

2-2-1: DEFINITIONS:

APPEAL AUTHORITY: The person appointed by the mayor with the advice and consent of council to hear appeals from person(s) who have been affected by the implementation of the land use ordinances.

LAND USE AUTHORITY: Anyone who has the authority to interpret or implement the city ordinances as defined by the land use ordinance.

LAND USE ORDINANCE: The legislatively adopted document referred to as the development code. (Ord. 07-7, 4-24-2007)

2-2-2: ESTABLISHMENT OF AN APPEAL AUTHORITY:

There is hereby created an appeal authority to be appointed by the mayor with the advice and consent of the city council. It is the intent of this establishment to appoint a person or person(s) who will not personally benefit from decisions associated with the interpretation of the ordinances of Elk Ridge City. In establishing an appeal authority, the city council may:

- A. Designate a separate appeal authority to hear requests for variances other than the appeal authority it designates to hear appeals.
- B. Designate one or more separate appeal authorities to hear distinct types of appeals of land use authority decisions. (Ord. 07-7, 4-24-2007)

2-2-3: TERM OF OFFICE:

The appeal authority shall serve for a term of two (2) years. The term of office shall commence February 1 in the year in which the appeal authority is appointed. Any vacancy occurring of an appeal authority by reason of death, resignation, removal or disqualification shall be filled in the same manner as an original appointment for the expired term. The mayor may remove an appeal authority for cause if written charges against the member are filed with the mayor and after public hearing, if such hearing is requested by the member. (Ord. 07-7, 4-24-2007)

2-2-4: ORGANIZATION AND PROCEDURE:

- A. The appeal authority shall adopt rules consistent with this code for its own organization and for the transaction of business.
- B. Meetings of the appeal authority shall be held within ten (10) days after an application has been filed.
- C. All meetings shall be open to the public.
- D. A decision of an appeal authority takes effect on the date when the appeal authority issues a written decision, within a reasonable time period thereafter, or as otherwise

provided. A final decision shall be made within sixty (60) days after an application has been filed. (Ord. 07-7, 4-24-2007)

2-2-5: DUTIES AND POWERS:

A. The appeal authority shall have the following powers and duties:

1. To act in a quasi-judicial manner; and
2. To serve as the final arbiter of issues involving the interpretation or the application of land use ordinances.

B. The appeal authority shall hear and decide on the following:

1. Requests for variances from the terms of the land use ordinances; and
2. Appeals from decisions applying the land use ordinances.

C. The appeal authority may not entertain an appeal of a matter in which the appeal authority, or any participating member, had first acted as the land use authority. (Ord. 07-7, 4-24-2007)

2-2-6: APPEALS TO THE APPEAL AUTHORITY:

A. As a condition precedent to judicial review, each adversely affected person may timely specifically challenge a land use authority's decision.

B. The appeal authority shall determine the correctness of a decision of the land use authority in its interpretation and application of a land use ordinance.

C. Only those decisions in which a land use authority has applied a land use ordinance to a particular application, person or parcel may be appealed to an appeal authority.

D. For every appeal, the applicant shall present to an appeal authority every theory of relief that it can raise in district court.

E. The city may not require an adversely affected party to pursue duplicate or successive appeals before the same or separate appeal authorities as a condition of the adversely affected party's duty to exhaust administrative remedies.

F. The appeal authority shall conduct each appeal and variance request as described by this chapter.

G. The appeal authority shall respect the due process rights of each of the participants.

H. Land use decisions specified by the city council may be appealed directly to the district court. (Ord. 07-7, 4-24-2007)

2-2-7: VARIANCES:

A. Any person or entity desiring a waiver or modification of the requirements of a land use ordinance as applied to a parcel or property that he owns, leases, or in which he holds some other beneficial interest may apply to the applicable appeal authority for a variance from the terms of the ordinance.

1. The appeal authority may grant a variance only if:

- a. Literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinances;
- 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.

B. In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under subsection A1a of 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.

C. In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under subsection A1a of this section, the appeal authority may not find an unreasonable hardship if the hardship is self-imposed or economic.

D. In determining whether or not there are special circumstances attached to the property under subsection A1b of 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 zone.

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

F. Variances run with the land.

G. The appeal authority may not grant a use variance.

H. 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 purpose of the standard or requirement that is waived or modified. (Ord. 07-7, 4-24-2007)

2-2-8: INTERPRETATION OF LAND USE ORDINANCE:

A. Any person alleging there was an error in any order, requirement, decision, or determination made by the land use authority in the administration or interpretation of the land use ordinance may request an interpretation and decision from the appeal authority in accordance with section [2-2-4](#) of this chapter.

B. The appeal authority will grant a waiver to the decisions of the land use authority procedural only as follows:

1. If the decision or requirement by the land use authority conflicts with the intent or literal interpretation of the land use ordinances; or
2. If the decision or requirement by the land use authority conflicts with state or local laws.

C. In some instances, the appeal authority may not fully understand the intent of an ordinance or requirement placed upon any person(s) by the land use authority. Under these circumstances the appeal authority may obtain a decision from the city council prior to making a final decision (if applicable).

1. If the appeal authority requires an interpretation from the city council, the appeal authority shall make a final decision within ten (10) days after that interpretation is given. (Ord. 07-7, 4-24-2007)

2-2-9: DISTRICT COURT REVIEW OF APPEAL AUTHORITY DECISIONS:



- A. Any person or entity adversely affected by any decision of the appeal authority may petition the district court for a review of the decision.
- B. In the petition for review, the petitioner may only allege that there was an error in any order, requirement, decision, or determination made by the land use authority in the administration or interpretation of the land use ordinance.
- C. The petition is barred unless it is filed within thirty (30) days after the appeal authority's decision becomes effective.
- D. The appeal authority shall transmit to the reviewing court the record of its proceedings including its minutes, findings, orders, and, if available, a true and correct transcript of its proceedings. If the proceeding was tape recorded, a transcript of that tape recording is a true and correct transcript for purposes of this subsection.
- E. Review of the appeal authority's decision shall be done by the court in the manner and upon the standards provided by law.
- F. The appellant has the burden of proving that the land use authority erred.
- G. No person may challenge in district court the land use decision made under this chapter, until that person has exhausted the person's administrative remedies as provided in this chapter.
- H. Any person adversely affected by a final decision made in the exercise of or in violation of the provisions of this chapter may file a petition for review of the decision with the district court within thirty (30) days after the local land use decision is final. (Ord. 07-7, 4-24-2007)