

Proposed by:	Administration
Attorney Review:	Sept/October
First Reading:	10/16/2008
Second Reading:	11/06/2008
Vote: 6 Aye	0 Nay 0 Absent

MUNICIPALITY OF SKAGWAY, ALASKA
ORDINANCE NO. 08-21

AN ORDINANCE OF THE MUNICIPALITY OF SKAGWAY, ALASKA AMENDING CHAPTER 19.04.070, BOARD OF ADJUSTMENT (APPEALS) TO CORRECT THE SITE FOR RULES OF APPELLATE PROCEDURE.

WHEREAS, The appellate rules for appeals from administrative agency, which includes municipalities, are in 601-602 of the Rules of Appellate Procedure;

BE IT ORDAINED AND ENACTED BY THE MUNICIPALITY OF SKAGWAY, ALASKA AS FOLLOWS:

Section 1. Classification. This ordinance is of a general and permanent nature and shall become a part of the Skagway Municipal Code.

Section 2. Purpose. To amend Chapter 19.04.070 to correct the site for Rules of Appellate Procedure. The Skagway Municipal Code is hereby amended (~~strike through~~) indicates text to be deleted from, and (**bold underscore**) indicates text added to the current code.

Section 3. Amendment. Chapter 19.04.070, Board of Adjustment (appeals) is hereby amended as follows:

19.04.070 Board of Adjustment (appeals).

- A. The ~~city council~~ **borough assembly** is the board of adjustment. The board of adjustment shall hear and decide:
 - 1. Appeals regarding alleged errors in enforcement of zoning ordinances and building codes;
 - 2. Appeals from decisions of the planning commission on requests for conditional uses;
 - 3. Appeals from the decision of the planning commission on requests for variances from the terms of the zoning ordinance which are not contrary to the public interest, when a literal enforcement would deprive a property owner of rights commonly enjoyed by other properties in the same district.
- B. A variance shall not be granted because of special conditions caused by actions of the person seeking relief, or for reasons of pecuniary hardship or inconvenience.
- A. A variance shall not be granted which will permit a land use in a district in which that use is prohibited.
- B. In exercising the above-mentioned powers, the board of adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as may be appropriate, and to that end shall have all powers of the body from whom the appeal is taken.
- C. Procedure of the Board of Adjustment.
 - 1. Meetings of the board are held at the call of the presiding officer. The presiding officer may administer oaths and compel attendance of witnesses. Meetings and hearings of the board shall be open to the public, and the board shall keep minutes of its proceedings showing its

- decision, the reasons for its decision, and the vote of each member upon each question. Such minutes shall be public records.
2. Any interested party, including but not limited to a city official, may file with the board of adjustment a notice of appeal, specifying in detail his objections. Only such objections as are specifically set forth in detail in the notice of appeal will be considered. The ~~city~~ borough clerk is the clerk of the board of adjustment. All such appeals shall be filed in writing with the clerk of the board of adjustment within ten (10) days of the date of the error, the decision, of the adoption of the resolution of the board of adjustment granting or denying the application for a conditional use permit or variance. Any purported appeals filed after ten (10) days may not be considered by the board of adjustment.
 3. Upon such notice of appeal having been duly filed, the clerk shall ~~thereupon~~ send a certified copy ~~thereof~~ to the zoning official and the planning commission, together with a written request for all pertinent records and transcripts, including the written decision and/or resolution of the planning commission, granting or denying the application. The zoning official and planning commission clerk shall, within seven (7) days after having received the certified copy of the appeal and request, certify and deliver such records, transcripts and documents to the clerk of the board of adjustment.
 4. An appeal to the board stays enforcement proceedings unless the board or a court issues an enforcement order based on a certificate of imminent peril to life or property made by the enforcement officer.
 5. The board of adjustment shall hear and decide appeals de novo, and shall consider all pertinent records, transcripts and documents certified to it by the zoning official and the planning commission clerk. The board of adjustment shall commence a public hearing on all appeals not later than thirty (30) days following the date certified record, as specified in subsection 3 above, is delivered to the clerk of the board of adjustment; provided, however, the date of commencement of the hearing may be continued for a period not to exceed an aggregate total of thirty (30) additional days, as follows:
 - a. By the clerk, upon the clerk's determination there is a lack of a quorum, or upon receipt by the clerk of a written request from the appellant not less than three (3) days prior to the scheduled hearing;
 - b. By the board, for purposes of securing additional information, or upon written request for a continuance by the appellant, or for other reasons.
 6. At least seven (7) days' notice of the time and place of the public hearing shall be published in a newspaper of general circulation in the ~~city~~ borough, and posted in two (2) public places in the ~~city~~ borough. In addition, at least seven (7) days' written notice of the time and place of the hearing shall be given to the appellant(s) and affected property owners, as such are determined within this title.
 7. The board of adjustment, after having received and considered the appeal, the certified records, transcripts and documents, and duly held a public hearing on the appeal, shall forthwith render a decision. The decisions of the board of adjustment shall be by motion setting forth the reasons for the motion, and the vote shall be taken by "yes" and "no," which shall be permanently entered on the record of the proceedings.

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- The weighted vote may not be used. A majority vote in the affirmative adopts any motion.
8. The adoption of the motion constitutes the final decision of the board of adjustment, and the date of the adoption of the motion constitutes the date of the final decision of the board of adjustment. The clerk of the board of adjustment shall, not later than ten (10) days of the date of the final decision, certify the motion to the zoning official, planning commission clerk, and planning commission. In addition, a certified copy of the motion shall immediately be mailed to the appellant(s) by certified mail, return receipt requested. The appellant shall be informed of his further right of appeal as set forth in subsection F below.
 9. If the board of adjustment fails, within thirty days after the date of the close of the hearing on the appeal, to affirmatively reverse, affirm, modify or remand the decision of the administrative official or planning commission shall be deemed to be upheld and affirmed.
- D. **Judicial Review.** A municipal officer, a taxpayer, or an aggrieved person may appeal an action of the board of adjustment to the Superior Court in the manner provided by ~~Rule 45 of the Rules of Appellate Procedure of the State~~ **under the Alaska Court Rules, Rule 601-602 of the Rules of Appellate Procedure.**

Section 4. Severability. If any provision of this ordinance or any application of the ordinance to any person or circumstance is held invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected.

Section 5. Effective Date. This ordinance shall become effective upon adoption of the Borough Assembly.

PASSED AND APPROVED by a duly constituted quorum of the Borough Assembly of the Municipality of Skagway this 6th day of November, 2008.

Thomas D. Cochran, Mayor

ATTEST:

Marjorie D. Harris, Borough Clerk

(SEAL)