, on behalf of Michael J. and Kathlene A. Steinhauer, to replat Lot 7, Block Two of Skylight Heights Subdivision First Addition into a 50'x50' (2,500 sf) utility lot and a remainder lot of approximately 9.57 acres. The property location is within the SE ¼ SE ¼ Section 9, and the NE ¼ NE ¼ Section 16, T1N, R3W, FM on Vancouver Road. The Administrative Hearing Officer approved the preliminary plat with the following conditions:

1. GVEA, ACS, GCI, FNG, IGU, Chena Goldstream FD, & ADOT&PF shall have a maximum of 30 calendar days to review and comment on the final plat.
2. All easements of record shall be shown on the final plat.
3. A plat note shall be added, stating "Any new driveway or modification of an existing driveway within the Vancouver Road right-of-way shall require a permit from the FNSB Rural Services prior to construction."
4. Plat Note 10 shall be amended, stating "Lots 7A and 78 shall not have direct lot access onto Murphy Dome Road."
5. The subdivision name shall be correctly labeled as "Skylight Heights First Addition" per parent Plat No. 87-73.

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

- A. The request qualifies as a quick plat because it meets all the requirements of FNS8C 17.16.010(A)(3); it is "A subdivision of a communication site or utility site which requires no legal road access as defined in Chapter 17.56 FNSBC."
- B. The plat is creating two lots from one lot.
- C. The purpose of this plat is to create a utility lot for a communications tower.
- D. FNS8C 17.04.010 requires subdivision when land is leased for five or more years.
- E. The lots rely on Vancouver Road, which is maintained by the Murphy Road Service Area.
- F. There is no direct lot access onto a major collector road.
- G. The 20-foot-wide common access easement meets the minimum ingress/egress requirements for the communications site.
- H. Lot 78 will not be used for a purpose other than a public utility or service use.

- I. This plat request does not require a variance from a subdivision regulation.
- J. Lot 78 is permitted to be created underneath the RE-4 minimum lot size per Title 18.96.150.
- K. The plat does not require road construction or improvements.
- L. This plat request does not deny legal and physical access to any lot or tract.
- M. This plat does not vacate a public road, trail, public area, or any easements.
- N. This plat does not alter a dedicated street or right-of-way or require dedication.

**Approved**

Appeal of this decision must be made in writing to the Community Planning Department within ten (10) working days of the decision.

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**RP033-21 Replat of GL-7, Section 36, T1N, R3W** A request by 3-Tier Alaska, on behalf of Alaska Mental Health Trust Authority, to subdivide Government Lot 7 into a 50'x50' (2,500 sf) utility lot and a remainder lot of approximately 33.41 acres. The property location is within the NW ¼ NE ¼ Section 36, T1N, R3W, FM at the top of Ester Dome. The Administrative Hearing Officer approved the preliminary plat with the following conditions:

1. GVEA, ACS, IGU, ADOT&PF, GCI, FNG, and the Chena Goldstream FD shall have a maximum of 30 calendar days to review and comment on the final plat.
2. All easements of record shall be shown on the final plat.
3. Note 7 shall be simplified to state "Access to the subdivision is via Ester Dome Road. DOT&PF Northern Region asserts management authority and maintenance responsibility per PLO and prescriptive ditch to ditch right of way for the portions of Ester Dome Road not covered under PLO. Ester Dome Road is a public maintained road from its intersection with RST 1602 to the east and northeast to Sheep Creek Road."

4. Note 9 shall be removed from the final plat.
5. A plat note shall be added stating *"The Equinox Marathon Trail, identified in the FNSB Comprehensive Recreational Trail Plan as Trail # 1-B8, passes through this subdivision. The recreational trail route utilizes the 60' public access ROW "RST 1602 Ester Dome-Nugget Creek Trail" depicted in this plat. Consult the current trail plan for more information."*
6. Signs containing the new street name of "Ester Ridge Road" shall be provided and erected by the applicant as per FNSBC 17.60.010(D).

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

- A. The request qualifies as a quick plat because it meets all the requirements of FNSBC 17.16.010(A)(3); it is "A subdivision of a communication site or utility site which requires no legal road access as defined in Chapter 17.56 FNSBC"
- B. The plat is creating two lots from one lot.
- C. The purpose of this plat is to create a utility lot for an existing communications tower.
- D. FNSBC 17.04.010 requires subdivision when land is leased for five or more years.
- E. This plat request does not require a variance from a subdivision regulation.
- F. RST 1602 will be named "Ester Ridge Road" through the entirety of the parent parcel as required by FNSBC 17.36.010.
- F. Ester Ridge Road is a public right-of-way that contains the Equinox Marathon Trail, a Category B trail in the Borough's Comprehensive Recreational Trail Plan.
- H. ADOT&PF asserts maintenance authority for Ester Dome Road to the intersection with Ester Ridge Road.
- I. Lot 7B is permitted to be created underneath the GU-1 minimum lot size per Title 18.96.150.

- J. The plat does not require road construction or improvements.
- K. This plat request does not deny legal and physical access to any lot or tract.
- L. This plat does not vacate a public road, trail, public area, or any easements.
- M. This plat does not alter a dedicated street or right-of-way or require dedication.

### **Approved**

Appeal of this decision must be made in writing to the Community Planning Department within ten (10) working days of the decision.

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**GR2021-133** A request by the Catholic Schools of Fairbanks for affirmative recognition of legal nonconforming use status (grandfather rights) for a school building in the Two-Family Residential (TF) zoning district, located on Lot C1, Monroe Catholic School Subdivision, 2<sup>nd</sup> Addition, addressed at 615 Monroe Street.

After a public administrative hearing on April 15, 2021, the FNSB Administrative Hearing Officer did **AFFIRM (Approve)** your request for affirmative recognition of legal nonconforming use status (grandfather rights) for a school building in the Two-Family Residential (TF) zoning district. The FNSB Administrative Hearing Officer adopted the staff report and the following Findings of Fact in support of this determination:

1. The subject property was purchased in 1950 to be used as a school site.
2. 1949 aerial photography shows the barracks located on the subject property.
3. Immaculate Conception School, with eight grade levels, began operation in the barracks on the subject property in 1951. There was no zoning for the subject property at this time.
4. The Catholic Schools of Fairbank's high school, Monroe High School, which is still in operation on the site, was originally constructed on the subject property in 1955 and completed in 1956.

5. The subject property was annexed into the City of Fairbanks on January 1, 1959 and was zoned General Residential. Schools were permitted uses provided they received "favorable endorsement by the planning and zoning commission, ... and approval by the city council." No documentation has been found to determine whether or not the existing school was required to, or did in fact, receive such an endorsement. The school buildings became nonconforming at this time.
6. FNSBC 18.108.020 states that *"Any nonconforming building/ use or lot which existed lawfully prior to the effective date of the ordinance codified in this title or any lawful building/ use or lot which has become nonconforming upon the adoption of the ordinance codified in this title or any subsequent amendments thereto may be continued, subject to the restrictions in this chapter."*
7. Aerial photography from 1967 shows the schools in their current configuration on the subject property.
8. The Fairbanks North Star Borough became the zoning authority with the adoption of Ordinance 67-34 on March 14, 1968. The subject property continued to be zoned General Residential (R2). "Educational Uses" were conditional uses in the R2 zoning district, and the school buildings continued to be nonconforming.
9. Ordinance No. 88-010, effective April 20, 1988, rezoned the subject property from General Residential (R2) to Two-Family Residential (TF). The school buildings continued to be nonconforming.
10. FNSBC 18.108.040.B.1 states that *"Except as otherwise provided in this subsection, a building or premises devoted to or designed for, in whole or in part a nonconforming use/ may be enlarged or altered as long as the use reflects the nature and purpose of the use prevailing when the zoning took effect and there is no difference in the quality or character of the use."*
11. The school has been in continuous use since it was originally established on the property in 1951.

Because the school on the subject property lawfully existed and was in operation prior to January 1, 1959 when the property was annexed into the City of Fairbanks and zoned General Residential (R2), the school building in the Two-Family Residential {TF} zoning district does have affirmative recognition for legal non-conforming use status for school buildings under Chapter 18.108, Nonconforming (Grandfathered) Uses and Lots.

### **AFFIRMED (APPROVED)**

Appeal of this decision must be made in writing to the Community Planning Department within 15 days of the date on the Notice of Decision.

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**GR2021-135** A request for affirmative recognition of legal nonconforming structure status (grandfather rights) for an east front-yard setback not meeting the required 20 feet for a single-family residence on Lot 21, Block 5, Hamilton Acres in the Two-Family Residential (TF) zoning district, located at 542 Baranof Ave.

After a public administrative hearing on April 15, 2021, the FNSB Administrative Hearing Officer did AFFIRM (Approve) your request for affirmative recognition of legal nonconforming structure status (grandfather rights) for the east front yard setback in the Two-Family Residential (TF) zoning district. The FNSB Administrative Hearing Officer adopted the staff report and the following Findings of Fact in support of this determination:

1. The single-family residential structure located on Lot 21, Block 5, Hamilton Acres is constructed approximately three to four feet from the east property line, within the required 20-foot east front yard setback in the Two-Family Residential (TF) zoning district.
2. FNSBC 18.108.020 states "Any nonconforming building, use or lot which existed lawfully prior to the effective date of the ordinance codified in this title or any lawful building, use or lot which has become nonconforming upon the adoption of the ordinance codified in this title or any subsequent amendment thereto may be continued, subject to the restrictions in this chapter."
3. Lot 21, Block 5, Hamilton Acres, was created with the recording of a plat for the North East Portion of Hamilton Acres Subdivision in 1948. The dimensions of this lot have not been amended since creation.



4. Lot 21 is adjacent to two public rights-of-way, Baranof Avenue and F Street. The F Street right-of-way has never been developed as a public roadway, but functions as driveway access to the subject property.
5. Under the current FNSB Title 18, the eastern lot line is considered to be a "front lot line" requiring a 20-foot front "yard" or "setback". The existing dwelling does not meet the required setback of 20 feet.
6. The original dwelling unit is estimated by the FNSB Assessor to have been constructed in 1948.
7. An addition to the east side of the structure is estimated by the FNSB Assessor to have been constructed in 1965 and picked up during a site inspection on January 23, 1966, noting "...new addition to end of house". The addition included a below grade basement.
8. The subject property was annexed into the City of Fairbanks on September 28, 1965 and was zoned General Residential (R2).
9. Due to the short construction season in Fairbanks, colder than average winter weather in 1965, and frozen ground, the construction of the 1965 addition with a below grade basement must have commenced before September 28, 1965 in order to have been picked up during a site inspection by FNSB Assessing staff on January 23, 1966.
10. In 1965, the zoning regulations for corner lots in the General Residential (R2) zone required "...a minimum front yard of fifteen (15) feet from the street line on the narrow side of a corner lot and seven and one-half (7 ½) feet on the street line along the long side of such corner lot.
11. The 1965 City of Fairbanks zoning regulations defined "street" as "Any public thorough fare (street, avenue, boulevard, parkway) or place more than sixteen (16) feet in width which has been dedicated or deeded to the public for public use."
12. The 1965 City of Fairbanks zoning regulations defined "lot corner" as "A lot, or such part of a lot, of which any two adjacent street lines form an angle of divergence from a straight line of more than forty-five (45) degrees."

13. On September 28, 1965, Lot 21 was considered a "corner lot" requiring a "minimum front yard of ... seven and one-half (7 ½) feet" along the east lot line. The dwelling with the new addition became nonconforming related to the east front-yard setback upon annexation.
14. The FNSB established their zoning regulations with the adoption of Ord. No. 67-34 on March 28, 1968. The subject property was rezoned from General Residential (R2) to Restricted Residential (R1), which increased the minimum front yard setback requirement to 25 feet. The dwelling remained nonconforming.
15. In 1968, FNSBC 49.15.030 stated that "lots of records, or uses of land or structures existing at the time of adoption of, or amendment to, this ordinance may be continued even though they do not conform to the standards established by this ordinance; provided any such non-conforming use which is discontinued for a period of twelve months may not be re-established; and, provided further no such non-conforming structure or use may be expanded except in accordance with the standards established by this ordinance."
16. The subject property was rezoned from Restricted Residential (R1) to General Residential (R2) with the adoption of the Ord. No. 69-16 on June 26, 1969, which reduced the minimum front-yard setback requirement to 20 feet and the minimum side-yard setback requirement of 15 feet "except that building is permitted up to one interior lot line". The dwelling remained nonconforming.
17. The subject property was rezoned from General Residential (R2) to Two-Family Residential (TF) when Ordinance 88-010 went into effect on April 25, 1988. The front-yard setback requirement for the TF zone remained 20 feet. The dwelling remained nonconforming.
18. FNSBC 18.108.040(A)(1) states "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, except that expansion is permitted within the standards that were in place when the zone changed. Reconstruction of the exterior of the building must be complete within a period of 36 months of the building being damaged or

destroyed.”

19. No other additions or modifications have been made to the east side of the dwelling since the 1965 addition that would have increased the nonconformity of the east front-yard setback.

Because the addition to the dwelling was constructed prior to September 28, 1965 when the property was annexed into the City of Fairbanks and zoned General Residential (R2), the east front-yard setback of 3-4 feet in the Two-Family Residential (TF) zoning district does have affirmative recognition for legal non-conforming structure status under Chapter 18.108, Nonconforming (Grandfathered) Uses and Lots.

**AFFIRMED (APPROVED)**

Appeal of this decision must be made in writing to the Community Planning Department within 15 days of the date on the Notice of Decision.

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