

Introduced	Mayor
Date:	07/15/97
Hearing:	08/19/97
Action:	Enacted
Vote:	8 Yes, 1 No

**KENAI PENINSULA BOROUGH  
ORDINANCE 97-52**

**AN ORDINANCE ADOPTING PROCEDURES FOR VARIANCE FROM THE  
PROVISIONS OF TITLE 21 OF THE KENAI PENINSULA BOROUGH CODE**

**WHEREAS,** AS 29.40.040(b) sets forth conditions under which variances may not be granted; and

**WHEREAS,** AS 29.40.050(a) specifically requires that the borough assembly provide for an appeal from the terms of a land use regulation when literal enforcement would deprive a property owner of rights commonly enjoyed by other properties in a district; and

**WHEREAS,** some chapters of Title 21 provide for variance procedures and other chapters do not; and

**WHEREAS,** adopting a chapter for addressing procedures for variances from the provisions of Title 21 assist the fair and uniform application of Title 21 throughout the borough;

**NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:**

**SECTION 1.** That a new Chapter 21.05 shall be adopted as follows:

**21.05.010 Purpose.**

The purpose of this chapter is to grant relief from the literal application of this title where unusual individualized situations result in more stringent burdens being placed on some parcels of land than others and to prevent special hardships to individual landowners or deprivation of rights commonly enjoyed by other properties in a district. This chapter allows variances only from area, not land use, requirements.

**21.05.020 Burden of Proof.**

The situations justifying variances are rare and the burden of proof that an application meets the standards of this ordinance is on the applicant.

**21.05.030. Application--Public Hearing.**

- A. An application for a variance shall be made on a form provided by the planning department and shall contain:
  - 1. the legal description of the parcel for which the variance is requested;
  - 2. a statement of the facts justifying the variance; and
  - 3. the applicant's certification that
    - a. the variance is not being sought by the person causing the conditions requiring the variance,
    - b. that the variance will not permit a land use in a district where the use is prohibited, and
    - c. that the variance is not sought solely to relieve pecuniary hardship or inconvenience.
- B. The planning department may require additional information from the applicant helpful to the variance determination, including but not limited to, an as-built or certificate from a licensed land surveyor or professional engineer when necessary to the determination.
- C. The planning department shall process the variance application within 45 days of receipt, place it on the planning commission agenda, and make recommendations to the planning commission regarding approval, denial, and conditions, if any, to be placed on the variance.
- D. A public hearing shall be held before the planning commission regarding all variance applications. The public hearing notice requirements set forth in KPB 21.11 shall be followed. Variances within local option zoning districts require notice to all property owners within the district.

**21.05.040 Standards.**

- A. Pursuant to AS 29.40.040(b) a variance from a land use regulation adopted under KPB Title 21 may not be granted if:
  - 1. special conditions that require the variance are caused by the person seeking the variance;
  - 2. the variance will permit a land use in a district in which that use is prohibited; or
  - 3. the variance is solely to relieve pecuniary hardship or inconvenience.
- B. The planning commission shall also consider the following standards:
  - 1. whether a lesser variance than that applied for would do substantial justice to the applicant as well as surrounding property owners;
  - 2. whether a lesser variance than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to the surrounding property owners;
  - 3. whether relief can be granted in such a fashion that the spirit of the ordinance will be observed and public health, safety, and welfare secured; and
  - 4. whether the authorization of a variance will not be materially detrimental to the public welfare or injurious to nearby property;
- C. Consistent with the public health, safety, and welfare, the planning commission may attach conditions to an authorized variance regarding location, character, and other features of the proposed structures or uses as it finds necessary to carry out the spirit and purposes of this ordinance and the ordinance from which the variance is requested.

**21.05.050 Variances--Expiration--Extension.**

If the variance allowed requires further action of the property owner to be effective, and such action is not taken within two years of granting the variance, the variance shall expire. The planning

department may prepare and record an expiration document; however, failure to prepare or record an expiration document does not extend the length of variance authorization. The planning commission may extend the period of variance authorization without a public hearing upon a finding that there has been no basic change in pertinent conditions surrounding the property at the time of original approval as long as the request for extension is submitted before the two-year period of authorization expires. If the period of authorization expires without an extension application being filed with the planning department the applicant must again file an original application for variance.

**21.05.060 Findings of Fact.**

A written decision in resolution form shall be rendered by the planning commission granting, denying, or modifying the variance application with findings of fact based on the substantial evidence in the record.

**21.05.070 Recordation.**

Variations, extensions, and expirations may be recorded in the state of Alaska recording district in which the affected parcel is located. A recording fee not to exceed the administrative costs of preparing and recording the variance document may be charged as a condition of a variance or variance extension. If the recording fee is charged the borough shall be responsible for the recording. Failure to record a variance, expiration, or extension will not affect its validity.

**21.05.080 Appeal.**

Pursuant to AS 29.40.050 an appeal may be taken from the grant or denial of a variance pursuant to the provisions of KP.B 21.20 by the applicant, a government entity, or an aggrieved party. An "aggrieved party" means a party adversely impacted by the decision and who has participated in a particular variance determination at the planning commission level either by filing written comments or in person.

**21.05.090 Exemptions.**

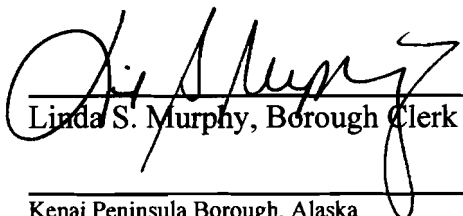
- A. The following ordinances are exempt from the provisions of this chapter:
  - 1. ordinances related to the Seldovia district; and
  - 2. chapters within Title 21 which set forth variance provisions, unless otherwise provided in such chapters.

**SECTION 2.** That this ordinance shall take effect immediately upon its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 19TH DAY OF AUGUST, 1997.**

  
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Jack E. Brown, Assembly President

ATTEST:

  
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Linda S. Murphy, Borough Clerk

