

ORDINANCE #2021 – O – 12

AN ORDINANCE AMENDING HIDEOUT TOWN CODE CHAPTER 3.04 TO REPLACE THE BOARD OF ADJUSTMENT WITH AN ADMINISTRATIVE LAW JUDGE

WHEREAS, the Town of Hideout met in regular meeting on August 12, 2021 to consider amending Chapter 3.04 of the Town Code; and

WHEREAS Administrative Law Judges can be scheduled expeditiously and are specifically trained and have experience to administrative appeals; and,

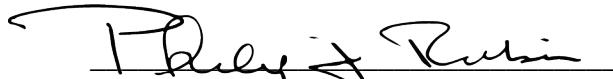
NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF HIDEOUT, UTAH, THAT:

SECTION I: Amended. Chapter 03.04 of the Hideout Town Code is hereby amended as redlined in Attachment A.

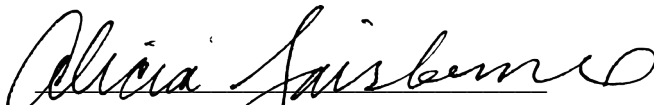
SECTION II: Effective Date. This ordinance shall become effective upon publication.

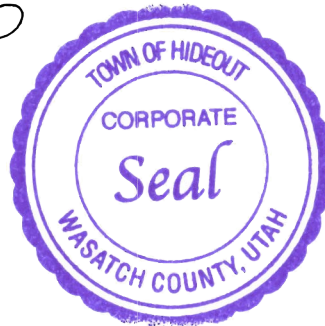
PASSED AND ADOPTED by the Town Council of Hideout, Utah, this 12th day of August in the year 2021.

TOWN OF HIDEOUT


Philip Rubin, Mayor

ATTEST:


Alicia Fairbourne, Town Clerk



Attachment: Exhibit A

Exhibit A

Title 3
Chapter 4

3.04.02 APPOINTMENT, TERM, VACANCY

1. In order to provide for just and fair treatment in the administration of Land Use, and for all administrative appeals in the Town and to ensure that substantial justice is done, the Town of Hideout shall appoint an Administrative Law Judge (ALJ) ~~a Board of Adjustment~~ to exercise the powers and duties provided in this chapter.
2. ~~Membership;~~ ~~_____~~ Appointment:
 1. The ~~Board of Adjustment~~ Administrative Law Judge shall ~~serve the as the Town's Board of Appeals. consist of three (3) members and whatever alternate members that the Mayor considers appropriate.~~
 2. The Mayor shall appoint the members and alternate members Administrative Law Judge with the advice and consent of the Hideout Legislative Body for a term of three (3) years. The Mayor may appoint more than one Administrative Law Judge, but only one Administrative Law Judge shall consider and decide any matter properly presented for review.
 - 2.3. A person appointed to serve as an administrative law judge shall either be law trained or have significant experience with the requirements and operation of administrative hearing processes. The person shall be free from any bias or conflict of interest that might affect impartiality of decisions.-.
 3. ~~The Mayor shall appoint members of the Board of Adjustment to terms so that the term of one member expires each year.~~
 4. ~~No member of the Board of Adjustment shall be allowed to serve for more than two (2) consecutive terms.~~
3. ~~Alternate Members:~~
 1. ~~No more than two (2) alternate members may sit at any meeting of the Board of Adjustment at one time.~~
 2. ~~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:~~
 1. 4. The Mayor may remove an Administrative Law Judge ~~any member of the Board of Adjustment with or without cause.~~ with the advice and consent of the Hideout Legislative Body
5. ~~Vacancies:~~
 1. ~~The Mayor, with the advice and consent of the Town Council, shall fill any vacancy.~~
 2. ~~The person appointed shall serve for the unexpired term of the member or alternate member whose Office is vacant.~~

HISTORY

Adopted by Ord. 20-06 Zoning Amendments on 7/23/2020

Amended by Ord. 2020-11 Technical Corrections to Ordinance 2020-06 on 11/12/2020

3.04.04 ORGANIZATION AND PROCEDURES

1. ~~Elect Chairperson; Adopt Rules:~~ The Board of Adjustment Administrative Law Judge shall:

- ~~1. Organize and elect a Chairperson; and~~
- ~~2. Adopt rules that comply with any ordinance adopted by the Town Council.¹~~
- ~~2. 1. Meetings: The Board of AdjustmentAdministrative Law Judge shall ~~meet at the call of the Chairperson~~ review variance requests and other administrative appeals as such arise and at any other times that the Board of AdjustmentAdministrative Law Judge 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. 2. Open Meetings; Records, Minutes:~~
 1. All ~~meetings of the Board of Adjustment~~Administrative Law Judge hearings shall comply with the requirements of Utah Code Annotated title 52, chapter 4, open and public meetings.
 2. The ~~Town Board of Adjustment~~Administrative Law Judge shall:
 1. Keep minutes and have a recording of the Administrative Law Judge his/herits proceedings, ~~showing the vote of each member upon each question, or if absent or failing to vote, indicating that fact; and~~
 2. Keep records of its examinations and other official actions.
 - ~~3. The Board of Adjustment~~Administrative Law Judge may, but is not required to, have his/herits proceedings contemporaneously transcribed by a court reporter or a tape recorder.
 - ~~4. The Board of Adjustment~~Administrative Law Judge shall file his/herits records with the Town Administrator in the offices at Office of the Board of Adjustment.Town Hall.
 - ~~5. All records in the Office of the Board of Adjustment~~Administrative Law Judge are public records.
- ~~5.2. Voting: The concurring vote of two (2) members of~~An affirmative vote by the Board of AdjustmentAdministrative Law Judge 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.
- ~~6.3. Decisions, When Effective: Decisions of the Board of Adjustment~~Administrative Law Judge become effective at the time the Administrative Law Judge issues a written decision. meeting in which time the decision is made. ~~e, unless a different time is designated in the Board's rules or at the time the decision is made.~~

HISTORY

Adopted by Ord. [20-06 Zoning Amendments](#) on 7/23/2020

Amended by Ord. [2020-11 Technical Corrections to Ordinance 2020-06](#) on 11/12/2020

3.04.06 POWERS AND DUTIES

- ~~4. Generally: The Board of AdjustmentAdministrative Law Judge shall hear and decide:~~
 1. Appeals from zoning decisions applying the zoning ordinance;

2. Variances from the terms of the zoning ordinance.
2. Nonconforming Uses: The ~~Board of Adjustment~~Administrative Law Judge may make determinations regarding the existence, ~~e~~Expansion or modification of nonconforming uses ~~as delegated to them by the Town Council.~~
3. Administrative Enforcement Appeals (Title 13)
4. Any appeal authority which may be delegated by the Mayor

~~2.~~

HISTORY

Adopted by Ord. 20-06 Zoning Amendments on 7/23/2020

Amended by Ord. 2020-11 Technical Corrections to Ordinance 2020-06 on 11/12/2020

3.04.08 APPEALS

Appeals to the ~~Board of Adjustment~~Administrative Law Judge 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~~Administrative Law Judge 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 Town Planner.
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~~Administrative Law Judge. A written appeal failing to specify grounds of appeal may be summarily dismissed by the ~~Board of Adjustment~~Administrative Law Judge, with or without prejudice. The brief should address all issues to be brought before the ~~Board of Adjustment~~Administrative Law Judge. 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~~Administrative Law Judge, which shall be no sooner than thirty (30) days thereafter, and no later than ~~seventy five~~seventy-five (75) days thereafter.
5. The official responsible for the administrative decision being appealed shall refer to the ~~Board of Adjustment~~Administrative Law Judge 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 Town Planner certifies to the ~~Board of Adjustment~~Administrative Law Judge 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~~Administrative Law Judge. In exercising ~~his/her~~its powers, the ~~Board of Adjustment~~Administrative Law Judge 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 ~~the Board of Adjustment~~Administrative Law Judge. Any person or entity aggrieved by a decision of the ~~Board of Adjustment~~Administrative Law Judge may petition the district court for a review of the decision as permitted by Utah State Law.

HISTORY

Adopted by Ord. [20-06 Zoning Amendments](#) on 7/23/2020

Amended by Ord. [2020-11 Technical Corrections to Ordinance 2020-06](#) on 11/12/2020

3.04.10 ROUTINE AND UNCONTESTED MATTERS

1. Unless prohibited by state statute, the Town Planner is hereby authorized to decide certain matters, ~~as designated by the Board of Adjustment~~Administrative Law Judge, that are consistent with the guidelines established by this Title and state law and the rules adopted by the Board of AdjustmentAdministrative Law Judge. Pursuant to that authority, the ~~zoning administrator~~Town Planner 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~~town-initiated Development or construction that has resulted in the creation of nonconforming Structures or uses. The specific types of decisions the Town Planner is authorized to make shall include:
 1. 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;
 2. 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;
 3. Change in the status of a nonconforming use to a less intense use than that immediately preceding the proposed use;
 4. 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
 5. 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 Town Planner. However, in lieu of giving notice of a time, date and place of a hearing, the Town Planner's notice shall provide for a time frame within which all interested parties may submit their input to the Town Planner. All responses received pursuant to the notice shall become a permanent part of the file.
3. Appeal: A decision of the Town Planner may be appealed to the ~~Board of Adjustment~~Administrative Law Judge as provided for in this chapter.

HISTORY

Adopted by Ord. [20-06 Zoning Amendments](#) on 7/23/2020

Amended by Ord. [2020-11 Technical Corrections to Ordinance 2020-06](#) on 11/12/2020

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~~Administrative Law Judge 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:
 1. A description of the requested Variance together with a designation of that section of the Town Code from which relief is being requested;
 2. An accurate Plot plan, if appropriate, indicating the manner in which the Variance will be applied and its effect upon adjacent properties; and
 3. A filing fee as established by ordinance.
3. Public Hearing. Upon receipt of a complete application as determined by the Town Planner, a public hearing shall be set with the ~~Board of Adjustment~~Administrative Law Judge ~~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 Town Planner.
5. Findings Required. The ~~Board of Adjustment~~Administrative Law Judge 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~~Administrative Law Judge may not grant use Variances. ~~The majority vote of the members of the Board of Adjustment~~Administrative Law Judge shall be necessary to grant a Variance.
6. Requirements for Granting a Variance. The ~~Board of Adjustment~~Administrative Law Judge may grant a Variance only if all of the following conditions are met:
 1. 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;
 2. There are special circumstances attached to the property that do not generally apply to other properties in the same districts;
 3. Granting the Variance is essential to the enjoyment of a substantial property right possessed by other property in the same district;
 4. The Variance will not substantially affect the General Plan and will not be contrary to the public interest; and
 5. 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 6(a), above, the ~~Board of Adjustment~~Administrative Law Judge may not find an unreasonable hardship unless the alleged hardship:
 1. Is located on or associated with the property for which the Variance is sought; and
 2. Comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.
 1. In determining whether or not enforcement of the Land Use Ordinance would cause unreasonable hardship under Section 6(a), above, the ~~Board of Adjustment~~Administrative Law Judge may not find an unreasonable hardship if the hardship is self-imposed.
 2. In determining whether or not there are special circumstances attached to the property under Section 3.04.12(6), the ~~Board of Adjustment~~Administrative Law Judge 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. ~~Neither the Board of Adjustment nor~~ Administrative Law Judge and any other body may ~~not~~ grant use Variances.
11. Additional Requirements. In granting a Variance, the ~~Board of Adjustment~~ Administrative Law Judge may impose additional requirements on the applicant that will:
 1. Mitigate any harmful effects of the Variance; or
 2. Serve the purpose of the standard or requirement that is waived or modified.

HISTORY

Adopted by Ord. [20-06 Zoning Amendments](#) on 7/23/2020

Amended by Ord. [2020-11 Technical Corrections to Ordinance 2020-06](#) on 11/12/2020

3.04.14 DISTRICT COURT REVIEW OF ADMINISTRATIVE LAW JUDGE BOARD DECISION

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

HISTORY

Adopted by Ord. [20-06 Zoning Amendments](#) on 7/23/2020

Amended by Ord. [2020-11 Technical Corrections to Ordinance 2020-06](#) on 11/12/2020