

Chapter 10. Board of Zoning Adjustments ¹⁷⁸

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28-10-1 Purpose and Intent. The purpose and intent of this chapter is to provide for just and fair treatment in the administration of the Clinton City zoning Ordinances, and to ensure that substantial justice is done. The City establishes of the Board of Zoning Adjustments in accordance with Utah Code Annotated 10-9a-701.

28-10-2 Appointment, Term and Removal. ³⁸ The Board of Zoning Adjustments shall consist of six (6) total members, five (5) of whom are to be appointed by the mayor with the advice and consent of the city council, and the sixth shall be a member of the planning commission, designated by the Chairman of the commission with the advice and consent of the commission. The commission member of the board shall serve as an ex-officio member of the commission and shall not be a voting member. Otherwise the commission member shall have the same powers and duties as the other appointed members of the board.

The Mayor, with the advice and consent of the city council, may appoint two (2) alternate members to the board to be appointed by the Chair when members are absent in order to have a full Board.

Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. Terms of office of the five citizen members of the board shall be staggered at intervals to provide uniformity and continuity of policy. Such appointed citizen members shall serve for a period of five (5) years and at staggered intervals, but in any event, each member of the Board of Zoning Adjustments shall serve until the expiration of the term for which he is appointed and until a successor is appointed and qualified. The planning commission representative to the board shall serve a one year term and only while serving on the planning commission.

The city council may appoint associate members of such board, and in the event that any regular member

is temporarily unable to act due to absence from city, illness, interest in a case before the board or any other cause, his place may be taken during such temporary disability by an associate member designated for the purpose.

Any member may be removed for cause by the appointing authority upon written charges and after public hearing, if such public hearing is requested.

28-10-3 Organization and Meetings.

(1) During the first meeting of each year, the Board of Zoning Adjustments shall elect one of its members to act as Chairman for that particular year.

(2) 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. .

(3) All meetings of the Board of Zoning Adjustments shall comply with the requirements of Title 52 Chapter 4 of the Utah State Code, Open and Public Meetings.

(4) 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. The records of the Board shall be filed in the Department of Community Development and be public record.

(5) All decisions of the Board shall be based upon the findings of fact and every finding shall be supported in the record of the meetings of the Board. The concurring vote of three (3) members of the Board shall be 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 of the Board of Zoning Adjustments become effective at the meeting in which the decision is made.

(7) The Board of Zoning Adjustments may adopt rules of procedure, not inconsistent with State law or City Code.

28-10-4 Powers and Duties. The Board of Zoning Adjustments shall have the power and duty to hear and decide:

(1) Appeals from zoning decisions applying the Zoning Ordinance;

(2) Special Exceptions to the terms of the zoning ordinance; and

(3) Variances from the terms of the zoning ordinance.

28-10-5 Appeals.

(1)

(a) The applicant or any other person or entity adversely affected by a decision administering or interpreting a zoning ordinance may appeal that decision applying the zoning ordinance by specifically objecting to any order, requirement, decision, or determination made by an official in the administration or interpretation of the zoning ordinance.

(b) Any officer, department, board, or bureau of a municipality affected by the grant or refusal of a building permit or by any other decisions of the administrative officer in the administration or interpretation of the zoning ordinance may appeal any decision to the Board of Zoning Adjustments.

(2) The person or entity making the appeal has the burden of proving that an error has been made.

(3)

(a) Only zoning decisions applying the zoning ordinance may be appealed to the Board of Zoning Adjustments.

(b) A person may not appeal, and the Board of Zoning Adjustments may not consider, any zoning ordinance amendments.

(4) Appeals may not be used to waive or modify the terms or requirements of the zoning ordinance.

(5) An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal was taken certifies to the Board of Zoning Adjustments after the Notice of Appeal shall have been filed with him that by reason of facts stated in the certificate, a stay would, in his opinion, cause immediate and irreparable damage to life or property. In such case, proceedings shall not be stayed otherwise than by restraining order which may be granted by the Board of Zoning Adjustments or by the district court on application and notice and on due cause shown.

28-10-6 Zoning Administrator.

(1) There is hereby created the office of Zoning Administrator. The Community Development Director shall serve as the zoning administrator or another may serve as designated by the Mayor and approved by the City Council.

(2) The Zoning Administrator is hereby authorized to decide certain matters, as designated by the Board of Zoning Adjustments, that are consistent with the

guidelines established by this Title, state law and the rules adopted by the Board of Zoning 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 City 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) Change in the status of a nonconforming use to a less intense use than that immediately preceding the proposed use;

(b) Final review and approval on plans where the Board has required that a final plan be submitted for special approval, showing that all requirements imposed by the Board in granting the original approval have been complied with; and

(c) The granting of a variance in the very limited instance wherein the applicant and the City are in complete agreement regarding all issues, that the spirit and intent of the zoning ordinance is satisfied and that all criteria required statutorily for variance have also been satisfied.

(3) The notice requirements established by the ordinance, which 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.

(4) A decision of the Zoning Administrator may be appealed to the Board of Zoning Adjustments as provided for in this chapter.

28-10-7 Special Exceptions.

(1) In enacting the zoning ordinance, the City Council has given jurisdiction to the Board of Zoning Adjustments to hear and decide certain specified special exceptions to the provisions of the zoning ordinance.

Where a zone boundary line divides a lot in single ownership at the time of the passage of this Ordinance, permit the extension of a use of building stated on the portion of such lot which lies in the less restricted zone into the more restricted zone, provided that such extension shall be subject to all regulations of the less restricted zone and shall extend not more than one hundred (100) feet into the

other portion of the lot in the more restricted zone.

To permit lot line adjustment, wherein such an adjustment creates a lot which does not have the required width of the zone in which the lot is located; provided, the created nonconforming lot meets the area requirements of the zone and the structure placed on the lot meets all required site standards of the zone; and furthermore, that before building permits are issued for the nonconforming split lot, the lot split shall be reviewed and approved by the Community Development Department.

(2) The Board of Zoning Adjustments may hear and decide special exceptions only if authorized to do so by the zoning ordinance and based only on the standards contained in the zoning ordinance.

28-10-8 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 Board of Zoning Adjustments for a variance from the terms of the zoning ordinance.

(2)

(a) The Board of Zoning Adjustments may grant a variance only if:

(i) 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;

(ii) There are special circumstances attached to the property that do not generally apply to other properties in the same district;

(iii) Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district;

(iv) The variance will not substantially affect the general plan and will not be contrary to the public interest; and

(v) The spirit of the zoning ordinance is observed and substantial justice done.

(b)

(i) In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under Subsection (2)(a), the Board of Zoning Adjustments 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.

(ii) In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under Subsection (2)(a), the Board of Zoning Adjustments may not find an unreasonable hardship if the hardship is self-imposed or economic.

(iii) In determining whether or not there are special circumstances attached to the property under Subsection (2)(a), the Board of Zoning Adjustments may find that special circumstances exist only if the special circumstances:

(A) relate to the hardship complained of; and

(B) deprive the property of privileges granted to other properties in the same district.

(3) The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.

(4) Variances run with the land.

(5) The Board of Zoning Adjustments and any other body may not grant use variances.

(6) In granting a variance, the Board of Zoning Adjustments may impose additional requirements on the applicant that will:

(a) mitigate any harmful affects of the variance; or

(b) serve the purpose of the standard or requirement that is waived or modified.

28-10-9 Time for Filing Appeals. The applicant shall file an appeal in writing within fifteen (15) days after having received a determination from a City official regarding the administration or interpretation of the zoning ordinance. Said appeal shall be filed with the office of the Community Development. Failure to file within said fifteen (15) days shall bar the applicant from a hearing before the Board of Zoning Adjustments.

28-10-10 Time Limitation on Variances.

In the event the Board of Zoning Adjustments does grant a variance in accordance with the provisions of this chapter, alterations in accordance with the variance must be activated within six months after the date the variance is granted or the variance becomes null and void. The time limit of the variance may be extended an additional six months by the Board of Zoning Adjustments, only if the petitioner shows adequate cause to the Board that circumstances necessitate a time extension.

28-10-11 Appeals of Board of Zoning

Adjustments Decisions. Any person adversely affected by any decision of a Board of Zoning Adjustments may petition the District Court for a review of the decision as provided by state law.