

KANAB

Land Use Ordinance

Chapter 3

Land Use Appeal Authority and Land Use Appeals

This ordinance provides for the powers and duties of the Kanab City Appeals Officer.

Adopted January 22, 2008
Revised April 10, 2012

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Section 3-1 Appointment, Term and Removal

Pursuant to Utah Code Annotated sections 10-9a-103(2) and 10-9a-701 et seq. (as amended), the Kanab City Land Use Appeal Authority (hereafter "Appeal Authority") shall be appointed by the legislative body for the term of three (3) years provided and until a successor has been appointed. The Appeal Authority may be removed **for cause** by a majority vote of the City Council following a public hearing.

Comment [JS1]: I recommend taking this out so that there is less to be proved if the City Council wants a new appeal authority.

Section 3-2 Appeals

~~The applicant, a board or officer of the municipality, or any person adversely affected by the land use authority's decision administering or interpreting a land use ordinance may, within the time period provided by this ordinance, appeal that decision to the appeal authority by alleging that there is error in any order, requirement, decision, or determination made by the land use authority in the administration or interpretation of the land use ordinance. Appeal may be made to the Appeal Authority by the applicant for a land use permit or approval or by any other person or entity aggrieved by any decision of a land use authority permitting, applying or interpreting the land use ordinance.~~

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The standard of review shall be limited to an examination of the underlying administrative record to

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determine only whether or not the decision issued by the land use authority was arbitrary, capricious or illegal.

All appeals shall be made as follows:

A. The appeal shall be made within 10 ~~calendar business~~ days of the action or decision being appealed from by filing a completed written Notice of Appeal Form ~~with the Appeal Authority by submitting the completed Notice of Appeal Form to~~ at the Kanab City Office during business hours. The applicant of the appeal shall pay a fee of \$150 when the Notice of Appeal is filed. Notice of Appeal Forms are available at the Kanab City Office and on the City's ~~Internet~~ website.

Comment [JS2]: State code only requires 10 calendar days, not business days.

~~A.B.~~ ~~The action or decision being appealed is not required to be written in order to trigger the appeal time period. Instead, the day the action or decision happens is the same day that triggers the time period. However, if an appeal authority or judge determines that a written decision is required by state law, then the signing of the land use application or permit by the land use authority shall constitute the "written decision."~~

Comment [JS3]: Looking at other cities, and at the state, I think this should be about \$250, but it depends on how much it costs the City to administer appeals.

C. Within 10 ~~calendar business~~ days following an applicant's submission of a Notice of Appeal Form to the City as set forth in paragraph A above, the applicant shall file at the Kanab City Office ~~with the Appeal Authority~~ a written document entitled "Summary of Grounds for Appeal."~~,"~~ The Summary of Grounds for Appeal ~~which~~ shall specify the grounds for the appeal and circumstances related thereto, ~~and, The Summary of Grounds for Appeal~~ shall allege that there was error in the order, requirement, decision, or determination made by an official or officials in the administration or interpretation of the land use ordinance; and, additionally, pursuant to Utah Code Annotated section 10-9a-701(4)(c) (as amended), the Summary of Grounds for Appeal shall set forth in detail to the Appeal Authority every theory of relief

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that the appellant could raise within a petition for review of the decision applying the land use ordinance to the district court. The Appellant may not subsequently raise any theory that is not in the Summary of Grounds for Appeal.

D. If the City Manager determines that the Notice of Appeal or the Summary of Grounds for Appeal was not filed within the allotted time, or that the fee was not paid in time, then the City may reject such filing by sending written notice to the applicant. Such rejection ends the appeal unless overruled by the Appeal Authority as herein described. Such rejection constitutes a new land use decision which the appellant may then appeal, following the procedures above. The Appeal Authority would then only rule regarding the City's decision to reject the appeal. If the Appeal Authority overrules the City's decision to reject the appeal, then the original filing shall be accepted by the City and the appeal shall move forward. A Summary of Grounds for Appeal failing to allege such error or specify the grounds for appeal or failure to pay the appeal fee shall be summarily dismissed by the Appeal Authority

B-E. The person or entity making the appeal shall have the burden of proving that an error has been made.

C-F. If the City has determined that the appeal is timely, All papers constituting the record upon which the action appealed from was made shall be transmitted to the Appeal Authority, together with the Notice of Appeal and the Summary of Grounds for Appeal.

D-G. The Appeal Authority shall set the appeal for hearing to be held within a reasonable time from the date the appeal is received. Written notice of the date set for hearing the appeal shall be sent or emailed mailed to the applicant at least seven days before the appeal hearing date.

E-H. The filing of an appeal does not shall stay all proceedings and actions in furtherance of the matter appealed. A stay occurs only by pending a decision of the Appeal Authority. Said stay shall exist unless the land use authority certifies to the Appeal Authority, after the notice of appeal shall have been filed, that by reason of facts stated in the

Comment [JS4]: Do we want to clarify that they must pay an additional fee? Or that the fee will be refunded if the Appeal Authority says it was timely?

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~~certificate, the stay would cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by~~ restraining order which may be granted by the Appeal Authority or by District Court on application, notice and due cause shown.

~~F.I.~~ The decision of the Appeal Authority shall be necessary to reverse any order, requirement, decision, or determination of any land use authority or to decide in favor of the appellant.

~~G.J.~~ Judicial review -- Exhaustion of administrative remedies.

1. Pursuant to Utah Code Annotated sections 10-9a-708 and 801(as amended) any person adversely affected by a final decision of the Appeal Authority may obtain judicial review of a final decision of the Appeal Authority by filing a petition for review with the district court.
2. A party may seek judicial review only after exhausting all administrative remedies available.
3. A party shall file a petition for judicial review of the decision within 30 calendar days after the date that the order constituting the final decision is issued or is considered to have been issued under Utah Code annotated 10-9a-708 (as amended).
4. The petition shall name the City, the Appeal Authority and all other appropriate parties as respondents including any interveners and shall meet the form requirements specified in the Utah Rules of Civil Procedure.

Section 3-3 Variances

- A. Definition. A variance is a device which grants a property owner relief from certain provisions of the zoning ordinance when, because of the particular physical surroundings, shape, or topographical conditions of the property, compliance would result in a particular hardship upon the owner, as distinguished from a mere inconvenience or a desire

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to reduce financial difficulties.

- B. Variance Criteria. Unless otherwise provided in this Title, the Appeal Authority may grant a variance from the requirements of any provision of the zoning ordinance to the extent that such a grant shall be consistent with the provisions of this Section. Notwithstanding, the spirit of this Title must be observed and substantial justice done. Further, a previous variance can never set a precedent. Each case must be considered only on its individual merits. The Appeal Authority 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; and
 2. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district; and
 3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district; and
 4. The granting of the variance will not substantially affect the general plan and will not be contrary to the public interest; and
 5. The spirit of the zoning ordinance is observed and substantial justice done.
- C. In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under this section, the Appeal Authority 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.

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- D. In determining whether or not enforcement of the zoning ordinances would cause unreasonable hardship under this section, the Appeal Authority may not find unreasonable hardship if the hardship is self-imposed or economic.
- E. In determining whether or not there are special circumstances attached to the property under this section, the Appeal Authority may find that special circumstances exist only if the special circumstances:
 - 1. Relate to the hardship complained of; and
 - 2. Deprive the property of privileges granted to other properties in the same district.
- F. The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.
- G. Variances, once granted, shall run with the land.
- H. Use variances may not be granted by the Appeal Authority or any other body.
- I. In granting a variance, the Appeal Authority may impose additional requirements on the applicant that will:
 - 1. Mitigate any harmful effects of the variance; or
 - 2. Serve the same or similar purpose of the standard or requirement that is waived or modified.

Section 3-4 Meetings

Meetings of the Appeal Authority shall be held as the Appeal Authority may determine in accordance with any rules adopted by the Appeal Authority in accordance with Section 3-9 of this ordinance. All meetings of the Appeal Authority shall be open to the public.

Section 3-5 Minutes

The Appeal Authority shall keep minutes of meeting

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proceedings, and shall keep records of its hearings and other official actions, all of which shall be filed with the Kanab City Clerk and shall be public record.

Section 3-6 Action to be Taken

~~The Appeal Authority's decision~~Approval or disapproval, rejection, or modified approval of an application shall be based upon findings which shall be made a part of the official record.

Section 3-7 Decision on Appeal

~~The standard of review to be used by the Appeal Authority in reviewing the decision of the land use authority is different for findings of fact than for questions of law or mixed questions of law and fact.~~

~~A. For findings of fact, the Appeal Authority must defer to the factual findings of the land use authority, and may not reverse these findings of fact unless the Appeal Authority finds them to be clearly erroneous because they are against the weight of evidence.~~

~~B. For questions of law or mixed questions of law and fact, such as the interpretation and application of a land use ordinance, the Appeal Authority is not required to defer to the land use authority, but must only ascertain that the question of law, or mixed question of law and fact, was decided correctly.~~

~~C. Standards: In reviewing an action or decision from which an appeal has been taken, the Appeal Authority shall apply the appropriate standards, requirements or criteria as specified within this title and state law for such action or decision, and accordingly shall only review the action or decision to determine if an error was made in applying the land use ordinance.~~

~~D. Administrative Powers on Appeal:~~ In its decision, the Appeal Authority may reverse or affirm wholly or partly, or may modify the order,

Comment [JS5]: The standard is arbitrary, capricious, or illegal, by state code. I am hesitant to make any additional standards, even though they sound appropriate.

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requirement, decision or determination appealed. At the public ~~hearing~~meeting to consider the appeal, the Appeal Authority may continue ~~the hearing or may continue~~ consideration at a later date. If consideration of the appeal is adjourned, within thirty (30) days following the closing of the ~~public hearing~~meeting on an appeal, the Appeal Authority shall ~~issue a written decision, act on the appeal at a public meeting held in conformance with Utah Code Annotated title 52, Chapter 4, open and public~~ meetings.

~~E. Decision and Findings: The Appeal Authority's decision takes effect on the date its written decision is issued. Every decision of the Appeal Authority regarding the appeal shall contain a full record of the findings of the land use authority in the particular case. The Appeal Authority's decision constitutes a final, appealable decision.~~

~~Section 3-8 Rules~~

~~The Appeal Authority shall adopt rules for the regulation of procedure and the conduct of duties not inconsistent with the provisions of this Ordinance or of State law.~~

Comment [JS6]: In the past, such decisions have been written, rather than at a hearing. Saves time and money.

Comment [JS7]: Repetitive.

Comment [JS8]: repetitive