DENALI BOROUGH, ALASKA
ORDINANCE NO. 07-21
INTRODUCED BY: MAYOR DAVID M TALERICO

AN ORDINANCE CREATING TITLE 5, CHAPTER 5.20 OF THE DENALI BOROUGH CODE OF ORDINANCES TITLED BOARDS OF REVIEW AND ADJUSTMENT

BE IT ENACTED by the Assembly of the Denali Borough, Alaska that:

Section 1. Classification. This ordinance is of a general and permanent nature.

Section 2. Purpose. The purpose of this ordinance is to create Denali Borough Code of Ordinances, Title 5, Chapter 5.20 as follows:

Chapter 5.20
BOARDS OF REVIEW AND ADJUSTMENT

Sections:

5.20.005. Definitions.
5.20.010. Purpose.
5.20.020. Number of members.
5.20.030. Qualifications.
5.20.040. Selection of members.
5.20.050. Terms.
5.20.060. Vacancies.
5.20.070. Officers.
5.20.080. Voting.
5.20.090. Quorum.
5.20.100. Quasi-Judicial Hearings and notifications. Appeal to superior court.
5.20.110. Appeals—Board of adjustment.
5.20.120. Appeals—Board of Review.
5.20.130. Appeal to superior court.
5.20.140. Severability.

5.20.005 Definitions.

Board of Adjustment, a body of local government to hear appeals of planning commission decisions for matters of building, subdivision platting and zoning regulations.

Board of Review, a body of local government to hear appeals of administrative decisions in reference to Overnight Accommodations and Severance Tax issues.

Ex officio, means by virtue or because of an office.

Quasi-judicial, means having a partly judicial charter by possession of the right to hold hearings on and conduct investigations into disputed claims and alleged infractions of rules and regulations and to make decisions in the general manner of courts

5.20.010. Purpose.

Until such time as rescinded by ordinance, the Denali Borough Assembly will designate itself the Denali Borough Board of Review and Denali Borough Board of Adjustment. The purpose of these boards is to review quasi-judicial decisions of the administration and/or the planning commission on matters appealable by ordinance or procedure.

5.20.020. Number of members.

The boards will be comprised of the nine regular members of the borough assembly and the mayor as an ex officio member.

5.20.030. Qualifications.

All members of the Board of Review and Board of Adjustment must meet the qualifications of a voter as contained in DBC 8.05.020.

5.20.040. Selection of members.

Members of the assembly shall automatically by the nature of their position on the assembly be members of the boards.

5.20.050. Terms.

Members' terms will run concurrent with their assembly seat terms.

5.20.060. Vacancies.

A board seat shall become vacant when or if an assembly seat becomes vacant. Vacant seats will be filled by assembly members as they assume their seats.

5.20.070. Officers.

A. Board of Adjustment: The Denali Borough Mayor will act as the ex officio Chairman of the Board of Adjustment, per DBC 2.10.030 (B). The Assembly Presiding Officer will act as the Vice-chairman of the board.

B. Board of Review: The Presiding Officer and Deputy Presiding Officer of the assembly will act as the Presiding Officer and Deputy Presiding Officer, respectively.

5.20.080. Voting.

A. All members will have a vote, unless excused due to a conflict of interest.

B. All votes will be taken by 'roll call'.

C. Five affirmative votes are needed for passage of a motion involving legal action.

5.20.090. Quorum.

Five (5) members constitute a quorum.

5.20.100. Quasi-judicial hearings and notifications.

A. Intent. This section governs all quasi-judicial hearings held by the planning

commission, the Boards of Review and Adjustment or the assembly as required by this or any other chapter.

B. Quasi-judicial Hearing Notice. Notice of the hearing shall be published per the Denali Borough Charter Section 1.05. Furthermore, notice must be sent by certified mail, return receipt requested to the appellant and/or applicant for the hearing. The notice shall contain at least the following information:

1. A brief description of the proposal on which the public body is to act;
2. A legal and common description of the property involved, if any;
3. Date, time, and place of the public hearing;
4. Person and place to contact for more detailed information.

C. Public Posting. If the hearing involves land, the applicant shall post the property subject to the application with public notices as provided by the borough at least ten (10) days before the date of the required public hearing. Such notices shall be placed so as to be visible from each improved street adjacent to the property. The applicant is responsible for removing the posted notices within five (5) days after the hearing is completed. Failure to properly post notices shall be grounds for deferral or denial of the application. No one except the applicant or an agent of the applicant shall remove or tamper with any such required posted notice during the period it is required to be maintained under this paragraph.

D. Proof of Posting. If the hearing involves land, before the hearing, the applicant shall submit to the planning department an affidavit signed by the person who posted the notice stating that the notice was posted as required by this section and administrative procedure.

E. The borough judicial body conducting the quasi-judicial hearing shall issue written findings, stating its decision, the reasons for its decision, and the vote of each member upon each question. The quasi- judicial body shall undertake deliberations immediately upon the conclusion of the hearing. An electronic recording shall be made of the hearings and shall be reduced to written minutes. The minutes and electronic recording shall be made a public record. Copies of the decision shall be promptly posted on the borough's official web site and mailed to all parties participating in the hearing. The decision shall be distributed to the parties of record.

5.20.110. Appeals—Board of Adjustment.

Pursuant to AS 29.40.050 an appeal of the planning commission decision to the borough assembly may be taken from the grant or denial of a quasi-judicial hearing pursuant to the provisions of any chapter by the applicant, a government entity, or an aggrieved party.

A. Time; Fees. Any party of record may file an appeal of a decision of the planning commission within 15 days of the date of the notice of the decision with the borough clerk on the forms provided, and by paying the filing and records preparation fee of $75.00.

B. Appeals shall be in writing and must contain:

1. The name and address of the appellant;
2. A description of the action or determination from which the appeal is sought;
3. The reason for the appeal, which must include a description of harm to the appellant.

C. Procedure.

1. Once a completed appeal application and fee have been received by the borough clerk, the planning commission clerk will have a verbatim transcript prepared for the appeal process.

2. The Denali Borough Assembly acting as the Board of Adjustment shall

ordinarily set a date for and hold a hearing on all appeals within sixty (60) days of the filing of the appeal. Notices to the appellant and/or applicant for the action or determination must be sent by certified mail, return receipt requested, in addition to all who testified at the hearing.

3. Consideration shall be given only to the evidence and findings of fact heard by the commission. No new evidence or issues or testimony shall be presented on appeal to the assembly.

4. The Board of Adjustment shall render a decision, reference the appeal, based on the facts of record. In exercising the above-mentioned powers, the Board of Adjustment or Review may reverse, remand or affirm, wholly or partly, or may modify the order, requirement, decision or determination, based on facts, as ought to be made, and to that end shall have all the powers of the body from whom the appeal is taken.

5. All hearings of the board shall be open to the public.

6. The board shall issue findings of fact as per DBC 5.20.100(E).

5.20.120. Appeals—Board of Review.

An appeal of an administration decision reference the borough's Overnight Accommodations Tax and/or the Severance Tax shall be appealed to the borough assembly, acting as the Board of Review, under the procedures listed in DBC 3.25.190 and/or 3.30.090, respectively.

A. Time; Fees. A grievant may file an appeal within 30 days of the date of the administration's notice of the decision, with the borough clerk in writing, and by paying the filing and records preparation fee of $75.00.

B. Appeals shall be in writing and must contain:

1. The name and address of the grievant;
2. A description of the action or determination from which the appeal is sought;
3. The reason for the appeal, which must include a description of harm to the appellant.

C. Procedure.

1. Once a completed appeal application and fee have been received by the borough clerk, the borough clerk will prepare the record for the appeal process.

2. The Denali Borough Assembly acting as the Board of Review shall ordinarily set a date for and hold a hearing on all appeals within sixty (60) days of the filing of the appeal. Notices to the grievant must be sent by certified mail, return receipt requested.

3. The Board of Review shall render a decision, referencing the appeal based on the whether DBC 3.25 was properly interpreted and applied and shall grant relief as may be appropriate in the circumstances.

4. All hearings of the board shall be open to the public.

5. The board shall issue findings of fact as per DBC 5.20.100 (E).

5.20.130. Appeal to superior court.

An appeal from any action or decision of the Board of Adjustment or the Board of Review may be taken by any person to the state of Alaska Superior Court as provided by state law and applicable ordinances. Fees will be set by the court.

5.20.140. Severability.
In the event any portion, section, subsection, clause, sentence, or phrase of this chapter is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter.

Section: **Effective Date.** This ordinance becomes effective upon adoption by the Denali Borough Assembly and signature of the Mayor.

DATE INTRODUCED: JUNE 13, 2007
FIRST READING: JULY 11, 2007
PUBLIC HEARING: JULY 11, 2007

PASSED and APPROVED by the DENALI BOROUGH ASSEMBLY this 8TH day of AUGUST, 2007

MAYOR DAVID M TALERICO

ATTEST:
GAIL PIEKNIK, BOROUGH CLERK

Ayes: PASSED UNANIMOUSLY: HOLMES, KOHLSDORF, WALKER, POLLOCK, BULARD, HALL, EVANS, MERCER and HOCKIN.