

NOTICE OF APPEAL TO THE BOARD OF ADJUSTMENT

This appeal under AMC 21.30.030 must be perfected by the applicant, or any person adversely affected by the Planning and Zoning Commission's, Platting Board's, or Urban Design Commission's decision, no later than **20 days** after the date that the written *Findings of Fact and Decision* is approved, on the record, and becomes final. To perfect the appeal, the applicant 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.

General Identity of Action Being Appealed:

2014 AUG 20 PM 2:57

Planning Department File Number: Case 2014-0094 ^{Planning & Zoning} Date of Action: August 4, 2014 ^{MUNICIPAL CLERK'S OFFICE}

Name of Project or Subdivision: SEARS application for approval of limited large retail establishment site plan

Appellant's Name and Address:

Last Name: See attached list of appellants First Name: _____

C/o Holmes Weddle & Barcott, P.C.

Address: 701 W. 8th Ave., Suite 700 City: Anchorage State: AK Zip: 99501

Phone Number: 907.274.0660 (Attorney's office)
(907) 274-0666

Relationship to Action: Petitioner Agent of Petitioner Government Agency Other Person Adversely Affected

Provide Name and Address of Petitioner

Last Name: SEARS ROEBUCK & CO. First Name: N/A

Address: 6060 Rockside Woods Blvd. N. Suite 117 City: Independence State: OH Zip: 44131

NOTE: If you are not the petitioner or his/her agent, you must give notice to the petitioner by certified mail at his/her last known address within three days of filing this *Notice of Appeal to the Board of Adjustment*.

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. **SEE ATTACHED WRITTEN STATEMENT OF CAUSE AND REASONS**

FOR GRANTING APPEAL

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 Holmes Weddle & Barcott, PC, Attorneys for Appellants Date 8/20/14
James N. Reeves

Statement Attached: _____ Appeal Fee (\$1080): X Cost Bond (\$50): X Preparation (\$1.70 per page): _____

Date: 8/20/14 Cash: _____ Check: 73136 & 73137 Credit Card: _____ Receipt: 478130 Total Paid: \$1130.00

LIST OF APPELLANTS
(Appeal of Planning & Zoning Commission
action on August 4, 2014, on Case 2014-0094)

1. Alaska Corn Company
Stephen Troxell (owner)
600 E. Northern Lights Blvd, #154
Anchorage, Alaska 99503
907.278.4842
2. Hops Hallmark
Kenneth Henry (owner)
600 E. Northern Lights Blvd., #124
Anchorage, Alaska 99503
907.278.8477
3. Lemon Tree Gifts
Roger Davis (owner)
600 E. Northern Lights Blvd., #178
Anchorage, Alaska 99503
907.317.0834
4. Neuerburg Enterprises, LLC, d/b/a GNC
George F. Neuerburg (owner)
600 E. Northern Lights Blvd., #142
Anchorage, Alaska 99503
907.440.7723
5. Regis
Cindy Prewett (manager)
600 E. Northern Lights Blvd., #127
Anchorage, Alaska 99503
907.274.6666
6. Stallone's Men's Store
Dick Stallone (owner)
600 E. Northern Lights Blvd., #138
Anchorage, Alaska 99503
907.274.7848

WRITTEN STATEMENT OF CAUSES AND REASONS FOR GRANTING APPEAL

1. The Commission's Resolution #2014-040, adopted August 4, 2014 ("the Resolution"), is invalid because the Commission failed to hold a public hearing as required by AMC 21.50.320, made applicable in this case by AMC 21.55.130(A). (The statement by the Petitioner in its application that the limited site plan review should be done without a public hearing because "the loading dock addition is minor in comparison with the overall existing building" is not supported by the Code. AMC 21.50.320, which the petitioner itself acknowledged in its application to be applicable, specifically refers to "Public Hearing Site Plan Review" (emphasis added)."
2. The Resolution is invalid because the Petitioner failed to provide reasonable notice to occupants of surrounding property that may be affected by the proposed limited site plan, including existing retail merchants, so that those affected could provide information to the Commission about the impacts of the proposal upon pedestrian access and circulation within the Sears Mall consistent with the general design and site plan for the property.
3. If (as is assumed solely for the purpose of this paragraph) the Petitioner's application for approval could be processed as a consent agenda item, without a public hearing, the Resolution is nevertheless invalid because the staff recommendation was not accompanied by written concurrence and agreement by the petitioner as required by AMC 21.10.209.
4. The Resolution is invalid because the Petitioner's proposed action fails to comply with AMC 21.14.040, requiring consistency with previous site plan approvals and minimization or mitigation of negative impacts on adjacent properties, and because the Resolution fails to include findings with respect to those requirements.
5. The Resolution is invalid because the modifications it authorizes increase (rather than decreasing) the degree of nonconformity with the standards of AMC 21.50.320.
6. The Resolution is invalid because Condition 8 ("SIGNIFICANTLY promote access to the common areas of the mall through the Sears store") is so vaguely worded that it will be impossible for anyone to determine whether the property owner's modification of the property satisfies the condition.
7. 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.
8. Petitioner reserves the right to amend and supplement this Statement to the extent permitted by law.

CORRECTIVE ACTION DESIRED: Determine that Commission's action in Case No. 2014-0094 was illegal and that Resolution 2014-040 is invalid, and send the case back for further action including a public hearing after appropriate notice to the public.

CASH RECEIPT

478130

Municipality of Anchorage
P.O. Box 196650 • Anchorage, AK 99519-6650



FINANCE DEPARTMENT

Date of Payment (MMDDYY)

8/20/2014

Received from Holmes Weddle & Barrott, PC.

Receiving Department Remarks Notice of Appeal to the Board of Adjustment

Amount of Payment

\$ 1130.00

Payment type (select only one)

- #731375 73136
- ACH
 - Cash/Check
 - MLP
 - Credit Card
 - AWWU
 - Debit Card
 - Other

Employee ID 61998 Coll. Dept ID 1020 Deposit ID

ACCOUNTING INFORMATION

LN#	\$ AMOUNT	FUND	ACCOUNT	DEPT ID	PROGRAM	CLASS	BDGT PERIOD	PROJECT/GRANT
	ACTIVITY ID		RES TYPE	RES CAT	OPEN ITEM			DESCRIPTION
1	1080.00	101	9116 9794	1020	0000	000	2014	102000 Appeal to BOA
2	50.00	101	9794	1020	0000	000	2014	102000 Cost Bond
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RECEIPT 478130

Prepared by (please print): Lisa Schlousner Date prepared: 8/20/14 Phone no: X 4688