

MUNICIPALITY OF ANCHORAGE BOARD OF ADJUSTMENT
APPEAL FROM PLANNING & ZONING COMMISSION RESOLUTION No. 2014-040
PLANNING & ZONING COMMISSION CASE No. 2014-0094
BOARD OF ADJUSTMENT APPEAL No. 2014-4

FINDINGS AND DECISION OF THE BOARD OF ADJUSTMENT

WHEREAS, a limited site plan review application was filed on behalf of Sears Roebuck and Company (Sears) on May 12, 2014 for a large retail establishment site plan amendment for the addition of an exterior loading dock, screened trash receptacle, and renovation of the building façade to accommodate additional entranceways for Nordstrom Rack and three additional future interior tenant spaces within the present Sears store space; and

WHEREAS, the Mall at Sears is a large retail establishment owned by Carr Gottstein Properties, in existence prior to May 8, 2001, and generally located in Anchorage midtown, north of Benson Boulevard, south of Northern Lights boulevard, east of Denali Street, and west of the Seward Highway; and

WHEREAS, the application was filed and accepted for limited site plan review under the provisions of “old” Title 21; and

WHEREAS, on July 14, 2014, the Planning & Zoning Commission conducted a limited site plan review without public hearing and approved the application during the Regular Agenda portion of the meeting, after the item was pulled from the Consent Agenda at the request of Commission Member Spoerhase; and

WHEREAS, six retail merchants (Alaska Corn Company, Hops Hallmark, Lemon Tree Gifts, Nueurburg Enterprises LLC – *dba* GNC, Regis, and Stallone’s Men’s Store (Appellants) timely filed an appeal of the decision of the Planning & Zoning Commission; and

WHEREAS, the Board of Adjustment has deliberated and decided the appeal at a meeting open to the public on February 18, 2015;

NOW, THEREFORE, BE IT RESOLVED, the Board of Adjustment adopts the following findings and conclusions:

I.
FINDINGS BY THE BOARD OF ADJUSTMENT

RECORD ON APPEAL

As a preliminary matter and by unanimous vote (3-0), the Board of Adjustment makes these findings concerning the record on appeal:

1. The Board of Adjustment does not conduct evidentiary hearings. AMC 21.30.080. Any party may file a timely application for rehearing by the Planning & Zoning Commission based on the new evidence as provided in AMCR 21.10.503. Allegations of new evidence shall not be considered or decided by the Board of Adjustment. AMC 21.30.040.

2. No application for rehearing was filed in Planning & Zoning Case 2014-0094. The parties have filed voluminous exhibits outside the record on appeal. Unless the Board of Adjustment specifically takes official notice of an exhibit, the parties' supplemental documents are hereby rejected as outside the record on appeal, per AMC 21.30.080.

3. To assist the Board of Adjustment in its exercise of independent judgment on the interpretation of municipal code, the Board takes official notice of the legislative history of AO 2001-80, to include the minutes of the Regular Assembly Meeting of May 8, 2001, attached as Exhibit B to Appellants' Reply Brief.

ISSUES ON APPEAL

Issue No. 1: Is a Public Hearing on a limited site plan amendment filed under AMC 21.55.130 required as a matter of law? By unanimous vote (3-0), the Board of Adjustment exercises its independent judgment in the interpretation of municipal code and concludes a public hearing on a limited site plan review amendment filed under AMC 21.55.130 is not required as a matter of law.

4. Review of the legislative history of AO 2001-80 (including the minutes of the Regular Assembly Meeting of May 8, 2001); AMC 21.15.030F.3.b.; AMC 21.15.030G.3; the definition of large retail establishment under AMC 21.35.020B; AMC 21.55.130; and AMC 21.50.320 do not support Appellants' position.

5. Appellee's limited site plan review application is for a large retail establishment in existence on or before May 8, 2001, and is not subject to a public hearing requirement under the facts presented in this appeal.

Issue No. 2: Is Planning & Zoning Commission Resolution No. 2014-040 invalid because the modifications it authorizes will increase, rather than decrease, the degree of nonconformity? By unanimous vote (3-0), the Board of Adjustment decides Planning & Zoning Commission Resolution No. 2014-040 is valid. This issue is further addressed in conjunction with related Issues No. 5 and No. 6.

Issue No. 3: Does failure to comply with AMCR 21.10.209, governing items decided on the consent agenda, invalidate Planning & Zoning Commission Resolution No. 2014-040? By unanimous vote (3-0), the Board of Adjustment decides that AMCR 21.10.209 does not invalidate Planning & Zoning Commission Resolution No. 2014-040.

6. Although the second recital in Planning & Zoning Resolution No. 2014-040 references the consent agenda, the record clearly reflects this item was pulled from the consent agenda by Planning & Zoning Commission Member Spoerhase and decided as a regular agenda item with the applicant present. As a matter of law, AMCR 21.10.209 is not applicable.

7. Modification of Planning & Zoning Resolution No. 2014-040 is appropriate for clarification.

Issue No. 4: Is Planning & Zoning Commission condition #8 (to “amend the plan to include signage, or otherwise to SIGNIFICANTLY promote access to the common areas of the mall through the Sears store”) vague and illusory rendering Resolution 2014-040 invalid? By unanimous vote (3-0), the Board of Adjustment decides Planning & Zoning Commission Resolution 2014-040, Condition #8 under Part B. is reasonably stated and requires no amendment. On the related issue of direct access from leased retail space to the interior common area generally, the Board of Adjustment makes these additional findings by unanimous vote (3-0):

8. Site plan review standards for large retail establishments do not mandate direct access from leased retail space to the interior common area of the Sears Mall.

9. Internal configuration of tenant space within a large retail establishment is non-jurisdictional to site plan review. Appellants are seeking relief neither the Planning & Zoning Commission nor the Board of Adjustment may provide.

Issue No. 5: Did the Planning & Zoning Commission err by not including findings of fact on requirements listed in AMC 21.50.320, specifically subsections J. *Pedestrian access*; K. *Community spaces*; O. *Northern design elements*; and P. *Aesthetic characteristics* ? By unanimous vote (3-0), the Board of Adjustment decides that the Planning & Zoning Commission did not err by not including findings

of fact in Resolution 2014-040 on requirements listed in AMC 21.50.320. Along with conformity under Issue No. 3, requirements listed in AMC 21.50.320 are further addressed under Issue No. 6.

Issue No. 6: Does the record support the findings on all material requirements of approval? In recognition of the relationship and restatement among Issues No. 3, No. 5, and No. 6, the Board of Adjustment by unanimous vote (3-0), makes the following findings concerning standards, material requirements of approval, and provisions applicable to limited site plan review for a large retail establishment in existence on or before May 8, 2001:

10. The Planning & Zoning Commission's review of the limited site plan review under the standards and provisions in AMC 21.55.130, including consideration of AMC 21.50.320, is supported by substantial evidence in the record.

11. The Planning & Zoning Commission has applied the standards set out in AMC 21.50.320 in a manner proportionate to the extent of the proposed limited site plan amendment, and determined the conditions of approval.

12. The limited site plan review amendment, together with the conditions of approval, complies with the standards in AMC 21.55.130 and AMC 21.50.320 appropriate to the large retail establishment existing on or before May 8, 2001.

13. Large retail establishment is a defined term under AMC 21.35.020B:

Large retail establishment means one or more buildings located on a single lot that are used or intended for use principally for the retail sale of merchandise, and whose total floor area exceeds 20,000 square feet. Large retail establishment includes without limitation general merchandise retailers, warehouse and club retailers, superstores, discount stores, outlet stores, second-hand stores, and thrift stores.

14. A large retail establishment is a single integrated property. In AMC 21.55.130, reference to "surrounding property" does not include merchants and retailers occupying adjoining spaces within a large retail establishment.

15. The Board of Adjustment finds modification of Planning & Zoning Resolution No. 2014-040, Finding No. A.1., is appropriate for clarification.

II.

CONCLUSIONS

1. This appeal was heard in accordance with AMC 21.30.090.
2. The meeting at which the Board of Adjustment decided this appeal was held in accordance with AMC 21.30.080.
3. The Board of Adjustment takes official notice of the legislative history of AO 2001-80, to include the minutes of the Regular Assembly Meeting of May 8, 2001, attached as Exhibit B to Appellants' Reply Brief. The parties' other supplemental documents are rejected as outside the record on appeal, per AMC 21.30.080, and are not considered by the Board of Adjustment in deciding this appeal.
4. The Board of Adjustment substitutes its independent judgment for the Planning & Zoning Commission and modifies Planning & Zoning Commission Resolution No. 2014-040, as indicated in the attachment.
5. In all other respects Planning & Zoning Commission Resolution No. 2014-040 is affirmed and the appeal to the Board of Adjustment in Planning & Zoning Commission Case No. 2014-0094 is denied.
6. This is a final decision of the Board of Adjustment with respect to all issues involved in this case. The parties have 30 days from the date of mailing or other distribution of this decision to file an appeal to the Superior Court.

PASSED AND APPROVED by the Board of Adjustment this 26th day of February 2015.



Bernd Guetschow, Chair
on his own behalf and on behalf of
Board of Adjustment Members
John Haxby and Robert Stewart

MUNICIPALITY OF ANCHORAGE
PLANNING AND ZONING COMMISSION RESOLUTION NO. 2014-040

A RESOLUTION APPROVING AN AMENDMENT TO A LARGE RETAIL ESTABLISHMENT SITE PLAN IN THE B-3 (GENERAL BUSINESS) DISTRICT, IN ACCORDANCE WITH AMC 21.55.130 AND AMC 21.50.320; WITHIN N1/2, NE ¼, NE ¼, SECTION 30, T13N, R3W, S.M., ALASKA; GENERALLY LOCATED SOUTH OF NORTHERN LIGHTS BOULEVARD AND WEST OF THE SEWARD HIGHWAY, IN ANCHORAGE.

(Case 2014-0094; Parcel ID No. 009-042-01)

WHEREAS, a request was received from Sears Roebuck and Company **for a limited , to amend a** large retail establishment site plan **review** in the B-3 (general business) district, in accordance with AMC 21.55.130 and AMC 21.50.320; within N1/2, NE1/4, NE1/4, Section 30, T13N, R3W, S.M.; generally located south of Northern Lights Boulevard and west of the Seward Highway, in Anchorage; and

WHEREAS, the large retail establishment (LRE) commonly known as "Sears Mall" was in existence prior to May 8, 2001; and

WHEREAS, **on July 14, 2014,** the Planning and Zoning Commission reviewed this request on the **regular agenda after moving it to the regular agenda from the consent agenda on July 14, 2014.;**

NOW, THEREFORE, BE IT RESOLVED by the Anchorage Planning and Zoning Commission that:

A. The Commission makes the following findings of fact:

1.
 - a. **The Planning and Zoning Commission conducts the limited site plan review under the standards and provisions in AMC 21.55.130, including consideration of AMC 21.55.320.**
 - b. **The Planning and Zoning Commission applies the standards set out in AMC 21.50.320 in a manner proportionate to the extent of the proposed limited site plan review amendment, and determines the conditions of approval.**
 - c. The **proposed limited** site plan **amendment, together with the conditions of approval,** complies with the standards found in AMC 21.55.130 and AMC 21.50.320 **as appropriate for a large retail establishment existing on or before May 8, 2001 , with the conditions of approval.**
2. A pedestrian access connection is an important safety and economic benefit between the Nordstrom Rack entrance and the main entrance to the mall through the Sears store.

3. Northern design elements should be implemented where possible; the covered walkway between entrances is important.
 4. The loading dock addition while necessary for the use, does not promote the balance of the existing building that is without a prominent front side and divides the pedestrian access.
- B. The Commission approves the **limited** large retail establishment site plan **amendment as proposed**, subject to the following conditions:
1. All construction and improvements related to this approval shall be substantially in compliance with the application, narrative, and with the following plans on file with the Planning Division, except as modified by conditions of this approval:

700 E. Northern Lights Blvd. Renovation, prepared by RIM architects/DOWL HKM; sheets D201, A101, A201, A202, C101, C102, C103, L101, L501, and L502 dated 4/07/2014.
 2. A notice of zoning action, including a copy of the approved Commission resolution for this case, shall be filed with the State Recorder's Office and proof of such shall be submitted to the Department of Planning.
 3. Submit a copy of the updated site plan that shows the required sight distance triangles per ADOT&PF standards. Verify the removed trees are replaced on a one-to-one basis.
 4. Amend the site plan to show pedestrian walkway striping for pedestrian access to the east entry doors from the sidewalk along Northern Lights Boulevard.
 5. Submit a copy of the updated elevation plan to show an overhang awning along at least sixty (60) percent of the east elevation building length.
 6. Submit a landscape plan to include the landscape budget required by AMC 21.55.130 towards improving landscaping along Northern Lights Boulevard.
 7. A lighting plan shall be submitted for review and approval.
 8. Amend the plan to include a sign, or otherwise to SIGNIFICANTLY promote access to the common areas of the mall through the Sears store.

PASSED AND APPROVED by the Anchorage Planning and Zoning Commission
this 14th day of July, 2014.

ADOPTED by the Anchorage Municipal Planning and Zoning Commission this 4th day of August, 2014. This written decision/resolution of the Planning and Zoning Commission is final and any party may appeal it within twenty (20) days to the Board of Adjustment pursuant to Anchorage Municipal Code 21.30.030.

Jerry T. Weaver, Jr.
Secretary

J.A. Fergusson
Chair

(Case 2014-0094; Parcel ID No. 009-042-01)

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