

Proposed by:	Planning & Zoning Commission
Attorney Review:	06/21/2017
First Reading:	07/06/2017
Second Reading:	07/20/2017

Vote: 6 Aye 0 Nay 0 Absent

MUNICIPALITY OF SKAGWAY, ALASKA ORDINANCE NO. 17-10

AN ORDINANCE OF THE MUNICIPALITY OF SKAGWAY, ALASKA AMENDING SMC 19.04.060 VARIANCES AND CONDITIONAL USE PERMITS, OF TITLE 19 PLANNING AND ZONING, TO PROVIDE THAT VIOLATIONS OF THE TERMS AND CONDITIONS OF A CONDITIONAL USE PERMIT SHALL BE SUBJECT TO A CIVIL FINE.

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

Section 1. Classification. Section 3 of this ordinance is of a general and permanent nature and shall become a part of the Skagway Municipal Code.

Section 2. Purpose. To amend SMC 19.04.060 Variances and Conditional Use Permits, of Title 19 Planning and Zoning, to provide that violations of the terms and conditions of a conditional use permit shall be subject to a civil fine.

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. SMC 19.04.060 Variances and Conditional Use Permits is hereby amended as follows:

19.04.060 Variances and conditional use permits.

A. Variances.

1. Purpose. The planning commission shall consider and decide applications for variances. Variances are intended to provide a mechanism for the relaxation of such standards as minimum lot or yard requirements, setback, or building coverage, when the applicant shows, and the planning commission finds, that the criteria in subsection 3, Standards below are met. No variance shall be granted because of special conditions caused by actions of the person seeking relief, or for reasons of pecuniary hardship or inconvenience; nor shall any variance be granted which would permit a land use in a district in which that land use has been prohibited.

2. Application for Variance Permits.

- a. Submission and Contents. The applicant shall submit to the clerk of the planning commission, one copy of the completed permit application verified by the owner of the property concerned together with all supporting materials and the permit fee. The application shall contain the following information:

- (i) The owner or owners of the property for which the variance has been requested;
- (ii) The variance requested;

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- (iii) A legal description of the property involved;
 - (iv) A plot plan indicating date, north arrow, scale, exterior property boundaries and location of all existing and proposed buildings on the property, elevations and dimensions of such buildings or alterations, and such other data as may be required and their approximate distance from lot lines;
 - (v) Access for ingress and egress, sewer and water lines serving the property, power poles and all easements on the property; and,
 - (vi) Construction details, approximate dimension of parking areas and spaces, if applicable, and other information as necessary to illustrate the impact of the proposed variance.
 - b. Filing Fee. Upon recommendation of the planning commission, the borough assembly shall establish a fee schedule to cover the costs of legal advertisement, mailed notification, and other fees, if any. These fees must be filed with the application for the variance permit. Upon written request by the applicant, the application may be withdrawn, the fee may be refunded provided that the clerk of the planning commission has not mailed notice to surrounding property owners and prior to the final date of public notification.
- 3. Standards. The planning commission must find all four (4) of the following conditions to exist in order to grant the variance:
 - a. That there are exceptional physical circumstances or conditions applicable to the property or to its intended development which do not apply generally to the other properties in the same zoning district;
 - b. That the strict application of the provisions of this title would result in practical difficulties or unnecessary hardship. Financial difficulty is not considered a hardship;
 - c. That the granting of the variance will not result in material damage or prejudice to other properties in the vicinity, nor be detrimental to the public health, safety or welfare;
 - d. That the granting of the variance will not be contrary to the objectives of the comprehensive plan.
- 4. Standards for a Building Height Exemption. Only standards (a) – (c) below must be met in order to grant a variance permit for a building height exemption. No other standards apply. The planning commission may require the applicant to submit whatever reasonable evidence may be needed to protect the public interest. The burden of proof rests with the applicant. In considering the granting of a variance permit for a building height exemption, a majority of the planning commission members, after a public hearing, must find in writing that:
 - a. The building can be protected by the Skagway Volunteer Fire Department, is constructed of non-combustible materials, or has fire suppression systems to comply with requirements for that particular use;

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- b. The building height would not cause conflicts with surrounding land use; and,
 - c. The immediately adjacent property's viewshed and open access to the sun shall not be unduly impacted.
5. Standards for Yard Setback Exemptions in the Business-Historical Zoning District. Only standards (a) – (f) below must be met in order to grant a variance permit for a yard setback exemption in the Business-Historical zoning district. No other standards apply. The planning commission may require the applicant to submit whatever reasonable evidence may be needed to protect the public interest. The burden of proof rests with the applicant. In considering the granting of a variance permit for a yard setback exemption in the Business-Historical zoning district, a majority of the planning commission members, after a public hearing, must find in writing that all six (6) of the following are met:
- a. Adjacent property owners will not be adversely impacted by the sloughing of rooftop snow or drainage from the applicant's property;
 - b. There is adequate space for the storage and servicing of on-site refuse;
 - c. There must be adequate space for the placement and maintenance of existing or future outdoor fuel tanks;
 - d. Public utilities on the property shall not be covered by permanent structures and shall have adequate space around them for maintenance. If any moving of utilities would be required due to the granting of the variance, the property owner shall bear the cost;
 - e. Fire protection standards are met per SMC 15.08.010, Fire Prevention Code; and,
 - f. The 90% maximum total lot coverage requirement in the Business-Historical zoning district will not be exceeded by granting the variance.
6. Public Hearing – Notification and Publication. The planning commission shall hold a public hearing upon each properly submitted application. From the time of filing such application until the time of such hearing, the application, together with all plans and information submitted, shall be available for public inspection in the office of the borough clerk. The hearing shall be held no later than thirty (30) days following the date of filing of such application. The planning commission may extend the time for the public hearing in its discretion, at the request of the applicant, or upon determination by the clerk of the planning commission of the lack of a quorum. Public notice may be given in a newspaper of general circulation in the municipality, stating the date, time, place and purpose of the hearing, and generally describing the variance sought. The notice shall be posted in two (2) public places in the municipality. The clerk of the planning commission shall also mail a copy of the notice by first class mail to the owners of property, as follows:

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- a. Owners of property located within three hundred feet (300') from any point on the outside perimeter of the property for which a variance has been requested; and
 - b. The owner or owners of the property for which the variance has been requested.
 7. Investigation. The commission shall cause to be made an investigation of facts bearing on any application sufficient to assure that the action taken is consistent with the intent and purpose of this title. The commission shall hear and consider evidence and facts from any person at the public hearing, or written communication from any person relative to the application.
 8. Determination and Conditions. Within thirty (30) days from the conclusion of the public hearing, the commission shall render its decision, unless such time limit is extended by common consent and agreement signed by both the applicant and the commission. The commission, in granting the variance, may establish conditions under which a lot or parcel of land may be used, or may make any other conditions, requirements or safeguards that it may consider necessary to prevent damage or prejudice to adjacent properties, or detriment to the municipality. The decision of the planning commission, either for the granting, with or without conditions, or the denial of an application for variance, shall become final and effective ten (10) days following such decision. Any variance approved by the planning commission shall be conditional upon the privilege granted being utilized within six (6) months after the effective date of the variance.
 9. Recording. The planning commission shall cause to be recorded with the district recorder for Skagway, all variance permits granted by the planning commission. It shall also cause to be recorded all resolutions of the commission revoking or modifying any variance permit. Subsequent owners of property subject to a variance permit succeed to the benefits and limitations of the original permit holder.
- B. Conditional Uses.**
1. Purpose. A conditional use permit gives site specific flexibility to the zoning regulations in a uniform and controlled manner. It permits uses that are desirable to the community, but may not be suitable at every location in the zone based on character, intensity, size or impact on surrounding uses. The planning commission may attach restrictions and conditions designed to fit the special problems, which the use presents.
 2. Application for Conditional Use Permits.
 - a. Submission and Contents. The applicant shall submit to the clerk of the planning commission, one copy of the completed permit application together with all supporting materials and the permit fee. The application shall contain the following information:
 - (i) The owner or owners of the property for which the conditional use has been requested;
 - (ii) The conditional use requested;
 - (iii) A legal description of the property involved;

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- (iv) A plot plan indicating date, north arrow, scale, exterior property boundaries and location of all existing and proposed buildings on the property, elevations and dimensions of such buildings or alterations, and such other data as may be required and their approximate distance from lot lines;
 - (v) Access for ingress and egress, sewer and water lines serving the property, power poles, and all easements on the property;
 - (vi) Construction details, approximate dimension of parking areas and spaces, if applicable, and other information as necessary to illustrate the impact of the proposed conditional use.
 - b. Filing Fee. Upon recommendation of the planning commission, the borough assembly shall establish a fee schedule to cover the costs of legal advertisement, mailed notification, and other fees, if any. These fees must be filed with the application for the conditional use permit. Upon written request by the applicant, the application may be withdrawn, the fee may be refunded provided that the clerk of the planning commission has not mailed notice to surrounding property owners and prior to the final date of public notification.
- 3. Standards. The planning commission may require the applicant to submit whatever reasonable evidence may be needed to protect the public interest. The burden of proof rests with the applicant. In considering the granting of any conditional use permit, a majority of the entire planning commission members, after a public hearing, must find in writing that:
 - a. The requested conditional use will protect the public health, safety, and welfare; and
 - b. The requested conditional use will not permanently or substantially injure the lawful use of neighboring properties or uses; and
 - c. The requested conditional use will generally be in harmony with the comprehensive plan, coastal management plan, and other officially adopted plans; and
 - d. The requested conditional use will not substantially decrease the value of or be out of harmony with property in the neighboring area.
- 4. Restrictions and Conditions. In granting a conditional use permit, the planning commission may, in order to assure compliance with the foregoing standards, require and attach conditions which may include one or more of those found at 6 (a) – (n) below. Such restrictions and conditions must be within the power of the property owner or developer to accomplish and must bear a reasonable relationship to the use of the property for which the permit is requested.
 - a. Conditions that effect dimensional and lot standards including lot size, yard requirements, lot coverage, building setback requirements and height of structures;
 - b. Conditions such as time limits that effect the development schedule to minimize construction-related disruption to traffic and the neighborhood or to implement other requirements;

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- c. Conditions that consider the possible or probable effects upon factors such as topography, slope and soil stability, geophysical hazards such as flooding, surface and subsurface drainage and water quality.
 - d. Conditions that effect utilities and service requirements, including sewers, storm drainage, water, fire protection, access and electrical power. The planning commission may enlist the aid of relevant public utility officials with specialized knowledge in evaluating the probable effects of the proposed use and may consider the costs of enlarging, upgrading, or extending the public utilities in establishing conditions under which the conditional use may be permitted.
 - e. Conditions that effect community appearance such as landscaping, fencing and screening.
 - f. Conditions that effect adequate and lawful parking, curb cuts, traffic movement, and that ensure access is adequate to serve the additional volume of traffic.
 - g. Conditions such that the unsightliness, building height, or structural incompatibility would not significantly affect surrounding areas or the viewshed.
 - h. Conveyance of title, easements licenses, or other property interests to government entities, public utilities, or owner's associations.
 - i. Conditions may be imposed to discourage production of more than 65 dba of sound at the property line during the day and 55 dba at night.
 - j. Conditions may be imposed to improve on and off-site drainage.
 - k. Conditions may be imposed to require dedication of public access easements to streams, rivers and tidewater.
 - l. Other conditions which will uphold the policies of the zoning regulations, the comprehensive plan and the harmony and beneficial use of neighboring uses.
 - m. The planning commission may also require an agreement and performance bond to insure compliance with such restrictions and conditions.
 - n. The permit may be automatically revoked upon the occurrence of specified events. In such case, it shall be the responsibility of the owner to apply for a new permit. Any order revoking a permit shall state with particularity the grounds therefore and the requirements for the re-issuance. Compliance with such requirements shall be the sole criteria for re-issuance.
5. Issuance or Denial of Conditional Use Permit; Findings of Fact. In passing upon an application for a conditional use permit, the planning commission shall, after notice and hearing as hereinafter provided, from the evidence presented to it, make written findings of fact in a formal resolution of the planning commission, which findings of fact support the standards set forth above (in the case where a conditional use permit is granted), or which

findings of fact show that the evidence does not support the standards (in the case where a conditional use permit is not granted). Such resolutions shall be permanently retained by the planning commission.

6. Public Hearing and Determination. After the planning official has duly forwarded the completed application to the planning commission, the planning commission shall study it and shall, within thirty (30) days after the receipt of such application, hold a public hearing whereat it may receive evidence pertinent to the granting or denial of such application according to the standards set forth above. If, at the hearing, the planning commission determines that it needs additional information, it may recess the hearing for a period of not more than thirty (30) days, during which time it shall procure or receive such additional information; provided, however, that before it so recesses, it must then and there announce the time and place at which the hearing will be resumed. Within thirty (30) days after the completion of the hearing, the planning commission shall, in a formal written resolution of the commission, either grant or deny the application, and the planning commission shall make its findings of fact a part thereof in the manner provided above.
7. Public Hearing – Notification and Publication.
 - a. The planning commission shall hold a public hearing on conditional use permit applications. Public notice may be given in a newspaper of general circulation in the municipality. The notice shall generally describe the conditional use sought. Notice shall also be posted at two (2) public places within the municipality. The clerk of the planning commission shall also mail a copy of the notice to owners of property, as follows:
 - (i) Notice by first class mail to owners of property located within three hundred feet (300') from any point on the outside perimeter of the property for which a conditional use permit has been requested; and
 - (ii) The owner or owners of the property for which the conditional use permit has been requested. Such notifications are complete upon publication and upon mailing.
 - b. Such notification shall contain, but not be limited to, the following information:
 - (i) For land within an area where street addresses are available, a legal description of the property and a street address;
 - (ii) For land outside an area where street addresses are available, a legal description, U.S. survey and lot number, and the approximate number of yards or miles from a generally known point of reference (landmark, building, etc.).

8. Civil fines.

- a. **Failure to comply with the terms and conditions of any approved conditional use permit shall be considered a violation of the provisions of this chapter.**

b. For each and every violation of any terms or conditions of an approved conditional use permit, the owner, agent, or contractor of a building or premises where such violations have been committed or exist, or any other person who maintains any building or premises in which any violation exists, shall be subject to a civil fine, established by resolution. Each and every day that such violation continues shall be deemed a separate and distinct violation of this chapter.

89. Revocation and Cancellation of Permit.

- a. Any conditional use permit granted under this section may be revoked and canceled by the planning commission for failure to comply with the conditions of the conditional use permit. Before taking any action toward revoking such permit the planning commission shall first give the owner of the property upon which the conditional use is authorized, twenty (20) days' written notice, by prepaid certified U.S. mail or hand delivery, in advance of the date of hearing, of the subject of the hearing, and of the date, time and place of the hearing. This notice is complete upon mailing or hand delivery. The planning commission shall thereafter hold the hearing at the time and place set forth in the notice. The planning commission may conduct more than one hearing in its discretion before concluding the hearing process.
- b. The permittee may, at the hearing, present evidence on his own behalf, and may cross-examine witnesses. After the planning commission has concluded the hearing, the planning commission shall make written findings of fact from the evidence presented to it at the hearing supporting the conclusion that the permittee has failed to comply with the conditions of the conditional use permit (in cases where the permit is revoked), or that the permittee has not failed to comply with the conditions of the conditional use permit (in cases where the permit is not revoked) within thirty (30) days, unless otherwise extended by the planning commission. These findings shall be in a formal written resolution of the planning commission, and shall be retained permanently by the planning commission as part of its official records. In all revocation proceedings, the burden of proof is upon the planning commission.
- c. After the conditional use permit has been revoked, the permittee shall thereafter immediately discontinue the use of the property for which the permit had originally been granted. If, after a conditional use permit has been revoked, the permittee does not immediately discontinue the use of the property for which the permit had originally been granted, a civil penalty not to exceed \$300 for each day of continuing violation may be imposed. In addition, the planning commission may apply to the superior court for an injunction to

restrain the former permittee from using such land for the purposes previously authorized in the permit.

- d. In the event, however, that the permittee duly appeals the revocation of the permit to the board of adjustment, such appeal 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 planning commission or a court.

910. Recording. The planning commission shall cause to be recorded with the district recorder for Skagway, all conditional use permits granted by the planning commission. It shall also cause to be recorded all resolutions of the commission revoking or modifying any conditional use permit. Subsequent owners of property subject to a conditional use permit succeed to the benefits and limitations of the original permit holder.

101. Duration of Conditional Use Permit. A conditional use permit expires eighteen (18) months after the date it was granted, unless a permit issued has been put into use and/or construction has been started and diligently continued to completion. Where unusual circumstances may prevent compliance with the time requirements for start of construction, the planning commission may, upon written request by the affected party, extend, by resolution, the time for required start of construction an additional sixty (60) days, provided the request is filed with the planning commission prior to the expiration of the one (1) year. Excavation is not considered to be construction for the purposes of enforcing this section.

142. Modification of Permit. The terms of a conditional use permit may be modified by new or revised conditions, which may be more or less restrictive than those contained in the permit. The procedure for such modifications may be initiated either by the property owner to whom the permit is granted or the planning commission if:


- a. An original permit condition had a timing requirement that has been exceeded, violated, or expired; or
- b. A condition in the original permit has not been complied with.

C. Notification and hearing are required as provided under subsections 19.04.060(B)(2),(6) and (7) above. In passing upon such modifications, the commission shall, after notice and hearing, from the evidence presented to it, make written findings of fact in a formal resolution of the commission, which findings either support the modifications or do not support the modifications within thirty (30) days, unless otherwise extended by the planning commission. In making a determination, the commission shall follow the guidelines pertaining to the granting of conditional use permits as set forth above. In all modification proceedings, the burden of proof shall be upon the initiating party.

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.

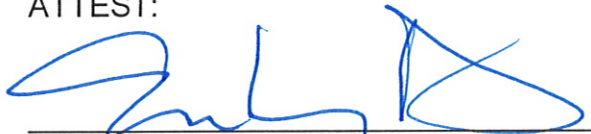
Section 5. Effective Date. This ordinance shall become effective immediately upon adoption.

PASSED AND APPROVED by a duly constituted quorum of the Borough Assembly of the Municipality of Skagway this 20th day of July, 2017.



Mark Schaefer, Mayor

ATTEST:



Emily A. Deach, Borough Clerk

(SEAL)

