

TITLE 3 LAND USE AUTHORITY

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3 LAND USE AUTHORITY

3.02 PLANNING COMMISSION

[remains unchanged]

3.04 BOARD OF ADJUSTMENT

3.04.02 APPOINTMENT, TERM, VACANCY

1. In order to provide for just and fair treatment in the administration of Land Use, and to ensure that substantial justice is done, the Town of Hideout shall appoint a Board of Adjustment to exercise the powers and duties provided in this chapter. Unless otherwise designated in this Title, the Board of Adjustment shall be the Land Use Appeal Authority.
2. Membership; Appointment:
 - a. The Board of Adjustment shall consist of three (3) members and whatever alternate members that the Chief Executive Officer considers appropriate.
 - b. The Chief Executive Officer shall appoint the members and alternate members with the advice and consent of the Hideout Legislative Body for a term of three (3) years.
 - c. The Chief Executive Officer shall appoint members of the Board of Adjustment to terms so that the term of one member expires each year.
 - d. No member of the Board of Adjustment shall be allowed to serve for more than two (2) consecutive terms.
3. Alternate Members:
 - a. No more than two (2) alternate members may sit at any meeting of the Board of Adjustment at one time.
 - b. The Town Council shall make rules establishing a procedure for alternate members to serve in the absence of members of the Board of Adjustment.
4. Removal:
 - a. The Chief Executive Officer may remove any member of the Board of Adjustment with or without cause.
5. Vacancies:
 - a. The Chief Executive Officer, with the advice and consent of the Town Council, shall Fill any vacancy.
 - b. The person appointed shall serve for the unexpired term of the member or alternate member whose Office is vacant.

3.04.04 ORGANIZATION AND PROCEDURES

1. Elect Chairperson; Adopt Rules: The Board of Adjustment shall:
 - a. Organize and elect a Chairperson; and
 - b. Adopt rules that comply with any ordinance adopted by the town council.
2. Meetings: The Board of Adjustment shall meet at the call of the Chairperson and at any other times that the Board of Adjustment determines.
3. Administer Oaths; Compel Attendance: The Chairperson, or in the absence of the Chairperson, the acting Chairperson, may administer oaths and compel the attendance of witnesses.
4. Open Meetings; Records, Minutes:

- a. All meetings of the Board of Adjustment shall comply with the requirements of Utah Code Annotated title 52, chapter 4, open and public meetings.
 - b. The Board of Adjustment shall:
 - i. Keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating that fact; and
 - ii. Keep records of its examinations and other official actions.
 - c. The Board of Adjustment may, but is not required to, have its proceedings contemporaneously transcribed by a court reporter or a tape recorder.
 - d. The Board of Adjustment shall file its records in the Office of the Board of Adjustment.
 - e. All records in the Office of the Board of Adjustment are public records.
5. Voting: The concurring vote of two (2) members of the Board of Adjustment is necessary to reverse or modify any order, requirement, decision or determination of any administrative official or agency, or to decide in favor of the appellant.
 6. Decisions, When Effective: Decisions of the Board of Adjustment become effective at the meeting in which the decision is made, unless a different time is designated in the Board's rules or at the time the decision is made.

3.04.06 POWERS AND DUTIES

1. Generally: The Board of Adjustment shall hear and decide:
 - a. Appeals from zoning decisions applying the zoning ordinance;
 - b. Variances from the terms of the zoning ordinance.
2. Nonconforming Uses: The Board of Adjustment may make determinations regarding the existence, Expansion or modification of nonconforming uses as delegated to them by the Town Council.

3.04.08 APPEALS

Appeals to the Board of Adjustment shall be made as follows:

1. Any person or entity (including a Town department or elected official) affected by an administrative decision applying the Land Use Ordinance may appeal that decision to the Board of Adjustment by alleging that there is an error in any order, requirement, decision, or determination by an official.
2. Notice of Appeal and all supporting documents shall be filed within thirty (30) days of decision or action taken by the official. Notice of Appeal shall be filed with the Planning Department.
3. Notice of Appeals shall state the administrative order, requirement, decision or determination from which the person or entity appeals and shall specify the grounds for the appeal and circumstances related thereto. Any filings shall include copies of any documentary evidence or written arguments intended to be presented to the Board of Adjustment. A written appeal failing to specify grounds of appeal may be summarily dismissed by the Board of Adjustment, with or without prejudice. The brief should address all issues to be brought before the Board of Adjustment. Any new issues not addressed in the brief that are put forth at the hearing, shall be grounds to continue the matter to allow for adequate time to respond to the new issues.
4. Within five (5) business days of receipt of a Notice of Appeal, the applicant will be informed of a date for the hearing before the Board of Adjustment, which shall be no sooner than thirty (30) days thereafter, and no later than seventy five (75) days thereafter.
5. The official responsible for the administrative decision being appealed shall refer to the Board of Adjustment all papers constituting the record upon which the action appealed from was taken, at least seven (7) days prior to the hearing.

6. Appeal Stays Action. An appeal stays all proceedings unless the Planning Department certifies to the Board of Adjustment that a stay would cause imminent peril to life or property, or irreparable harm.
7. Burden of Proof. The person or entity making the appeal has the burden of proving that an error has been made.
8. Actions of Board of Adjustment. In exercising its powers, the Board of Adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, condition, decision or determination as ought to be made. The majority vote of the members of the Board shall be necessary to reverse any order, requirement, decision or determination applying the Land Use Ordinance.
9. Appeal of Decision of Board of Adjustment. Any person or entity aggrieved by a decision of the Board of Adjustment may petition the district court for a review of the decision as permitted by Utah State Law.

3.04.10 ROUTINE AND UNCONTESTED MATTERS

1. The Planning Staff is hereby authorized to decide certain matters, as designated by the Board of Adjustment, that are consistent with the guidelines established by this Title and state law and the rules adopted by the Board of Adjustment. Pursuant to that authority, the zoning administrator may decide all cases which are routine in nature, uncontested, that do not impact the character of the neighborhood, are primarily brought about by recent changes in the zoning ordinance or town initiated Development or construction that has resulted in the creation of nonconforming Structures or uses. The specific types of decisions the zoning administrator is authorized to make shall include:
 - a. The determination of a nonconforming use which can be verified by substantial evidence. "Substantial evidence", for the purpose of this section, shall mean official documents, including any written correspondence, receipts, permits or documents issued by a public body or agency thereof, etc., that may establish the truth of the matter asserted by the applicant;
 - b. Consider additions or alterations to existing Buildings and Structures, which are nonconforming as to height, area or Yard regulations; providing, that the addition follows the existing wall lines and no additional Dwelling Units are added to the Building or Structure;
 - c. Change in the status of a nonconforming use to a less intense use than that immediately preceding the proposed use;
 - d. Final review and approval on plans where the board has required that a final plat be submitted for special approval, showing that all requirements imposed by the board in granting the original approval have been complied with; and
 - e. The granting of a Variance in the very limited instance wherein the applicant and the town are in complete agreement regarding all issues, and that the spirit and intent of this Title is satisfied and that all criteria required statutorily for a Variance has also been satisfied.
2. Notice Requirements: The notice requirements established by this title, that are required before a hearing on a Variance, must still be satisfied by the Zoning Administrator. However, in lieu of giving notice of a time, date and place of a hearing, the Zoning Administrator's notice shall provide for a time frame within which all interested parties may submit their input to the Zoning Administrator. All responses received pursuant to the notice shall become a permanent part of the file.

3. Appeal: A decision of the Planning Staff may be appealed to the Board of Adjustment as provided for in this chapter.

3.04.12 VARIANCES

1. Authorized: Any person or entity desiring a waiver or modification of the land use requirements as applied to a parcel of property that they own, lease, or in which they hold some other beneficial interest may apply to the board of adjustment for a Variance from the land use requirements.
2. Applications. Applications for Variance shall be filed with the Town of Hideout Offices. Applications shall contain the following information:
 - a. A description of the requested Variance together with a designation of that section of the Hideout Planning, Land Use and Development Code from which relief is being requested;
 - b. An accurate Plot plan, if appropriate, indicating the manner in which the Variance will be applied and its effect upon adjacent properties; and
 - c. A filing fee as established by ordinance.
3. Public Hearing. Upon receipt of a complete application as determined by the **Town Staff**, a public hearing shall be set with the Board of Adjustment for the next available meeting date.
4. Burden of Proof. The applicant for a Variance shall bear the burden of proving that all of the foregoing conditions are satisfied as determined by the **Planning Department**.
5. Findings Required. The Board of Adjustment may authorize Variances from the requirements of this Title, only when those Variances serve the public interest, and are consistent with State law. In addition, the Board of Adjustment may not grant use Variances. The majority vote of the members of the Board of Adjustment shall be necessary to grant a Variance.
6. Requirements for Granting a Variance. The Board of Adjustment may grant a Variance only if all of the following conditions are met:
 - a. Literal enforcement of the Land Use Ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the Land Use Ordinance;
 - b. There are special circumstances attached to the property that do not generally apply to other properties in the same districts;
 - 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 Land Use Ordinance is observed, and substantial justice done.
7. Unreasonable Hardship. In determining whether or not enforcement of the Land Use Ordinance would cause unreasonable hardship under Section 11.03.12(6)(a), the Board of Adjustment 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.
 - i. In determining whether or not enforcement of the Land Use Ordinance would cause unreasonable hardship under Section 11.03.12(6)(a), the Board of Adjustment may not find an unreasonable hardship if the hardship is self-imposed.
 - ii. In determining whether or not there are special circumstances attached to the property under Section 11.03.12(6)(a), the Board of Adjustment may find that

special circumstances exist only if the special circumstances relate to the hardship complained of and deprive the property of privileges granted to other properties in the same district.

8. Meeting Conditions. The applicant shall bear the burden of proving that all of the conditions justifying a Variance have been met.
9. Variance Applicability. Variances run with the land.
10. Use Variance. The Board of Adjustment and any other body may not grant use Variances.
11. Additional Requirements. In granting a Variance, the Board of Adjustment may impose additional requirements on the applicant that will:
 - a. Mitigate any harmful effects of the Variance; or
 - b. Serve the purpose of the standard or requirement that is waived or modified.

3.04.14 DISTRICT COURT REVIEW OF BOARD DECISION

Any person adversely affected by any decision of a Board of Adjustment may petition the district court for a review of the decision as provided by state law.