

FAIRBANKS NORTH STAR BOROUGH PLANNING COMMISSION

**MINUTES**  
**April 27, 2021**

A regular meeting of the Fairbanks North Star Borough Planning Commission was held via Zoom from the Mona Lisa Drexler Assembly Chambers, Juanita Helms Administration Center, 907 Terminal Street, Fairbanks, Alaska.

The meeting was called to order at 6:00 p.m. by John Perreault, Chair.

**A. ROLL CALL**

COMMISSIONERS PRESENT: Chris Guinn Savannah Fletcher  
John Perreault Mike Kenna  
Eric Muehling Shane Koester  
Doug Sims Sandra Mota  
Kerynn Fisher

COMMISSIONERS ABSENT (A) & EXCUSED (E): Jason McComas-Roe (E)

OTHERS PRESENT: Christine Nelson, Director of Community Planning  
Kellen Spillman, Deputy Director of Community Planning  
Annmarie Billingsley, Asst. Borough Attorney  
Don Galligan, Planner IV, Transportation Planner  
Kristina Heredia, Planner III  
Sarah Bingham, Planner II  
Sharon Wittenkeller, Recording Clerk

**B. MESSAGES**

1. Communications to the Planning Commission

Kellen Spillman provided an update on the upcoming May and June Planning Commission meeting agenda items, including work sessions on the FNSB Road Corridor and with AK DOT & PF on upcoming 2021 projects. He also provided updates on the budget staffing changes which moves two Administrative Assistant III positions to the clerk's office and adding a new FTE Planner III position. He spoke of the new Code Enforcement Officer, Adam Pruett who transferred from the Permit Tech position who will be working on the 400+ open code enforcement cases. Mr. Spillman and Mr. Galligan met with AK DOT & PF to inform them of all the Planning Commission processes with variance requests, local planning authority approval, requirements for highway projects and flood plain regulations. He spoke to the most recent Community Research Quarterly and has information on the housing trends in the FNSB. An RFP for the finalized Downtown Plan was just released and hopefully a contractor will be

hired by the end of May. He followed up with the most recent APA conference session which was recorded and will be shared with the Commission.

Ms. Nelson reminded the Commission of a potential change in how meetings will be conducted starting May 1<sup>st</sup> which will depend on the FNSB Operational Status before the meeting. Currently, if the FNSB Operational Status is low or low-intermediate, Commissioners, members of the public, and staff may choose if they want to attend in-person or via Zoom with maximum of 15 allowed in the Chambers. Commissioners must inform the clerk by 5:00 p.m. the day before the meeting on how they chose to attend the meeting. Ms. Nelson spoke to the increase of conditional use requests for daycares due to requirements of the state licensing agency. There are about 60 daycares within FNSB and about 30 which require conditional use permits and only about 1/3 of them have received conditional use permits.

## 2. Citizen's Comments

Russell Johnson, Project Manager with AK DOT & PF shared a power point presentation and gave a brief three-minute overview of the HP2021-007 Steese Expressway Chena River Bridge Redeck Project.

Commissioners questioned and discussed the following items:

- A third lane to pull off on and turn onto 10<sup>th</sup> Avenue.
- Timing of the construction of the project in correlation with the Wendell Street Bridge.
- The length of the project.
- Bridge closure.

John Netardus, Highway Design Manager, with AK DOT & PF and Brian Charlton, Projects Coordinator with FNSB shared a power point presentation and gave a brief overview of HP2021-004 FAST Sidewalk Improvements Project FFY2019, HP2021-005 FAST Intersection Improvements, HP2021-006 Growden Area Accessibility Improvements.

Commissioners questioned and discussed the following items:

- Whether there will be a striped crossing in the island in the parking lot of the Carlson Center, across both entrances and exits from the parking lot.
- The grass island in front of the Carlson Center that separates the current parking lot and the road is a snow dump area, a low area that is full of water and an issue that will need to be resolved.
- Whether the proposed sidewalk and wooden bridge will be fully ADA compliant.

## 3. Disclosure & Statement of Conflict of Interest

Commissioner Koester received a Dear Property Owner letter for CU2021-009 and was excused from hearing or voting on the item.

Commissioner Guinn was excused from hearing or voting on the Appeal of GR2021-100 to due conflict of interest.

**C. APPROVAL OF AGENDA AND CONSENT AGENDA**

Motion to approve the agenda and consent agenda made by Commissioner Guinn and seconded by Commissioner Fletcher. Carried without objection or roll call vote.

**D. MINUTES**

Minutes from March 9, 2021 were approved with corrections.

**E. CONSENT AGENDA ITEMS**

1. **Approved \*HP2021-004 FAST Sidewalk Improvements Project FFY2019:** A request by the State of Alaska Department of Transportation and Public Facilities (AK DOT&PF) for local planning authority approval of the FAST Sidewalk Improvements project FFY2019. AK DOT&PF Northern Region is proposing a project to improve sidewalks by constructing new sidewalks or paths adjacent to NPHS Blvd, Snowman Ln, 2<sup>nd</sup> Avenue (adjacent to the Carlson Center), and Loftus Rd.
2. **Approved \*HP2021-005 FAST Intersection Improvements:** A request by the State of Alaska Department of Transportation and Public Facilities (AK DOT&PF) for local planning authority approval of the FAST Intersection Improvements project. AK DOT&PF Northern Region is proposing a project to improve intersections at 23<sup>rd</sup> Avenue and South Cushman Street, Chena Pump Road going into Chena Point Ave, West Tanana Drive (Noatak Dr) and Sheep Creek Extension. Project includes drainage improvements, roadside hardware, and utilities.
3. **Approved \*HP2021-006 Growden Area Accessibility Improvements:** A request by the State of Alaska Department of Transportation and Public Facilities (AK DOT&PF) for local planning authority approval of the Growden Area Accessibility Improvements project. The FNSB in partnership with AK DOT&PF Northern Region is proposing a project to construct a new asphalt pathway through Growden Park from Stewart St to Wilbur St to 2nd Ave including roadside hardware, ADA compliant curb ramps, and crosswalks.
4. **Approved \*HP2021-007 Steese Expressway Chena River Bridge Redeck Project:** A request by the State of Alaska Department of

Transportation and Public Facilities (AK DOT&PF) for local planning authority approval of the Steese Expressway Chena River Bridge Redeck Project. This project is proposing to resurface the Steese Expressway Chena River Bridge to extend the service life of the bridge and improve safety.

**F. QUASI-JUDICIAL HEARING**

1. **CU2021-009:** A request by Alejandra Barragan for Conditional Use approval of a Daycare Facility for up to 12 children in the Two-Family Residential (TF) zoning district on Lot 7A, Block 10, Charles Slater Subdivision, located at 120 Ina Street.

Commissioner Koester received a Dear Property Owner letter and was excused from this hearing and voting on the request due to conflict of interest.

Oath Administered.

Applicant Testimony

Applicant, Alejandra Barragan spoke to the following in her report:

- Applied for the conditional use permit due to state licensing's requirements.
- She has been licensed for more than fourteen years.
- She has been at the same location for ten years.
- She provides services to the community.
- Hours of operations are 6:30 a.m. to 5:30 p.m.
- She is licensed for up to twelve children and has two employees when there are eight or more children.
- She has not had any complaints from neighbors.

Sarah Bingham presented the staff report. Based on the staff analysis, the Department of Community Planning recommended approval.

Interested Person Testimony

Chair Perreault opened interested person testimony. Being that there were no members of the public who wished to provide testimony, interested person testimony was closed.

**MOTION:** I move to approve the Conditional Use Permit (CU2021-009) for a day care facility on Lot 7A, Block 10, Charles Slater Subdivision with seven (7) conditions, and adopting the staff report and three (3) Findings of Fact in support of the approval made Commissioner Sims and seconded by Commissioner Kenna.

Commissioner Sims stated his support of the conditional use noting the good track record of the daycare operating at that location in the subdivision and adequate lot area for turning, maneuvering and parking.

Commissioner Muehling commented that the applicant has been in the location for ten years, there were no noted complaints and supported the application as daycares are sorely needed in the area.

Commissioner Perreault stated that protecting the health, safety and welfare of the community is being offered through the daycare services that are being provided.

#### ROLL CALL

Eight (8) in Favor: Fisher, Fletcher, Guinn, Kenna, Mota, Muehling, Sims, Perreault.

Zero (0) Opposed:

#### **MOTION CARRIED – CU2021-009 APPROVED**

#### Conditions for Approval

1. The maximum number of children permitted at the day care is limited to twelve (12).
2. The hours of operation of the day care facility shall be limited to 6:00am to 6:00pm, including drop off and pick up activities.
3. The gravel portion of the client parking area, as shown in the applicant's site plan, shall be surfaced with at least two inches of compacted gravel no later than July 1, 2021 and that surface shall be maintained.
4. No materials or vehicles, other than employee or client vehicles, shall be parked or stored in the designated parking spaces.
5. All outdoor parking spots, including the drop off and pick up area, shall be plowed and maintained year-round.
6. Drop off and pick up times shall be staggered to ensure that client vehicles do not exceed two vehicles simultaneously within the designated drop off and pickup spaces.
7. If any modifications are made to the site plan, floor plans, or other FNSB required documents or operational characteristics, the applicant or holder of this conditional use permits shall submit revised documents to the FNSB Community

Planning Department. If modifications are made to the conditional use, an amendment to the Conditional Use Permit may be required pursuant to FNSBC 18.104.050(D).

#### Findings of Fact for Approval

1. The proposed conditional use conforms to the intent and purpose of Title 18 and of other ordinances and state statutes:
  - a. The proposed conditional use is consistent with the 'Urban Area' FNSB Regional Comprehensive Plan land use designation because the day care facility will provide "essential human services for residents" of the borough "that will enrich the quality of life for all residents," mentioned in Strategy 1 of Goal 1 in the Community and Human Resources section of the Comprehensive Plan. The added land use also "fit[s] the diverse needs of the community," corresponding to Goal 3 in the Land Use section of the Comprehensive Plan.
  - b. FNSBC 18.96.060(C) does not require a specific number of client parking spots for day care facilities and is not subject to the design standards of FNSBC 18.96.060(H).
  - c. The conditions that limit the number of children, hours of operation and parking restrictions, promote public health, safety, and welfare and protect private property rights.
  - d. The applicant is in the process of renewing their state license for a day care facility from the Alaska Department of Health and Social Services, the state agency that is responsible for regulating childcare facilities. Renewing a state license is dependent on obtaining this conditional use permit.
  - e. The FNSB Eielson Air Force Base Regional Growth Plan shows that "The FNSB region has a shortage of affordable infant and preschool age childcare options" demonstrating that this application meets the purpose of a conditional use, to meet "the public need for the particular use in a particular location"<sup>1</sup> as stated in FNSBC 18.104.050.
2. There are adequate existing sewage capacities, transportation facilities, energy and water supplies, and other public services to serve the proposed conditional use.
  - a. The day care facility has adequate water supply and sewage capacity because the property is served by Golden Heart Utilities.
  - b. The facility has adequate power supply because it is served by the GVEA grid.

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<sup>1</sup> FNSBC 18.104.050(A)

- c. The facility has adequate fire services because the property is served by the City of Fairbanks Fire Department.
  - d. The facility is served by the City of Fairbanks Police Department for law enforcement.
  - e. The subject property has access from Ina Street which is a local road maintained by the City of Fairbanks. The City Engineer does not object to client vehicles backing into the right-of-way.
  - f. Ina Street has the needed capacity to serve the day care facility safely and without any congestion occurring from the use.
3. The proposed conditional use protects public health, safety, and welfare because the day care facility complies with Title 18 standards for the TF zoning district (FNSBC 18.44) as well as with other applicable land use related laws.
- a. With recommended condition, the hours of operation for the day care facility will not negatively impact the residential neighborhood because the day care would not operate in the evenings or night, when more residents are home. These hours of operation are consistent with the City's noise ordinance.
  - b. The noise produced by the day care facility does not negatively impact the residential neighborhood because, as conditioned, the day care is for a maximum of 12 children and the outside playtime is limited.

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2. **CU2021-008:** A request by Barbara Paschall for conditional use approval of a Marijuana Cultivation Facility, Indoor Large in the General Use (GU-1) /Military Noise Overlay (MNO) zoning district on Tax Lot-2120, Section 21, T1S, R1E located at 1349 Warner Road, North Pole, AK.

Oath Administered.

Kristina Heredia presented the staff report. Based on the staff analysis, the Department of Community Planning recommended approval.

Commissioner Muehling inquired if the borough has any security requirements or suggestions for a marijuana site.

Ms. Heredia replied that the borough requires that the applicant comply with local regulations and adhere to working with AMCO, and that those conditions are proposed.

### Applicant Testimony

Applicant, Barbara Paschall spoke to the following in her report:

- She owns Nature's Relief in downtown Fairbanks, on 7<sup>th</sup> Avenue.
- Her premise behind opening the business is to become vertically integrated in the marijuana industry.
- She feels it is beneficial to the community.
- She has added to the base tax and employed a number of employees.
- She had made a positive difference downtown on her corner property by landscaping and keeping it clean.
- She wants to supplement her downtown business by opening the business on Warner Road in North Pole.

Commissioners questioned and discussed the following:

- Vertical integration; supply the downtown store with the cultivation product from the Warner Road business products.
- Impact on traffic on connecting road.
- Number of employees.

### Interested Person Testimony

Chair Perreault opened interested person testimony.

Pete Smith of Warner Road, North Pole, AK spoke to his concerns of the marijuana business having a negative impact on his property, property value, loss of income, his tenants, safety in the neighborhood, and the odor.

Scott Ravenscroft of Warner Road, North Pole, AK spoke to his concerns of traffic and access onto the business property from Warner Road as it is a bus stop for kids getting on the bus. He suggested they create access onto the property from the Old Richardson Highway instead of Warner Road.

Jeremy Granger of North Pole spoke to his concerns of odor and the use of carbon filters, the improper use of the carbon filters and the attraction of a certain type of people to the business.

It was determined that Mr. Granger was not in the area of the 2,000-foot radius within the business' property and did not receive a Dear Property Owner letter.

### Applicant Rebuttal

Ms. Paschall spoke to the following in her rebuttal:

- They will be using the commercial-rated carbon filters and equipment.
- They plan to have adequate air flow throughout the facility.
- They will be conducting monthly tests on the equipment.
- Feels her building will improve the neighborhood.

Mr. Kelly Paschall spoke to the following:

- His wife, Barbara has been a good community member to two-plus years while owning Nature's Relief.
- There have not been any complaints.
- They gainfully employ five-plus people in the community.
- They add significantly to the tax base.
- The building will do nothing but increase property values.
- Surrounding structures are old and worn down.
- Their building is brand new.
- There will not be more than half a dozen cars going through.
- They will do everything they can to mitigate odors.
- They have proven they are good community members.
- He encourages people to embrace the industry and embrace the tax base that the industry brings to lower property taxes.

Commissioner Fletcher inquired what Ms. Paschall's understanding was of her legal requirements to mitigate odor.

Ms. Paschall stated for the state license the requirement is that there cannot be a strong odor emission from the building and that there are certain ways to mitigate the odor.

**MOTION:** I move to approve the Conditional Use Permit (CU2021-008) for a Marijuana Cultivation Facility, Indoor Large in the General Use (GU-1) zoning district on Tax Lot-2120, Section 21, T1S, R1E, FM, with five (5) conditions as amended, and adopting the staff report and three (3) Findings of Fact in support of the approval made by Commissioner Sims and seconded by Commissioner Muehling.

ROLL CALL

Eight (8) in Favor: Fisher, Fletcher, Guinn, Koester, Mota, Muehling, Sims, Perreault.

One (1) Opposed: Kenna.

**MOTION CARRIED – CU2021-008 APPROVED**

Conditions for Approval

1. Prior to the commencement of a Marijuana Cultivation Facility, Indoor Large operation, the applicant or holder of this conditional use permit shall comply with all applicable land use related laws. Applicable permits and approvals may include but are not limited to:
  - a. As required by the FNSB and the Department of Commerce, Community, and Economic Development (Alcohol and Marijuana Control Office), the applicant or holder of this conditional use permit shall ensure the site meets all licensing requirements.
  - b. The applicant or holder of this conditional use permit shall obtain a formal plan review by the State of Alaska Department of Public Safety (Division of Fire and Life Safety, Plan Review Bureau) and shall comply with all recommendations and/or requirements resulting from the plan review.
2. All parking, turning and maneuvering area shall be located entirely within the subject property of the conditional use being served.
3. The existing vegetated area at least 20 feet in depth, as shown on the Site Plan dated April 12, 2021, and identified as "Natural Vegetation" shall be maintained along the southern, eastern and western property lines.
4. The applicant shall construct an earthen berm, fence or other structure to permanently block the existing driveway onto the Old Richardson Highway.
5. If any modifications are made to the site plan, floor plans, narrative or other FNSB required documents or operational characteristics which were submitted on April 12, 2021, the applicant or holder of this conditional use permit shall submit revised documents to the FNSB Community Planning Department. If modifications are made to the conditional use, an amendment to the Conditional Use Permit may be required pursuant to FNSBC 18.104.050(D).

#### Findings of Fact for Approval

1. The proposed conditional use conforms to the intent and purpose of Title 18 and of other ordinances and state statutes because:
  - a. FNSB Regional Comprehensive Plan Land Use Goal 3 is supported by the conditional use by increasing the variety of land uses in the non-urban areas.
  - b. The intent of Title 18 is met because the conditional use, with conditions, protects private property rights and promotes public health, safety, and welfare.
  - c. Alaska Statute 3AAC 306 governs the state licensing and operational standards for marijuana facilities. Title 18 requires that a borough permitted commercial retail marijuana store obtain a license pursuant to all state regulations. The

applicant has provided information sufficient to show they intend to meet the state regulations.

2. There are adequate existing utilities serving the site and other public services are available to serve the proposed conditional use.
  - a. A water holding tank and septic system will be installed.
  - b. The subject property is served by the North Star Volunteer Fire Department for emergency fire response.
  - c. The subject property has adequate power supply because it is served by the GVEA grid.
  - d. The subject property is served by the Alaska State Troopers for law enforcement.
  - e. The subject property has access from Warner Road and the Old Richardson Highway, which is a Major Collector Road that is maintained by AK DOT&PF. The Old Richardson Highway and Warner Road can accommodate the trip ends generated by the proposed marijuana facility.
  
3. The proposed conditional use protects public health, safety, and welfare because the property complies with Title 18 standards for the GU-1 zone (FNSBC 18.40) as well as Title 18 standards for marijuana establishments (FNSBC 18.96.240).
  - a. The proposed Marijuana Cultivation Facility, Indoor Large is located on a property adjacent to two residential land uses.
  - b. There is potential for commercial land uses that could create land use conflicts adjacent to residential zones.
  - c. There are a variety of more intensive commercial and industrial land uses that could be permitted by right in the General Use zone.
  - d. The applicant has proposed mitigation efforts to limit any negative impacts to the surrounding properties including downward facing lighting, vegetative buffering and minimal signage.
  
  - e. Site Security and waste disposal adhere to all requirements per Alaska Statute 3AAC 306.
  - f. Odor and noise are limited due to the operation being entirely indoors.
  - g. Hours of operation are within Alaska State regulations.

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3. **CU2021-007:** A request by Barbara Paschall for conditional use approval of a Marijuana Product Manufacturing Facility, Unlimited in the General Use (GU-1)/Military Noise Overlay (MNO) zoning district on Tax Lot-2120, Section 21, T1S, R1E located at 1349 Warner Road, North Pole, AK.

Oath Administered.

Kristina Heredia presented the staff report. Based on the staff analysis, the Department of Community Planning recommended approval.

Commissioner Muehling inquired if the use of butane in processing of these products any more or less hazardous than a gas furnace in a residential home.

Mr. Heredia deferred the question to the applicant.

#### Applicant Testimony

Applicant, Barbara Paschall spoke to following in her report:

- Phase II of her plan is to be fully integrated with the retail store.
- The trim product produced from the cultivation facility will be used in the manufacturing facility.
- A closed loop system will be utilized for the butane which is safer for the environment.
- Chemicals are stored in a fireproof container and shelving unit which is required and they are working with the Fire Marshal.
- They will not go forward with the business until they obtain their safety certificate.
- They are following all regulations.
- Employees will be trained and will conduct safety and fire drills on the facility.
- The facility will not emit any odor.
- There will not be a sign on the building stating what the business is.
- The 9-foot overhead door is there for the future use of the building and will not be used for conducting business.

Commissioners questioned and discussed the following items:

- Functioning of the closed loop system.
- Processing waste disposal and plant matter.
- Composting or removing waste off site.

#### Interested Person Testimony

Mark Conkey of North Pole spoke to his concerns of kids in the neighborhood, an increase in traffic, odor and property value.

Scott Ravenscroft of Warner Road, North Pole, AK spoke to his concern of the current access to the business from Warner Road and hoped to see access moved to the Old Richardson Highway.

#### Applicant Rebuttal

Ms. Paschall spoke to following in her rebuttal:

- Does not anticipate a lot of traffic to and from the building.
- Traffic count will be limited, with 4-6 cars per day.
- The driveway is safer on Warner Road because of the high speeds on the old Richardson Highway.
- There will be security cameras and on-site security, which will also benefit the neighborhood.

Commissioner Muehling asked if all of the parking will be onsite and if it would be necessary for any vehicles to park on the road.

Ms. Paschall responded that there is plenty of parking on site and there will no parking on the road.

**MOTION:** I move to approve the Conditional Use Permit (CU2021-007) for a Marijuana Product Manufacturing Facility, Unlimited in the General Use (GU-1) zoning district on Tax Lot-2120, Section 21, T1S, R1E, FM, with five (5) conditions as amended, and adopting the staff report and three (3) Findings of Fact in support of the approval made by Commissioner Fisher and seconded by Commissioner Sims.

Commissioner Fisher stated she has no objections to the request; she did note the concerns of the neighbors and that the industry will add to the tax base and is an appropriate use in the GU1 zone.

Commissioner Muehling commented on the unique processing of waste on site either by composting or taking it off site to the land fill. The processing of waste adequately protects the health and safety of the community.

Commissioner Fletcher stated her support for the request and her trust of good faith with the applicant to responsibly manage the manufacturing business. The closed loop system, the carbon filters, the non-use of the larger doors, fire safety measures speak to intentional thoughtful practices.

Commissioner Fletcher inquired about the reason for the access off the Old Richardson Highway being closed.

Ms. Heredia explained that they had inquired with AK DOT & PF about using the access off the Old Richardson Highway and they were informed that using that access would require additional permits. The applicant had agreed to block off the access point and was in support of construction of a berm and had already constructed the access points on Warner Road to limit the access because the Old Richardson Highway is a collector road. The subdivision regulations state that subdivisions are not to have access onto major collectors which was incorrectly noted in the staff report because this is not a subdivision, hence the request to remove that condition in the staff report. For safety measures it is best not to have access points onto major collectors due to high speeds and unnecessary slowing of vehicles.

Mr. Spillman included that engineering studies that govern access points onto roadways significantly show that when you add access to high speed, high volume roadways know as major collectors or arterials you can expect the crash rate to increase. Difference in speed is the main factor in the crash rates, when a person slows down to turn. Best practice is to limit or prohibit direct lot access onto major collectors or arterials which FNSB does in the subdivision code. For properties like this that have not been through the subdivision process, FNSB and AK DOT & PF agree that limiting direct lot access onto major collectors and arterials is preferable.

#### ROLL CALL

Eight (8) in Favor: Fisher, Fletcher, Guinn, Koester, Mota, Muehling, Sims, Perreault.

One (1) Opposed: Kenna.

#### **MOTION CARRIED – CU2021-007**

#### Conditions for Approval

1. Prior to the commencement of a Marijuana Product Manufacturing Facility, Unlimited operation, the applicant or holder of this conditional use permit shall comply with all applicable land use related laws. Applicable permits and approvals may include but are not limited to:
  - a. As required by the FNSB and the Department of Commerce, Community, and Economic Development (Alcohol and Marijuana Control Office), the applicant or holder of this conditional use permit shall ensure the site meets all licensing requirements.
  - b. The applicant or holder of this conditional use permit shall obtain a formal plan review by the State of Alaska Department of Public Safety (Division of Fire and Life Safety, Plan Review Bureau) and shall comply with all recommendations and/or requirements resulting from the plan review.

2. All parking, turning and maneuvering area shall be located entirely within the subject property of the conditional use being served.
3. The existing vegetated area at least 20 feet in depth, as shown on the Site Plan dated April 12, 2021, and identified as "Natural Vegetation" shall be maintained along the southern, eastern and western property lines.
4. The applicant shall construct an earthen berm, fence or other structure to permanently block the existing driveway onto the Old Richardson Highway.
5. If any modifications are made to the site plan, floor plans, narrative or other FNSB required documents or operational characteristics which were submitted between April 12-14, 2021, the applicant or holder of this conditional use permit shall submit revised documents to the FNSB Community Planning Department. If modifications are made to the conditional use, an amendment to the Conditional Use Permit may be required pursuant to FNSBC 18.104.050(D).

#### Findings of Fact for Approval

1. The proposed conditional use conforms to the intent and purpose of Title 18 and of other ordinances and state statutes because:
  - a. FNSB Regional Comprehensive Plan Land Use Goal 3 is supported by the conditional use by increasing the variety of land uses in the non-urban areas.
  - b. The intent of Title 18 is met because the conditional use, with conditions, protects private property rights and promotes public health, safety, and welfare.
  - c. Alaska Statute 3AAC 306 governs the state licensing and operational standards for marijuana facilities. Title 18 requires that a borough permitted commercial retail marijuana store obtain a license pursuant to all state regulations. The applicant has provided information sufficient to show they intend to meet the state regulations.
2. There are adequate existing utilities serving the site and other public services are available to serve the proposed conditional use.
  - a. A water holding tank and septic system will be installed.
  - b. The subject property is served by the North Star Volunteer Fire Department for emergency fire response.
  - c. The subject property has adequate power supply because it is served by the GVEA grid.
  - d. The subject property is served by the Alaska State Troopers for law enforcement.
  - e. The subject property has direct access from Warner Road, which is adjacent to the Old Richardson Highway, which is a Major Collector Road that is

maintained by AK DOT&PF. The Old Richardson Highway and Warner Road can accommodate the trip ends generated by the proposed marijuana facility.

3. The proposed conditional use protects public health, safety, and welfare because the property complies with Title 18 standards for the GU-1 zone (FNSBC 18.40) as well as Title 18 standards for marijuana establishments (FNSBC 18.96.240).
  - a. The proposed Marijuana Product Manufacturing Facility, Unlimited is located on a property adjacent to two residential land uses.
  - b. Commercial land uses can create potential land use conflicts when adjacent to residential uses.
  - c. There are a variety of more intensive commercial and industrial land uses that are allowed by right in the General Use zone.
  - d. The applicant has proposed mitigation efforts to limit any negative impacts to the surrounding properties including safe chemical storage, a closed-loop extraction process, downward facing lighting, vegetative buffering and minimal signage.
  - e. The applicant is working with the proper regulatory agencies to ensure that all chemicals will be used and stored safely.
  - f. Site Security and waste disposal adhere to all requirements per Alaska Statute 3AAC 306.
  - g. Odor and noise are limited due to the operation being entirely indoors.
  - h. Hours of operation are within Alaska State regulations.

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## **G. APPEALS**

1. **Appeal of GR2021-100:** An appeal by Spirit of Alaska Credit Union for the denial of a request for legal nonconforming lot size status (grandfather rights) for Tax Lot 2836, Section 28, T1S, R1E in the General Use (GU-1) zoning district. Located at 1540 and 1542 Eskimo Museum Lane.

Commissioner Guinn was excused from hearing the appeal and voting due to his conflict of previous employment with FNSB Community Planning Department and his involvement in policy discussions during the time of the developments of this property.

Oath Administered.

Appellant, Anthony Rizk presented his report and spoke of the following items:

- Requesting that the original decision to deny grandfathers rights on a property owned by Spirit of Alaska be overruled.
- It is a foreclosure property located at 1540 and 1542 Eskimo Museum Lane.

- They are currently under contract to sell the property to a low-income buyer who is using grants to help purchase the property.
- The crux of the matter is that FNSB is not recognizing the property prior to a April 25, 1988 Ordinance which included a minimum lot size of 40,000 square feet in the GU1 Zone.
- There are two different tax lots in question; 2818 and 2836 where both dwellings reside.
- At the time the structures were built the zone was Unrestricted Use with no minimum lot size required.
- The two structures were built close together.
- Mr. Guinn was working for the borough at the time.
- The first structure was built in 1968 and the second structure was built in 1973.
- Tax Lot 2836 has its own separate PAN number and Tax Lot 2818 has its own separate PAN number.
- Possesses tax documents back to 1979 showing that there were separate taxes paid on Tax Lot 2836 after the structures were built.
- The same owner paid taxes on Tax Lot 2818.
- Possesses appraisal reports from a local appraiser from November 2017, 2019 and 2020.
- In review of the appraisal reports one report is marked legal, one is marked legal non-conforming with grandfathered use and the other is marked legal.
- The property database spoke of section 2843; it was previously assessed as Tax Lot 2818 and 2836.
- Discussed aerial photos he provided to the Commission of the properties in question.
  - Spoke of an easement across a lot line.
  - The main structure sits across the lot line; behind it.
  - Questioned on how you would know where the lot lines are if it has never been subdivided or platted.
- Provided Ms. Nelson with a mortgage location survey which shows the current dimensions and detailed plot plan and questioned how the information is obtained if it was not obtained from the borough.
- The problem with the grandfathering is that the borough cannot find a warranty deed that shows the tax lot was a separate lot on its own prior to the 1988 ordinance.
- There are not a lot of options with the property without grandfather rights.
- Purchasing 14,000 square feet of adjoining property to come into compliance is not an option.
- The two structures sit on a lot that is 26,310 square feet which is too small for a GU1 Zone.
- The structures were built in an Unrestricted Use zone before it was rezoned.

The Commission and staff questioned and discussed the following items:

- The incomplete chain of title.

- Research of historic books at the recorder's office and online.
- Title research through a title research company.
- Mortgage location survey included in the packet on page 672.
- Dwelling that crosses the tax lot line and an easement for it located at 1540 Eskimo Museum Lane.
- Date of construction of 1540 Eskimo Museum Lane, either built in 1968 or 1973.
- FNSB code 18.108.040.C.2 - If a structure on a nonconforming lot encroaches onto an adjoining lot under common ownership, the two lots shall thereafter be considered a single lot for purposes of this title.

Christine Nelson presented the staff report. Based on the staff analysis, the Department of Community Planning recommended denial of the appeal.

The Commission questioned and discussed the following items:

- Lot size became nonconforming in 2010.
- Both tax lots bought and sold together without subdivision activity for many years but taxed separately.
- Classified as tax lots, not legal lots.
- Definition of lot of record; adopted in 1968 and repealed in 1988.
- Transfer of property ownership and left-over remainder of tax lots.
- Lots created for tax purposes but not legal lots.
- Properties bought and sold by deed, before and after Title 49 subdivision regulations went into place.
- Tax Lots for 2836 and 2818 were described in a deed together, numerous times prior to 1988.
- Communication between the Planning Department on zoning for properties and the Assessing Department on the taxing of the lots as properties are subdivided – is there a way to catch these before creating a history of two properties being taxed as independent parcels but having not gone through the platting process.
- Disconnect at the state level between what is required of Assessing and subdivision regulations.
- Illegal subdivisions.
- Clarification on if a lot is legal if it goes through platting.
  - Various ways to go through platting processes.
- Common ownership and location of structure in conjunction with tax lot lines.
- If the owner of Tax Lot 2818 acquired Tax Lot 2836 would the two lots combined meet the minimum 40,000 square feet in GU1 Zone and be eligible for the platting process?
- Could the owner sell to any neighboring lot legally or obtain the additional square footage needed to be in compliance within the zoning and then sell.
  - It would have to be platted to become legal by lot line elimination or a quick plat between 2836 and one of the other tax lots.
- If the two lots went through the platting process it would be extremely difficult or impossible to make them comply with the existing subdivision regulations;

- The biggest concern would be legal constructed access required to both parcels involving one or multiple surrounding properties to a state-maintained right-of-way to dedicate the right-of-way for the legal constructed access and build said access.
- In a complicated situation such as this where it would be difficult to get the property into a legal lot what is a recommendation to address the situation as an alternative to seeking grandfather rights.
  - This is an on-going issue which will need policy direction and a code revision from the Assembly.
  - Could this be addressed through code with a new definition in an amnesty option/situation?
- Questioned whether the properties are connected to water and sewer or if they are on a well and septic.
- The option of a rezone.
- Tax uses on an illegal lot.
- Questioned reasons for separate Tax Lots 2818 and 2836 vs. combining them.

### Interested Person Testimony

Chair Perreault opened interested person testimony. Being that there were no members of the public who wished to provide testimony, interested person testimony was closed.

### Rebuttal

Mr. Rizk spoke to the following in his rebuttal:

- The lots were taxed as two tax lots.
- The structures were built when the zoning was Unrestricted Use in 1968 and 1973.
- There are not a lot of options to buy property near the tax lots.
- Low income buyer waiting to purchase the property.
- Structures sitting on two lots with a lot of history.
- Does not plan to buy additional square footage to come into compliance to purchase the lot.
- Interested in the grandfather rights to move forward.

**MOTION:** I move to deny the appeal and uphold the decision of GR2021-100 denying legal nonconforming lot size status for Tax Lot 2836, Section 28, T1S, R1E, adopting the appeal staff report and thirteen (13) Findings of Fact in support of the decision for denial made by Commissioner Mota and seconded by Commissioner Kenna.

Commissioner Muehling stated that there is a problem in the borough with lots being deeded and divided by attorney's and families which have not gone through the proper platting process. The burden of proof is on the appellant and the appellant did not provide evidence of legal nonconforming grandfather rights status.

Commissioner Sims appreciated the extensive research done by staff. As a matter of borough policy there should be a moratorium on grandfather rights discussion on nonconforming lot sizes until there is an amnesty clause put into Title 17. Unable to find any findings of fact to support the legal nonconforming grandfather rights to support the appeal request.

Commissioner Fletcher encouraged Spirit of Alaska to reconsider the other viable options to sell the property.

Commissioner Fisher would like future discussion on a recommendation to the Assembly for a code modification to allow for amnesty in these types of situations.

#### ROLL CALL

Eight (8) in Favor: Fletcher, Fisher, Kenna, Koester, Mota, Muehling, Sims, Perreault.

Zero (0) Opposed:

#### **MOTION CARRIED – APPEAL DENIED**

#### Findings of Fact for Approval or Denial

1. Tax Lot 2836, Section 28, T1S, R1E is an estimated 26,310 square feet in size and zoned General Use (GU-1). The lot does not comply with the GU-1 zoning district standards because it does not meet the current minimum lot size requirement of 40,000 square feet.
2. The Fairbanks North Star Borough adopted the FNSB Zoning Ordinance (Title 49) on March 28, 1968 with the adoption of Ordinance No. 67-34. Under this ordinance, the subject property was zoned Unrestricted Use (UU). There was no minimum lot size requirement for the UU zoning district.
3. Between March 28, 1968 and April 25, 1988, FNSBC 49.15.020 defined a Lot of Record as "a plot of land, the description of which has been recorded in the office of the District Magistrate." During that period, the title of "District Magistrate" was amended to "Office of the District Recorder."
4. The subject property was rezoned from UU to General Use (GU-1) when Ordinance No. 88-010 became effective on April 25, 1988, instituting a minimum lot size requirement of 40,000 square feet.

5. A Warranty Deed, recorded on November 22, 2010, is the first recorded document that could be found which specifically identifies a portion of the transferred property as Tax Lot 2836, Section 28, T1S, R1E. Tax Lot 2836 was transferred in conjunction with adjacent Tax Lot 2818 in this deed. Together, the land area of both tax lots (56,676 square feet) exceeded the 40,000 square foot minimum lot size requirement.
6. On November 22, 2010, immediately following the recording of the Eades to Equity Trust Company deed, the Equity Trust Company recorded another Warranty Deed transferring ownership of Tax Lot 2818 to William Griffin. With the separate transfer of ownership of TL2818, the remainder of the parcel (TL2836) estimated at 26,310 square feet in size did not meet the minimum lot size requirement and the parcel became nonconforming in size at that time.
7. A Statutory Warranty Deed, recorded on April 18, 2011, is the earliest deed located in which the subject property was described and transferred separately in its current configuration.
8. FNSBC 18.108.020 states that a nonconforming lot "which existed lawfully prior to the effective date of the ordinance codified in this title" or any "lot which has become nonconforming upon adoption of the ordinance codified in this title or any subsequent amendment thereto may be continued, subject to the restrictions to this chapter."
9. Tax Lot 2836 has never been platted through applicable subdivision regulations.
10. Tax Lot 2836 never met the definition of "lot of record" because the subject property was never described in its current configuration in a deed recorded between March 28, 1968 and April 25, 1988.
11. The minimum lot size requirement of 40,000 square feet in the GU-1 zone had already been established prior to the subject lot being described in its current configuration by warranty deed in 2011. TL 2836 did not meet the minimum lot size requirement when the warranty deed was recorded in April 2011.
12. The applicant bears the burden of proof to demonstrate that the applicable criteria for legal nonconforming lot size have been met.
13. The Appellant did not provide evidence that the subject property was lawfully created in its current configuration prior to April 25, 1988 when the land was zoned GU-1 and the 40,000 minimum lot size requirement was established.

#### **H. NEW BUSINESS**

1. Review New COVID Mitigation Meeting Protocols – this item was discussed in communications.

**I. EXCUSE FUTURE ABSENCES**

The absence of Commissioner Kenna on May 25, 2021 is excused.

**J. COMMISSIONER'S COMMENTS/COMMUNICATIONS**

Commissioner Fisher looked forward to a future work session discussion on policy direction and a possibly code revision from the Assembly for an amnesty option for Grandfather Rights.

FAST Planning Update – Chair Perreault stated work is continuing on a variety projects and offered the opportunity for Commissioners to represent the Planning Commission on the FAST Planning Technical Committee.

**K. ADJOURNMENT**

There being no further business, the meeting was adjourned at 10:19 p.m.