

CHAPTER 3: APPEAL AUTHORITY

This Chapter replaced BOA Chapter by ordinance #2015-092315-1

3.1. DEFINITIONS:

3.1.1 “Appeal Authority” means the person appointed by the mayor with the advice and the consent of council to hear appeals from person(s) who have been affected by the implementation of the Land Use Ordinances.

3.1.2 “Land Use Authority” means anyone who has the authority to interpret or implement the city ordinances as defined by the Land Use Ordinance.

3.1.3. “Land Use Ordinance” is defined in Title 10, Chapter 9a of the Utah Code.

3.2. APPOINTMENT

There is hereby created an Appeal Authority to be appointed by the Mayor with the advice and consent of the Town Council. It is the intent of the Town that the appointed individual will not personally benefit from the decisions associated with the interpretation of the ordinances of the Town. The Appeal Authority is authorized to:

3.3 TERM

The Appeal Authority shall serve for a term of two (2) years. Notwithstanding the preceding, the term of office of the initial Appeal Authority shall run from the date of appointment until December 31, 2017. Thereafter all subsequent terms shall commence on January 1st of every other year or until the Appeal Authority position is vacant on account of death, resignation, removal, or disqualification. In the event of early vacancy, the position of Appeal Authority shall be filled in the same manner as an original appointment for the expired term. The Mayor may remove the individual acting as the Appeal Authority for cause if written charges against the member are filed with the Mayor and after public hearing, if the member requests such a hearing.

3.4. REMOVAL

The appointed Appeal Authority may be removed for cause by the Town Council upon written charges, which shall be filed with the Mayor, and after public hearing, if such public hearing is requested by the appointed Appeal Authority.

3.5. DUTIES AND POWERS

3.5.1. The Appeal Authority shall have the following powers and duties:

3.5.1.A. To act in a quasi-judicial manner; and

3.5.1.B. To serve as the final arbiter of issues involving the interpretation or the application of Land Use Ordinances.

3.5.2. The Appeal Authority shall hear and decide the following:

3.5.2.A. Requests for variances from the terms of the Land Use Ordinances.

3.5.2.B. Appeals from decisions applying the Land Use Ordinances; and

3.5.2.C. Appeals from a fee charged in accordance with §10-9a-510 of the Utah Code.

3.5.3. The Appeal Authority may not entertain an appeal of a matter in which the Appeal Authority, or any participating member, had first acted as the Land Use Authority.

3.6. APPEALS TO THE APPEAL AUTHORITY

3.6.1. As a condition precedent to judicial review, each adversely affected person may specifically challenge a Land Use Authority's decision, within fifteen (15) days of the land use decision and pay the related fee.

3.6.2. The Appeal Authority shall determine the correctness of a decision of the Land Use Authority in its interpretation and application of a Land Use Ordinance.

3.6.3. Only those decisions in which a Land Use Authority has applied a Land Use Ordinance to a particular application, person, or parcel may be appealed to the Appeal Authority.

3.6.4. All documents and exhibits constituting the record upon which the action appealed was made shall be presented to the Town Clerk with the application for hearing

3.6.5. For every appeal, the applicant shall present to the Appeal Authority every theory of relief that it can raise in District Court.

3.6.6. The Town may not require an adversely affected party to pursue duplicate or successive appeals before the same or separate appeal authorities as a condition of the adversely affected party's duty to exhaust administrative remedies.

3.6.7. The Appeal Authority shall conduct each appeal and variance request as described by this Chapter.

3.6.8. The person or entity who filed the appeal has the burden of proving that the Land Use Authority erred.

3.6.9. The Appeal Authority shall respect the due process rights of each of the participants.

3.6. 10. After the hearing, the Appeal Authority shall issue a written decision within a reasonable time after the hearing

3.7. VARIANCES.

3.7.1 Any person or entity desiring a waiver or modification of the requirements of a Land Use ordinance as applied to a parcel of property that he owns, leases, or in which he holds some other beneficial interest may apply to the Appeal Authority for a variance from the terms of the ordinance.

3.7.1.A. THE APPEAL AUTHORITY MAY GRANT A VARIANCE ONLY IF:

3.7.1.A.1. Literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the Land Use Ordinances;

3.7.1.A.2. There are special circumstances attached to the property that do not generally apply to other properties in the same zone;

3.7.1.A.3. Granting the variance is essential to the enjoyment of a substantial property right

possessed by other property in the same zone;

3.7.1.A.4. The variance will not substantially affect the General Plan and will not be contrary to the public interest; and

3.7.1.A.5. The spirit of the Land Use Ordinance is observed and substantial justice done.

3.7.1.B. In determining whether or not enforcement of the Land Use Ordinance would cause unreasonable hardship under subsection A.1 of the section, the Appeal Authority may not find an unreasonable hardship unless the alleged hardship:

3.7.1.B.1. Is located on or associated with the property for which the variance is sought; and

3.7.1.B.2. Comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.

3.7.1.C. In determining whether or not enforcement of the Land Use Ordinance would cause unreasonable hardship under subsection A.1 of this section, the Appeal Authority may not find an unreasonable hardship if the hardship is self-imposed or economic.

3.7.1.D. In determining whether or not there are special circumstances attached to the property under subsection A.2 of this section, the Appeal Authority may find that special circumstances exist only if the special circumstances:

3.7.1.D.1. Relate to the hardship complained of; and

3.7.1.D.2. Deprive the property of privileges granted to other properties in the same zone.

3.7.1.E. The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.

3.7.1.F. Variances run with the land.

3.7.1.G. The Appeal Authority may not grant a use variance.

3.7.1.H. In granting a variance, the Appeal Authority may impose additional requirements on the applicant that will:

3.7.1.H.1. Mitigate any harmful effects of the variance; or

3.7.1.H.2. Serve the purpose of the standard or requirement that is waived or modified.

3.8. INTERPRETATION OF LAND USE ORDINANCE.

3.8.1 Any person alleging there was an error in any order, requirement, decision, or determination made by the Land Use Authority in the administration or interpretation of the Land Use Ordinance may request an interpretation and decision from the Appeal Authority in accordance with section 3.4 of this chapter.

3.8.2 The Appeal Authority will grant a waiver to the decisions of the Land Use Authority procedural only as follows:

3.8.2.A. If the decision or requirement by the Land Use Authority conflicts with the intent or literal interpretation of the Land Use Ordinances; or

3.8.2.B. If the decision or requirement by the Land Use Authority conflicts with state or local laws.

3.9. DISTRICT COURT REVIEW OF APPEAL AUTHORITY DECISIONS.

3.9.1. Any person or entity adversely affected by any decision of the Appeal Authority may petition the District Court for a review of the decision.

3.9.2. In the petition for review, the petitioner may only allege that there was an error in any order, requirement, decision, or determination made by the Land Use Authority in the administration or interpretation of the Land Use Ordinance.

3.9.3. The petition is barred unless it is filed with thirty (30) days after the Appeal Authority's decision becomes effective.

3.9.4. The Appeal Authority shall transmit to the reviewing court the record of its proceedings including its minutes, findings, orders, and if available, a true and correct transcript of its proceedings. If the proceeding was tape recorded, a transcript of that tape recording is a true and correct transcript for purposes of this subsection.

3.9.5. Review of the Appeal Authority's decision shall be done by the court in the manner and upon the standards provided by law.

3.9.6. The appellant has the burden of proving that the Land Use Authority erred.

3.9.7. No person may challenge in District Court the land use decision made under this chapter, until that person has exhausted the person's administrative remedies as provided in this chapter.

3.9.8. Any person adversely affected by a final decision made in the exercise of, or in violation of, the provisions of this chapter may file a petition for review of the decision with the District Court within thirty (30) days after the local land use decision is final.