

Proposed by:	Mayor Selmer
Attorney Review:	03/10/2013
First Reading:	03/21/2013
Second Reading:	04/04/2013
Vote: 6 Aye	0 Nay 0 Absent

**MUNICIPALITY OF SKAGWAY, ALASKA
ORDINANCE NO. 13-08**

AN ORDINANCE OF THE MUNICIPALITY OF SKAGWAY, ALASKA AMENDING TITLE 19 BY AMENDING SECTIONS 19.12.170 AND 19.04.070 REGARDING APPEALS OF HISTORIC DISTRICT COMMISSION DECISIONS.

WHEREAS, currently appeals of Historic District Commission decisions are heard first by the Planning and Zoning Commission and then can be appealed to the Borough Assembly sitting as the Board of Appeals; and

WHEREAS, the Municipality wishes to streamline the appeals process by allowing for appeals of Historic District Commission decisions to go directly to the Borough Assembly sitting as the Board of Appeals;

NOW THEREFORE 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 Title 19 by amending section 19.12.170 and 19.04.070 for the purpose of allowing for appeals of historic district commission decisions to go to the board of appeals instead of the planning commission.

Section 3. Amendment. 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. Title 19 sections 19.12.170 and 19.04.070 are hereby amended as follows:

- 19.12.170 The review and appeal process.
- A. Required Submittals. The following procedures are for persons who intend to undertake rehabilitation, alteration, relocation, demolition or new construction within the Skagway Historic District. Applicants should review Municipal Code Chapter 19.10, Historic District Administrative Provisions.
1. Application for building permit accompanied by scale drawings, site plans, materials and colors selection is filed with the borough clerk's office. All elevations for proposed construction should be included in the application. The deadline for applications to be considered by the historic district commission is 5 working days before the meeting.
 2. Upon filing of such application, the borough clerk shall notify the historic district commission of the receipt of the application, and shall transmit it, together with accompanying plans and other information to the historic district commission.
 3. The historic district commission shall meet within thirty (30) days after notification by the borough clerk of the filing. During the public meeting the historic district commission shall give final review of the plans. The

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applicant for the building permit, or a representative, must be in attendance at the meeting.

4. The historic district commission shall approve or disapprove such plans and, if approved, shall issue a certificate of approval, which is to be signed by the chairman, attached to the application for a building permit, and immediately transmitted to the building inspector. The chairman shall also stamp all prints submitted to the historic district commission, signifying its approval.
5. If the historic district commission disapproves plans, it shall state its reasons for doing so, and shall transmit a record of such action and reasons therefore in writing to the building official and to the applicant. The historic district commission may advise modifications if it disapproves of the plans submitted. The applicant, if he or she so desires, may make modifications to the plans and shall have the right to resubmit the application at any time after so doing.
6. The failure of the historic district commission to approve or disapprove plans within forty-five (45) days from the date of application for the building permit, unless otherwise mutually agreed upon by the applicant and historic district commission, shall be deemed to constitute approval, and the building official shall proceed to process the application without regard to a certificate of approval.
7. After the certificate of approval has been issued and the building permit granted to the applicant, the building official or his designee shall from time to time inspect the construction, alteration or repair approved by such certificate, and shall take such action as is necessary to force compliance with the approved plans.

B. Appeals.

1. Any interested person ~~person aggrieved by a decision of the historic district commission, including but not limited to a municipal official,~~ may file with the ~~planning commission~~ borough assembly an appeal in writing stating detailed and specific allegations of error including reference to applicable provisions of the Skagway Municipal Code; and shall also include a statement of whether the action should be reversed, modified, remanded for further proceedings, or any other desired relief. All such appeals shall be filed with the borough clerk within ten (10) days of the date of such decision. If the final day to file an appeal falls on a week-end (Saturday or Sunday) or a holiday, the final day to file an appeal shall be the next working day of the week. **The time for filing an appeal shall not be extended and any** ~~Any~~ purported appeals **not** filed **within** after ten (10) days **of the decision** shall not be considered by the ~~planning commission~~ borough assembly.
2. The borough clerk shall transmit the record before the historic commission and the appeal and materials attached to the appeal to the ~~planning commission~~ borough assembly within 20 days of the filing of the appeal. The ~~planning commission~~ borough assembly shall make a reasonable effort to render a decision on the appeal within sixty (60) days after receipt of the record and the appeal from the borough clerk. The ~~planning commission~~ borough assembly may extend the time for decision in its discretion. Failure by the ~~planning commission~~ borough assembly to render a decision within sixty (60) days, or as extended by

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~~the planning commission~~ **borough assembly**, shall mean that the decision of the historic district commission is affirmed. If the ~~planning commission~~ **borough assembly** upholds the historic district commission's ruling, the **appellant** aggrieved party may appeal to the ~~borough assembly~~ **Superior Court as outlined in SMC 19.04.070(F)**.

~~3. All appeals to the planning commission shall follow the procedure as set forth in Section 19.04.070.~~

19.04.070

Board of Appeals.

A. The borough assembly is the board of appeals. The board of appeals shall hear and decide:

1. Appeals regarding alleged errors in enforcement of zoning regulations 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 regulations 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.
4. Appeals from decisions of the ~~planning commission based on appeals from decisions of the historic district commission,~~ **as set forth in SMC 19.12.170(B)**.

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.

C. A variance shall not be granted which will permit a land use in a district in which that use is prohibited.

D. In exercising the above-mentioned powers, the board of appeals 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, and to that end shall have all powers of the body from whom the appeal is taken.

E. Procedure of the Board of Appeals.

1. Appeals to the borough assembly of decisions of the historic district commission shall follow the procedure set forth in SMC 19.12.170(B).

42. Meetings of the board are held at the call of the presiding officer. 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.

23. Any interested party, including but not limited to a municipal official, may file with the board of appeals a notice of appeal, specifying in detail the basis for appeal. Only such grounds for appeal as specified in detail in the notice of appeal shall be considered. The borough clerk is the clerk of the board of appeals. All such appeals shall be filed in writing with the clerk of the board of appeals within ten (10) days of the date of the error, the decision, or the adoption of the resolution of the planning commission granting or denying the application for a conditional use permit or variance ~~or decision related to the historic district~~. Any purported appeals

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filed after ten (10) days shall not be considered by the board of appeals. If the final day to file an appeal falls on a week-end (Saturday or Sunday) or a holiday, the final day to file an appeal shall be the next working day of the week.

- ~~34.~~ Upon such notice of appeal having been duly filed, the borough clerk shall send a certified copy to the zoning official and the planning commission, together with a written request for all 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 twenty (20) 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 appeals.
- ~~45.~~ 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.
- ~~56.~~ The board of appeals shall hear and decide appeals de novo, and shall consider all records, transcripts and documents certified to it by the zoning official and the planning commission clerk. The board of appeals shall commence a public hearing on all appeals not later than thirty (30) days following the date the certified record, as specified in subsection 3 above, is delivered to the clerk of the board of appeals; provided, however, the date of commencement of the hearing may be continued for a period not to exceed an aggregate total of sixty (60) 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 five (5) 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.
- ~~67.~~ 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 borough, and posted in two (2) public places in the 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.
- ~~78.~~ The board of appeals, after having received and considered the appeal, the certified records, transcripts and documents, and duly held a public hearing on the appeal, shall render a decision within sixty days, unless otherwise extended by the board of appeals in its discretion. The decisions of the board of appeals 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. The weighted vote may not be used. Pursuant to Chapter 3.01.065, four affirmative votes are required to adopt any motion. A motion to uphold the decision of the official or planning commission that does not pass with four affirmative votes does not reverse the decision of the official or planning commission absent further motion by the board of appeals to

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reverse the decision in whole or in part or to otherwise modify the decision.

89. The adoption of the motion constitutes the final decision of the board of appeals, and the date of the adoption of the motion constitutes the date of the final decision of the board of appeals. The clerk of the board of appeals 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 or hand delivered. The appellant shall be informed of his further right of appeal as set forth in subsection F below.

910. If the board of appeals fails, within thirty (30) days after the date of the close of the hearing on the appeal, to **pass a motion with four affirmative votes to** affirmatively reverse, affirm, modify or remand the decision of the administrative official or planning commission, **the decision of the administrative official or planning commission** shall be deemed to be upheld and affirmed.

F. Judicial Review. A **party to the appeal to the board of appeals** ~~municipal taxpayer or an aggrieved person~~ may appeal an action of the board of appeals to the Superior Court under the Alaska Court Rules, 601-602 of the Rules of Appellate Procedure.

Section 4. Severability. If any provision of this ordinance or any application thereof 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 thereby.


Section 5. Effective Date. This ordinance shall become effective immediately upon adoption.

PASSED AND APPROVED by a duly constituted quorum of the Borough Assembly of the Municipality of Skagway this 4th day of April, 2013.



Stan Selmer, Mayor

ATTEST:


Emily A. Deach, Borough Clerk

(SEAL)

