

By: Matt Cooper, Leah Berman
Williams, and Marna Sanford
Referred to Planning
Commission: 8/12/2021

FAIRBANKS NORTH STAR BOROUGH

ORDINANCE NO. 2021 – 27

AN ORDINANCE AMENDING FAIRBANKS NORTH STAR BOROUGH CODE OF
ORDINANCES TITLES 4, 15, 17, AND 18 REGARDING APPEALS FROM DECISIONS AND
DETERMINATIONS OF THE PLANNING DIRECTOR, PLATTING BOARD, AND PLANNING
COMMISSION

WHEREAS, Citizens should be afforded a first level appeal to a board of
adjustment, rather than going directly to superior court, when feasible; and

WHEREAS, Land use decisions from the platting board and planning
commission should follow a consistent internal appeal process; and

WHEREAS, Allowing multiple appeals to Borough bodies before appealing
to superior court can cause delays for applicants and developers.

NOW, THEREFORE, BE IT ORDAINED by the Assembly of the Fairbanks
North Star Borough:

Section 1. This ordinance is of a general and permanent nature and shall
be codified.

Section 2. FNSBC 4.24.010, Board of Adjustment, is hereby amended as
follows:

AMENDMENTS ARE SHOWN IN LEGISLATIVE FORMAT
Text to be *added* is underlined
Text to be *deleted* is [BRACKETED, CAPITALIZED]

33 The borough assembly shall be the board of adjustment. The board of
34 adjustment, or an appeals officer that the board of adjustment may designate, shall hear
35 and decide appeals of planning commission determinations on requests for conditional
36 uses and variances, [AND OF] appeals from decisions or determinations made by the
37 department of community planning in the enforcement of FNSBC Title 18 and appeals
38 from decisions of the platting board.

39

40 Section 3. FNSBC 4.80.040(A)(3), Powers and duties, is hereby repealed
41 as follows: *[Note: The Clerk shall renumber accordingly.]*

42 [3. THE COMMISSION SHALL ACT AS THE PLATTING BOARD APPEALS BODY
43 AND SHALL HEAR AND DECIDE APPEALS FROM THE DECISIONS OF THE PLATTING
44 BOARD.]

45

46 Section 4. FNSBC 15.04.080, Appeals, is hereby amended as follows:
47 The commission shall consider and decide appeals where it is alleged there is error in any
48 order, requirement, condition, decision or determination made by the director regarding
49 approval or denial of a floodplain permit or certificate of compliance.

50 A. The appellant shall file an appeal with the commission clerk within 10 calendar
51 days after the director's decision. The appellant shall include their name or names, their
52 interest in the matter, their address, and which order, requirement, condition, decision
53 or determination made is being appealed.

54 B. The commission may reverse or affirm, wholly or in part, or modify the order,
55 requirement, condition, decision or determination under appeal, so long as such action is
56 in conformity with this chapter. The commission shall make its decision in writing, setting
57 forth its findings of fact, reasons for its decisions and corrective actions to be taken, if
58 necessary.

59 [C. APPEALS FROM COMMISSION DECISIONS ARE MADE TO THE ASSEMBLY USING
60 THE APPEAL PROCESS AS REQUIRED IN FNSBC 4.24.030(C) THROUGH (L).]

AMENDMENTS ARE SHOWN IN LEGISLATIVE FORMAT
Text to be *added* is underlined
Text to be *deleted* is [BRACKETED, CAPITALIZED]

61 [D.]C. Either the appellant or appellee may appeal the [ASSEMBLY'S] commission's
62 decision to superior court. Appeals may be made to the superior court in accordance with
63 the rules of appellate procedure.

64

65 Section 5. FNSBC 17.04.010, Definitions, is hereby amended as follows:
66 ["COMMISSION" MEANS THE FAIRBANKS NORTH STAR BOROUGH PLANNING
67 COMMISSION.]

68

69 Section 6. Subsection E of FNSBC 17.28.040 is hereby deleted as follows:
70 [E. ALL DECISIONS OF THE PLATTING BOARD UNDER THIS CHAPTER ARE FINAL
71 UNLESS APPEALED TO THE PLANNING COMMISSION WITHIN SEVEN CALENDAR DAYS.
72 ANY APPEAL IS SUBJECT TO CHAPTER 17.68 FNSBC.]

73

74 Section 7. Chapter 17.68 FNSBC, Appeals, is hereby amended as follows:

75 Sections:

76 17.68.010 Appeals from platting board[TO PLANNING COMMISSION] decisions.

77 [17.68.020 NOTICE OF APPEAL.

78 17.68.030 DECISION ON APPEAL.

79 17.68.040 APPEAL FROM PLANNING COMMISSION.]

80

81 Section 8. Chapter 17.68 FNSBC, Appeals, is hereby amended as follows:

82 Sections:

83 17.68.010 Appeals from platting board[TO PLANNING COMMISSION] decisions.

84 [17.68.020 NOTICE OF APPEAL.

85 17.68.030 DECISION ON APPEAL.

86 17.68.040 APPEAL FROM PLANNING COMMISSION.]

AMENDMENTS ARE SHOWN IN LEGISLATIVE FORMAT
Text to be *added* is underlined
Text to be *deleted* is [BRACKETED, CAPITALIZED]

87

88 17.68.010 Appeals from platting board [TO PLANNING COMMISSION] decisions.

89 Except for a final plat and action on a vacation application, any party or interested person
90 who participated in the hearing before the platting board may appeal a decision of the
91 platting board to [THE PLANNING COMMISSION] the board of adjustment by
92 [SUBMITTING] filing a written notice of appeal with the [PLATTING OFFICER] clerk's
93 office within seven days of the date of the decision. Members of the public may appeal
94 the platting board's application of this title's requirements concerning the dedication or
95 realignment of trails.

96

97 [17.68.020 NOTICE OF APPEAL.

98 A. A NOTICE OF APPEAL SUBMITTED PURSUANT TO THIS TITLE MUST BE IN
99 WRITING AND CONTAIN THE FOLLOWING INFORMATION:

- 100 1. NAMES AND ADDRESSES OF THE APPELLANT(S);
- 101 2. PLATTING SERIAL CASE FILE NUMBER OR OTHER IDENTIFICATION OF THE
102 MATTER FROM WHICH THE APPEAL IS TAKEN;
- 103 3. DATE AND IDENTITY OF THE SPECIFIC ACTION OR DECISION FROM WHICH THE
104 APPEAL IS TAKEN;
- 105 4. SPECIFIC GROUNDS OR REASONS FOR THE APPEAL, WITH REFERENCE TO ALL
106 FNSBC TITLE 17 PROVISIONS UPON WHICH THE APPELLANT RELIES. APPEALS ARE
107 LIMITED TO ALLEGATIONS OF ERROR ARISING FROM THE PLATTING BOARD'S
108 INTERPRETATION, APPLICATION OR FAILURE TO APPLY THE REQUIREMENTS OF THIS
109 TITLE AND UNLESS BASED ON CHANGED CIRCUMSTANCES OR NEW EVIDENCE WHICH
110 WITH DUE DILIGENCE COULD NOT HAVE BEEN DISCOVERED FOR PRESENTATION TO
111 THE PLATTING BOARD, MUST BE BASED ON FACTS OR ARGUMENTS RAISED BELOW.
- 112 B. A NOTICE OF APPEAL SHALL BE ACCOMPANIED BY THE APPROPRIATE FEE FOR
113 APPEALS FROM THE PLATTING BOARD.
- 114 C. THIS FEE IS REFUNDABLE TO A SUCCESSFUL APPELLANT.

AMENDMENTS ARE SHOWN IN LEGISLATIVE FORMAT
Text to be *added* is underlined
Text to be *deleted* is [BRACKETED, CAPITALIZED]

115 D. AN APPEAL MAY BE ACCEPTED BY THE PLANNING COMMISSION ONLY IF IT
116 COMPLIES WITH THE REQUIREMENTS OF THIS CHAPTER.

117 E. AFTER ACCEPTANCE OF AN APPEAL, NOTICE OF THE APPEAL MUST BE SENT TO
118 ALL PARTIES AND "INTERESTED PERSONS" WHO PARTICIPATED IN THE HEARING
119 BEFORE THE PLATTING BOARD NOTIFYING THEM OF THE RIGHT TO REQUEST
120 PARTICIPATION IN THE APPEAL ON OR BEFORE THE DEADLINE ESTABLISHED BY THE
121 CHAIR OR BY THE RULES OF THE COMMISSION.

122

123 17.68.030 DECISION ON APPEAL.

124 THE DECISION OF THE PLANNING COMMISSION ON AN APPEAL UNDER THIS CHAPTER
125 SHALL BE AS A RESOLUTION EXPRESSING SPECIFIC FINDINGS OF FACT AND REASONS
126 WHY THE ACTION WAS TAKEN, INCLUDING REFERENCE SPECIFICALLY TO THE RECORD
127 UPON WHICH ANY DISPUTED QUESTIONS OF FACT HAVE BEEN RESOLVED AND
128 PROVISIONS OF CODE OR STATUTE WHICH SUPPORT SUCH FINDINGS.

129

130 17.68.040 APPEAL FROM PLANNING COMMISSION.

131 APPEALS FROM THE PLANNING COMMISSION WITH RESPECT TO THIS TITLE SHALL BE
132 MADE TO THE SUPERIOR COURT.]

133

134 Section 9. FNSBC 18.104.060(D), Procedures for variances, is hereby
135 amended as follows:

136 D. Administrative Approval of Yard Setback Variance.

137 1. Notwithstanding any requirements in this chapter to the contrary, if a yard
138 setback variance is being requested and the property meets the following requirements,
139 the variance may be heard by the planning director or designee, as hearing officer, at an
140 administrative hearing:

AMENDMENTS ARE SHOWN IN LEGISLATIVE FORMAT
Text to be *added* is underlined
Text to be *deleted* is [BRACKETED, CAPITALIZED]

141 a. The relevant area of the building for which the setback variance is
142 requested was built prior to April 25, 1988, or the setback violation existed when the
143 property was purchased by the current owner prior to July 21, 2010;

144 b. The setback variance request is for 50 percent or less of the yard
145 requirement;

146 c. The setback variance request meets the state requirements set forth
147 in AS 29.40; and

148 d. The setback variance will not be injurious to the health, safety or
149 welfare of the neighborhood.

150 2. Within five working days after the administrative yard setback variance
151 application deadline, one of the following actions shall be taken by the community
152 planning department:

153 a. Accept the application for a review and action by the hearing officer;

154 b. Return the application if it is incomplete;

155 c. Schedule the application for a planning commission hearing if it is
156 determined that a more comprehensive review is needed.

157 3. The hearing officer shall make the final decision within five working days of
158 the hearing. If, as a result of the hearing, the hearing officer determines that conditions
159 exist that may adversely affect the public health, safety or welfare, traffic or parking, or
160 otherwise may necessitate a more comprehensive review by the planning commission,
161 the hearing officer may forward the application to the planning commission in lieu of a
162 decision. The requested variance shall be heard before the planning commission without
163 an additional fee.

164 4. An administrative yard setback variance decision by the planning director
165 or designee may be appealed by any aggrieved person, as defined in FNSBC
166 18.104.090(A)(4), to the planning commission by filing a notice of appeal with the
167 community planning department within 15 days after the final decision was mailed. The

AMENDMENTS ARE SHOWN IN LEGISLATIVE FORMAT

Text to be *added* is underlined

Text to be *deleted* is [BRACKETED, CAPITALIZED]

168 appeal shall be heard de novo by the planning commission. The planning commission
169 decision may be appealed by a party to the [BOARD OF ADJUSTMENT]superior court.

170

171 Section 10. FNSBC 18.108.030(C), Affirmative recognition of grandfather
172 rights, is hereby amended as follows:

173 C. Within 15 days of the hearing the department shall issue an administrative
174 determination of the grandfather rights. If no hearing is required the administrative
175 determination shall be issued within 10 working days of the application. Administrative
176 determinations granting structural-related grandfather rights without a hearing must be
177 mailed to the applicant and owners of nearby lots or land as set forth in FNSBC
178 18.104.010(C)(2). Administrative determinations may be appealed within 15 days of the
179 date the determination was mailed. The appeal shall be heard de novo by the planning
180 commission. The planning commission shall uphold or reverse the determination and
181 adopt specific findings of fact after considering the oral and written statements of the
182 applicant, interested persons, and the department of community planning. This decision
183 is appealable to the [BOARD OF ADJUSTMENT]superior court.

184

185 Section 11. FNSBC 18.116.040(C), Affirmative recognition of amnesty
186 relief, is hereby amended as follows:

187 C. Within 15 days of the hearing, the department shall issue an administrative
188 determination regarding the affirmative recognition of amnesty relief. If no hearing is
189 required, the administrative determination shall be issued within 10 working days of the
190 application. The applicant or any aggrieved person, as defined by FNSBC
191 18.104.090(A)(4), may appeal to the planning commission by filing a notice of appeal
192 with the community planning department within 15 days after the department's
193 determination was mailed. The appeal shall be heard de novo by the planning
194 commission. The planning commission shall uphold or reverse the determination and
195 adopt specific findings of fact after considering the oral and written statements of the

AMENDMENTS ARE SHOWN IN LEGISLATIVE FORMAT

Text to be *added* is underlined

Text to be *deleted* is [BRACKETED, CAPITALIZED]

196 applicant, interested persons, and the department of community planning. This decision
197 is appealable to the [BOARD OF ADJUSTMENT]superior court.

198

199 Section 12. Effective Date. This ordinance shall be effective at 5:00 p.m. on
200 the first Borough business day following its adoption.

201

202 ADOPTED THE _____ DAY OF _____ 2021.

203

204

205

206

207

208 ATTEST:

209

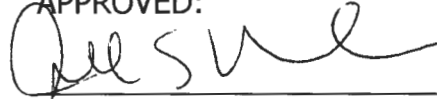
210

211 _____
April Trickey, CMC

212 Borough Clerk

Mindy O'Neall
Presiding Officer

APPROVED:



Jill S. Dolan
Borough Attorney

AMENDMENTS ARE SHOWN IN LEGISLATIVE FORMAT

Text to be *added* is underlined

Text to be *deleted* is [BRACKETED, CAPITALIZED]




Fairbanks North Star Borough

DEPARTMENT OF THE ASSEMBLY
Borough Clerk's Office

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

MEMORANDUM

TO: John Perreault, Chair, Planning Commission
Kellen Spillman, Acting Community Planning Director

FROM: April Trickey, CMC, Borough Clerk 

DATE: August 16, 2021

SUBJECT: Referral of Ordinance 2021-27 to the Planning Commission

On August 12, 2021 the Fairbanks North Star Borough Assembly referred the below ordinance to the Planning Commission. **A recommendation is due back by September 17, 2021.**

ORDINANCE NO. 2021-27

An Ordinance Amending Fairbanks North Star Borough Code Of Ordinances Titles 4, 15, 17, And 18 Regarding Appeals From Decisions And Determinations Of The Planning Director, Platting Board, And Planning Commission. (Sponsors: Assemblymembers Cooper, Williams and Sanford)

Should you have any questions, please contact me at 1402.

Attachment: Ordinance No. 2021-27

cc: Jim Williams, Chief of Staff



By: Matt Cooper, Leah Berman
Williams, and Marna Sanford
Referred to Planning
Commission: 8/12/2021

FAIRBANKS NORTH STAR BOROUGH

ORDINANCE NO. 2021 – 27

AN ORDINANCE AMENDING FAIRBANKS NORTH STAR BOROUGH CODE OF
ORDINANCES TITLES 4, 15, 17, AND 18 REGARDING APPEALS FROM DECISIONS AND
DETERMINATIONS OF THE PLANNING DIRECTOR, PLATTING BOARD, AND PLANNING
COMMISSION

WHEREAS, Citizens should be afforded a first level appeal to a board of
adjustment, rather than going directly to superior court, when feasible; and

WHEREAS, Land use decisions from the platting board and planning
commission should follow a consistent internal appeal process; and

WHEREAS, Allowing multiple appeals to Borough bodies before appealing
to superior court can cause delays for applicants and developers.

NOW, THEREFORE, BE IT ORDAINED by the Assembly of the Fairbanks
North Star Borough:

Section 1. This ordinance is of a general and permanent nature and shall
be codified.

Section 2. FNSBC 4.24.010, Board of Adjustment, is hereby amended as
follows:

AMENDMENTS ARE SHOWN IN LEGISLATIVE FORMAT
Text to be *added* is underlined
Text to be *deleted* is [BRACKETED, CAPITALIZED]

33 The borough assembly shall be the board of adjustment. The board of
34 adjustment, or an appeals officer that the board of adjustment may designate, shall hear
35 and decide appeals of planning commission determinations on requests for conditional
36 uses and variances, [AND OF] appeals from decisions or determinations made by the
37 department of community planning in the enforcement of FNSBC Title 18 and appeals
38 from decisions of the platting board.

39

40 Section 3. FNSBC 4.80.040(A)(3), Powers and duties, is hereby repealed
41 as follows: *[Note: The Clerk shall renumber accordingly.]*

42 [3. THE COMMISSION SHALL ACT AS THE PLATTING BOARD APPEALS BODY
43 AND SHALL HEAR AND DECIDE APPEALS FROM THE DECISIONS OF THE PLATTING
44 BOARD.]

45

46 Section 4. FNSBC 15.04.080, Appeals, is hereby amended as follows:
47 The commission shall consider and decide appeals where it is alleged there is error in any
48 order, requirement, condition, decision or determination made by the director regarding
49 approval or denial of a floodplain permit or certificate of compliance.

50 A. The appellant shall file an appeal with the commission clerk within 10 calendar
51 days after the director's decision. The appellant shall include their name or names, their
52 interest in the matter, their address, and which order, requirement, condition, decision
53 or determination made is being appealed.

54 B. The commission may reverse or affirm, wholly or in part, or modify the order,
55 requirement, condition, decision or determination under appeal, so long as such action is
56 in conformity with this chapter. The commission shall make its decision in writing, setting
57 forth its findings of fact, reasons for its decisions and corrective actions to be taken, if
58 necessary.

59 [C. APPEALS FROM COMMISSION DECISIONS ARE MADE TO THE ASSEMBLY USING
60 THE APPEAL PROCESS AS REQUIRED IN FNSBC 4.24.030(C) THROUGH (L).]

AMENDMENTS ARE SHOWN IN LEGISLATIVE FORMAT
Text to be *added* is underlined
Text to be *deleted* is [BRACKETED, CAPITALIZED]

61 [D.]C. Either the appellant or appellee may appeal the [ASSEMBLY'S] commission's
62 decision to superior court. Appeals may be made to the superior court in accordance with
63 the rules of appellate procedure.

64

65 Section 5. FNSBC 17.04.010, Definitions, is hereby amended as follows:
66 ["COMMISSION" MEANS THE FAIRBANKS NORTH STAR BOROUGH PLANNING
67 COMMISSION.]

68

69 Section 6. Subsection E of FNSBC 17.28.040 is hereby deleted as follows:
70 [E. ALL DECISIONS OF THE PLATTING BOARD UNDER THIS CHAPTER ARE FINAL
71 UNLESS APPEALED TO THE PLANNING COMMISSION WITHIN SEVEN CALENDAR DAYS.
72 ANY APPEAL IS SUBJECT TO CHAPTER 17.68 FNSBC.]

73

74 Section 7. Chapter 17.68 FNSBC, Appeals, is hereby amended as follows:

75 Sections:

76 17.68.010 Appeals from platting board[TO PLANNING COMMISSION] decisions.

77 [17.68.020 NOTICE OF APPEAL.

78 17.68.030 DECISION ON APPEAL.

79 17.68.040 APPEAL FROM PLANNING COMMISSION.]

80

81 Section 8. Chapter 17.68 FNSBC, Appeals, is hereby amended as follows:

82 Sections:

83 17.68.010 Appeals from platting board[TO PLANNING COMMISSION] decisions.

84 [17.68.020 NOTICE OF APPEAL.

85 17.68.030 DECISION ON APPEAL.

86 17.68.040 APPEAL FROM PLANNING COMMISSION.]

AMENDMENTS ARE SHOWN IN LEGISLATIVE FORMAT
Text to be *added* is underlined
Text to be *deleted* is [BRACKETED, CAPITALIZED]

87

88 17.68.010 Appeals from platting board [TO PLANNING COMMISSION] decisions.

89 Except for a final plat and action on a vacation application, any party or interested person
90 who participated in the hearing before the platting board may appeal a decision of the
91 platting board to [THE PLANNING COMMISSION] the board of adjustment by
92 [SUBMITTING] filing a written notice of appeal with the [PLATTING OFFICER] clerk's
93 office within seven days of the date of the decision. Members of the public may appeal
94 the platting board's application of this title's requirements concerning the dedication or
95 realignment of trails.

96

97 [17.68.020 NOTICE OF APPEAL.

98 A. A NOTICE OF APPEAL SUBMITTED PURSUANT TO THIS TITLE MUST BE IN
99 WRITING AND CONTAIN THE FOLLOWING INFORMATION:

- 100 1. NAMES AND ADDRESSES OF THE APPELLANT(S);
- 101 2. PLATTING SERIAL CASE FILE NUMBER OR OTHER IDENTIFICATION OF THE
102 MATTER FROM WHICH THE APPEAL IS TAKEN;
- 103 3. DATE AND IDENTITY OF THE SPECIFIC ACTION OR DECISION FROM WHICH THE
104 APPEAL IS TAKEN;
- 105 4. SPECIFIC GROUNDS OR REASONS FOR THE APPEAL, WITH REFERENCE TO ALL
106 FNSBC TITLE 17 PROVISIONS UPON WHICH THE APPELLANT RELIES. APPEALS ARE
107 LIMITED TO ALLEGATIONS OF ERROR ARISING FROM THE PLATTING BOARD'S
108 INTERPRETATION, APPLICATION OR FAILURE TO APPLY THE REQUIREMENTS OF THIS
109 TITLE AND UNLESS BASED ON CHANGED CIRCUMSTANCES OR NEW EVIDENCE WHICH
110 WITH DUE DILIGENCE COULD NOT HAVE BEEN DISCOVERED FOR PRESENTATION TO
111 THE PLATTING BOARD, MUST BE BASED ON FACTS OR ARGUMENTS RAISED BELOW.
- 112 B. A NOTICE OF APPEAL SHALL BE ACCOMPANIED BY THE APPROPRIATE FEE FOR
113 APPEALS FROM THE PLATTING BOARD.
- 114 C. THIS FEE IS REFUNDABLE TO A SUCCESSFUL APPELLANT.

AMENDMENTS ARE SHOWN IN LEGISLATIVE FORMAT
Text to be *added* is underlined
Text to be *deleted* is [BRACKETED, CAPITALIZED]

115 D. AN APPEAL MAY BE ACCEPTED BY THE PLANNING COMMISSION ONLY IF IT
116 COMPLIES WITH THE REQUIREMENTS OF THIS CHAPTER.

117 E. AFTER ACCEPTANCE OF AN APPEAL, NOTICE OF THE APPEAL MUST BE SENT TO
118 ALL PARTIES AND "INTERESTED PERSONS" WHO PARTICIPATED IN THE HEARING
119 BEFORE THE PLATTING BOARD NOTIFYING THEM OF THE RIGHT TO REQUEST
120 PARTICIPATION IN THE APPEAL ON OR BEFORE THE DEADLINE ESTABLISHED BY THE
121 CHAIR OR BY THE RULES OF THE COMMISSION.

122

123 17.68.030 DECISION ON APPEAL.

124 THE DECISION OF THE PLANNING COMMISSION ON AN APPEAL UNDER THIS CHAPTER
125 SHALL BE AS A RESOLUTION EXPRESSING SPECIFIC FINDINGS OF FACT AND REASONS
126 WHY THE ACTION WAS TAKEN, INCLUDING REFERENCE SPECIFICALLY TO THE RECORD
127 UPON WHICH ANY DISPUTED QUESTIONS OF FACT HAVE BEEN RESOLVED AND
128 PROVISIONS OF CODE OR STATUTE WHICH SUPPORT SUCH FINDINGS.

129

130 17.68.040 APPEAL FROM PLANNING COMMISSION.

131 APPEALS FROM THE PLANNING COMMISSION WITH RESPECT TO THIS TITLE SHALL BE
132 MADE TO THE SUPERIOR COURT.]

133

134 Section 9. FNSBC 18.104.060(D), Procedures for variances, is hereby
135 amended as follows:

136 D. Administrative Approval of Yard Setback Variance.

137 1. Notwithstanding any requirements in this chapter to the contrary, if a yard
138 setback variance is being requested and the property meets the following requirements,
139 the variance may be heard by the planning director or designee, as hearing officer, at an
140 administrative hearing:

AMENDMENTS ARE SHOWN IN LEGISLATIVE FORMAT
Text to be *added* is underlined
Text to be *deleted* is [BRACKETED, CAPITALIZED]

141 a. The relevant area of the building for which the setback variance is
142 requested was built prior to April 25, 1988, or the setback violation existed when the
143 property was purchased by the current owner prior to July 21, 2010;

144 b. The setback variance request is for 50 percent or less of the yard
145 requirement;

146 c. The setback variance request meets the state requirements set forth
147 in AS 29.40; and

148 d. The setback variance will not be injurious to the health, safety or
149 welfare of the neighborhood.

150 2. Within five working days after the administrative yard setback variance
151 application deadline, one of the following actions shall be taken by the community
152 planning department:

153 a. Accept the application for a review and action by the hearing officer;

154 b. Return the application if it is incomplete;

155 c. Schedule the application for a planning commission hearing if it is
156 determined that a more comprehensive review is needed.

157 3. The hearing officer shall make the final decision within five working days of
158 the hearing. If, as a result of the hearing, the hearing officer determines that conditions
159 exist that may adversely affect the public health, safety or welfare, traffic or parking, or
160 otherwise may necessitate a more comprehensive review by the planning commission,
161 the hearing officer may forward the application to the planning commission in lieu of a
162 decision. The requested variance shall be heard before the planning commission without
163 an additional fee.

164 4. An administrative yard setback variance decision by the planning director
165 or designee may be appealed by any aggrieved person, as defined in FNSBC
166 18.104.090(A)(4), to the planning commission by filing a notice of appeal with the
167 community planning department within 15 days after the final decision was mailed. The

AMENDMENTS ARE SHOWN IN LEGISLATIVE FORMAT

Text to be *added* is underlined

Text to be *deleted* is [BRACKETED, CAPITALIZED]

168 appeal shall be heard de novo by the planning commission. The planning commission
169 decision may be appealed by a party to the [BOARD OF ADJUSTMENT]superior court.

170

171 Section 10. FNSBC 18.108.030(C), Affirmative recognition of grandfather
172 rights, is hereby amended as follows:

173 C. Within 15 days of the hearing the department shall issue an administrative
174 determination of the grandfather rights. If no hearing is required the administrative
175 determination shall be issued within 10 working days of the application. Administrative
176 determinations granting structural-related grandfather rights without a hearing must be
177 mailed to the applicant and owners of nearby lots or land as set forth in FNSBC
178 18.104.010(C)(2). Administrative determinations may be appealed within 15 days of the
179 date the determination was mailed. The appeal shall be heard de novo by the planning
180 commission. The planning commission shall uphold or reverse the determination and
181 adopt specific findings of fact after considering the oral and written statements of the
182 applicant, interested persons, and the department of community planning. This decision
183 is appealable to the [BOARD OF ADJUSTMENT]superior court.

184

185 Section 11. FNSBC 18.116.040(C), Affirmative recognition of amnesty
186 relief, is hereby amended as follows:

187 C. Within 15 days of the hearing, the department shall issue an administrative
188 determination regarding the affirmative recognition of amnesty relief. If no hearing is
189 required, the administrative determination shall be issued within 10 working days of the
190 application. The applicant or any aggrieved person, as defined by FNSBC
191 18.104.090(A)(4), may appeal to the planning commission by filing a notice of appeal
192 with the community planning department within 15 days after the department's
193 determination was mailed. The appeal shall be heard de novo by the planning
194 commission. The planning commission shall uphold or reverse the determination and
195 adopt specific findings of fact after considering the oral and written statements of the

AMENDMENTS ARE SHOWN IN LEGISLATIVE FORMAT
Text to be *added* is underlined
Text to be *deleted* is [BRACKETED, CAPITALIZED]

196 applicant, interested persons, and the department of community planning. This decision
197 is appealable to the [BOARD OF ADJUSTMENT]superior court.

198

199 Section 12. Effective Date. This ordinance shall be effective at 5:00 p.m. on
200 the first Borough business day following its adoption.

201

202 ADOPTED THE _____ DAY OF _____ 2021.

203

204

205

206

207

208 ATTEST:

209

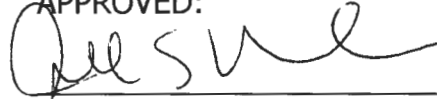
210

211 _____
212 April Trickey, CMC

Borough Clerk

Mindy O'Neall
Presiding Officer

APPROVED:



Jill S. Dolan
Borough Attorney

AMENDMENTS ARE SHOWN IN LEGISLATIVE FORMAT

Text to be *added* is underlined

Text to be *deleted* is [BRACKETED, CAPITALIZED]




Fairbanks North Star Borough


COMMUNITY PLANNING

planning@fnsb.gov
Main: (907) 459-1260
Fax: (907) 459-1255

MEMORANDUM

TO: Fairbanks North Star Borough Assembly

THROUGH: Bryce Ward, Mayor 
Jim Williams, Chief of Staff

FROM: Kellen D. Spillman 
Acting Community Planning Director

DATE: October 14, 2021

SUBJECT: **ORDINANCE NO. 2021-27:** An Ordinance Amending Fairbanks North Star Borough Code of Ordinances Titles 4, 15, 17, And 18 Regarding Appeals From Decisions And Determinations Of The Planning Director, Platting Board, And Planning Commission. (Sponsors: Assemblymembers Cooper, Williams and Sanford)

Ordinance 2021-27 was referred by the FNSB Assembly to the Planning Commission for recommendation. This ordinance proposes to amend the codified procedures regarding appeals of Platting, Floodplain and administrative decisions. Generally, it reduces the number of appeals hearings by FNSB entities (the Planning Commission and the Assembly), bringing those appeals to superior court sooner.

The FNSB Department of Community Planning recommended to the Planning Commission that the ordinance be approved. The Planning Commission held a public hearing on September 14, 2021 for Ordinance 2021-27.

During their discussion and debate, the Planning Commission raised the following concerns:

- It is unclear whether there's any cost savings with this change, either for the appellant or the FNSB;
- the opportunity to be heard by a mayor-appointed body and an elected body is eliminated;
- there doesn't appear to be a need to change the existing procedures.

The Commission voted to recommend against approval (5-4) of Ordinance No. 2021-27 to the FNSB Assembly.

The Community Planning Department requests that the ordinance be placed on the next regularly scheduled Assembly meeting agenda for Introduction.



1 By: Matt Cooper, Leah Berman
2 Williams, and Marna Sanford
3 Referred to Planning
4 Commission: 8/12/2021
5

6 FAIRBANKS NORTH STAR BOROUGH

7
8 ORDINANCE NO. 2021 – 27
9

10 AN ORDINANCE AMENDING FAIRBANKS NORTH STAR BOROUGH CODE OF
11 ORDINANCES TITLES 4, 15, 17, AND 18 REGARDING APPEALS FROM DECISIONS AND
12 DETERMINATIONS OF THE PLANNING DIRECTOR, PLATTING BOARD, AND PLANNING
13 COMMISSION
14

15 WHEREAS, Citizens should be afforded a first level appeal to a board of
16 adjustment, rather than going directly to superior court, when feasible; and
17

18 WHEREAS, Land use decisions from the platting board and planning
19 commission should follow a consistent internal appeal process; and
20

21 WHEREAS, Allowing multiple appeals to Borough bodies before appealing
22 to superior court can cause delays for applicants and developers.
23

24 NOW, THEREFORE, BE IT ORDAINED by the Assembly of the Fairbanks
25 North Star Borough:
26

27 Section 1. This ordinance is of a general and permanent nature and shall
28 be codified.
29

30 Section 2. FNSBC 4.24.010, Board of Adjustment, is hereby amended as
31 follows:
32

AMENDMENTS ARE SHOWN IN LEGISLATIVE FORMAT
Text to be *added* is underlined
Text to be *deleted* is [BRACKETED, CAPITALIZED]

33 The borough assembly shall be the board of adjustment. The board of
34 adjustment, or an appeals officer that the board of adjustment may designate, shall hear
35 and decide appeals of planning commission determinations on requests for conditional
36 uses and variances, [AND OF] appeals from decisions or determinations made by the
37 department of community planning in the enforcement of FNSBC Title 18 and appeals
38 from decisions of the platting board.

39

40 Section 3. FNSBC 4.80.040(A)(3), Powers and duties, is hereby repealed
41 as follows: *[Note: The Clerk shall renumber accordingly.]*

42 [3. THE COMMISSION SHALL ACT AS THE PLATTING BOARD APPEALS BODY
43 AND SHALL HEAR AND DECIDE APPEALS FROM THE DECISIONS OF THE PLATTING
44 BOARD.]

45

46 Section 4. FNSBC 15.04.080, Appeals, is hereby amended as follows:
47 The commission shall consider and decide appeals where it is alleged there is error in any
48 order, requirement, condition, decision or determination made by the director regarding
49 approval or denial of a floodplain permit or certificate of compliance.

50 A. The appellant shall file an appeal with the commission clerk within 10 calendar
51 days after the director's decision. The appellant shall include their name or names, their
52 interest in the matter, their address, and which order, requirement, condition, decision
53 or determination made is being appealed.

54 B. The commission may reverse or affirm, wholly or in part, or modify the order,
55 requirement, condition, decision or determination under appeal, so long as such action is
56 in conformity with this chapter. The commission shall make its decision in writing, setting
57 forth its findings of fact, reasons for its decisions and corrective actions to be taken, if
58 necessary.

59 [C. APPEALS FROM COMMISSION DECISIONS ARE MADE TO THE ASSEMBLY USING
60 THE APPEAL PROCESS AS REQUIRED IN FNSBC 4.24.030(C) THROUGH (L).]

AMENDMENTS ARE SHOWN IN LEGISLATIVE FORMAT

Text to be *added* is underlined

Text to be *deleted* is [BRACKETED, CAPITALIZED]

61 [D.]C. Either the appellant or appellee may appeal the [ASSEMBLY'S] commission's
62 decision to superior court. Appeals may be made to the superior court in accordance with
63 the rules of appellate procedure.

64

65 Section 5. FNSBC 17.04.010, Definitions, is hereby amended as follows:

66 ["COMMISSION" MEANS THE FAIRBANKS NORTH STAR BOROUGH PLANNING
67 COMMISSION.]

68

69 Section 6. Subsection E of FNSBC 17.28.040 is hereby deleted as follows:

70 [E. ALL DECISIONS OF THE PLATTING BOARD UNDER THIS CHAPTER ARE FINAL
71 UNLESS APPEALED TO THE PLANNING COMMISSION WITHIN SEVEN CALENDAR DAYS.
72 ANY APPEAL IS SUBJECT TO CHAPTER 17.68 FNSBC.]

73

74 Section 7. Chapter 17.68 FNSBC, Appeals, is hereby amended as follows:

75 Sections:

76 17.68.010 Appeals from platting board[TO PLANNING COMMISSION] decisions.

77 [17.68.020 NOTICE OF APPEAL.

78 17.68.030 DECISION ON APPEAL.

79 17.68.040 APPEAL FROM PLANNING COMMISSION.]

80

81 Section 8. Chapter 17.68 FNSBC, Appeals, is hereby amended as follows:

82 Sections:

83 17.68.010 Appeals from platting board[TO PLANNING COMMISSION] decisions.

84 [17.68.020 NOTICE OF APPEAL.

85 17.68.030 DECISION ON APPEAL.

86 17.68.040 APPEAL FROM PLANNING COMMISSION.]

AMENDMENTS ARE SHOWN IN LEGISLATIVE FORMAT

Text to be *added* is underlined

Text to be *deleted* is [BRACKETED, CAPITALIZED]

87

88 17.68.010 Appeals from platting board [TO PLANNING COMMISSION] decisions.

89 Except for a final plat and action on a vacation application, any party or interested person
90 who participated in the hearing before the platting board may appeal a decision of the
91 platting board to [THE PLANNING COMMISSION] the board of adjustment by
92 [SUBMITTING] filing a written notice of appeal with the [PLATTING OFFICER] clerk's
93 office within seven days of the date of the decision. Members of the public may appeal
94 the platting board's application of this title's requirements concerning the dedication or
95 realignment of trails.

96

97 [17.68.020 NOTICE OF APPEAL.

98 A. A NOTICE OF APPEAL SUBMITTED PURSUANT TO THIS TITLE MUST BE IN
99 WRITING AND CONTAIN THE FOLLOWING INFORMATION:

- 100 1. NAMES AND ADDRESSES OF THE APPELLANT(S);
 - 101 2. PLATTING SERIAL CASE FILE NUMBER OR OTHER IDENTIFICATION OF THE
102 MATTER FROM WHICH THE APPEAL IS TAKEN;
 - 103 3. DATE AND IDENTITY OF THE SPECIFIC ACTION OR DECISION FROM WHICH THE
104 APPEAL IS TAKEN;
 - 105 4. SPECIFIC GROUNDS OR REASONS FOR THE APPEAL, WITH REFERENCE TO ALL
106 FNSBC TITLE 17 PROVISIONS UPON WHICH THE APPELLANT RELIES. APPEALS ARE
107 LIMITED TO ALLEGATIONS OF ERROR ARISING FROM THE PLATTING BOARD'S
108 INTERPRETATION, APPLICATION OR FAILURE TO APPLY THE REQUIREMENTS OF THIS
109 TITLE AND UNLESS BASED ON CHANGED CIRCUMSTANCES OR NEW EVIDENCE WHICH
110 WITH DUE DILIGENCE COULD NOT HAVE BEEN DISCOVERED FOR PRESENTATION TO
111 THE PLATTING BOARD, MUST BE BASED ON FACTS OR ARGUMENTS RAISED BELOW.
- 112 B. A NOTICE OF APPEAL SHALL BE ACCOMPANIED BY THE APPROPRIATE FEE FOR
113 APPEALS FROM THE PLATTING BOARD.
- 114 C. THIS FEE IS REFUNDABLE TO A SUCCESSFUL APPELLANT.

AMENDMENTS ARE SHOWN IN LEGISLATIVE FORMAT
Text to be *added* is underlined
Text to be *deleted* is [BRACKETED, CAPITALIZED]

115 D. AN APPEAL MAY BE ACCEPTED BY THE PLANNING COMMISSION ONLY IF IT
116 COMPLIES WITH THE REQUIREMENTS OF THIS CHAPTER.

117 E. AFTER ACCEPTANCE OF AN APPEAL, NOTICE OF THE APPEAL MUST BE SENT TO
118 ALL PARTIES AND "INTERESTED PERSONS" WHO PARTICIPATED IN THE HEARING
119 BEFORE THE PLATTING BOARD NOTIFYING THEM OF THE RIGHT TO REQUEST
120 PARTICIPATION IN THE APPEAL ON OR BEFORE THE DEADLINE ESTABLISHED BY THE
121 CHAIR OR BY THE RULES OF THE COMMISSION.

122

123 17.68.030 DECISION ON APPEAL.

124 THE DECISION OF THE PLANNING COMMISSION ON AN APPEAL UNDER THIS CHAPTER
125 SHALL BE AS A RESOLUTION EXPRESSING SPECIFIC FINDINGS OF FACT AND REASONS
126 WHY THE ACTION WAS TAKEN, INCLUDING REFERENCE SPECIFICALLY TO THE RECORD
127 UPON WHICH ANY DISPUTED QUESTIONS OF FACT HAVE BEEN RESOLVED AND
128 PROVISIONS OF CODE OR STATUTE WHICH SUPPORT SUCH FINDINGS.

129

130 17.68.040 APPEAL FROM PLANNING COMMISSION.

131 APPEALS FROM THE PLANNING COMMISSION WITH RESPECT TO THIS TITLE SHALL BE
132 MADE TO THE SUPERIOR COURT.]

133

134 Section 9. FNSBC 18.104.060(D), Procedures for variances, is hereby
135 amended as follows:

136 D. Administrative Approval of Yard Setback Variance.

137 1. Notwithstanding any requirements in this chapter to the contrary, if a yard
138 setback variance is being requested and the property meets the following requirements,
139 the variance may be heard by the planning director or designee, as hearing officer, at an
140 administrative hearing:

AMENDMENTS ARE SHOWN IN LEGISLATIVE FORMAT

Text to be *added* is underlined

Text to be *deleted* is [BRACKETED, CAPITALIZED]

141 a. The relevant area of the building for which the setback variance is
142 requested was built prior to April 25, 1988, or the setback violation existed when the
143 property was purchased by the current owner prior to July 21, 2010;

144 b. The setback variance request is for 50 percent or less of the yard
145 requirement;

146 c. The setback variance request meets the state requirements set forth
147 in AS 29.40; and

148 d. The setback variance will not be injurious to the health, safety or
149 welfare of the neighborhood.

150 2. Within five working days after the administrative yard setback variance
151 application deadline, one of the following actions shall be taken by the community
152 planning department:

153 a. Accept the application for a review and action by the hearing officer;

154 b. Return the application if it is incomplete;

155 c. Schedule the application for a planning commission hearing if it is
156 determined that a more comprehensive review is needed.

157 3. The hearing officer shall make the final decision within five working days of
158 the hearing. If, as a result of the hearing, the hearing officer determines that conditions
159 exist that may adversely affect the public health, safety or welfare, traffic or parking, or
160 otherwise may necessitate a more comprehensive review by the planning commission,
161 the hearing officer may forward the application to the planning commission in lieu of a
162 decision. The requested variance shall be heard before the planning commission without
163 an additional fee.

164 4. An administrative yard setback variance decision by the planning director
165 or designee may be appealed by any aggrieved person, as defined in FNSBC
166 18.104.090(A)(4), to the planning commission by filing a notice of appeal with the
167 community planning department within 15 days after the final decision was mailed. The

AMENDMENTS ARE SHOWN IN LEGISLATIVE FORMAT

Text to be *added* is underlined

Text to be *deleted* is [BRACKETED, CAPITALIZED]

168 appeal shall be heard de novo by the planning commission. The planning commission
169 decision may be appealed by a party to the [BOARD OF ADJUSTMENT]superior court.

170

171 Section 10. FNSBC 18.108.030(C), Affirmative recognition of grandfather
172 rights, is hereby amended as follows:

173 C. Within 15 days of the hearing the department shall issue an administrative
174 determination of the grandfather rights. If no hearing is required the administrative
175 determination shall be issued within 10 working days of the application. Administrative
176 determinations granting structural-related grandfather rights without a hearing must be
177 mailed to the applicant and owners of nearby lots or land as set forth in FNSBC
178 18.104.010(C)(2). Administrative determinations may be appealed within 15 days of the
179 date the determination was mailed. The appeal shall be heard de novo by the planning
180 commission. The planning commission shall uphold or reverse the determination and
181 adopt specific findings of fact after considering the oral and written statements of the
182 applicant, interested persons, and the department of community planning. This decision
183 is appealable to the [BOARD OF ADJUSTMENT]superior court.

184

185 Section 11. FNSBC 18.116.040(C), Affirmative recognition of amnesty
186 relief, is hereby amended as follows:

187 C. Within 15 days of the hearing, the department shall issue an administrative
188 determination regarding the affirmative recognition of amnesty relief. If no hearing is
189 required, the administrative determination shall be issued within 10 working days of the
190 application. The applicant or any aggrieved person, as defined by FNSBC
191 18.104.090(A)(4), may appeal to the planning commission by filing a notice of appeal
192 with the community planning department within 15 days after the department's
193 determination was mailed. The appeal shall be heard de novo by the planning
194 commission. The planning commission shall uphold or reverse the determination and
195 adopt specific findings of fact after considering the oral and written statements of the

AMENDMENTS ARE SHOWN IN LEGISLATIVE FORMAT

Text to be *added* is underlined

Text to be *deleted* is [BRACKETED, CAPITALIZED]

196 applicant, interested persons, and the department of community planning. This decision
197 is appealable to the [BOARD OF ADJUSTMENT]superior court.

198

199 Section 12. Effective Date.This ordinance shall be effective at 5:00 p.m. on
200 the first Borough business day following its adoption.

201

202 ADOPTED THE _____ DAY OF _____ 2021.

203

204

205

Mindy O'Neall
Presiding Officer

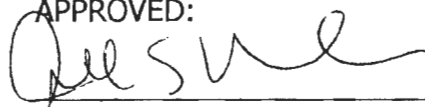
206

207

208 ATTEST:

APPROVED:

209



210

April Trickey, CMC
Borough Clerk

Jill S. Dolan
Borough Attorney

211

212

AMENDMENTS ARE SHOWN IN LEGISLATIVE FORMAT
Text to be *added* is underlined
Text to be *deleted* is [BRACKETED, CAPITALIZED]

**Fairbanks North Star Borough Fiscal
Impact Statement (FIS) (FNSBC 3.20.010 C.)**

Check	Date
Version 1	
Version 2	
Version 3	
Version 4	

Originator's Name: Melissa Kellner **Department:** Community Planning

To Be Introduced/Sponsored By: Cooper, Williams, Sanford

Abbreviated Ordinance Title: Duplicate Appeals

Department(s)/Division(s) Affected: Community Planning: Planning and Platting

Proposed Introduction Date: 10/21/21 **Ordinance No.:** 2021-27

Does this ordinance authorize:

- 1) a new or expansion of services which entails additional costs beyond that approved in the current adopted budget? **Yes** ___ **No** *
- 2) a project that is capital in nature and increases operational costs of the Borough in the current or any future fiscal year? **Yes** ___ **No** *

Required Information/Estimates	FISCAL IMPACT PRO FORMA SUMMARY - BEST ESTIMATE				
	Remainder of Current FY	1st Full FY of Operations	2nd Full FY of Operations	3rd Full FY of Operations	4th Full FY of Operations
	FY 20 / /	FY 20 / /	FY 20 / /	FY 20 / /	FY 20 / /
1. Timeline inclusive of all phases					
2. Number and type of new positions which may be required					
3. Cost of operations and maintenance					
4. Future costs to complete capital assets					
5. Estimated revenue impact					
6. Estimated non-Borough funds that may be received:					
a. to fund the ordinance					
b. to fund future phases					
c. to fund future operations and maintenance costs					
7. Anticipated annual tax subsidy					

Is backup attached? **Yes** ___ **No** ___

Contact Person's Name, for FIS questions: Kellen Spillman **Extension:** 1260

Director(s) Signature(s): *Kell D. Spill* **Date:** 9-21

Mayor's Office or Assembly Member Signature: **Date:**

Chief Financial Officer Signature: **Date:**

Fairbanks North Star Borough

COMMUNITY PLANNING

Planning@fnsb.gov
Main: (907) 459-1260

STAFF REPORT

TO: Fairbanks North Star Borough Planning Commission

THROUGH: Kellen Spillman, Acting Director *RDS*
Department of Community Planning

FROM: Melissa Kellner, Acting Deputy Director *MK*
Department of Community Planning

DATE: September 14, 2021

SUBJECT: **ORDINANCE NO. 2021-27:** An Ordinance Amending Fairbanks North Star Borough Code of Ordinances Titles 4, 15, 17, And 18 Regarding Appeals From Decisions And Determinations Of The Planning Director, Platting Board, And Planning Commission. (Sponsors: Assemblymembers Cooper, Williams and Sanford)

Purpose and Intent

Ordinance 2021-27 was referred by the FNSB Assembly for Planning Commission recommendation (Attachment A). The Ordinance proposes to amend the codified procedures regarding appeals of Platting, Floodplain and administrative decisions. The proposed amendments affect Titles 4 (Boards and Commissions), 15 (Floodplain Management), 17 (Subdivisions) and 18 (Zoning). This report focuses for the most part on the impacts to Title 18, which is within the Planning Commission's purview.

The reason behind this change, expressed in the whereas statements, is to create consistent and streamlined appeals processes.

Background

Currently, appeals of Platting Board and Floodplain decisions are heard by the Planning Commission, and appeals of Planning Commission decisions are heard by the Assembly. Appeals of administrative decisions (administrative variance, grandfather rights, and amnesty cases) are heard by the Assembly acting as the Board of Adjustment or a hearing officer appointed by the Assembly.

This proposed ordinance would move Platting Board decision appeals to the Assembly rather than the Planning Commission. The Assembly's decision would then be appealable to superior court. Under current code, the Planning Commission's decision in this regard is also appealable to superior court.

Appeals of Floodplain decisions would remain with the Planning Commission. Appeals of Planning Commission decisions would skip the Assembly and go straight to superior court.

Action	Current hearing body	Proposed hearing body
Appeals of Platting Board decisions (ord. lines 33-40)	Planning Commission	Assembly
Appeals of Floodplain decisions (59-63)	Planning Commission	Planning Commission (no change)
<ul style="list-style-type: none"> • Appeals of Planning Commission's Floodplain-related decisions (59-63) 	Assembly	Superior court
Appeals of Title 18 administrative decisions (admin variances, grandfather rights, amnesty)	Planning Commission	Planning Commission (no change)
<ul style="list-style-type: none"> • Appeals of Planning Commission's decisions on admin decision-related appeals (134-197) 	Assembly acting as Board of Adjustment	Superior court
Appeals of Planning Commission's decisions on conditional uses and variances	Assembly acting as Board of Adjustment	Board of Adjustment (no change)

Analysis

An average of approximately two Community Planning-associated decisions have been appealed each year over the past eight years. Some of these cases and others were withdrawn at various points in the process and may have not gone through the full appeals process.

Because appeals are relatively rare, a work session has sometimes been held prior to the appeals hearing for the Planning Commission in order to review the procedures and applicable code. Because the Planning Commission currently acts as the appeals body for Platting Board

decisions (subdivision), new Commissioners do receive specific training regarding Title 17 during their onboarding. It is likely that if this ordinance goes through the BOA, members may have a need for similar training.

The Board of Adjustment has the ability to appoint a hearing examiner or sometimes chooses to remand an appeal case back to the Planning Commission, as was the case in 2015 with a conditional use for a communications tower and in 2016 with a conditional use for a school building.

The current process for appealing floodplain and administrative decisions creates a path that potentially includes two hearings before FNSB bodies: first, an appeal is heard by the Planning Commission, and if that decision is also appealed, it is heard by the Board of Adjustment. Each hearing can be time-consuming and costly. The changes proposed in this ordinance would remove the Board of Adjustment from hearing appeals of the Planning Commission's decisions on appeals of floodplain and administrative decisions. Instead, those appeals would go directly to superior court. This change does appear to streamline the process, as the Board of Adjustment is cut out of the process entirely. Staff has no objection to this change.

While the process for Platting Board appeals is part of Title 17 and therefore not technically within the Planning Commission's purview, these changes do affect the Planning Commission. As proposed, appeals of Platting Board decisions would go to the Assembly rather than the Planning Commission, and any further appeal of that decision would go to superior court. Currently, appeals of the Planning Commission's decisions on appeals related to Title 17 issues also go to superior court. This change does not necessarily streamline the process as far as the number of decision-making bodies involved in the levels of an appeal. Further, the Planning Commission may be more likely to have some land use-related expertise that would be valuable in hearing appeals on subdivision-related decisions.

Currently, appeals of the Planning Commission's quasi-judicial decisions, including conditional uses and variances, are heard by the Board of Adjustment. This ordinance does not propose any changes to that procedure. Staff agrees that this is appropriate to leave as-is.

Recommendation

The Community Planning Department supports this ordinance and recommends that it be advanced with a recommendation of approval.

Proposed Draft Motion:

I move that the Planning Commission recommend approval of Ordinance No. 2021-27 to the FNSB Assembly.

Attachments:

Attachment A: ORD NO. 2021-27

FAIRBANKS NORTH STAR BOROUGH

**Ord 2021-27 An
Ordinance Regarding
Appeals of Planning
Director, Platting
Board and Planning
Commission
Decisions**

FNSB Community Planning
September 14, 2021
Planning Commission



Overview

- Intent: to create consistent and streamlined appeals processes.
- Current processes sometimes include consideration by multiple FNSB bodies.
 - Proposal eliminates this for most administrative decisions.
- Planning Commission is potentially affected by T17 change, but this is outside PC's authority.
- Appeals of Planning Commission's decisions on conditional uses and variances are unaffected.



Ord 2021-27

Background on Appeals

- An average of 2 appeals are submitted per year for Community Planning-related decisions.
- Planning Commission training:
 - Onboarding for new commissioners includes T17 overview.
 - Work sessions are often held prior to appeals to review procedures and relevant code.
 - Similar prep may be necessary for Assembly if it takes over these responsibilities.



Platting Board appeals

Existing process



Proposed process





Floodplain decision appeals

Existing process



Proposed process



Administrative decision appeals

(admin variances, grandfather rights, amnesty)

Existing process



Proposed process





Planning Commission Appeals: No change (conditional uses, variances)

Existing process



Proposed process





Ord 2021-27

Staff Recommendation

Draft Motion: I move that the Planning Commission recommend approval of Ordinance No. 2021-27 to the FNSB Assembly.



Melissa Kellner

From: Leah Williams
Sent: Tuesday, September 14, 2021 6:58 PM
To: Melissa Kellner
Subject: Fwd: 9/14/21 Planning Commission Addendum Item FW: Duplicate appeals (Ord 2021-27)
Attachments: image001.png; Flow Chart-duplicate appeals only.docx

Whoops, sorry!

Sent from my iPad

Begin forwarded message:

From: Sharon Wittenkeller <Sharon.Wittenkeller@fnsb.gov>
Date: September 14, 2021 at 2:31:15 PM AKDT
To: Annmarie Billingsley <annmarie.billingsley@fnsb.gov>, Chris Guinn <CGuinn@fnsb-bc.us>, chrisguinn@ak.net, Doug Sims <doug.sims@fnsb-bc.us>, Doug Sims Personal <drms@gci.net>, Eric Muehling <eric.muehling@fnsb-bc.us>, Gerard Kenna <Gerard.Kenna@fnsb-bc.us>, Jason McComas-Roe <Jason.McComas-Roe@fnsb-bc.us>, Jason McComas-Roe Personal <jroe@scottiesalaska.com>, John Perreault <john.perreault@fnsb-bc.us>, Kerynn Fisher <kerynn.fisher@fnsb-bc.us>, Kerynn Fisher <kerynn@gmail.com>, Mike Kenna <gmkenna@alaska.edu>, Sandra Mota <sandra.mota@fnsb-bc.us>, Savannah Fletcher <Savannah.Fletcher@fnsb-bc.us>, Shane Koester <shane.koester@fnsb-bc.us>
Cc: Jill Dolan <jill.dolan@fnsb.gov>, Leah Williams <leah.williams@fnsb.gov>
Subject: 9/14/21 Planning Commission Addendum Item FW: Duplicate appeals (Ord 2021-27)

Hello Commissioners,

Please see the attached flow chart provided by Assemblymember Williams in regards to Ordinance No. 2021-27 on tonight's Planning Commission agenda. Paper copies will also be available tonight for those attending in-person.

To avoid an Open Meetings Act (OMA) violation, please do not "reply all" to this e-mail.

Thank you,

Sharon Wittenkeller
Administrative Assistant III Clerk
Fairbanks North Star Borough
907 Terminal Street
Fairbanks, AK 99701
P: (907) 459-1274

From: Jill Dolan <jill.dolan@fnsb.gov>
Sent: Tuesday, September 14, 2021 2:24 PM

To: Webmail Clerks <clerks@fnsb.gov>
Cc: Leah Williams <leah.williams@fnsb.gov>
Subject: FW: Duplicate appeals (Ord 2021-27)

Hello clerks,

Can you distribute the attached flowchart to the Planning Commission for tonight's meeting?

Thanks,
Jill

From: Leah Williams <leah.williams@fnsb.gov>
Sent: Tuesday, September 14, 2021 2:05 PM
To: Jill Dolan <jill.dolan@fnsb.gov>
Cc: Matthew Cooper <matthew.cooper@fnsb.gov>; Marna Sanford <marna.sanford@fnsb.gov>
Subject: Re: Duplicate appeals (Ord 2021-27)

If it's not too late, distributing the flowchart to the Planning Commission would be helpful.

It looks like I'm going to the planning commission meeting tonight.

Leah

Leah Berman Williams
Fairbanks North Star Assembly Seat G
907-347-4021

		Step 1	Step 2	Step 3	Court
Grandfather rights, amnesty, zoning permits, administrative variances	Current	Administrative hearing	Planning Commission*	Board of Adjustment	Court
	Proposed	Administrative hearing	Planning Commission*		Court
Floodplain permit or certificate of compliance	Current	Director decision	Planning Commission*	Board of Adjustment	Court
	Proposed	Director decision	Planning Commission*		Court
Platting board decisions (major plats, variances)	Current	Platting Board	Planning Commission*		Court
	Proposed	Platting Board	Board of Adjustment		Court
Quick plat application	Current	Administrative Hearing	Platting Board*	Planning Commission*	Court
	Proposed	Administrative Hearing (or referral to PB)	Platting Board*	Board of Adjustment	Court
Variances, conditional use permits	No Change	Planning Commission	Board of Adjustment		Court
Revocation of CUP	No Change	Administrative notification, then Planning Commission	Board of Adjustment		Court

* De novo hearing

LEGISLATIVE HEARING

1. Ordinance No. 2021-27 (Duplicate Appeal)

ORDINANCE NO. 2021-27: An Ordinance Amending Fairbanks North Star Borough Code Of Ordinances Titles 4, 15, 17, And 18 Regarding Appeals From Decisions And Determinations Of The Planning Director, Platting Board, And Planning Commission. (Sponsors: Assemblymembers Cooper, Williams and Sanford)

Leah Berman Williams, Assemblymember, presented the sponsor report and highlighted the following:

- Previous appeal ordinance defeated by the Assembly.
- Several Assemblymembers felt there were good ideas mentioned in the original ordinance such as streamlining the appeals process.
- The overarching idea within the newly proposed ordinance is that everyone can have their appeal case heard by a committee, board or commission.
- There should only be one step in the appeal process.
- Explained the grid which commissioners received via addendum that describes the current process and the more streamlined process being proposed in the new ordinance.
- As the Planning Commission are the experts on Title 18, the Platting Board is being viewed by the Assembly as the experts on Title 17.
- Decisions made by the Planning Commission are appealed to the Board of Adjustment.
- Decisions made by the Platting Board are being proposed to be appealed directly to the Board of Adjustment.

The Commission questioned and discussed with Assemblymember Williams the following:

- Whether the Board of Adjustment is the Borough Assembly or their designee in the form of an Administrative Hearing Officer. It was answered it would be the Assembly and that they are not changing the structure of the Board of Adjustment in the ordinance.
- Who is the Board of Adjustment; it was answered the Assembly.
- Whether the Assembly can appoint an Administrative Hearing Officer to hear a matter in their place; it was answered, yes, the Borough Assembly is the Board of Adjustment, in code is the option to designate an Administrative Hearing Officer.
- Whether the Borough Assembly is often likely to designate an Appeals Officer; it was noted not to be believed so.
- In the event that the Borough Assembly does designate an Administrative Hearing Officer, who is it likely to be; it was answered the Borough Assembly would select from an approved list of individuals who could be appointed as a Hearing Officer.

- Is it correct, if the ordinance is adopted, that in the event of an appeal, an appellants case may go before the Board of Adjustment, which is the Borough Assembly, or may also go before an Administrative Hearing Officer appointed by the Borough Assembly; it was answered that was correct, if the Assembly, acting as Board of Adjustment had a conflict, that is a situation where they may need to appoint a Hearing Officer from an approved list of individuals who can serve as a Hearing Officer.
- Whether some of the individuals on the approved list are borough attorneys; it was answered no, they would not appoint an attorney who is a borough employee because it would be a conflict.
- Quick Plat appeal process; why the process was not proposed to be more streamlined and still requires a second administrative review process; it was answered quick plats can be easily handled with an Administrative Hearing or they can be handled directly by the Platting Board. They want to ensure there is still an option in case the quick plat was heard initially by the Platting Board for the appellant to appeal the decision.
- Is there any impact on staff's workload; it was answered, it is not anticipated to have a significant impact on staff and will hopefully decrease the amount of work because they are taking a step out.
- How the Assembly felt about taking on the workload being lifted from the Planning Commission; it was answered that was yet to be determined.
- Approved list of individuals who may be appointed as Administrative Hearing Officers acting as the Board of Adjustment and where the list is; it was answered, there is an Assembly approved list of individuals to select from who may serve as a Hearing Officer and those individuals have adequate experience, such as having served as lawyers or judges. Conflict checks are completed prior to selecting a Hearing Officer.
- Whether Assemblymembers were potentially conflicted in serving constituents who had appeals before the Assembly; it was answered there are some matters that go before the Assembly that they may want to make legislative changes to or take other positions on. This makes few changes to what goes before the Board of Adjustment, with the exception of Platting Board appeals.

Melissa Kellner, Acting Community Planning Director, presented the staff report. Based on the staff analysis, the Department of Community Planning supported the ordinance and recommended that it be advanced with a recommendation of approval.

The Commission questioned and discussed with staff the following:

- Whether there is a reduction in staff workload with the proposed ordinance; it was answered that was the understanding, and it would not increase Community Planning's staff time or presumably increase the Clerk's Office staff time.
- Whether there would be any changes to the fees citizens pay to file an appeal application with the proposed ordinance; it was answered, the fee schedule is already established and is adopted as part of the budget every year, and there was uncertainty as to how borough fees compare to court fees.

- Does the elimination of any situations where Planning Commission and Platting Board hear the same case streamline the process; it was answered, yes.
- The number of cases that come before the Planning Commission and Platting Board in a year; it was answered, low two-three hundreds.
- Is it fair to call this process streamlined when typically, only two appeals a year are heard; it was answered, yes, when the process comes into play it is streamlined.
- The general knowledge of Planning Commissioners of Title 17 under current code, would hear the appeal of a Platting Board issue.
- How many Planning Commission appeal decisions were reversed by the Board of Adjustment; the information was not readily available.
- Whether Planning Commission appeal decisions are generally appealed to the Board of Adjustment; it was answered, that is not necessarily the case.
- The number of staff hours spent on the appeal process; it was answered, it varies widely and is unique to each case.
- Whether the appellant pays a fee to the borough for filing an appeal; it was answered, there is an appeal application fee and costs associated with preparing materials for the appeal.
- How staff hours would be affected if an appeal were to advance to Superior Court.
- How long the current appeals process has been in place; it was answered, over a decade.
- Whether any comments from citizens who have gone through the appeal process were considered in preparing the ordinance; it was answered there were no comments considered.

Chair Perreault opened and closed public testimony as there were no individuals to provide public comment.

Assemblymember Williams did not have a rebuttal.

MUEHLING,
Seconded by FLETCHER

moved to recommend approval of
Ordinance No. 2021-27 to the FNSB
Assembly.

Commissioner Muehling supported the motion and expressed the proposed ordinance is consistent and streamlined. The process needs to be fair and begin with a community board, either Title 17 or Title 18. The ordinance satisfies the need for any citizen to come before a community board. Conditional uses are unaffected and there is little impact on staff and fees. The Assembly will need training and insight on what defines a legal lot and the definition of "lot" with respect to the subdivision platting process, and other issues concerning property tax and amnesty.

Commissioner Fletcher expressed one perspective of importance is that of the individual appealing a decision. Streamlining the process makes it clearer for the appellant and spares them time with respect to removing another review process.

Commissioner Mota noted the need for an appropriate balance between the costs associated with the public process and the benefits of the public process. She didn't hear anything in terms of costs of the borough process that will support that the reduction costs outweigh the benefits of the additional level of appeal. The additional step adds to the procedural thoroughness.

Commissioner Koester described his personal experience with the current appeal process all the way to Supreme Court. He noted the process was very costly. He supported keeping the appeal processes in-house to minimize costs to citizens. He would like to see the Assembly take on tax lots, which affects more people than the entire appeals process and the average two appeals a year. There are bigger issues that could be addressed and clarified through ordinances other than the appeal process that is rarely used.

Commissioner Kenna expressed he has not heard anyone in his two years of service accuse the appeal process of being unfair or that the process needs to be changed. Before the ordinance was introduced, the Commission should have received from the presenters, information on how the appeal process was initially established, why it was established and why it entails several steps. He does not see any issues with the current process. The only complaint and justification he heard for the proposed streamlined process is the de novo process for sake of repeating workload. The correction to that issue is to do what de novo review hearings are supposed to do; they are not supposed to be re-presentations of evidence, they are not supposed to be used for presentation of new evidence, rather review of the record in its entirety with deference given to the assessments who review the appeal before. If the de novo appeal process was followed as is stated in its definition, the notion of the double workload is irrelevant, and the process is streamlined. There is no reason to change the current process or take away a level of appeal from citizens.

Commissioner Perreault noted the two biggest roadblocks to previously attempt to change the appeal process were to have a single borough employee serve as an adjudicating officer and remove boards and citizens as part of the process. The proposed ordinance process removes the single adjudicator, and it keeps boards and citizens in the process. Having seen the biggest issues updated in the newly proposed ordinance he supported the motion.

VOTE ON MOTION TO RECOMMEND APPROVAL OF ORDINANCE NO. 2021-27 TO THE FNSB ASSEMBLY.

Yeses: Guinn, Fisher, Muehling, Perreault

Noes: McComas-Roe, Fletcher, Mota, Koester, Kenna

MOTION DEFEATED

4 Yeses, 5 Noes

MCCOMAS-ROE,
Seconded by KENNA

moved to recommend against approval of Ordinance No. 2021-27 to the FNSB Assembly.

VOTE ON MOTION TO RECOMMEND AGAINST APPROVAL OF ORDINANCE NO. 2021-27 TO THE FNSB ASSEMBLY.

Commissioner McComas-Roe expressed his appreciation of Commissioner comments. He felt the proposed ordinance was an anti-democratic bureaucratization of what is currently a reasonable public process. The commission denied the proposal previously and the commission should deny it again.

Commissioner Fletcher expressed her desire to have more evidence of citizens firsthand experience with the process.

Yeses: Mota, Fletcher, Koester, McComas-Roe, Kenna

Noes: Guinn, Fisher, Muehling, Perreault

MOTION CARRIED

5 Yeses, 4 Noes

EXCUSE FUTURE ABSENCES

Commissioner Sims is excused for the September 29, 2021 meeting and Commissioner Muehling is excused for the October 12, 2021 meeting.

COMMISSIONER'S COMMENTS/COMMUNICATIONS

Commissioner Guinn enjoyed the discussion on the ordinance and saw both sides of the argument.

Commissioner Koester inquired about the Right-of-Way training and if it was related to the Downtown Plan.

Commissioner Fisher echoed Commissioner Guinn's comment on the ordinance, noting there were very good points made. She plans to attend on Zoom while Covid case counts remain high.

Commissioner Fletcher echoed other commissioner comments on the ordinance discussion and was torn on the decision. She wants to use the process that best serves the community. She noted she will be attending future meetings through Zoom.