

Postponed indefinitely 5/3/05

Submitted by: Assemblymember Allan Tesche, Assembly Chair Traini, Dan Coffey
Prepared by: Assembly Department
For reading: March 1, 2005

ANCHORAGE, ALASKA
AO NO. 2005-43

1 AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY REPEALING
2 ANCHORAGE MUNICIPAL CODE SECTION 4.40.131, SECTION 21.10.030, AND
3 CHAPTER 21.30, PART I, PERTAINING TO THE BOARD OF ADJUSTMENT, AND
4 AMENDING SECTIONS 21.15.125, 21.30.180, AND 21.30.190 PROVIDING FOR JUDICIAL
5 APPEAL OF FINAL DECISIONS OF THE PLANNING AND ZONING COMMISSION, THE
6 PLATTING BOARD, THE URBAN DESIGN COMMISSION, OR A HEARING OFFICER
7 FOR APPROVAL OR DISAPPROVAL OF PLATS OR VARIANCES FROM THE
8 PROVISIONS OF CHAPTERS 21.80 AND 21.85 OR DECISIONS REGARDING
9 APPLICATIONS FOR CONCEPT OR FINAL APPROVAL OF CONDITIONAL USES.

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11
12 THE ANCHORAGE ASSEMBLY ORDAINS:

13
14 Section 1. Anchorage Municipal Code Chapter 4.40, Regulatory and Adjudicatory Boards
15 and Commissions is hereby amended by the repeal of AMC section 4.40.131 as follows:

16
17 *** *** ***

18 4.40.131 [BOARD OF ADJUSTMENT.]

19
20 **4.40.131 [BOARD OF ADJUSTMENT.]**

21
22 [THERE IS ESTABLISHED A BOARD OF ADJUSTMENT TO EXERCISE THE
23 POWERS AND DUTIES MORE PARTICULARLY SET FORTH IN TITLE 21.]

24
25 (AO No. 2003-101, § 2, 7-15-03)

26
27 Section 2. Anchorage Municipal Code Section 21.10.030 is repealed as follows:

28
29 **21.10.030 [BOARD OF ADJUSTMENT.]**

30
31 [A.] [THERE IS A BOARD OF ADJUSTMENT, WHICH SHALL DECIDE
32 APPEALS FROM:]

1 [1. DECISIONS REGARDING THE APPROVAL OR DISAPPROVAL OF
2 A PLAT OR VARIANCE FROM THE PROVISIONS OF CHAPTERS 21.80
3 AND 21.85; AND]

4
5 [2.] DECISIONS REGARDING THE APPROVAL OR DISAPPROVAL OF
6 APPLICATIONS FOR CONCEPT OR FINAL APPROVAL OF
7 CONDITIONAL USES;

8
9 IN ACCORDANCE WITH CHAPTER 21.30 .]

10
11 [B.] [THE BOARD OF ADJUSTMENT SHALL BE:]

12
13 [1.] [A THREE-MEMBER BOARD OF ADJUSTMENT, WITH TWO
14 ALTERNATE MEMBERS, FOR APPEALS FROM THE PLATTING BOARD
15 AND THE PLANNING AND ZONING COMMISSION, WHOSE MEMBERS
16 ARE NOMINATED BY THE MAYOR AND CONFIRMED BY EIGHT
17 MEMBERS OF THE ASSEMBLY FOR THREE-YEAR STAGGERED TERMS.
18 THE BOARD'S SEATS SHALL BE DESIGNATED SEATS 1, 2, AND 3. THE
19 BOARD MEMBERS SHALL BE KNOWLEDGEABLE AND EXPERIENCED
20 IN ADMINISTRATIVE LAW AND IN THE PROVISIONS OF TITLE 21 OF
21 THE MUNICIPAL CODE.]

22
23 [2.] [THE PLANNING AND ZONING COMMISSION, FOR APPEALS
24 FROM THE HEARING OFFICER.]

25
26 (GAAB 21.30.360, 21.30.370; AO No. 73-76; AO No. 77-355; AO No. 84-70; AO No.
27 85-72; AO No. 86-155; AO No. 2003-58, § 1, 7-8-03; AO No. 2003-151, § 1, 12-2-03)

28
29 Section 3. Anchorage Municipal Code section 21.15.125 is amended to read as follows:

30
31 **21.15.125 Approval of subdivision plats--Abbreviated plat procedure.**

32
33 *** *** ***
34 E. Action on plat.

35
36 *** *** ***
37 4. Appeals. Decisions of the platting authority under this section are final
38 unless appealed [WITHIN 15 DAYS]:
39
40
41

1 a. Within 15 days to [TO] the authority hearing the application for
2 conditional use or site plan approval, where the platting officer is the
3 platting authority under Section 21.15.030 .I.

4
5 b. Within 30 days to [TO] the superior court [BOARD OF
6 ADJUSTMENT] under sections 21.30.180 and 21.20.190 [21.30.010
7 THROUGH 21.30.100], where the authority hearing an application for
8 conditional use or site plan approval is the platting authority under Section
9 21.15.030.I.

10
11 c. Within 15 days to [TO] the platting board in all other cases.

12
13 An appeal under subsection [B OR] c of this subsection shall be treated as an
14 original application for preliminary plat approval under this section.

15
16 *** *** ***

17 (AO No. 16-76; AO No. 78-50; AO No. 79-25; AO No. 79-34; AO No. 81-209; AO No.
18 83-187(S); AO No. 84-32; AO No. 84-70; AO No. 85-21; AO No. 85-72; AO No. 86-
19 155; AO No. 88-24; AO No. 89-108, 9-8-89; AO No. 94-63, § 1, 4-12-94; AO No. 96-
20 124, § 1, 10-1-96; AO No. 2002-95, § 2, 7-16-02; AO No. 2003-131, § 1, 10-7-03)

21
22 Section 4. Anchorage Municipal Code Chapter 21.30, Part 1, Appeals to Board of
23 Adjustment, is repealed in its entirety, including amendments pertaining to AMC Sections
24 21.30.030, 21.30.040, 21.30.060, 21.30.095, and 21.30.100 as enacted in AO 2004-126(S) as
25 amended, and amendment to Section 21.30.040 as enacted in AO 2005-14: (*The Code Revisor is*
26 *instructed to renumber subsequent Parts II and III.*)

27
28 Chapter 21.30
29 APPEALS

30
31 [PART 1. APPEALS TO BOARD OF ADJUSTMENT]

- 32
33 21.30.010 [JURISDICTION OF BOARD.]
34 21.30.020 [INITIATION OF APPEAL.]
35 21.30.025 [APPELLEES BEFORE BOARD.]
36 21.30.030 [PERFECTION OF APPEAL; NOTICE OF APPEAL; APPEAL FEE.]
37 21.30.040 [NEW EVIDENCE OR CHANGED CIRCUMSTANCES.]
38 21.30.050 [APPEAL RECORD.]
39 21.30.060 [WRITTEN ARGUMENTS.]
40 21.30.070 [APPEAL PACKET; NOTICE OF HEARING.]
41 21.30.080 [CONDUCT OF HEARING.]

1 21.30.090 [SCOPE OF REVIEW.]

2 21.30.095 [DECISION.]

3 21.30.100 [REMEDIES.]

4
5 [The entire repealed text of AMC 21.30.010-.100 is not set out]

6
7 (AO No. 73-76; AO No. 80-85; AO No. 2004-126(S) Amended; AO No. 2005-14)

8
9 Section 5. Anchorage Municipal Code Section 21.30.180, Judicial Review Authorized, is
10 amended to read as follows:

11
12 **21.30.180 Judicial review authorized.**

13
14 In accordance with Appellate Rule 601 *et seq.*, of the Alaska Rules of Court, a municipal
15 officer, a taxpayer or a person jointly or severally aggrieved may appeal to the superior
16 court:

17
18 A. A final decision of the planning and zoning commission, platting board, urban
19 design commission, or hearing officer [THE BOARD OF ADJUSTMENT ON AN
20 APPEAL FROM A DECISION] regarding:

21
22 1. the approval or disapproval of a plat or variance from the provisions of
23 chapters 21.80 and 21.85; or

24
25 2. approval or disapproval of an application for concept or final approval of a
26 conditional use.

27
28 B. A final decision of [THE BOARD OF ADJUSTMENT ON AN APPEAL FROM]
29 the platting board regarding an application for a subdivision.

30
31 C. A final decision of the zoning board of examiners and appeals on applications for
32 a variance.

33
34 D. A final decision of the zoning board of examiners and appeals denying any
35 application for a permit on grounds of noncompliance with provisions of this title.

36
37 E. Any final action or decision under this title that is appealable to the superior court
38 under the Alaska Rules of Court and/or laws of the State of Alaska.

39
40 (AO No. 73-76; AO No. 77-355; AO No. 84-32; AO No. 84-70; AO No. 85-72; AO No.
41 85-23; AO No. 86-155; AO No. 04-126(S))

1
2 Section 6. Anchorage Municipal Code Section 21.30.190, Scope of Judicial Review, is
3 amended to read as follows:
4

5 **21.30.190 Scope of judicial review.**
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7 An appeal to the superior court shall be heard solely on the record established before the
8 municipal bodies. In the case of appeals from the planning and zoning commission,
9 platting board, the urban design commission, the hearing officer, or the zoning board of
10 examiners and appeals [THE BOARD OF ADJUSTMENT], the record shall include the
11 proceedings before the administrative body [PLANNING AND ZONING
12 COMMISSION, THE PLATTING BOARD OR THE HEARING OFFICER]. The
13 findings of the planning and zoning commission, the platting board, the urban design
14 commission, the hearing officer, or the zoning board of examiners and appeals [, AND
15 THE BOARD OF ADJUSTMENT] shall not be reversed if, in the light of the whole
16 record, they are supported by substantial evidence.
17

18 (AO No. 73-76; AO No. 84-70; AO No. 85-72; AO No. 86-155)
19

20 Section 7. Upon Assembly approval of Sections 1-6, the Code Revisor is instructed to
21 amend Anchorage Municipal Code Sections 4.05.050B, 21.10.005B, 21.30.170A and C, and
22 Anchorage Municipal Code of Regulations Sections 21.20.002A.10 and 21.20.004 by deleting
23 reference to the Board of Adjustment.
24

25 Section 8. Notwithstanding AMC 21.10.015, this ordinance repealing the Board of
26 Adjustment and providing for judicial appeals, does not require Planning Commission review.
27

28 Section 9. All appeals pending before the board of adjustment on the effective date of this
29 ordinance shall be heard by the board as constituted and according to the ordinances in effect
30 prior to the effective date of this ordinance. In the event a final decision on any pending case is
31 appealed to the superior court and subsequently remanded by the court after the effective date of
32 this ordinance, the remand shall be to the board that made the initial decision in the case. The
33 board of adjustment retains no continuing jurisdiction in those cases where a remand has been
34 ordered by the board to a lower administrative body before the effective date of this ordinance.
35 All appeals originating after the effective date of this ordinance or which have been remanded to
36 a lower administrative body shall be filed with the superior court in accordance with AMC
37 21.30.180 and 21.30.190.
38

39 Section 10. This ordinance shall become effective immediately upon its passage and approval
40 by the Assembly.
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PASSED AND APPROVED by the Anchorage Assembly this ____ day of _____, 2005.

Chair

ATTEST:

Municipal Clerk