

FAIRBANKS NORTH STAR BOROUGH

BOARD OF ADJUSTMENT (BOA)

PUBLIC INFORMATION PACKET FOR APPEALS REGARDING CONDITIONAL USE, VARIANCE, GRANDFATHER RIGHTS AND OTHER APPEALS



Office of the Borough Clerk
Fairbanks North Star Borough
907 Terminal Street
Fairbanks, Alaska 99701
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Revised 06/2021

PURPOSE

The Board of Adjustment hears appeals of Planning Commission determinations on requests for conditional uses and variances, and of decisions or determinations made by the Department of Community Planning in the enforcement of FNSBC Title 18. The Borough Assembly sits as the Board of Adjustment or the Board may designate an appeals officer to hear the case.

STANDARD OF REVIEW / HOW THE BOARD OF ADJUSTMENT "HEARS" AN APPEAL

The Board hears and decides appeals on the record, meaning no new evidence, testimony, or changed circumstances are heard by the Board. When considering an appeal, the Board schedules a hearing open to the public to review and discuss an appeal packet which contains specific information about the case.

SUMMARY OF APPEAL PROCESS

- Appeals must be filed no later than 15 days after the date of notification of a decision
- To file, submit a completed Notice of Appeal form to the Borough Clerk's Office along with a \$75 non-refundable filing fee and \$200 cost bond. Cost bonds are refunded to the appellant in the event the Board reverses, or partly reverses, the decision being appealed.
- The Clerk's Office will prepare an appeal record consisting of verbatim transcripts of any previous proceedings, copies of all documentary evidence and copies of the written decision being appealed.
- It is the responsibility of the appellant to arrange and pay for the preparation of a transcript by a court reporter.
- After the Record is complete, a period of written argument begins. The appellant will have an opportunity to file a written brief in support of their appeal, and the appellee will have an opportunity to rebut that with a written brief of their own. The appellant will then have a final opportunity to provide a written reply to the appellee's brief.
- An appellee brief may be filed by "any person who would be aggrieved if the decision of the lower administrative body were reversed" FNSBC 4.24.030. To participate in the process, a form called Notice of Intent to File a Brief must be submitted to the Borough Clerk's Office within 20 days after the date of notification of the decision that is being appealed.
- The Clerk's Office will prepare an appeal packet consisting of the appeal record plus any written arguments and schedule a hearing date. **Only the material contained in the appeal packet is considered by the Board.**
- The board reviews the appeal packet and issues its decision. Written notification of the decision is sent to the appellant and appellee(s).

EX-PARTE CONTACT PROHIBITED

Ex-parte contact with the Board of Adjustment is when an appellant or appellee contacts the Board without the other party's knowledge, this includes contact in person, by phone, e-mail or text. All contact with the Board of Adjustment shall go through the Borough Clerk's Office.



Fairbanks North Star Borough

DEPARTMENT OF THE ASSEMBLY
Borough Clerk's Office

clerks@fnsb.gov
Main: (907) 459-1401
Fax: (907) 459-1224

NOTICE OF APPEAL TO THE BOARD OF ADJUSTMENT

Name

Email Address

Mailing Address

City, State, Zip Code

Phone Number

Case No. of Action Being Appealed

Relationship to Action – Please Select One

Applicant

Governmental Agency

Permittee or owner of land for which a conditional use has been revoked

Person aggrieved by a decision or determination made by the director of department of community planning in the enforcement of FNSBC Title 18, or by a decision of the planning commission concerning a request for conditional use or variance. To be considered a "person aggrieved," the person must qualify as an interested person and if a quasi-judicial hearing was held must have participated in the hearing as a party or interested person. FNSBC 18.104.090(A)

The Notice of Appeal must contain detailed and specific allegations of error. Please present those allegations here. Attach additional sheets as needed.

Appellant Signature

Date



Fairbanks North Star Borough

DEPARTMENT OF THE ASSEMBLY
Borough Clerk's Office

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Main: (907) 459-1401
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NOTICE OF INTENT TO FILE A BRIEF

Name

Email Address

Mailing Address

City, State, Zip Code

Phone Number

Case No. of Action Being Appealed

Relationship to Action – Please Select One

The party in whose favor the lower administrative body's decision was rendered

Borough Agency

Permittee or owner of land for which a conditional use has been revoked

Person who would be aggrieved if the decision of the lower administrative body were reversed. To be considered a "person aggrieved," the person must qualify as an interested person and if a quasi-judicial hearing was held must have participated in the hearing as a party or interested person. FNSBC 18.104.090(A)

If filing as a person aggrieved, please explain: Attach additional sheets as needed.

Appellant Signature

Date

18.104.090 Appeals.

A. Initiation of Appeal. Decisions may be appealed to the board of adjustment or a hearing officer by:

1. An applicant for a conditional use or variance;
2. The permittee or owner of land for which a conditional use has been revoked;
3. Any governmental agency or unit;
4. Any person aggrieved by a decision or determination made by the director of the department of community planning in the enforcement of this title, or by a decision of the planning commission concerning a request for conditional use or variance. To be considered a "person aggrieved," the person must qualify as an interested person and if a quasi-judicial hearing was held must have participated in the hearing as a party or interested person. A request for variance from the terms of the land use regulations may be appealed when literal enforcement would deprive a property owner of rights commonly enjoyed by other properties in the district.

4.24.010 Board of adjustment.

The borough assembly shall be the board of adjustment. The board of adjustment, or an appeals officer that the board of adjustment may designate, shall hear and decide appeals of planning commission determinations on requests for conditional uses and variances, and of decisions or determinations made by the department of community planning in the enforcement of FNSBC Title 18.

4.24.030 Procedures for conditional use, variance, and other appeals.

A. An appellee brief may be by:

1. The party in whose favor the lower administrative body's decision was rendered;
2. Any borough agency;
3. Any person who would be aggrieved if the decision of the lower administrative body were reversed.

B. Appellees who wish to be notified by the clerk's office of the date the record is available and of the date the appellant's brief is filed must file a notice of intent to file a brief with the clerk's office on a form prescribed by the borough clerk, within 20 days after the decision of the lower administrative body from which the appeal is taken.

C. Notice of Appeal. An appeal must be perfected no later than 15 days after the date of notification of decision. The appeal is perfected by the filing of a notice of appeal, appeal fee and cost bond in accordance with this subsection.

1. The notice of appeal must be filed with the borough clerk on a form prescribed by the borough clerk and must contain detailed and specific allegations of error.

4.24.030 Procedures for conditional use, variance, and other appeals – continued

2. The appellant shall pay a nonrefundable appeal fee of \$75.00. In addition, the appellant shall file a cost bond of \$200.00. Following completion of the record, the appellant shall pay the actual cost of the record. However, should the decision of the lower body be reversed in whole or in part, the cost bond shall be refunded in full.

3. An untimely notice of appeal or a notice of appeal which does not conform with the requirements of this subsection shall be denied. No further proceedings shall be made on a defective notice of appeal unless the defect is corrected within the period provided for an appeal.

D. New Evidence – Changed Circumstances. Appeals alleging new evidence or changed circumstances shall not be heard by the board of adjustment or hearing officer but shall be remanded forthwith by the clerk to the lower administrative body, which shall determine whether to rehear the matter.

E. Preparation of Record.

1. Upon timely perfection of an appeal, the borough clerk shall prepare an appeal record. The record shall contain:

a. A verbatim transcript of any proceedings before the administrative body from which the appeal has been taken prepared in accordance with subsection (E)(2) of this section;

b. Copies of all documentary evidence, memoranda and exhibits, correspondence and other written material submitted to the administrative body prior to the decision from which the appeal is taken;

c. A copy of the written decision of the administrative body, including its findings and conclusions.

2. The appellant shall arrange for the preparation of the transcript by a court reporter and shall pay the cost of such preparation. The appellant shall file this transcript with the borough clerk. If the appellant fails to file the transcript within 30 days of the filing of the notice of appeal, the appeal shall be automatically denied.

3. Upon completion of the record, the clerk shall notify the appellant by certified mail of the cost of its preparation. If the appellant fails to pay the costs within seven days of receiving the notice, the appeal shall be automatically denied. Upon timely payment of costs, the clerk shall, by certified mail, serve a copy of the record on the appellant. The clerk shall also notify by certified mail the appellees who have filed a notice of intent to file a brief that the record is available for pickup and the date the record was mailed to the appellant. Upon request, the clerk shall provide a copy of the record to an appellee or the public.

4.24.030 Procedures for conditional use, variance, and other appeals – continued

F. Written Argument.

1. Brief of the Appellant. The appellant may file a written brief of points and authorities in support of those allegations of error specified in the notice of appeal with the clerk's office no later than 15 days after mailing of the appeal record. The clerk shall deliver a copy of the appellant's brief to the borough staff assigned responsibility for the appeal. The clerk shall also notify by certified mail those appellees who have filed a notice of intent to file a brief that the appellant's brief is available for pickup. Upon request, the clerk shall provide a copy of the appellant's brief to appellees.

2. Brief of Appellee. Borough staff shall prepare and submit to the clerk a written reply to the notice of appeal and any brief in support thereof no later than 30 days after mailing of the appeal record. An appellee who has filed a notice of intent to file brief may also file with the clerk's office a written reply to the notice of points on appeal and any brief in support thereof no later than 30 days after the mailing of the appeal record. The clerk shall notify the appellant by certified mail that appellee briefs have been filed.

3. Reply Brief. An appellant may file a written reply brief to the appellee briefs no later than 10 days after mailing of notice that the appellee briefs have been filed.

4. Form of Briefs. All briefs shall be type-written on eight and one-half by 11-inch pages. The text of the brief shall be double-spaced other than quotations from the record, case law, or other applicable law or exhibits which cannot be retyped on eight and one-half by 11-inch pages. The brief of the appellant is limited to 25 pages exclusive of exhibits. The brief of appellee is limited to 25 pages exclusive of exhibits. The reply brief is limited to 10 pages exclusive of exhibits. The clerk shall not accept a brief unless it is in the form prescribed by this subsection.

5. Untimely Briefs. If a brief is not filed within the time prescribed by this section, the clerk shall notify the board of adjustment or hearing officer that the brief was filed late. The board or hearing officer shall determine whether to accept a late brief and whether to allow additional time for any qualified opposing party to file its brief.

G. Appeal Packet – Notice of Hearing. Following the time set for the receipt of written argument from the appellant, appellee and the borough staff, the clerk shall prepare and distribute to the board members or hearing officer an appeal packet containing only the notice of appeal, the appeal record and any briefs filed in accordance with subsection (F) of this section. Following distribution of the packets, a date shall be set for consideration of the appeal. Notice of consideration on the appeal shall be published in a newspaper of general circulation and shall be served by mail on the appellant and those appellees who have submitted briefs. Appeal packets shall be made available to the public upon demand.

H. Appeal Hearing. The meeting at which the board deliberates and decides an appeal shall be open to the public and a record of the hearing shall be made. The board or hearing officer shall not hear arguments nor take additional testimony or other evidence. Only the material contained in the appeal packet shall be considered.

4.24.030 Procedures for conditional use, variance, and other appeals – continued

I. Scope of Administrative Review.

1. An appeal shall be heard solely on the basis of the record established before the lower administrative body, the notice of appeal, appellant's argument and the reply thereto.
2. The board of adjustment or hearing officer may exercise its independent judgment on legal issues raised by the appellant. Legal issues as used in this subsection are those matters that relate to the interpretation or construction of ordinances or other provisions of law.
3. The board of adjustment or hearing officer shall, unless it substitutes its independent judgment pursuant to subsection (I)(4) of this section, defer to the judgment of the lower administrative body regarding disputed issues or findings of fact. Findings of fact adopted expressly or by necessary implication by the lower administrative body may be considered as true if they are supported in the record by substantial evidence. Substantial evidence for the purpose of this subsection means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. If the record affords a substantial basis of fact from which the fact in issue may be reasonably inferred, it shall be considered that the fact is supported by substantial evidence.
4. Notwithstanding the provisions of subsection (I)(3) of this section, the board of adjustment, by an affirmative vote of two-thirds of the fully constituted board, or the hearing officer, may substitute its independent judgment for that of the lower administrative body on any disputed issues or findings of fact. The judgment must be supported on the record by substantial evidence. For the purpose of this subsection, the fully constituted board of adjustment shall not include those members who do not participate in the appeal.

J. Decision.

1. The board of adjustment or hearing officer may affirm or reverse the decision of the lower administrative body in whole or in part. It shall decide an appeal on the basis of the record on appeal and the briefs of the parties to the appeal, in accordance with the standards of subsection (K) of this section. A majority vote of the fully constituted board is required to reverse or modify the decision appealed from. For the purpose of this subsection, the fully constituted board shall not include those members who do not participate in the appeal. Where an appeal has been referred to a hearing officer, the hearing officer alone shall decide the appeal. A decision reversing or modifying the decision appealed from shall be in a form which finally disposes of the case on appeal except where the case is remanded in accordance with subsection (K) of this section.
2. Every decision to affirm or reverse the decision of the lower administrative body shall be based upon findings and conclusions adopted by the board or hearing officer. Such findings must be reasonably specific so as to provide the community, and where appropriate, reviewing authorities, a clear and precise understanding of the reason for the decision. The board may seek the assistance of the borough attorney in the preparation of findings.

4.24.030 Procedures for conditional use, variance, and other appeals – continued

K. Remedies.

1. Where the board of adjustment or hearing officer reverses or modifies a decision of the lower administrative body in whole or in part, its decision shall finally dispose of the matter on appeal, except that the case shall be remanded to the lower body where it determines either:

a. That there is insufficient evidence in the record on an issue material to the decision of the case; or

b. That there has been a substantial procedural error which requires further public hearing.

2. A decision remanding a case shall describe any issue upon which further evidence should be taken, and shall set forth any further directions the board or hearing officer deems appropriate for the guidance of the lower administrative body.

3. The lower administrative body shall act on the case upon remand in accordance with the decision of the board of adjustment or hearing officer in the minimum time allowed by the circumstances.

L. Special Rules of Procedure Applicable to Appeal Hearings Before the Board of Adjustment or Hearing Officer.

1. Ex Parte Contacts Prohibited. Board members and the hearing officer shall be impartial in all appeal matters, both in fact and in appearance. No board member or hearing officer shall receive or otherwise engage in ex parte contacts with the appellant, other parties adversely affected by the appeal, or members of the public concerning the appeal or issues specifically presented in the notice of appeal either before the appeal hearing or during any period of time the matter is subject to reconsideration.

2. Decisions of the board of adjustment or hearing officer may be brought up for reconsideration or rehearing only if:

a. There was substantial procedural error in the original proceeding; or

b. The board or hearing officer acted without jurisdiction in the original proceeding; or

c. The original decision was based upon fraud or misrepresentation. The appellant or appellee may seek reconsideration or a rehearing by filing a request with the borough clerk, together with materials supporting one or more of the grounds stated above, within 15 days of the original decision. The board, by majority vote, or hearing officer may schedule a rehearing only if it finds the allegations to be correct. A rehearing shall be conducted in the same manner as original proceedings.

M. Judicial Review. Either the appellant or appellee may appeal the decision of the board of adjustment or hearing officer to the superior court. Appeals shall be made in accordance with the Alaska Rules of Civil Procedure.