

NOTICE OF APPEAL TO THE BOARD OF ADJUSTMENT

Under AMC 21.03.050A, any municipal agency or any party of interest for the application, as defined in AMC 21.14, may appeal a decision of the Planning and Zoning Commission, the Platting Board, or the Urban Design Commission to the Board of Adjustment within **20 days** after the date of service of the decision. To perfect the appeal, the appellant must file a *Notice of Appeal to the Board of Adjustment* with the Municipal Clerk's Office and pay the appeal fee and cost bond.

RECEIVED
MAY 12 2018
CLERK'S OFFICE

General Identity of Action Being Appealed:

Planning Department File Number: Date of Action:
Name of Project or Subdivision:

Appellant's Information:

Last Name: First Name:
Address: City: State: Zip:
Phone Number: E-mail:

Relationship to Action: Applicant Agent of Applicant Municipal Agency Party of Interest

Applicant's Information: Same as Appellant

Last Name: First Name:
Address: City: State: Zip:
Phone Number: E-mail:

NOTE: If you are not the applicant or his/her agent, you must include a certificate of service on the applicant with your notice of appeal, appeal fee, and cost bond.

Specifics of Appeal Certification

An appeal may be considered for the following three causes, singly or in combination:

- 1. Procedural Error** - If you allege procedural error, specify those patterns which constitute the error and the manner in which the alleged error resulted in prejudice to your interest.
- 2. Error in Application of Law** - If you allege legal error, specify the manner in which principles of law were incorrectly applied. Include reference to any ordinance, statute, or other codified law upon which the allegation of legal error is based.
- 3. Findings or Conclusions that were Not Supported by Evidence** - If you allege that findings or conclusions are not supported by the evidence that was presented, specify and explain those findings or conclusions which lacked evidentiary support at the time of the action.

An appeal, for any cause, must be explained; and a reason must be given for why the appeal should be granted. Explain what corrective decision is desired by this appeal. A written statement of cause and reason for granting the appeal must accompany this notice to be considered.

I (we) hereby certify that I am (we are) qualified to make this appeal and that my (our) statement of cause and reason is true and correct to the best of my (our) knowledge.

Signature Date

Statement Attached: _____ Appeal Fee (\$1080): Cost Bond (\$50): Preparation (\$1.70 per page): _____
Date: 5/29/18 Cash: _____ Check: Credit Card: _____ Receipt: 1000052036 Total Paid: 1130.00
1000052035

LIST OF APPELLANT AND APPELLEES
Appeal of Planning & Zoning Commission Action
May 7, 2018 – Case 2017-0124

APPELLANT

Anchorage Shopping Center
400 W. Dimond Blvd., Suite 240
Anchorage, Alaska 99502

APPELLANT REPRESENTED BY:

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APPELLEES

Sears Roebuck & Co.
(original applicant)
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Independence, Ohio 44131

Seritage SRC Finance, LLC
489 Fifth Avenue, 18th Floor
New York, New York 10017

WRITTEN STATEMENT OF CAUSES AND REASONS FOR GRANTING APPEAL

The Appellant Anchorage Shopping Center LLC submits this Statement as an attachment to its Notice of Appeal to the Board of Adjustment dated May 29, 2018, addressing Municipality of Anchorage Planning and Zoning Commission Resolution No. 2018-005, as required by AMC 21.03.050:

1. The Resolution is invalid because it fails to comply with AMC R 21.10.304 as interpreted and applied by the Anchorage Board of Adjustment in its "Findings, Conclusions, and Decision" dated May 2, 2017, as corrected by its Order dated May 18, 2017.

2. The Resolution is invalid because it does not reflect consideration of possible "interior solutions" by which the project could achieve compliance with applicable requirements including those imposed by AMC 21.50.200, AMC 21.50.320 and AMC 21.55.130; and due to this omission it fails to comply with the Board of Adjustment's Decision.

3. The Resolution is invalid because it does not include any findings or conclusions with respect to the requirements of AMC 21.50.200, one of the laws with which, as the Board of Adjustment ruled, the application must comply, and because based on the evidence in the record it violates that law.

4. The Resolution is invalid because it purports to allow the property to which the application applies to move further away from compliance with applicable large retail establishment standards than it was in May 8, 2001, in violation of the applicable Code provisions and of the Board of Adjustment's Decision.

5. The Resolution is invalid because its finding that the site plan "improves access . . . around the building on the north side and from the parking lot to the mall" is not supported in the record of the proceedings as required by AMCR 21.10.304.A and because it does not include an explanation of the purported finding that is sufficient to provide a reasonable basis for understanding the reason for this finding, as is also required by AMCR 21.10.304.A.

6. The Resolution is invalid because its findings concerning the "Community Spaces" requirement are unintelligible, are not sufficient on their face to demonstrate compliance with applicable requirements, and even if assumed hypothetically to be sufficient to demonstrate compliance with the requirements are not supported by the record. In addition, these findings do not comply with AMCR 21.10.304.A.

7. The Resolution is invalid because the modifications it authorizes increase (rather than decrease) the degree of nonconformity of the property with the standards of AMC 21.50.200, AMC 21.50.320, and AMC 21.55.130.

8. The Resolution is invalid because Condition 8 (must "SIGNIFICANTLY promote access to the common areas of the mall through the Sears store") is so vaguely worded, and so lacking in any

objective standard as to what it means or requires, that it will be impossible for anyone to determine whether the property owner has satisfied it, thus making it an illusory and unenforceable requirement.

9. The Resolution is invalid because it does not include specific findings of fact on all material requirements for approval and because, as to such findings as it contains, the record before the Commission does not support the findings.

10. The Resolution is invalid because no Traffic Impact Analysis ("TIA") was submitted for consideration in conjunction with the application and, in the alternative, because there was no reasonable basis in the record to conclude that a TIA was not required.

11. The Resolution is invalid because it does not accurately reflect the action that was actually taken by the Commission in the meeting on April 9, 2018, at which the Commission voted to approve a motion that the Resolution (adopted May 7, 2018) purports to document.

12. Appellant reserves the right to amend and supplement this Statement to the extent permitted by law. In addition, Appellant reserves its right of appellate review with respect to any prior ruling by the Board of Adjustment or the Superior Court adverse to the appellant therein on any contention asserted by any appellant in any earlier appeal relating to this matter.

Municipality of Anchorage

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63019

C075

274

1000052035

5/29/18

Reference:P&Z 2017-0124

OTHER

\$1,080.00

Holmes Weddle & Barcott

Receipt Recipient:

Total Due: \$1,080.00

Amount Tendered: \$1,080.00

Change: \$0.00

Payment Method: Check 81422

Keep receipt for your records

Municipality of Anchorage

CLERK'S OFFICE



63019 C075 275 1000052036 5/29/18

Reference:P&Z 2017-0124

OTHER \$50.00
Holmes Weddle & Barcott

Receipt Recipient:

Total Due: \$50.00

Amount Tendered: \$50.00

Change: \$0.00

Payment Method: Check 81421

Keep receipt for your records