

Chapter 3

VARIANCES AND APPEALS

Land Use Code, Title 12

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Section 3-1 ESTABLISHMENT OF APPEALS AUTHORITIES.

In order to provide for just and fair treatment in administering the planning and zoning ordinance, there is hereby created two appeal authorities in the administration of variances and appeals: The Variance Committee and the Board of Adjustment.

Section 3-2 VARIANCE COMMITTEE.

1. The Variance Committee shall consist of one City Elected Official, the City Administrator or appointee, and the City Public Works Director. The Elected Official shall be appointed by the Mayor to the Variance Committee as Chair of the Committee with the advice and consent of the City Council.
2. Organization and Procedures: The Variance Committee shall review and provide a determination on matters requiring a variance from established provisions of this Code, but shall not consider or hear appeals resulting from a decision of a City official, commission, board or the legislative body.
3. The Variance Committee Chair shall keep a record of all meetings, its findings and its resulting decisions.
4. Appeals to Variance Committee Decisions: An applicant for a variance to the Variance Committee, or any other person adversely affected by a decision made by the Variance Committee, may appeal that decision to the Board of Adjustment, applying the provisions of Section 3-5 "Appeals" of the City Code.
5. The Variance Committee may make determinations regarding the existence, expansion, or modification of nonconforming uses if that authority is delegated to them by the legislative body.

Section 3-3 VARIANCES.

1. Any person or entity desiring a waiver or modification of the requirements of the zoning 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 Variance Committee for a

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- variance from the terms of the zoning ordinance.
2. The Variance Committee may grant a variance only if:
 - a. literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance;
 - b. there are special circumstances attached to the property that do not generally apply to other properties in the same district;
 - c. granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district;
 - d. the variance will not substantially affect the general plan and will not be contrary to the public interest; and
 - e. the spirit of the zoning ordinance is observed and substantial justice done.
 3. In determination whether or not enforcement of the zoning ordinance would cause unreasonable hardship under Subsection 2, above, the Variance Committee may not find an unreasonable hardship unless the alleged hardship:
 - a. is located on or associated with the property for which the variance is sought; and
 - b. comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.
 4. In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under Subsection 2, above, the Variance Committee may not find an unreasonable hardship if the hardship is self-imposed or based on economic reasons.
 5. In determining whether or not there are special circumstances attached to the property under Subsection 2, above, the Variance Committee may find that special circumstances exist only if the special circumstances:
 - a. relate to the hardship complained of; and

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- b. deprive the property of privileges granted to other properties in the same district.
6. The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.
7. Variances run with the land.
8. The Variance Committee and any other body may not grant use variances.
9. In granting a variance, the Variance Committee may impose additional requirements on the applicant that will:
 - a. mitigate any harmful affects of the variance; or serve the purpose of the standard or requirement that is waived or modified.

Section 3-4 NOTIFICATION OF COUNCIL.

Before any application for a variance or building permit shall be issued, the Variance Committee shall give the City Council at least 15 days notice of the application. The City Council shall have the opportunity to respond and comment on the application within the 15 days.

Section 3-5 BOARD OF ADJUSTMENT.

1. The Board of Adjustment is established to administer appeals, and shall consist of five members, one member of which shall be a member of the Planning Commission. The members of the Board of Adjustment shall be appointed by the mayor with the advice and consent of the City Council. The City Council may fix per diem compensation for the members of the Board of Adjustment by resolution, based on necessary and reasonable expenses for meetings actually attended.
2. Terms of Office. Each member of the Board of Adjustment shall serve for a term of five years and until his successor is so appointed provided that the term of the members of the first board so appointed shall be such that the term of one member shall expire each year. One member shall be appointed on or before the first Monday in February of each year. Any member may be removed for cause by the mayor upon written charges and after a public hearing before the city council, if such public hearing is requested by member. Vacancies shall be filled in the same manner as the original appointment for the unexpired term.

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3. Organization. The board of adjustment shall elect a chairman and may adopt such rules for its own proceedings as are deemed necessary. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board of adjustment shall comply with the requirements of Utah State Code. Open and Public Meetings. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall immediately be filed in the office of the recorder, which shall be the office of the board, and shall be a public record.
4. Powers and Duties. The Board of Adjustment shall hear and decide appeals from zoning decisions applying the zoning ordinance.

Section 3-6 APPEALS.

The purpose of the appeal procedure is to provide recourse in the event it is alleged that there is error in any order, requirement, certificate, decision, or determination made by an administrative official or advisory body in the administration or enforcement of this ordinance.

1. Appeals to the Board of Adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the city affected by any decision of the administrative officer or agency provided, however, that appeals from a decision of the legislative body shall be appealed directly to the district court.
2. Such appeal shall be taken within 7 days from the date of the action appealed from by filing with the officer from whom the appeal is taken, and with the Board of Adjustment, a notice of appeal specifying the ground thereof.
3. The officer from whom the appeal is taken shall forthwith transmit to the board of adjustment all the papers constituting the record upon which the action appealed from was taken.
4. The appellant shall have the burden of proof that an error was made by the officer from whom the appeal is taken.
5. Any appellant may be required to verify an appeal before a

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notary public or other person authorized to administer oaths.

6. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the officer from whom appeal is taken shall certify that a stay would, in his opinion, cause imminent peril to life and property.
7. A public hearing shall be held by the Board of Adjustment within 30 days from date of application.
8. Reasonable notice of time, place, and purpose of the hearing shall be given. Failure of owners to receive notice of hearing shall in no way affect the validity of action taken.
9. The Board of Adjustment shall find whether, in its opinion, error was made.
11. The Board of Adjustment may within the terms of this ordinance affirm, reverse, or modify the action appealed as it seems just and equitable and exercise all rights of any other officer or commission.
12. The concurring vote of three members of the Board of Adjustment is necessary to reverse any order, requirement, decision, or determination of any administrative or appointed official or to decide in favor of the appellant.
13. The City or any person aggrieved by any decision of the Board of Adjustment may petition the district court for review; provided petition for such relief is presented to the court within 30 days after the filing of such decision in the office of the Board.