

Town of Hinckley
ORDINANCE 26-10-15

APPEAL AUTHORITY

AN ORDINANCE AMENDING THE APPEAL AUTHORITY BOARD FROM AN APPOINTED FIVE MEMBER BOARD TO AN APPOINTED HEARING OFFICER

WHEREAS, 10-9a-501 of the Utah State Code (as amended) authorizes a legislative body to weigh policy considerations and enact land use regulations; and

WHEREAS, pursuant to 10-8-84 of the Utah State Code (as amended) the legislative body may pass all ordinances and rules, and make all regulations, not repugnant to law, necessary for carrying into effect or discharging all powers and duties conferred by this chapter, and as are necessary and proper to provide for the safety and preserve the health, and promote the prosperity, improve the morals, peace and good order, comfort and convenience of the municipality and its inhabitants, and for the protection of property in the municipality; and

WHEREAS, the Planning Commission conducted a public hearing to review the proposed amendments and made a positive recommendation to the Town Council for adoption; and

WHEREAS, the Town Council has reviewed the Planning Commission's recommendation and finds it to be in the best interest of the health, safety, and welfare of its citizens to make the proposed amendments to the Town's Code.

WHEREAS, pursuant to 10-3-702.1 of the Utah State Code, the Town Council finds this ordinance will not impact family health, stability, and formation.

NOW THEREFORE, be it ordained by the Town Council of Town of Hinckley, UT as follows:

SECTION 1: Repealer. If any provisions of the municipal code previously adopted are inconsistent herewith they are hereby repealed.

SECTION 2: Amendment. Section "11.17.1" is hereby amended as follows.

~~An Appeals Authority is hereby established, which shall consist of five (5) members to be appointed by the Town Council, with each member to serve for a term of five (5) years. The Appeal Authority will consist of five (5) citizens residing within the Town limits. The senior member of the Appeals Authority shall serve as the chairman. Members of the Appeal Authority may be removed from office by the Town Council for cause upon written charges and after public hearing. Vacancies shall be filled by appointment by the Town Council for the expected duration of the Appeals Authority. The Appeal Authority shall~~

~~have three (3) members present to form a quorum.~~

An Appeals Authority is hereby established, which shall consist of a single person appointed by the Town Council as the Hearing Officer. Such Hearing Officer shall be a citizen residing within the Town limits. If such Hearing Officer vacates the position, a replacement shall be appointed by the Town Council. The Hearing Officer may be removed from office by the Town Council for cause upon written charges and after a public hearing.

HISTORY:

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SECTION 3: **Amendment.** Section "11.17.2" is hereby amended as follows.

A. Hear and Decide Appeals: To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the Land Use Authority.

B. Interpret Provisions: To interpret the provisions of this title in such a way so as to further the intent and purposes of the recommendations and policies of the Town's adopted general and master plans.

~~C. Scope of Review and Standard of Interpretation: In deciding any appeal of a land use authority decision, the Appeal Authority shall determine the correctness of the Land Use Authority's interpretation and application of the plain meaning of applicable land use regulations. The Appeal Authority shall interpret and apply a land use regulation to favor the land use application unless the regulation plainly restricts the land use application. If the Town has not designated a scope of review for factual matters by ordinance, the Appeal Authority shall review factual matters de novo, without deference to the Land Use Authority's determination of those facts. If the scope of review is designated as on-the-record review, the Appeal Authority shall determine whether the record includes substantial evidence for each essential finding of fact.~~

C. Scope of Review and Standard of Interpretation: In deciding any appeal of a land use authority decision, the Hearing Officer shall determine the correctness of the Land Use Authority's interpretation and application of the plain meaning of applicable land use regulations. The Hearing Officer shall interpret and apply a land use regulation to favor the land use application unless the regulation plainly restricts the land use application. If the Town has not designated a scope of review for factual matters by ordinance, the Hearing Officer shall review factual matters de novo, without deference to the Land Use Authority's determination of those facts. If the scope of review is designated as on-the-record review, the Hearing Officer shall determine whether the record includes substantial evidence for each essential finding of fact.

D. Authorize Variances: To authorize upon appeal, in specific cases, such variance from the terms of this title as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this title would result in unnecessary hardship.

HISTORY:

(Ord. 22-01-06, 1/6/2022)

Ord 2026-04-23, 4/23/2026

SECTION 4: Amendment. Section "11.17.3" is hereby amended as follows.

~~A. Meetings: The Appeals Authority shall adopt rules necessary for the conduct of its affairs and in keeping with the provisions of this title. Meetings shall be held as the Board may determine. The chairman, or in their absence, the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings shall be conducted in accordance with the Utah Open and Public Meetings Act. As set out in Chapter 4 of Title 52, Utah Code Annotated, as amended.~~

~~B. Minutes: The Appeal Authority shall keep minutes of its proceedings showing the vote of each member upon each question, or failing to vote indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be a public record and be immediately filed in the office of the Board.~~

A. Meetings: The Hearing Officer shall adopt rules necessary for the conduct of its affairs and in keeping with the provisions of this title. Meetings shall be held as the Hearing Officer may determine. The Hearing Officer may administer oaths and compel the attendance of witnesses. All meetings shall be conducted in accordance with the Utah Open and Public Meetings Act. As set out in Chapter 4 of Title 52, Utah Code Annotated, as amended.

B. Minutes: The Hearing Officer shall keep minutes of its proceedings showing the ruling upon each question and shall keep records of its examinations and other official actions, all of which shall be a public record and be immediately filed in the Town office.

HISTORY:

(Res. 04-02-19, 2/19/2004)

(Ord. 22-01-06, 1/6/2022)

Ord 2026-04-23, 4/23/2026

SECTION 5: Amendment. Section "11.17.4" is hereby amended as follows.

~~A. Notice of Appeal: Appeals to the Appeal Authority may be taken by any person aggrieved or by an officer or bureau of the Town Council of the Town affected by any decision of the Land Use Authority. Unless otherwise specified by this title, such appeals shall be taken within ten (10) days from the date of the action appealed specifying the grounds for the appeal. Forms shall be provided by the Town for this purpose. Upon receipt of a notice of appeal, the Land Use Authority shall transmit to the Appeal Authority the notice of appeal constituting the record of the action appealed and the existing ordinance(s).~~

~~B. Time for Hearing Appeal: The Appeal Authority shall fix a hearing of appeal fifteen (15) days after receipt of notice of appeal. The Appeal Authority shall give public notice thereof as well as due notice to the parties of interest and decide within a reasonable time. At the hearing, only the following persons may present or speak:~~

A. Notice of Appeal: Appeals to the Hearing Officer may be requested by any person aggrieved of the Town affected by any decision of the Land Use Authority. Such appeal shall be submitted to the Land Use Authority. Forms shall be provided by the Town for this purpose. Upon receipt of a notice of appeal, the Land Use Authority shall transmit to the Hearing Officer the notice of appeal constituting

the record of the action appealed and the existing ordinance(s).

B. Time for Hearing Appeal: The Hearing Officer shall hold a hearing of appeal within fifteen (15) days after receipt of notice of appeal. The Hearing Officer shall give public notice thereof as well as due notice to the parties of interest within a reasonable time. At the hearing, only the following persons may present or speak:

1. The appellant or the appellant's representatives;
2. The land use applicant or the land use applicant's representatives; and
3. The Town's representatives.

~~C. Record of Proceedings: The Board shall keep a record of the proceedings for each matter heard which shall be kept on file and copies made available to any party at a cost according to the Town's fee schedule. The record of proceedings may include documents and physical evidence considered in the case.~~

C. Record of Proceedings: The Hearing Officer shall keep a record of the proceedings for each matter heard which shall be kept on file and copies made available to any party at a cost according to the Town's fee schedule. The record of proceedings may include documents and physical evidence considered in the case.

HISTORY:

(Ord. 22-01-06, 1/6/2022)

Ord 2026-04-23, 4/23/2026

SECTION 6: Amendment. Section "11.17.5" is hereby amended as follows.

~~An appeal stays all proceedings in furtherance of the action appealed, unless the Land Use Authority certifies to the Appeals Authority after the notice of appeal is filed that by reason of facts stated in the certificate a stay would, in their opinion, cause imminent peril to life and property. In such a case, proceedings shall not be stayed other than by a restraining order which may be granted by the Appeals Authority or by a court of record on application, on notice to the Land Use Authority from whom the appeal is taken and on due cause shown.~~

An appeal stays all proceedings in furtherance of the action appealed, unless the Land Use Authority certifies to the Hearing Officer after the notice of appeal is filed that by reason of facts stated in the certificate a stay would, in their opinion, cause imminent peril to life and property. In such a case, proceedings shall not be stayed other than by a restraining order which may be granted by the Hearing Officer or by a court of record on application, on notice to the Land Use Authority from whom the appeal is taken and on due cause shown.

HISTORY:

(Ord. 22-01-06, 1/6/2022)

Ord 2026-04-23, 4/23/2026

SECTION 7: Amendment. Section "11.17.6" is hereby amended as follows.

A. The following rules and procedures shall govern the process of such appeals:

1. Applicants shall submit to the Land Use Authority a request for variance on forms provided

for this purpose, along with a copy of the denial of the building permit.

~~2. The Land Use Authority shall, upon receipt of a request for variance, transmit the request, a copy of the denial, and any other pertinent information to the Board for their consideration.~~

~~3. The Appeal Authority shall fix a reasonable time and place for a hearing on the variance request. The Appeal Authority shall provide notice of the hearing to the applicant, the Land Use Authority, and the Town. The hearing is not required to be a public hearing. At the hearing, only the applicant or the applicant's representatives, the land use applicant or the applicant's representatives, and the Town's representatives may present or speak.~~

~~4. The Appeals Authority shall vote on the decision. The concurring vote of three (3) members of the Appeal Authority shall be necessary to reverse any order, requirement, decision or determination of the Land Use Authority.~~

~~5. The Appeal Authority shall render written findings on each case heard within thirty (30) days of the hearing. Where the request for variance is approved, such written decision shall demonstrate the following:~~

2. The Land Use Authority shall, upon receipt of a request for variance, transmit the request, a copy of the denial, and any other pertinent information to the Hearing Officer for consideration.

3. The Hearing Officer shall fix a reasonable time and place for a hearing on the variance request. The Hearing Officer shall provide notice of the hearing to the applicant, the Land Use Authority, and the Town. The hearing is not required to be a public hearing. At the hearing, only the applicant or the applicant's representatives, the land use applicant or the applicant's representatives, and the Town's representatives may present or speak.

4. The Hearing Officer shall make a ruling on the appeal and as to whether it is necessary to reverse any order, requirement, decision or determination of the Land Use Authority.

5. The Hearing Officer shall render written findings on each case heard within thirty (30) days of the hearing. Where the request for variance is approved, such written decision shall demonstrate the following:

a. That exceptional topography, or extraordinary or exceptional circumstances exist which are peculiar to land, structures, or buildings involved which are not applicable to other lands, structures, or buildings in the same district.

b. That owing to extraordinary circumstances, literal interpretation of the provisions of this title would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this title.

c. That the extraordinary circumstances were not created by the owner of the property and do not represent a general condition of the district in which the property is located.

d. That the variance shall not authorize a use other than those specifically enumerated in the zoning district in which the variance is sought.

e. That the circumstances found to constitute a hardship cannot be practically corrected.

f. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building, or structure.

g. That the granting of the variance shall not be out of harmony with the intent and purpose of this zoning title or the Master Plan of the Town or any portion thereof.

~~h. That the variance shall not injure the land value; or use of; or prevent the access of light and air to the adjacent properties; or to the area in general; or shall not be detrimental to the health, safety, and welfare of the public.~~

h. That the variance shall not injure the land value; or use of; or prevent the access of light and air to the adjacent properties; or to the area in general; or shall not be detrimental to the health, safety, and welfare of the public.

B. Nonconforming Use Not Grounds for Issuance: Existence of a nonconforming use of neighboring lands, structures, or buildings in the same district, or of nonconforming use of lands, structures, or buildings in other districts shall not be considered grounds for the issuance of a variance.

~~C. Burden of Proof: In any appeal before the Appeal Authority: (a) a land use applicant who is the appellant bears the burden of proving that the land use authority's decision is illegal or not supported by substantial evidence; (b) an adversely affected party who is the appellant bears the burden of proving that the land use authority's decision is illegal or that factual findings are clearly erroneous.~~

C. Burden of Proof: In any appeal before the Hearing Officer: (a) a land use applicant who is the appellant bears the burden of proving that the land use authority's decision is illegal or not supported by substantial evidence; (b) an adversely affected party who is the appellant bears the burden of proving that the land use authority's decision is illegal or that factual findings are clearly erroneous.

D. Request Denied: Where the request for variance is denied, the written decision must be accompanied by reasons therefore, and be based on findings of fact.

~~E. Request Approved: The Board shall cause a description of each variance granted to be filed in the office of the Millard County Recorder with a legal description of the affected property within thirty (30) days. The description shall include the nature of the variance, any time limitations and any special conditions imposed by the Appeal Authority.~~

E. Request Approved: The Hearing Officer shall cause a description of each variance granted to be filed in the office of the Millard County Recorder with a legal description of the affected property within thirty (30) days. The description shall include the nature of the variance, any time limitations and any special conditions imposed by the Hearing Officer.

HISTORY:

(Ord. 22-01-06, 1/6/2022)

Ord 2026-04-23, 4/23/2026

SECTION 8: Amendment. Section "11.17.7 Appeals From Hearing Officer Decisions" is hereby amended as follows.

~~11.17.7 Appeals From Board Decisions~~ 11.17.7 Appeals From Hearing Officer Decisions

SECTION 9: Amendment. Section "11.18.1 Consideration By Hearing Officer " is hereby amended as follows.

~~11.18.1 Consideration By Appeal Authority~~ 11.18.1 Consideration By Hearing Officer

~~The Appeal Authority may consider, upon appeal, such variances from the terms of this title as shall not be contrary to the public interest. The purpose of any variances shall be to modify the strict application of the requirements of this title where it can be shown that by reason or exceptional topography or other extraordinary or exceptional circumstances, literal enforcement of the terms of this title will result in an unnecessary hardship to the extent that the property might be prohibited from being used in a manner conforming to other property in the same zone.~~

The Hearing Officer may consider, upon appeal, such variances from the terms of this title as shall not be contrary to the public interest. The purpose of any variances shall be to modify the strict application of the requirements of this title where it can be shown that by reason or exceptional topography or other extraordinary or exceptional circumstances, literal enforcement of the terms of this title will result in an unnecessary hardship to the extent that the property might be prohibited from being used in a manner conforming to other property in the same zone.

HISTORY:

(Ord. 22-01-06, 1/6/2022)

Ord 2026-04-23, 4/23/2026

SECTION 10: **Amendment.** Section "11.18.2" is hereby amended as follows.

~~Any person or entity desiring a waiver or modification of the requirements of the zoning ordinances as applied to a parcel of property that they own, leases, or in which they hold some other beneficial interest may apply to the Appeal Authority for a variance from the terms of the zoning ordinance.~~

~~A. The Appeal Authority may grant a variance only if:~~

Any person or entity desiring a waiver or modification of the requirements of the zoning ordinances as applied to a parcel of property that they own, leases, or in which they hold some other beneficial interest may apply to the Hearing Officer for a variance from the terms of the zoning ordinance.

A. The Hearing Officer may grant a variance only if:

1. 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.
2. There are special circumstances attached to the property that do not generally apply to other properties in the same zone.
3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone.
4. The variance will not substantially affect the general plan and will not be contrary to the public interest.
5. The spirit of the zoning ordinance is observed and substantial justice done.

~~B. In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under Subsection A-1 the Appeal Authority may not find an unreasonable hardship unless the alleged hardship:~~

B. In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under Subsection A-1 the Hearing Officer 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.
2. Comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.

~~3. In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under Subsection A-1 the Appeal Authority may not find an unreasonable hardship if the hardship is self-imposed or economic.~~

~~C. In determining whether or not there are special circumstances attached to the property under Subsection A-1, the Appeal Authority may find that special circumstances exist only if the special circumstances:~~

3. Is not self-imposed nor economic.

C. In determining whether or not there are special circumstances attached to the property under Subsection A-1, the Hearing Officer may find that special circumstances exist only if the special circumstances:

1. Relate to the hardship complained of.
2. Deprive the property of privileges granted to other properties in the same zone.

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

E. Variances run with the land.

~~F. The Appeal Authority shall not grant use variances in conflict with the existing zone.~~

~~G. In granting a variance, the Appeal Authority may impose additional requirements on the applicant that will mitigate any harmful effects of the variance.~~

F. The Hearing Officer shall not grant use variances in conflict with the existing zone.

G. In granting a variance, the Hearing Officer may impose additional requirements on the applicant that will mitigate any harmful effects of the variance.

HISTORY:

(Ord. 22-01-06, 1/6/2022)

Ord 2026-04-23, 4/23/2026

SECTION 11: Severability. If any section, subsection, sentence, clause, or phrase of this amendment is declared invalid or unconstitutional by a court of competent jurisdiction, said portion shall be severed and such declaration shall not affect the validity of the remainder of this amendment.

SECTION 12: Effective Date. This ordinance being necessary for the peace, health, and safety of Town of Hinckley, shall go into effect at the expiration of the 20th day after publication or posting or the 30th day after final passage as noted below or whichever of said days is the more remote from the date of passage thereof.

****Signatures On Next Page****

PASSED AND ADOPTED by Town of Hinckley Town Council this **15th day of October, 2026.**



ALAN MILLER, Mayor
Town of Hinckley

Attest:



TRESA TAYLOR, Town Clerk
Town of Hinckley

Town Council Vote as Recorded:	AYE	NAY	ABSTAIN	ABSENT
Alan Miller	<u>X</u>	—	—	—
Chris Mork	<u>X</u>	—	—	—
Skip Taylor	<u>X</u>	—	—	—
Ron Black	<u>X</u>	—	—	—
Trent Staheli	<u>X</u>	—	—	—



RECORDED this 15th day of October, 2026.
PUBLISHED OR POSTED this 19th day of October, 2026.

CERTIFICATE OF PASSAGE AND PUBLICATION OR POSTING

In accordance with Utah Code Annotated §10-3-713, 1953 as amended, I, the Town Clerk of Town of Hinckley, hereby certifies that the foregoing Amendment was duly passed and published or posted at:

- 1. Town Office
- 2. U.S. Post Office
- 3. Hinckley Station

on the above referenced dates.



TRESA TAYLOR, Town Clerk
Town of Hinckley