

12.100.122 TERM OF OFFICE

- A. The Appeal Authority shall consist of ~~five~~ three members ~~and five (5) alternates~~. The Mayor shall appoint the members with the advice and consent of the city council for a term of five years. The Mayor shall appoint members of the first Appeal Authority to terms so that the terms of ~~one member expires each year~~ members stagger. Terms of members of the Appeal Authority shall begin on or before the first Monday in February of each year.
- B. The Mayor may remove any member of the Appeal Authority for cause, if written charges are filed against the member with the Mayor. The Mayor shall provide the member with ~~an public hearing appeal~~, if requested.
- C. The Mayor, with the advice and consent of the city council, shall fill any vacancy. The person appointed shall serve for the unexpired term of the member whose office is vacant.

12.100.123 ORGANIZATION AND PROCEDURES

- A. The Appeal Authority shall organize and elect a chairperson and adopt rules that comply with all ordinances adopted by the city council.
- B. The Appeal Authority shall meet at the call of the chairperson and at any other times that the Appeal Authority determines.
- C. The chairperson, or in the absence of the chairperson, the acting chairperson may administer oaths and compel the attendance of witnesses.
- D. Appeal Authority Meetings
1. All meetings of the Appeal Authority shall comply with the requirements of Title 52, Chapter 4, Open and Public Meetings, Utah Code Unannotated.
 2. The Appeal Authority shall keep a record of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating that fact and keep records of its examinations and other official actions.
 3. The Appeal Authority may have its proceedings contemporaneously transcribed by a court reporter and shall have the minutes taken by the city recorder and all proceedings are required to be electronically recorded.
 4. The Appeal Authority shall file its records in the City Office. The public shall have access to this record during regular Enoch City office hours and in compliance with GRAMA.
- E. A quorum shall be considered three members of the Appeal Authority and no evidence shall be presented to the Appeal Authority unless a quorum is present. A majority vote shall be constituted of at least a majority of members present.

F. Decisions of the Appeal Authority become effective at the meeting in which the decision is made unless a different time is designated in the Appeal Authority's rule or at the time the decision is made.

G. The Mayor and City Council may fix per diem compensation for the members of the Appeal Authority based on necessary and reasonable expenses and on meetings actually attended.

H. Each appeal to the Appeal Authority shall be on a form provided by the Appeal Authority and all information called for by such form shall be furnished by the appellant.

I. Before making its decision, the Appeal Authority shall hold a hearing upon the appeal. Notice of the time and place of such hearing shall be sent by mail to the appellant, to the planning commission and to the building inspector, at least fifteen days prior to the day fixed for the hearing. Such notice shall contain the name of the appellant, the time and place fixed for the hearing and a brief statement of the error alleged by the appellant or other question of variance for which the appellant appeals.

J. The appellant shall pay to ~~the City of Enoch~~ City a filing and processing fee as set in the fee schedule. Such payment shall be paid with the filing of the appeal. The Appeal Authority may give notice to other interested persons and organizations.

K. Each appeal, filed in proper form with the required dates, shall be numbered serially, docketed, and shall be placed upon the calendar of the Appeal Authority and shall be heard in the order in which they appear on the calendar, unless advanced for hearing by order of the Appeal Authority for good cause shown. However, the cost of the advanced hearing, including the salary of the Appeal Authority members and recorder, will be added to the filing fee cost and shall be paid by the appellant.

12.100.124 POWERS AND DUTIES

A. The Appeal Authority shall hear and decide:

1. appeals from decisions applying land use ordinances;
2. appeals from a land use fee charged; and
3. requests for variances from the terms of the land use ordinances.

12.100.125 APPEALS

A. The Appeal

1. ~~a~~ The applicant or any other person or entity adversely affected by a decision administering or interpreting a land use ordinance may appeal that decision applying the land use ordinance by alleging that there is error in any order, requirement, decision or determination made by an official in the administration or interpretation of the land use ordinance.

2. ~~b.~~ Appeals to the Appeal Authority of decisions administering or interpreting a land use ordinance must be filed within 30 days of the decision.

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 land use ordinances may appeal any decision to the Appeal Authority.

C. The Appeal Authority shall hear and decide appeals from planning commission decisions regarding conditional use permits unless the Zoning Ordinance designates another body to hear conditional use permit appeals.

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

E. Only zoning decisions applying the zoning ordinances may be appealed to the Appeal Authority. A person may not appeal, and the Appeal Authority may not consider, any Zoning Ordinance amendments.

F. Appeals may not be used to waive or modify the terms or requirements of the Zoning Ordinance.

12.100.126 ROUTINE AND UNCONTESTED MATTERS

A. With the consent of the City Council, the Mayor may appoint an administrative officer to decide routine and uncontested matters before the Appeal Authority. The Appeal Authority shall designate which matters may be decided by the administrative officer and establish guidelines for the administrative officer to comply with in making decisions.

B. Any person affected by a decision of the administrative officer may appeal the decision to the Appeal Authority.

12.100.127 SPECIAL EXCEPTIONS

A. In enacting the Zoning Ordinance, the Mayor and City Council may provide for special exceptions and grant jurisdiction to the Appeal Authority to hear and decide some or all special exceptions.

B. The Appeal Authority 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.

C. The Mayor and City Council may provide that conditional use permits be treated as special exceptions in the Zoning Ordinance.

12.100.128 VARIANCES

A. 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 Appeal Authority for a variance from the terms of the Zoning Ordinance.

B. Variance Rules

1. The Appeal Authority 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 land use ordinance;
 - b. there are special circumstances attached to the property that do not generally apply to other properties in the same zone;
 - c. granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;
 - 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.

2. Unreasonable Hardship

- a. In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under Subsection B (1), the Appeal Authority may not find an unreasonable hardship unless the alleged hardship is located on or associated with the property for which the variance is sought; and comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.
 - b. In determining whether or not enforcement of the Zoning Ordinance would cause unreasonable hardship under Subsection B(1), the Appeal Authority may not find an unreasonable hardship if the hardship is self-imposed or economic.
3. In determining whether or not there are special circumstances attached to the property under Subsection B(1), the Appeal Authority 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 zone.

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

D. Variances run with the land.

E. Neither the Appeal Authority nor any other body may grant use variances.

F. In granting a variance, the Appeal Authority may impose additional requirements on the applicant that will mitigate any harmful effects of the variance; or serve the purpose of the standard or requirement that is waived or modified.

12.100.129 DISTRICT COURT REVIEW OF APPEAL AUTHORITY DECISION

- A. Any person adversely affected by any decision of an Appeal Authority may petition the district court for a review of the decision.
- B. In the petition, the plaintiff may only allege that the Appeal Authority's decision was arbitrary, capricious, or illegal.
- C. The petition is barred unless it is filed within 30 days after the Appeal Authority's decision is final.
- D. The Appeal Authority shall transmit to the reviewing court the record of its proceeding including its minutes, findings, order and, if available, a true and correct transcript of its proceedings. If the proceeding was electronically recorded a transcript of that electronic recording is a true and correct transcript for purposes of this subsection.
- E. If there is a record, the district court's review is limited to the record provided by the Appeal Authority. The court may not accept or consider any evidence outside the Appeal Authority's record unless that evidence was offered to the Appeal Authority and the court determines that it was improperly excluded by the Appeal Authority. If there is no record, the court may call witnesses and take evidence.
- F. The court shall affirm the decision of the Appeal Authority, if the decision is supported by substantial evidence in the record.
- G. Petitions
 - 1. The filing of a petition does not stay the decision of the Appeal Authority.
 - 2.
 - a. Before filing the petition, the aggrieved party may petition the Appeal Authority to stay its decision.
 - b. Upon receipt of a petition to stay, the Appeal Authority may order its decision stayed pending district court review, if the Appeal Authority finds it to be in the best interest of the municipality.
 - c. After the petition is filed, the petitioner may seek an injunction staying the Appeal Authority's decision.
 - d. Provisions of Utah State Code 10-9a-703 regarding appeals will be in effect.

12.100.130 BUILDING PERMITS

- A. The building inspector shall not issue any building permit for any building, construction or repair of any building unless such fully conforms to all zoning regulations or ordinances of this municipality in effect at the time of application.
- B. No permit shall be issued for any building or structure or part thereof on any land located between the mapped lines of any street, as shown on any official street map adopted by the

governing body. However, the Appeal Authority shall have the power, upon an appeal filed with it by the owner of any such land, to authorize the granting of a permit for a building or structure or any part thereof, within any mapped street located in any case in which the Appeal Authority, upon the evidence, finds:

1. that the property of the appellant, of which such mapped street location forms a part, will not yield a reasonable return to the owner unless such permit be granted, or
2. that balancing the interest of the municipality in preserving the integrity of the official map and the interest of the owner in the use and benefits of the property, the granting of such permit is required by consideration of justice and equity.

C. Before taking any such action, the Appeal Authority shall hold a public hearing thereon. In the event that the board of adjustment decided to authorize a building permit, it shall have the power to specify the exact location, ground area, height, and other details and conditions of extent and character and also the duration of the building, structure, or part thereof to be permitted.