

FNSB ADMINISTRATIVE HEARING
May 06, 2021 9:00 AM

ACTION MEMORANDUM

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

Quick Plats

RP038-21 Andree Subdivision A request by Degerlund Engineering, LLC., on behalf of Linda I. & Peter J. Vandehei, to relocate the common lot line between Lots 3 and 4, Block A of Andree Subdivision, thereby creating two lots of approximately 1.84 acres and 2.68 acres. The property location is within the W ½ NE ¼ Section 16, T1N R1E, FM, on Derek Drive. The Administrative Hearing Officer approved the preliminary plat with the following conditions:

1. GVEA, ACS, IGU, and the Violet Drive RSA 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 to the plat that states "*Any new driveway or modification of an existing driveway shall require a permit from FNSB Rural Services, prior to construction.*"

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

- A. This request qualifies as a quick plat because it meets the requirements of FNSBC 17.16.010(A)(1).
- B. The replat is shifting a portion of the common lot line between Lots 3 and 4, creating two lots from two lots.
- C. The lot line shift does not create any new nonconformities.
- D. This request benefits from FNSBC 17.52.050 (Applicability), exempting it from meeting the access standards of Chapter 17.56.

E. FNSBC 17.52.050 exempts this platting application from the design and public improvement requirements of Title 17 because:

1. The lots were legally created by Plat No. 77-43.
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, including minimum lot size.

F. This plat request does not require a variance from a subdivision regulation.

G. The plat does not require road construction or improvements.

H. This plat request does not deny legal and physical access to any lot or tract.

I. This plat does not vacate a public road, trail, public area, or any easements.

J. This plat 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.

Grandfather Rights

GR2021-144 A request by Stephen Ketzler for affirmative recognition of legal nonconforming use status (grandfather rights) for a triplex in the Two-Family Residential zone on Lot 02A, Block 55, Fairbanks Townsite.

After a public administrative hearing on May 6, 2021, the FNSB Administrative Hearing Officer did **NOT AFFIRM (Denied)** your request for affirmative recognition of legal nonconforming use status (grandfather rights) for a triplex 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. Lot 2A, Block 55, Fairbanks Townsite contains a multiple-family residence (triplex). A multiple-family residence is not a permitted land use in the Two-Family Residential (TF) zoning district.
2. Zoning was originally established in this area on February 13, 1946. Townsite Block 55 was zoned Residential at that time. Single-family dwellings were permitted; duplexes and apartment buildings were only allowed via special permit.
3. Townsite Block 55 was reclassified as General Residential in a code revision that became effective in January 1959. Permitted uses included single-family dwellings, duplexes and "the renting of rooms for lodging purposes only for the accommodation of not to exceed four persons in a single family dwelling."
4. The Fairbanks North Star Borough zoning ordinance was adopted with Ordinance No. 67-34 on March 28, 1968. The subject parcel continued to be zoned General Residential, and only single-family and two-family residences were permitted.
5. Lot 2A, Block 55 was created with the recording of plat #77-98 on August 18, 1977.
6. A single-family residence was constructed on the lot in 1976 according to FNSB Assessing records.
7. No building permits or other records were located to identify exactly when the single family residence was converted to a duplex.
8. FNSB records indicate that the subject property was assessed as a single-family residence until 2012 when it was first assessed as having 2 dwelling units. Prior to March 2021, FNSB Assessing was unaware that there were three dwelling units in the structure and the structure has never previously

been assessed as having three dwelling units.

9. The subject property was rezoned from General Residential (R2) to Two-Family Residential (TF) when Ordinance No. 88-010 went into effect on April 25th, 1988. The TF zoning district continued to only permit single-family residences and two-family residences.
10. On May 17, 1993, a City of Fairbanks building permit was issued on the subject lot for a "10 x 15' addition to the existing residence for use as a guest room".
11. A lease agreement submitted by the applicant shows that the 1993 addition is currently being rented as a studio apartment and has been since at least January 15, 2021.

Because the single-family residence was constructed in 1976 and later converted to a duplex, and because the third dwelling unit in the triplex was not constructed until 1993, more than twenty-five years after the zoning prohibited triplexes, the triplex did not lawfully exist prior to the adoption of Ordinance #67-34 in March 1968, therefore the triplex in the Two-Family Residential (TF) zoning district does not have affirmative recognition for legal non-conforming use status for school buildings under Chapter 18.108, Nonconforming (Grandfathered) Uses and Lots.

DID NOT AFFIRM (DENIED)

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.

GR2021-115 A request for affirmative recognition of legal nonconforming structure status (grandfather rights) for a front-yard setback of 1.9' +/- feet, rather than the required 25 feet for a single-family residence on Lot 15A, Husky Gardens Subdivision in the Rural Residential (RR) zoning district located at 1515 Husky Way.

After a public administrative hearing on May 6, 2021, the FNSB Administrative Hearing Officer did **NOT AFFIRM (Denied)** your request for affirmative recognition of legal nonconforming structure status (grandfather rights) for the north front yard setback of 1.9+/-feet for a single family residence, rather than the 25 feet required in the Rural Residential (RR) zoning district. The FNSB Administrative Hearing Officer adopted the

staff report and the following Findings of Fact in support of this determination:

1. The residential structure on Lot 15A, Husky Gardens Subdivision, is located within the required front yard setback of 25 feet in the Rural Residential (RR) zoning district. The closest portion of the structure is 1.9+/-feet from the north property line.
2. Lot 15, Husky Gardens Subdivision was originally created with the recording of Husky Gardens Subdivision on April 26, 1960. A former resident of the subject property furnished a photo date stamped March 1968 showing the mobile home surrounded by several feet of undisturbed snow.
4. The FNSB established zoning regulations with the adoption of Ord. No. 67-34 on March 28, 1968. The subject property was zoned Unrestricted Use (UU) which had no required setbacks or use regulations at that time.
5. Ordinance 67-34, effective March 28, 1968, defined mobile home as "A dwelling which is designed for transportation as one unit, after fabrication/ on highways to a site where it is to be occupied and at which site it arrives complete and ready for occupanc¹/₂ except incidental unpacking and assembly operations/ location on jacks/ or foundations/ and connections to utilities."
6. In March 1968, FNSBC 49.15.030 stated that "lots of record, 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 nonconforming structure or use may be expanded except in accordance with the standards established by this ordinance.
7. The FNSB Assessor first established a valuation for "Improvements" on the subject property in 1969.
8. The subject property was rezoned from Unrestricted Use (UU) to Rural Residential (RR) on August 14, 1969 with Ord. 69-23, instituting a front yard setback requirement of 25 feet.
9. Under Ord. 69-23, a mobile home was a permitted use in the RR zone and the existing 1966 Duke trailer home met the definition of "mobile home". Its

existing placement on the subject property met the 25-foot front-yard setback at that time.

10. FNSB Assessor records include a photograph of the mobile home on the subject parcel date stamped March 23, 1970.
11. A former resident furnished an insurance policy dated June 8, 1971 for a 1,000 square foot "1966 Duke house trailer" with Haida Home serial number #551320, located on the subject property.
12. During an October 11, 1971 site inspection, FNSB Assessor records noted "Picked up new house attached to trailer", including a photo of the 2-story A-frame house located on the south side of the trailer. No zoning permit was obtained for the house addition.
13. On January 18, 1972 the FNSB zoning code was amended through Ordinance 71-37 to include the definition of building. Mobile homes became a conditional use in the Rural Residential zone at that time.
14. FNSB Assessor field card notes from a July 6, 1972 site inspection state "Trailer will be fully enclosed."
15. During an October 24, 1972 site inspection, FNSB Assessor records noted "Review picked up new garage", including a photo showing the new two-car garage and new covered/enclosed porches on the north side of the enclosed trailer. No zoning permit was obtained for the garage or porch additions.
16. The 1972 two-car garage addition created a nonconforming front yard of 1.9 +/- feet rather than the required 25 feet setback. There was no front-yard setback exemption in code that would allow such an encroachment into the setback. The residential structure became nonconforming upon construction of the garage and porches.
17. Several additions to the mobile home have been constructed at various times since March 23, 1970. A carport canopy addition on the east side of the two-car garage was constructed and later enclosed to create a third car garage bay located within the 25-foot front-yard setback. No zoning permit was obtained for this carport/garage addition. Open porches on the north side of the trailer were also subsequently enclosed.

18. On August 23, 1978 the FNSB Department of Community Planning issued a zoning permit for the addition of a room to the south side of the A-frame portion of the residential structure. The additions on the south side of the trailer met the required setbacks in the Rural Residential zone.
19. On March 9, 1979, Lot 15 Husky Gardens Subdivision was replatted to become Lot 15A Husky Gardens Subdivision. The north front lot line of Lot 15A, was not changed.
20. During a 2010 site inspection, FNSB Assessor staff took photos showing that the mobile home was still enclosed within the residential structure.
21. Prior to March 8, 2018 the mobile home had been removed from the structure. This is evident from the Assessor's Office notes noting "MH has been torn out" and photos showing a framed structure where the mobile home had been located.
22. The nonconformity was not the result of an ordinance or an amendment to an ordinance that made the structure nonconforming. The two-car garage and porch additions expanded a conforming residential structure in such a manner as to make the existing mobile home in violation of the established 25-foot front-yard setback, and therefore nonconforming.

Because Ordinance 69-23, which established the 25 foot front yard setback, was in effect prior to 1972 when the two-car garage was constructed, the garage was never lawfully established; therefore the residence DOES NOT have affirmative recognition of legal nonconforming structure status (grandfather rights) as it pertains to the north front-yard setback requirement in the Rural Residential (RR) zoning district under Chapter 18.108, Nonconforming (Grandfathered) Uses and Lots.

DID NOT AFFIRM (DENIED)

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.
