

Introduced by: Planning Commission
Date: May 25, 2004
Public Hearing: June 8 & 22, 2004
Action: Passed
Vote: 6-0

CITY OF BETHEL, ALASKA

ORDINANCE #04-08

AN ORDINANCE AMENDING BETHEL MUNICIPAL CODE SECTION 18.80.050 ENTITLED "CONVERSION OF NONCONFORMITY" TO ADD A PROCEDURE FOR AN OWNER TO APPLY FOR A PERMIT ALLOWING CERTAIN NONCONFORMING STRUCTURES TO REMAIN IN NONCONFORMING STATUS

WHEREAS, it has come to the attention of the Planning Department that some properties developed prior to December 31, 1990 have structures that unintentionally encroach into the required yard area setbacks, thus creating a nonconforming property;

WHEREAS, most lending institutions will no longer finance properties that are nonconforming for this reason, and thus placing an extreme financial burden on the property owner at the time of sale;

WHEREAS, most of these properties with such nonconforming structures are not detrimental to the general public's health, safety or welfare, or to the environment of the immediate neighborhood or community;

WHEREAS, Section 18.80.050 of the City of Bethel Municipal Code ("Code") requires the correction of all nonconformities within two years of the transfer of an interest in a property, either through a conditional use permit or a variance;

WHEREAS, most properties with yard area setback nonconformity do not qualify for the issuance of a conditional use permit because not all the conditions can be met in accordance with Subsection 18.60.040B of the Code; and

WHEREAS, most properties with yard area setback nonconformity do not qualify for the issuance of a variance because not all the standards can be met in accordance with Subsection 18.64.010B of the Code.

BE IT ORDAINED by the City Council of Bethel, Alaska, that:

SECTION 1. Classification. This ordinance is permanent in nature and shall be incorporated into the Bethel Municipal Code (“Code”).

SECTION 2. Content. Section 18.80.050 of the Code is hereby amended to read as follows (new language is underlined and deleted language is stricken out):

18.80.050 Conversion of nonconformity.

A. Except as provided in subsection C, the The right to continue a nonconformity is not transferable.

B. Except as provided in subsection C, a A person acquiring an interest in any nonconforming lot, structure, or use, shall either bring the nonconforming lot, structure or use into conformance within two years from the date the interest was acquired or apply for and be granted a conditional use permit or a variance, if applicable, within two years of the date the interest was acquired. The right to continue a nonconformity terminates two years after the interest is acquired and may not thereafter be continued or reestablished unless and until converted to a permitted conditional use or a variance, if justified, granted by the planning commission pursuant to an application that was filed within two years of the date of the acquisition.

C. The owner of any property with a structure that has been continuously nonconforming since at least December 31, 1990 because it encroaches into a required setback or yard area, may submit an application to the land use administrator for a permit allowing the nonconforming structure to continue.

1. The applicant shall complete and submit the application form provided in 18.60.020, requesting a permit allowing the nonconforming structure to continue. The application does not need to contain a complete site plan permit application under Subsection 18.60.020A.8.

2. The notification and hearing provisions in Section 18.60.030 shall be followed to consider the application.

3. The land use administrator and the planning commission shall review the application in accordance with Sections 18.60.040A and 18.60.050. Notwithstanding the standards of review set out in Sections 18.60.040B and 18.60.062, the land use administrator and the planning commission shall apply only the following standards of review in determining whether to grant the permit:

- a. A complete application has been submitted in accordance with subsection C.1;
 - b. The notification and hearing provisions have been followed in accordance with subsection C.2;
 - c. The nonconformity of the structure is only because of an encroachment into a required setback or yard area, and for no other reason;
 - d. The nonconformity of the structure due to encroachment into a required setback or yard area has continuously existed since at least December 31, 1990; and
 - e. Granting the application will not be detrimental to the general public's health, safety or welfare, or to the environment.
4. The permit shall remain in effect unless revoked in accordance with Chapter 18.84. The permit shall be recorded with the State of Alaska Recorder's Office for the Bethel recording district.
 5. Any appeal by the applicant or any property owner adversely impacted by the decision of the planning commission shall be in accordance with Chapter 18.72.

SECTION 3. Effective Date. This Ordinance shall take effect immediately upon approval by the City Council.

ENACTED THIS 22nd DAY OF JUNE 2004 by a vote of 6 in favor and 0 opposed.

ATTEST:

Raunie J. Walters
for City Clerk

R. Thor Wilkins, Vice Mayor
Hugh Short, Mayor

