

CLERK'S OFFICE
AMENDED AND APPROVED
Date: 12-7-04

Submitted by: Chair of the Assembly
at the Request of the Mayor
Prepared by: Department of Law
For Reading: October 12, 2004

IMMEDIATE RECONSIDERATION ANCHORAGE, ALASKA
FAILED 12-7-04 AO NO. 2004-126(S) As Amended

1
2
3
4 AN ORDINANCE AMENDING ANCHORAGE MUNICIPAL CODE CHAPTERS 21.20
5 AND 21.30 TO CLARIFY PROCEDURES FOR THE PLANNING AND ZONING
6 COMMISSION, BOARD OF ADJUSTMENT, AND ZONING BOARD OF EXAMINERS
7 AND APPEALS REGARDING FILING APPEALS, NEW EVIDENCE, CHANGED
8 CIRCUMSTANCES, REMANDS, PREPARATION OF APPEALS BY MUNICIPAL
9 STAFF, ISSUANCE OF DECISIONS, APPEALS TO SUPERIOR COURT, AND
10 RELATED MATTERS.
11

12
13 THE ANCHORAGE ASSEMBLY ORDAINS:

14
15 **Section 1.** Anchorage Municipal Code section 21.20.100 (**Planning & Zoning**
16 **Commission**) is hereby amended to read as follows (*the remainder of the section is not affected*
17 *and is therefore not set out*):
18

19 **21.20.100 Review and recommendation by planning and zoning commission.**

20 * * * * *
21

22
23 B. The recommendations shall be made by written resolution and shall include and
24 be supported by findings on the standards set out in section 21.20.090.

25
26 C. If the planning and zoning commission recommends that the assembly approve a
27 zoning map amendment as submitted or with modifications, within **sixty (60) [90]**
28 days of the commission's written resolution [ACTION] the department of
29 community planning and development shall forward the recommendation to the
30 assembly with an ordinance to amend the zoning map in accordance with the
31 recommendation.
32

33 D. If the planning and zoning commission recommends that the assembly disapprove
34 a zoning map amendment, that action is final unless, within **fifteen (15) [20]** days
35 of the commission's written resolution recommending disapproval [ACTION],
36 the applicant files a written statement with the municipal clerk requesting that an
37 ordinance amending the zoning map in accordance with the application be
38 submitted to the assembly.
39

40 **1. The draft ordinance shall be appended to an Assembly Informational**
41 **Memorandum (AIM), for consideration by the Assembly.**
42

43 (GAAB 21.05.090.A; AO No. 85-21; AO No. 85-58)
44

1 **Section 2.** Anchorage Municipal Code section 21.20.110 (**Planning & Zoning**
2 **Commission**) is hereby amended to read as follows:
3

4 **21.20.110 Protests.**
5

- 6 A. Any written communication conforming to subsection B. of this section, and
7 received by the municipal clerk after notice of a public hearing before the
8 assembly on a zoning map amendment and at least one business day before the
9 time set for the assembly public hearing on the amendment, is a protest of that
10 amendment.
11
12 B. A protest must object to the zoning map amendment, contain a legal description
13 of the property on behalf of which the protest is made, [AND] be signed by the
14 owner of that property, **and shall state the factual and/or legal basis for the**
15 **protest.**
16

17 (GAAB 21.05.090.A; AO No. 79-202; AO No. 85-58)
18

19 **Section 3.** Anchorage Municipal Code subsection 21.30.030A.1. (**Board of Adjustment**) is
20 hereby amended to read as follows:
21

22 **21.30.030 Perfection of appeal; notice of appeal; appeal fee.**
23

- 24 A. An appeal to the board of adjustment:
25
26 1. Initiated under section 21.30.020A. must be perfected by the applicant, or
27 **any person adversely affected by [party who requested written notice**
28 **of] the lower administrative body's decision, no later than fifteen (15)**
29 **days after the date the written findings of fact and** decision of the
30 administrative body from which the appeal is taken **is approved, on the**
31 **record, and becomes a final, appealable decision pursuant to**
32 **regulation 21.10.304D., 21.11.304D., or 21.13.340D., as applicable.**
33 **[mailed or otherwise distributed to them]** [, UNLESS A WRITTEN
34 REQUEST IS MADE WITHIN SEVEN DAYS AFTER THE
35 ADMINISTRATIVE BODY ACTS ON AN APPLICATION FOR THE
36 BODY TO ADOPT WRITTEN FINDINGS AND CONCLUSIONS ON
37 THE APPLICATION. A WRITTEN DECISION UNDER THIS
38 SUBSECTION IS THE DECISION OF THE BOARD FOR PURPOSES
39 OF COMPUTING THE TIME FOR APPEALING THE DECISION.]
40 **[For all other parties, an appeal must be perfected no later than 15**
41 **days after the date the written decision was signed.]** The appeal is
42 perfected by the filing of a notice of appeal, appeal fee and cost bond in
43 accordance with this section.
44
45

(AO No. 73-76; AO No. 79-196; AO No. 84-70; AO No. 85-72; AO No. 86-155;
AO No. 94-55, § 4, 5-3-94)

Section 4. Anchorage Municipal Code section 21.30.040 (**Board of Adjustment**) is hereby amended to read as follows:

21.30.040 **New evidence or changed circumstances.**

A. Allegations of new evidence or changed circumstances shall not be considered or decided by the board of adjustment. Allegations of new evidence or changed circumstances shall be raised by written motion for rehearing, filed with the municipal clerk ~~[administrative body from which the appeal is taken within]~~ no later than twenty (20) [30] days after ~~[of the date of mailing or other distribution of]~~ the lower administrative body's initial decision becomes final pursuant to regulation 21.10.304D., 21.11.304D., or 21.13.340D., as applicable.

1. The municipal clerk shall automatically reject any motion filed more than twenty (20) days after the lower administrative body's initial decision becomes final, without hearing or reconsideration by the lower administrative body.

2. A decision of the lower administrative body on any issues remanded from the board of adjustment is not an initial decision as described in section A. above. The municipal clerk shall automatically reject, without hearing or reconsideration, any motion alleging new evidence or changed circumstances filed in response to a lower administrative body's decision on any issue(s) presented on remand.

B. If the written motion is timely filed, t[T]he administrative body from which the appeal is taken shall decide whether to reopen and rehear the matter pursuant to regulation sections 21.10.503, 21.11.503, or 21.13.530. ~~[Upon the filing of a motion for rehearing, the administrative body from which the appeal was taken shall immediately notify the board of adjustment of said filing. Upon receiving notice of such filing, the board of adjustment shall stay the appeal pending the lower administrative body's decision on the motion for rehearing.]~~

[APPEALS ALLEGING NEW EVIDENCE OR CHANGED CIRCUMSTANCES SHALL NOT BE HEARD BY THE BOARD OF ADJUSTMENT BUT SHALL BE REMANDED FORTHWITH BY THE MUNICIPAL CLERK TO THE LOWER ADMINISTRATIVE BODY, WHICH SHALL DETERMINE WHETHER TO REHEAR THE MATTER.]

1 (AO No. 73-76; AO No. 80-85)

2
3 **Section 5.** Anchorage Municipal Code section 21.30.060B. (**Board of Adjustment**) is
4 hereby amended to read as follows:

5
6 **21.30.060** **Written arguments.**

7
8 * * * * * * * *

9
10 B. *Brief of appellee.* The municipal staff may, with the approval of the Director of
11 the Office of Economic and Community Development, [SHALL] prepare and
12 submit to the municipal clerk a written reply to the notice of appeal and any brief
13 in support thereof no later than **thirty (30)** days after service of the appeal record.
14 An appellee who has filed a notice of intent to file a brief may also file with the
15 municipal clerk's office a written reply to the notice of points on appeal and any
16 brief in support thereof no later than **thirty (30)** days after the service of the
17 appeal record. The municipal clerk shall notify the appellant by certified mail that
18 appellee briefs have been filed.

19
20 * * * * * * * *

21
22 (AO No. 73-76; AO No. 84-209(S); AO No. 90-144)

23
24 **Section 5.** Anchorage Municipal Code section 21.30.095B. (**Board of Adjustment**) is
25 amended, and three (3) new sections are added, to read as follows:

26
27 **21.30.095** **Decision.**

28
29 * * * * * * * *

30
31 B. Every decision of the board of adjustment to affirm or reverse the decision of the
32 lower administrative body pursuant to subsection A. of this section shall be in
33 writing and shall be based upon and include findings and conclusions adopted by
34 the board. Such findings must be reasonably specific so as to provide the
35 community, and, where appropriate, reviewing authorities, a clear and precise
36 understanding of the reason for the board's decision. The board may seek the
37 assistance of the municipal staff in the preparation of findings.

38
39 C. Every final decision of the board of adjustment shall clearly state on its face it is a
40 final decision with respect to all issues involved in the case, and that the parties
41 have **thirty (30)** days from the date of mailing, or other distribution of the
42 decision, to file an appeal to the superior court.

43
44 D. A board of adjustment decision remanding a case on one or more issues in
45 accordance with section 21.30.100 is not a final decision with respect to any

1 issues involved in the appeal. The board of adjustment's decision remanding the
2 case shall be the final decision with respect to all matters affirmed by the board of
3 adjustment's decision when, following the lower administrative body's decision
4 on remand, no appeal is perfected within the period specified in subsection
5 21.30.030A.

- 6
7 E. A board of adjustment decision remanding a case on one or more issues in
8 accordance with section 21.30.100 shall state that the decision is the final decision
9 with respect to all matters affirmed therein when, following the lower
10 administrative body's decision on remand, no appeal is perfected within the time
11 [15-day] period specified in [by] section 21.30.030, and shall also state the parties
12 have thirty (30) days from the expiration of said period to appeal to the superior
13 court.

14
15 (AO No. 73-76; AO No. 80-85)

16
17 **Section 6.** Anchorage Municipal Code subsection 21.30.100B. (**Board of Adjustment**) is
18 amended to read as follows:

19
20 **21.30.100 Remedies.**

21
22 * * * * *
23

- 24 B. The lower administrative body shall act on the case upon remand in accordance
25 with the decision of the board of adjustment in the minimum time allowed by the
26 circumstances. Cases on remand following a decision of the board shall take
27 precedence over all other matters on the agenda of the lower administrative body.
28 [CASES REMANDED IN ACCORDANCE WITH SECTION 21.30.040 ARE
29 NOT ENTITLED TO SUCH PREFERENCE.]

30
31 (AO No. 73-76; AO No. 80-85)

32
33
34 **Section 7.** Anchorage Municipal Code subsection 21.30.130A. (**Zoning Board of**
35 **Examiners and Appeals**) is amended to read as follows:

36
37 **21.30.130 Time limit for filing; notice of appeal; appeal fee.**

- 38
39 A. An appeal of an administrative official's decision, set out in section 21.30.110,
40 to the zoning board of examiners and appeals must be filed by the applicant, or
41 any person adversely affected who requested written notice of the decision
42 appealed from, no later than twenty (20) [30] days after written notification of
43 the decision. [the date the decision being appealed is [mailed or otherwise
44 distributed to the appellant] [NOTIFICATION OF THE DECISION BEING

1 APPEALED.] ~~[For all other parties, an appeal must be filed no later than 30~~
2 ~~days after the date the written decision was signed.]~~
3

4 * * * * *
5

6 (GAAB 21.05.080, 21.30.350; AO No. 91-35)
7

8 **Section 8.** Anchorage Municipal Code section 21.30.160B. (**Zoning Board of Examiners**
9 **and Appeals**) is hereby amended, and a new section is added, to read as follows:
10

11 **21.30.160 Decision.**
12

13 * * * * *

14 B. Every decision of the zoning board of examiners and appeals to affirm or reverse
15 an action of the administrative official shall be in writing and shall be based on
16 and include findings and conclusions adopted by the board. Such findings must
17 be reasonably specific so as to provide the community and, where appropriate,
18 reviewing authorities, with a clear and precise understanding of the reasons for
19 the board's decision.
20

21 C. Every final decision of the zoning board of examiners and appeals shall clearly
22 state it is a final decision and that the parties have thirty (30) days from the date
23 of mailing or other distribution of the decision to file an appeal to the superior
24 court.
25

26 (AO No. 73-76)
27

28 **Section 9.** Anchorage Municipal Code section 21.30.180 (**Rules of Procedure and Judicial**
29 **Review**) is hereby amended, and a new section is added, to read as follows:
30

31 **21.30.180 Judicial review authorized.**
32

33 In accordance with Appellate Rule 601 et seq., of the Alaska Rules of Court, a municipal
34 officer, a taxpayer or a person jointly or severally aggrieved may appeal to the superior
35 court:
36

37 A. A final decision of the board of adjustment on an appeal from a decision
38 regarding the approval or disapproval of an application for concept or final
39 approval of a conditional use.
40

41 B. A final decision of the board of adjustment on an appeal from the platting board
42 regarding an application for a subdivision.
43

44 C. A final decision of the zoning board of examiners and appeals on applications for
45 a variance.

- 1
2 D. A final decision of the zoning board of examiners and appeals denying any
3 application for a permit on grounds of noncompliance with provisions of this title.
4
5 E. A final decision of the zoning board of examiners and appeals pertaining to an
6 enforcement order issued under section 21.25.030.
7
8 F. Any final action or decision under this title that is appealable to the superior court
9 under the Alaska Rules of Court and/or laws of the State of Alaska.


10
11 (AO No. 73-76; AO No. 77-355; AO No. 84-32; AO No. 84-70; AO No. 85-72; AO No.
12 85-23; AO No. 86-155)

13
14 **Section 10.** This ordinance shall be effective immediately upon passage and approval by the
15 Anchorage Assembly.

16
17 PASSED AND APPROVED by the Anchorage Assembly this 7th day of
18 December, 2004.

19
20 
21 _____
22 Assembly Chair

23
24
25 ATTEST:

26
27 
28 _____
29 Municipal Clerk

30
31