

MILLCREEK CITY, UTAH
ORDINANCE NO. 17---

**AN ORDINANCE OF THE MILLCREEK COUNCIL
AMENDING THE ORDINANCE
THAT CREATES AN APPEAL AUTHORITY IN
ORDER TO PROVIDE FOR A STAY**

WHEREAS, the Millcreek Council (“Council”) met in a regular meeting on February __, 2017, to consider, among other things, approving an ordinance amending the ordinance that creates an appeal authority in order to provide for a stay; and

WHEREAS, on December 12, 2016, the Council adopted Ordinance 16-2 that created an appeal authority; and

WHEREAS, the Council finds it necessary to amend Ordinance 16-2 to authorize the appeal authority to order a stay pending appeal authority review; and

WHEREAS, the Council finds that this Ordinance is consistent with the Municipal Land Use, Development, and Management Act, Utah Code Ann. § 10-9a-101, *et seq.*; and

WHEREAS, after careful consideration, the Council has determined that it is in the best interest of the health, safety and of the present and future inhabitants of Millcreek to adopt this Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Council that Ordinance __ be amended as follows (designated by interlineating the words to be deleted and underlining the words to be added):

Section 1 Purpose.

An appeals authority (“authority”) is hereby created pursuant to the terms of the Municipal Land Use, Development, and Management Act, Utah Code Ann. § 10-9a-101, *et seq.* It is the intent of the city council that the authority satisfies the requirement of the above referenced statute for an appeal authority to hear and decide requests for variances from the terms of the land use ordinance and appeals from decisions applying land use ordinances.

Section 2 Appointment.

The authority shall consist of one member who shall be appointed by the mayor, with the advice and consent of the city council, for a term determined at the time of appointment.

Section 3 Vacancies.

Any vacancy occurring on the authority shall be promptly filled by the mayor with the advice and consent of the city council for the unexpired term of the member whose office is vacant.

Section 4 Organization of authority.

The authority shall be organized as deemed appropriate and as approved by the Council.

Section 5 Hearings and due process.

Hearings of the authority shall be held as necessary. The authority shall not have ex parte contacts. The authority shall have authority to administer oaths, provide an opportunity for cross-examination, and direct the proceedings of the authority in a quasi-judicial manner, so that the due process rights of each participant are respected. All hearings shall be open to the public and shall be recorded.

Section 6 Appeal and time to appeal.

Any person desiring a waiver or modification of the requirements of a land use ordinance as applied to a parcel of property that he owns, leases, or in which he holds some beneficial interest in or any person adversely affected by a decision applying the land use ordinances, may file an appeal to the authority. The party taking the appeal shall file the appeal with the city recorder within ten (10) business days after the date that the land use authority issues its written decision. The appeal must include the filing of an application and payment of a fee as provide in the City's current fee schedule.

Section 7 Burden.

The appellant shall have the burden of proceeding and shall have the burden of proving that the land use authority erred.

Section 8 Standard of review.

The appeal authority shall determine the correctness of a decision of the land use authority in its interpretation and application of land use ordinances based solely on the record (factual matters shall not be reviewed *de novo*).

Section 9 Variances.

A. The authority shall have the following powers to authorize on appeal in specific cases a variance from the terms of this title. The authority may grant a variance only if:

1. Literal enforcement of this title would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of this title;

2. There are special circumstances attached to the property that do not generally apply to other properties in the same district;

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 this title is observed and substantial justice is done.

B. In determining whether enforcement of this title will cause unreasonable hardship, the 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 particular to the property, not from conditions which are general to the neighborhood. In determining whether or not enforcement of this title would cause an unreasonable hardship, the authority may not find an unreasonable hardship if the hardship is self-imposed or economic. In determining whether or not there are special circumstances attached to the property, the authority may find that special circumstances exist only if special circumstances relate to the hardship complained of and deprive the property of the privileges granted to other properties in the same district. The applicant shall bear the burden of proving that all the conditions justifying a variance have been met.

C. In granting a variance, the 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.

Section 10 Stay.

A. Stay of Proceedings on appeal to appeals hearing officer: An appeal to the appeals hearing officer shall stay all further proceedings concerning the matter about which the appealed order, requirement, decision, determination, or interpretation was made unless the authority making the land use decision certifies in writing to the appeals hearing officer, after the appeal has been filed, that a stay would, in that authority's opinion, be against the best interest of the city.

B. Stay of proceedings on appeal to district court. The appeals hearing officer may stay its decision only in accordance with the provisions of Utah Code section 10-9a-708(9)(b).

This Ordinance, assigned no. 17-___, shall take immediate effect as soon as it shall be published or posted as required by law and deposited and recorded in the office of the City's recorder.

PASSED AND APPROVED this ___ day of February, 2017.

MILLCREEK COUNCIL

By: _____
Jeff Silvestrini, Mayor

ATTEST:

Leslie Van Frank, Acting Recorder

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