

SECTION 4

APPEAL AUTHORITY

THIS ORDINANCE PROVIDES FOR THE CREATION OF A THREE PERSON APPEAL AUTHORITY THAT REPLACES THE OLD BOARD OF ADJUSTMENT IN ACCORDANCE WITH THE STATE LAW.

PURPOSE: THE PURPOSE OF THIS ORDINANCE IS TO PROMOTE THE GROWTH AND WELFARE OF ELSINORE TOWN IN ACCORDANCE WITH THE STANDARDS SET FORTH IN THE GENERAL PLAN, TO PROTECT THE HEALTH AND WELFARE OF IT'S INHABITANTS, AND TO ENCOURAGE SAFE AND APPROPRIATE USE OF THE LAND WITHIN THE TOWN.

APPEAL AUTHORITY: ESTABLISHED IN ORDER TO CARRY OUT THE PROVISIONS OF UTAH STATE LAW REQUIRING ONE OR MORE PERSONS TO HEAR AND DECIDE:

- A. REQUESTS FOR VARIANCES FROM THE TERMS OF THE LAND USE ORDINANCE; AND
- B. APPEALS AND DECISIONS APPLYING TO LAND USE ORDINANCES.

THE PLANNING COMMISSION CAN MAKE A RECOMMENDATION TO THE TOWN COUNCIL ON WHOM THEY THINK SHOULD HEAR APPEALS AND VARIANCES. THE MAYOR WITH THE ADVICE AND CONSENT OF THE TOWN COUNCIL MAKES APPOINTMENT FOR THE APPEAL AUTHORITY.

TERM IN OFFICE: THE TERM IN OFFICE SHALL BE THREE YEARS OR UNTIL A REPLACEMENT HAS BEEN FOUND IN A PROMPT AND TIMELY MANNER. THE TERM OF THE APPEAL AUTHORITY MEMBER SHALL BEGIN IN FEBRUARY AND RUN FOR THREE YEARS. VACANCIES SHALL BE PROMPTLY FILLED IN THE SAME MANNER AS THE ORIGINAL APPOINTMENT FOR THE REMAINDER OF THE UNEXPIRED TERM.

ORGANIZATION AND PROCEDURES: THE APPEAL AUTHORITY CONVENES A HEARING OR MEETING ONLY AS NEEDED AND ALL HEARINGS OR MEETINGS ARE SUBJECT TO THE OPEN AND PUBLIC MEETINGS ACT, TITLE 52, CHAPTER 04. AS SUCH, SOMEONE ON BEHALF OF THE APPEAL AUTHORITY MUST DRAFT ACCURATE MINUTES OF EACH MEETING. A ONE PERSON APPEAL AUTHORITY MAY CHOOSE SOMEONE TO TAKE MINUTES. THE HEARING MUST, BY STATE LAW, BE RECORDED IN ADDITION TO WRITTEN MINUTES OF THE PROCEEDINGS.

POWERS AND DUTIES: AN APPEAL AUTHORITY IS EMPOWERED TO HEAR AND DECIDE:

- A. APPEALS ON ZONING AND LAND USE ISSUES AND DECISIONS,
- B. VARIANCES AND CONDITIONAL USE ISSUES. ANY VARIANCES GRANTED SHALL NOT AFFECT THE OVERALL PLAN OF ZONING IN THE TOWN BUT SHALL SERVE ONLY TO PREVENT UNNECESSARY HARDSHIP TO THE PETITIONER, IF GRANTED.

APPEALS:

WHO MAY APPEAL: APPEALS TO THE APPEAL AUTHORITY MAY BE MADE BY ANY AGGRIEVED PERSON, OFFICER, DEPARTMENT, BOARD OR BUREAU OF THE MUNICIPALITY AFFECTED BY ANY LAND USE DECISION. THE APPEAL AUTHORITY SHALL HEAR EACH APPEAL WITHIN A REASONABLE AMOUNT OF TIME. APPEALS SHALL BE FILED IN WRITING BY THE AGGRIEVED PARTY TO THE TOWN CLERK AND SUBMITTED TO THE APPEAL AUTHORITY WITHIN 30 DAYS AFTER DENIAL OF A VARIANCE BY THE PLANNING COMMISSION.

NOTICE OF HEARING: THE APPEAL AUTHORITY SHALL FIX A REASONABLE TIME FOR THE HEARING OF AN APPEAL, GIVE 10 (TEN) DAYS PUBLIC NOTICE THEREOF, AS WELL AS WRITTEN NOTICE TO THE PARTIES OF INTEREST – AGAIN WITH 10 (TEN) DAYS NOTICE. ANY AGGRIEVED PARTY MAY APPEAR AT THE HEARING IN PERSON, BY AGENT, OR BY ATTORNEY.

FEE FOR APPEAL: A FILING FEE WILL BE ASSESSED FOR EACH CASE BROUGHT TO THE APPEAL AUTHORITY. NO PART OF THIS FEE WILL BE REFUNDED, EXCEPT IN THE CASE WHERE THE PETITIONER PREVAILS, THEN THE FEE WILL BE REFUNDED TO THE INDIVIDUAL. REFER TO ELSINORE TOWN FEE SCHEDULE FOR CURRENT RATE.

STANDARDS FOR APPEAL: FIVE STANDARDS, AS MANDATED BY UTAH STATE MUST BE MET BEFORE A VARIANCE IS GRANTED TO A PETITIONER,

1. THAT 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.
2. THAT THERE ARE SPECIAL CIRCUMSTANCES ATTACHED TO THE PROPERTY THAT DO NOT GENERALLY APPLY TO OTHER PROPERTIES IN THE SAME ZONE.
3. THAT GRANTING THE VARIANCE IS ESSENTIAL TO THE ENJOYMENT OF A SUBSTANTIAL PROPERTY RIGHT POSSESSED BY OTHER PROPERTY IN THE SAME ZONE.
4. THAT THE VARIANCE WILL NOT SUBSTANTIALLY AFFECT THE GENERAL PLAN AND WILL NOT BE CONTRARY TO THE PUBLIC INTEREST; AND
5. THAT THE SPIRIT OF THE LAND USE ORDINANCE IS OBSERVED AND SUBSTANTIAL JUSTICE DONE.

HARDSHIP DEFINED:

- A. THE HARDSHIP MUST BE ASSOCIATED WITH THE PROPERTY IN QUESTION.
- B. THE HARDSHIP MUST BE PECULIAR TO THIS PIECE OF PROPERTY AND NOT ONE THAT IS GENERAL TO THE NEIGHBORHOOD.
- C. THE HARDSHIP CANNOT BE ECONOMIC, DUE TO PHYSICAL HANDICAP, OR SELF-IMPOSED.
- D. THE HARDSHIP CANNOT BE A USE VARIANCE I.E. TO CHANGE THE GENERAL USE OF THE PROPERTY AS DEFINED BY THE ZONING ORDINANCE.

JUDICIAL REVIEW OF APPEAL AUTHORITY DECISION: THE PETITIONER AGGRIEVED BY ANY DECISION OF THE APPEAL AUTHORITY MUST APPEAL THAT DECISION IN THE DISTRICT COURT. IF THE APPEAL AUTHORITY IS IN DOUBT ABOUT APPROVING OR DENYING A VARIANCE THE REQUEST MAY BE TABLED IN ORDER THAT THE APPEAL AUTHORITY HAS TIME TO SEEK LEGAL ADVICE.

ETHICS: THE SETTING FORTH OF THIS STANDARD IS TO PROTECT BOTH THE APPEAL AUTHORITY MEMBER AND PETITIONER.

1. THE OFFICE OF APPEAL AUTHORITY MAY NOT BE USED FOR FINANCIAL BENEFIT, FAVORS, OR INFORMATION.
2. THE APPEAL AUTHORITY MAY NOT RECEIVE GIFTS IN CONNECTION WITH ANY CASE OR PERSON THAT WILL BE APPEARING BEFORE HIM OR HER.
3. THE APPEAL AUTHORITY IS REQUIRED TO FILE A PUBLIC DISCLOSURE WITH THE TOWN CLERK AS TO ANY BUSINESS INTEREST THAT HE/SHE MAY HAVE THAT IS REGULATED BY THE TOWN. THIS DOCUMENT IS REQUIRED UPON FIRST ACCEPTING APPOINTMENT AND SHOULD BE UPDATED EACH TIME THE APPEAL AUTHORITY IS RE-APPOINTED OR EACH TIME HIS/HER BUSINESS INTERESTS CHANGE IN A MANNER MATERIAL TO THE DISCLOSURE.
4. ANY PERSONAL INTEREST OR INVESTMENT THAT CREATES A CONFLICT WITH PUBLIC DUTIES OF THE APPEAL AUTHORITY MUST BE DISCLOSED IN AN APPEAL'S OPEN MEETING IF APPLICABLE TO THAT APPEAL AND RECORDED IN WRITTEN AND AUDIO RECORDINGS OF THE MINUTES.