

Chapter 19.92
APPEALS HEARING OFFICER

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19.92.010 Appeals hearing officer.

A. *Position Created.* The position of appeals hearing officer is created pursuant to authority granted by the Municipal Land Use, Development, and Management Act, UTAH CODE ANN. 10-9a-101 *et seq.* (the “Act”). The appeals hearing officer shall replace in all respects the previous duties of the city’s board of adjustment.

B. *Powers and Duties.* The appeals hearing officer is the city’s appeal authority pursuant to section 10-9a-701 of the Act, and shall have the following powers and duties:

1. Hear and decide appeals where it is alleged that there is an error in any order, requirement, decision or determination made by an administrative official or the planning commission in the enforcement or interpretation of this title or of any ordinance adopted pursuant thereto, including conditional use decisions. Appeals may not be used to waive or modify the terms or requirements of this title.

2. Authorize variances from the terms of this title pursuant to the procedures and standards set forth in section 19.92.030. “Variances,” of this chapter.

3. Hear and decide appeals from decisions made by an administrative

official or the planning commission concerning subdivisions or subdivision amendments pursuant to Title 12 of this code.

4. Hear and decide applications to amend, modify, expand, nonconforming uses pursuant to section 19.88.070.

C. *Qualifications.* Each appeals hearing officer shall be appointed by the city manager with the advice and consent of the city council. The manager may appoint more than one appeals hearing officer, but only one appeals hearing officer shall consider and decide any matter properly presented for appeals hearing officer review. An appeals hearing officer may serve a maximum of three consecutive full terms of five years each. The appeals hearing officer shall either be law trained or have significant experience with land use laws and the requirements and operations of administrative hearing processes.

D. *Conflict Of Interest.* An appeals hearing officer shall not participate in any appeal in which the appeals hearing officer has a conflict of interest under the standards set forth in the Municipal Officers’ and Employees’ Ethics Act, UTAH CODE ANN. 10-3-1301 *et seq.*

E. *Compensation.* Each appeals hearing officer shall be compensated for its services on a reasonable, uniform basis applicable to all the city’s appeals hearing officers. The basis and rate of compensation shall be determined by the manager in consultation with the mayor and the city attorney.

E. *Removal.* An appeals hearing officer may resign at any time upon at least 60 days’ prior written notice to the manager. An appeals hearing officer may be removed for cause by the manager for violation of this title or any applicable policies and procedures following receipt by the manager of a

written complaint filed against the appeals hearing officer. If requested by the appeals hearing officer, the manager shall provide the appeals hearing officer with a public hearing conducted by the manager or a qualified designee. Any vacancy shall be promptly filled by the manager with the advice and consent of the city council.

19.92.020 General procedures for hearings.

In addition to any other procedures in this title which are applicable to hearings conducted by the appeals hearing officer:

A. The appeals hearing officer may administer oaths and compel the attendance of witnesses.

B. All hearings before the appeals hearing officer shall comply with the requirements of the Open and Public Meetings Act, UTAH CODE ANN. 52-4-101 *et seq.*

C. If the appeals hearing officer is authorized by this code to hear and decide appeals of planning commission decisions, then the appeals hearing officer shall review the record of the planning commission decision to determine whether the decision is not illegal and is supported by substantial evidence in the record and therefore not so unreasonable as to be arbitrary and capricious.

D. If the appeals hearing officer is authorized by this code to hear and decide appeals of city administrative official decisions, then the appeals hearing officer shall make a *de novo* review of any such issue.

E. The appeals hearing officer shall:

1. Keep minutes and/or audio recordings of his or her proceedings; and
2. Keep records of his or her examinations and other official actions.

F. The appeals hearing officer shall file his or her records in the office of the

city's community development department. All such records are subject to the Government Records Access and Management Act, UTAH CODE ANN. 63G-2-101 *et seq.*

G. Decisions of the appeals hearing officer become effective at the meeting in which the decision is made, unless a different time is designated at the time the decision is made, such as the date of issuance of any written decision by the appeals hearing officer.

19.92.030 Variances.

A. Any person or entity desiring a waiver or modification of the requirements of this title as applied to a parcel of real property that he or she owns, leases or holds some other beneficial interest may apply to the appeals hearing officer for a variance from the terms of this title. The variance procedures in this section are intended to provide a narrowly circumscribed means by which relief may be granted from unforeseen particular applications of this title that create unreasonable hardships. When such hardships may be more appropriately remedied, if at all, pursuant to other provisions of this title, the variance procedure is inappropriate.

B. Procedure.

1. Application. An application for a variance shall be filed with the director of community development (the "*director*") and shall include the following items and information unless determined inapplicable by the director:

(a) Written Information:

(i) The property owner's name and address and the owner's signed consent to the filing of the application;

(ii) The applicant's name and address, if different than the owner, and the applicant's interest in the subject property;

(iii) The names and addresses of all professional consultants, if any, advising the applicant with respect to the application;

(iv) The address and legal description of the subject property;

(v) The Sidwell map numbers identifying the property; and

(vi) The names and addresses of the owners of all real property located within 500 feet of the subject property.

2. Graphic Information.

(a) A site plan drawn to scale identifying all property lines, structures, including primary and accessory structures, fences, right of way, and their respective distances from the property lines;

(b) An elevation drawing to scale showing all elevations of existing and proposed structures;

(c) When the variance involves building height a streetscape plan showing the height of the buildings on both sides of the street to the nearest intersection;

(d) When the variance involves grade changes, a topographical drawing prepared by a licensed surveyor shall be included. The existing topography shall be shown in dashed lines at two foot intervals and the proposed grade shall be shown in solid lines at two foot intervals. All retaining walls shall be identified and the height shall be shown on the plan relative to the proposed grades. Retaining walls shall be designed by a structural engineer licensed to practice in the state; and

(e) When a variance request involves setbacks or height or grade changes a complete landscape plan shall be provided, which shall show landscape design and identify all species and caliper of proposed plants.

3. Variance Information.

(a) The specific feature or features of the proposed use, construction or development that require a variance;

(b) The specific provision of this title from which the variance is sought and the precise variance being sought;

(c) A statement of the characteristics of the subject property that prevent compliance with the provisions of this title and result in unnecessary hardship;

(d) A statement of the minimum variation of the provisions of this title that would be necessary to permit the proposed use, construction or development;

(e) An explanation of how the application satisfies each standard set forth in subsection C of this section; and

(f) Any other information identified by the director to be pertinent to the requested variance.

4. Fees. The application shall be accompanied by the applicable fees shown on the city's consolidated fee schedule. The applicant shall also be responsible for payment of all fees established for providing the public notice required by this title.

5. Hearing. Upon receipt of a complete application for a variance, the appeals hearing officer shall hold a hearing with notice in accordance with the requirements of this chapter.

6. Decision. Upon the close of the hearing the appeals hearing officer shall render its decision, granting, granting with conditions, or denying the variance.

C.

1. The appeal hearing officer may authorize in specific cases variance from the terms of this title only if:

(a) 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;

(b) There are special circumstances attached to the property that do not generally apply to other properties in the same district;

(c) Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district;

(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 zoning ordinance is observed and substantial justice is done.

2. In determining whether enforcement of the zoning ordinance would cause unreasonable hardship under subsection (C)(1)(a) of this section, the appeals hearing officer may not find an unreasonable hardship unless the alleged hardship:

(a) Is located on or associated with the property for which the variance is sought, and

(b) Comes from circumstances particular to the property, not from conditions which are general to the neighborhood.

3. In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under subsection (C)(1)(a) of this section, the appeals hearing officer may not find an unreasonable hardship if the hardship is self-imposed or economic.

4. In determining whether or not there are special circumstances attached to the property under subsection (C)(2)(b) of this section, the appeals hearing officer may find that special circumstances exist only if special circumstances:

(a) Relate to the hardship complained of; and

(b) Deprive the property of the privileges granted to other properties in

the same district.

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

E. Variances run with the land.

F. The appeals hearing officer shall not grant a variance that:

1. Is intended as a temporary measure only;

2. Is greater than the minimum variation necessary to relieve the unnecessary hardship demonstrated by the applicant; or

3. Authorizes uses not allowed by law (i.e., a “use variance”).

G. In granting a variance, the appeals hearing officer 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.

H. A variance less than or different than that requested may be authorized when the record supports the applicant's right to some relief but not to the relief requested.

19.92.040 Appeals of administrative decisions.

A. *Authority.* As described in section 19.92.010(B), the appeals hearing officer shall hear and decide appeals alleging an error in any decision made by a city administrative official as well as administrative decisions of the planning commission. Planning commission recommendations to the city council concerning proposed amendments to the city's zoning ordinance, zoning map or general plan are not appealable and therefore may not be appealed to the appeals hearing officer.

B. *Parties Entitled to Appeal.* An applicant or any other person or entity

adversely affected by a decision administering or interpreting this title may appeal to the appeals hearing officer.

C. Filing Procedures. An appeal shall be made in writing within ten days of the administrative decision by the city administrative official or planning commission and shall be filed with the city's community development department. The appeal shall specify the decision appealed, the alleged error made in connection with the decision being appealed, and the reasons the appellant claims the decision to be in error, including every theory of relief that can be presented in district court.

D. Fees. The appeal shall be accompanied by the applicable fees shown on the city's consolidated fee schedule. The appellant shall also be responsible for payment of all fees established for providing any required public notice.

E. Stay. 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 director of the city's community development department certifies in writing to the appeals hearing officer, after the appeal has been filed, that a stay would, in the director's opinion, be against the best interest of the city.

F. Notice. Upon receipt of an appeal of an administrative decision, the appeals hearing officer shall schedule and hold a public hearing in accordance with the standards and procedures set forth in this chapter. Notification of the date, time and place of the hearing shall be given to the appellant, the respondent (i.e., the land use applicant) and the city at least 15 calendar days before the

hearing, and notice of the hearing shall be posted on the city's website and the state public notices website at least five calendar days before the hearing.

G. Time Limitation. All appeals shall be heard within 180 days after the filing of the appeal. Appeals not heard within this time frame due to the appellant's failure to expeditiously pursue its appeal will be considered void and withdrawn by the appellant.

H. Burden Of Proof. The appellant has the burden of proving the decision appealed is incorrect.

I. Standards of Review. The standards of review shall be as specified in section 19.92.020. In appeals on the record of administrative decisions of the planning commission, no new evidence shall be heard or considered by the appeals hearing officer. In *de novo* appeals of decisions of administrative officials, the appeals hearing officer shall review the matter appealed anew, based upon applicable procedures and standards for approval and giving no deference to the decision below. The appeals hearing officer shall review the decision based upon applicable standards and shall determine its correctness.

J. Decision. The appeals hearing officer shall uphold the decision unless it is not supported by substantial evidence in the record or it violates a law, statute, or ordinance in effect when the decision was made. The appeals hearing officer shall render a written decision on the appeal. Such decision may reverse or affirm, wholly or in part, or may modify the administrative decision.

K. Effective Date; Notification. A decision by the appeals hearing officer shall become effective on the date the decision is rendered. Notification of the decision of the appeals hearing officer shall be sent by mail to all parties to the

appeal within ten days after the appeals hearing officer's decision.

L. Record of Proceedings. The proceedings of each appeal hearing shall be recorded on audio equipment. The audio recording of each appeal hearing shall be kept for a minimum of 60 days. Upon the written request of any interested person, such audio recording shall be kept for a reasonable period of time beyond 60 days, as determined by the appeals hearing officer. Copies of the recordings of such hearings may be provided, if requested, at the expense of the requesting party. The appeals hearing officer may have the appeal proceedings contemporaneously transcribed by a court reporter.

M. Policies and Procedures. The manager may adopt policies and procedures, consistent with the provisions of this section, for processing appeals of administrative decisions, the conduct of an appeal hearing, and for any other purpose considered necessary to properly consider an appeal.

N. Submissions. All briefs, transcripts and other written materials desired to be submitted by the appellant, the respondent or the city in connection with an appeal shall be provided to the appeals hearing officer at least ten business days before the hearing date.

the decision of the district court in any appeal of the decision.

19.92.050 Appeal of decision.

If authorized by state statute, any person adversely affected by a final decision made by the appeals hearing officer may file a petition for review of the decision with the district court within 30 days after the decision is rendered.

19.92.060 Stay of decision.

The appeals hearing officer may stay the issuance of any permits or approval based on its decision for 30 days or until