

# **CHAPTER 3**

## **DECISION MAKING BODIES, AND OFFICIALS**

**(Amended 10/99, 4/02, 10/05, 2008, 2010)**

### **3.1 CITY COUNCIL.**

- (1)** The City Council has the following powers and duties in connection with the implementation of this Ordinance:
- (a) to adopt, amend, or reject a proposed General Plan for all or part of the area within the City;
  - (b) to consider and adopt, reject or modify amendments to the text of this Ordinance and to the Zoning Map pursuant to the provisions of this chapter.
  - (c) to establish a Fee Schedule for applications for zoning amendments, special approvals and any other type of approval required by the provisions of this Ordinance; and
  - (d) to take such other actions not delegated to other bodies which may be desirable and necessary to implement the provisions of this Ordinance.

### **3.2 PLANNING COMMISSION, NUMBER OF MEMBERS, APPOINTMENT, TERM OF OFFICE (Amended 10/99, 4/02, & 10/05).**

- (1) The Grantsville City Planning Commission is hereby designated as a land use authority for Grantsville city, to act in its individual jurisdiction.
- (2) The Planning Commission shall consist of six members, five voting members who do not hold a public office and one non-voting member from the city council. All members shall be appointed by the mayor with the advice and consent of the City Council. All members shall be residents and owners of real property with Grantsville City. Members shall hold no other public office or position with Grantsville City.
- (3) The terms of the appointed members of the Planning Commission, with the exception of the ex-officio member, shall be three years, and until their respective successors have been appointed, except that the terms of appointment shall be such that the terms of two members shall expire each year. The ex-officio member shall serve at the pleasure of the City Council. The Planning Commission existing at

the time of passage of this Code shall continue to serve, and the terms of its members shall be fixed by the City Council in such a manner as to comply with the above provisions for staggering terms of service.

### **3.3 COMPENSATION.**

(1) The members of the Planning Commission shall serve as such without compensation, except that the City Council may fix per diem compensation for the members of the Planning Commission based on necessary and reasonable expenses and on meetings actually attended. The actual expenses incurred shall be based upon presentation of proper receipts and vouchers.

### **3.4 VACANCIES AND REMOVALS FOR CAUSE.**

(1) Vacancies of appointed members occurring otherwise than through the expiration of terms shall be filled for the remainder of the unexpired term. The City Council shall have the right to remove any member of the Planning Commission for misconduct and may remove any member for non-performance of duty. Unexcused absences from 3 consecutive regular scheduled meetings of the Planning Commission may be considered by the City Council as non-performance of duty.

### **3.5 THE CHAIR. (Amended 4/19/00)**

(1) The Planning Commission shall elect from its members a Chair and Vice Chair during the month of January of each year, whose term of office shall be for twelve (12) months or until a successor is elected.

### **3.6 EX PARTE CONTACT**

(1) Ex parte contact between planning commission members and opposing parties involved in litigation with Grantsville City involving land use issues shall be prohibited. Planning commission members shall not participate in site or office visits, electronic communication, written communication, or verbal conversation either face-to-face or over the telephone, with any individual or any representative of a company or entity involved in legal proceedings with Grantsville City involving land use issues. This prohibition shall include plaintiffs who have filed suit against Grantsville City, claimants who have served a Notice of Claim on Grantsville City, and defendants in actions filed by Grantsville City, such as those in violation of provisions of the Grantsville City Ordinance or the Grantsville Land Use Management and Development Code.

(2) Planning commission members shall be restricted from ex parte contact, including site or office visits, electronic communication, written communication, and verbal conversation either face-to-face or over the telephone, with any

individual or representative of a company or entity when such interaction involves a request for a conditional use permit, planned unit development, a request for approval of a subdivision, or for an exception to the Grantsville Land Use Management and Development Code. Interaction between applicants and those in opposition to an application shall only occur at a legally scheduled meetings where the public has received legal notice. This restriction on ex parte contact applies to all conditional use permit approval requests, planned unit development or subdivision requests, after an application for such is filed with the Grantsville City, while the application is under review by the planning commission, after a decision or recommendation on the application has been made by the planning commission, while the application is under review by the Grantsville City Council, or while the application is under appeal, if an appeal is filed. Planning commissioners shall not participate in ex parte contact with individuals or representatives of a company or entity opposed to a request for a conditional use permit, planned unit development or a subdivision approval, or an exception to the Grantsville Land Use Management and Development Code.

(3) If ex parte contact as described in Subsections (1) or (2) occurs, it shall be disclosed at the next meeting of the planning commission and the planning commission member who had such contact shall neither participate in the discussion nor vote on the matter.

(4) Receipt of written information regarding an active request for a conditional use permit, planned unit development or a subdivision, or an exception to the Grantsville Land Use Management and Development Code shall be permitted, provided such written information is disclosed at the next meeting of the planning commission and submitted as a part of the record of that meeting.

### **3.7 RULES AND REGULATIONS.**

(1) The Planning Commission may adopt such rules and regulations governing its procedures as it may consider necessary or advisable, and shall keep record of its proceedings, which record shall be open to inspection by the public at all times. The adopted rules and regulations shall be presented to the City Council for their approval or disapproval. Only after the formal approval of the City Council shall the rules and regulations be enforceable.

### **3.8 DOCUMENT SUBMISSION AND REVIEW PROCEDURES**

(1) Pre-Submission Procedures. To facilitate the handling of applications, the Planning Commission may adopt pre-submission procedures to allow for adequate investigations and staff review and may require compliance with such pre-submission review procedures as a prerequisite to formal receipt and action by the Planning Commission. Pre-submission review shall in no way be interpreted to

mean review by the Planning Commission.

(2) Submission and Docketing for Review. Upon receipt of all required fees and information for any specific step of the review procedure, the Zoning Administrator and other members of the Technical Review Committee if established, shall review the application for completeness and compliance with the provisions of this Code and other pertinent municipal regulations. When the Zoning Administrator determines that the application is ready for Planning Commission review, the Zoning Administrator will docket the application for review at the next regular public meeting of the Planning Commission. Incomplete applications shall not be docketed for Planning Commission review.

(3) Applications and concept plans are required for all land uses.

### **3.9 PLANNING COMMISSION POWERS AND DUTIES.**

- (1) The Planning Commission shall:
- (a) prepare and recommend a General Plan and subsequent amendments to the General Plan to the City Council;
  - (b) recommend zoning ordinances, subdivision ordinances, development codes and maps, and subsequent amendments to zoning ordinances, subdivision ordinances, development codes and maps to the City Council;
  - (c) administer provisions of the zoning ordinance, where specifically provided in this Code;
  - (d) recommend approval or denial of subdivision applications as provided in this Code;
  - (e) hear or decide the approval or denial of, or recommendations to approve or deny, conditional use permits;
  - (f) advise the City Council on matters as the City Council directs;
  - (g) exercise any other powers that are necessary to enable it to perform its function delegated to it by the City Council.

### **3.10 GENERAL PLAN.**

- (1) Grantsville City shall prepare and adopt a comprehensive, long range,

general plan for the growth and development of the land within Grantsville City considering the present and future needs of the City and growth and development of the land.

(2) The plan may provide for:

- (a) health, general welfare, safety energy conservation, transportation, prosperity, civic activities, aesthetics and recreational, educational and cultural opportunities.
- (b) the reduction of waste of physical, financial, or human resources that result from either excessive congestion or excessive scattering of population;
- (c) the efficient and economical use, conservation, and production of the supply of:
  - (i) food and water, and
  - (ii) drainage, sanitary, and other facilities and resources;
- (d) the use of energy conservation and solar and renewable energy resources; and
- (e) the protection of urban development.
- (f) the protection or promotion of moderate income housing;
- (g) the protection and promotion of air quality;
- (h) historic preservation;
- (i) identifying future uses of the land that are likely to require and expansion or significant modification of services or facilities provided by each affected entity;
- (l) an official map;

(3) (a) The Planning Commission shall provide notice as provided in Section 1.18(1), of its intent to make a recommendation to the municipal legislative body for a general plan or a comprehensive general plan amendment when the planning commission initiates the process of preparing its recommendation.

(b) The Planning Commission shall make and recommend to the legislative body a proposed general plan for the area within the city.

(c) The plan may include areas outside the boundaries of the city if, in the planning commission's judgment, those areas are related to the planning of the city's territory.

(d) Except as otherwise provided by or with respect to a city's power of eminent domain, when the plan of a city involves territory outside the boundaries of the city if, the city may not take action affecting the territory without the concurrence of the county or other municipalities affected.

(4) (a) At a minimum, the proposed general plan, with the accompanying maps, charts, and descriptive and explanatory matter, shall include the planning

commission's recommendation for the following plan elements:

- (i) a land use element that;
    - (A) designates the long-term goals and the proposed extent, general distribution, and location of land for housing, business, industry, agriculture, recreation, education, public buildings and grounds, open space, and other categories of public and private uses of land as appropriate, and
    - (B) may include a statement of the projections for and standards of population density and building intensity recommended for the various land use categories covered by the plan;
  - (ii) a transportation and traffic circulation element consisting of the general location and extent of existing and proposed freeways, arterial and collector streets, mass transit, and any other modes of transportation that the planning commission considers appropriate, all correlated with the population projections and the proposed land use element of the general plan, and
  - (iii) an estimate of the need for the development of additional moderate income housing within the city, and a plan to provide a realistic opportunity to meet estimated needs for additional moderate income housing if long-term projections for land use and development occur.
- (b) In drafting the moderate income housing element, the planning commission:
- (i) shall consider the State legislature's determination that cities should facilitate a reasonable opportunity for a variety of housing, including moderate income housing:
    - (A) to meet the needs of people desiring to live there; and
    - (B) to allow persons with moderate incomes to benefit from and fully participate in all aspects of neighborhood and community life; and
  - (ii) may include an analysis of why the recommended means, techniques, or combination of means and techniques provide a realistic opportunity for the development of moderate income housing within the planning horizon, which means or techniques may include a recommendation to:
    - (A) rezone for densities necessary to assure the production of moderate income housing;
    - (B) facilitate the rehabilitation or expansion of infrastructure that will encourage the construction of moderate income housing;
    - (C) encourage the rehabilitation of existing uninhabitable housing stock into moderate income housing;
    - (D) consider general fund subsidies to waive construction related fees that are otherwise generally imposed by the city;
    - (E) consider utilization of state or federal funds or tax incentives to promote the construction of moderate income housing;
    - (F) consider utilization of programs offered by the Utah Housing Corporation within that agency's funding capacity; and
    - (G) consider utilization of affordable housing programs administered by

the Department of Community and Economic Development.

(5) The proposed general plan may include:

(a) an environmental element that addresses:

(i) the protection, conservation, development, and use of natural resources, including the quality of air, forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals, and other natural resources; and

(ii) the reclamation of land, flood control, prevention and control of the pollution of streams and other waters, regulation of the use of land on hillsides, stream channels and other environmentally sensitive areas, the prevention, control, and correction of the erosion of soils, protection of watersheds and wetlands, and the mapping of known geologic hazards;

(b) a public services and facilities element showing general plans for sewage, water, waste disposal, drainage, public utilities, rights-of-way, easements, and facilities for them, police and fire protection, and other public services;

(c) a rehabilitation, redevelopment, and conservation element consisting of plans and programs for:

(i) historic preservation; and

(ii) the diminution or elimination of blight; and

(iii) redevelopment of land, including housing sites, business and industrial sites, and public building sites;

(d) an economic element composed of appropriate studies and forecasts, as well as an economic development plan, which may include review of existing and projected municipal revenue and expenditures, revenue sources, identification of basic and secondary industry, primary and secondary market areas, employment, and retail sales activity;

(e) recommendations for implementing all or any portion of the general plan, including the use of land use ordinances, capital improvement plans, community development and promotion, and any other appropriate action;

(f) any other element the city council considers appropriate.

### **3.11 PUBLIC HEARING BY PLANNING COMMISSION ON PROPOSED GENERAL PLAN OR AMENDMENT . NOTICE . REVISIONS TO GENERAL PLAN OR AMENDMENT . ADOPTION / REJECTION BY LEGISLATIVE BODY. (2008-35)**

(1) (a) After completing its recommendation for a proposed general plan, or proposal to amend the general plan, the planning commission shall schedule and hold a public hearing on the proposed plan or amendment.

(b) The planning commission shall provide notice of the public hearing, as required by Section 1.18(1).

(c) After the public hearing, the planning commission may modify the proposed general plan or amendment.

(2) The planning commission shall forward the proposed general plan or amendment to the legislative body.

(3) The legislative body may make any revisions to the proposed general plan or amendment that it considers appropriate.

(4) (a) The municipal legislative body may adopt or reject the proposed general plan or amendment either as proposed by the planning commission or after making any revision that the municipal legislative body considers appropriate.

(b) If the municipal legislative body rejects the proposed general plan or amendment, it may provide suggestions to the planning commission for its consideration.

(5) The legislative body shall adopt:

(a) a land use element as provided in Subsection 3.10(3)(a)(i);

(b) a transportation and traffic circulation element as provided in Subsection 3.10(3)(a)(ii); and

(c) for all cities, after considering the factors included in Subsection 3.10(3)(b)(ii), a plan to provide a realistic opportunity to meet estimated needs for additional moderate income housing if long-term projections for land use and development occur.

(6) No application for an amendment to the general plan shall be considered by the City Council or the Planning Commission within two years of the final decision of the city Council upon a prior application covering substantially the same subject or substantially the same property. This determination shall be made by the Zoning Administrator upon receipt of an application. This provision shall not restrict the Mayor, a City Council member or a Planning Commissioner from proposing any future land use map category of the city at any time. The decision of the Zoning Administrator may be appealed to the City Council, provided a written appeal is filed with the City Recorder within 15 days of the Zoning Administrator's final decision. (Ordinance No. 2008-35)

### **3.12 EFFECT OF GENERAL PLAN.**

(1) Except as provided in Utah Code Annotated Section 10-9a-406, the general plan is an advisory guide for land use decisions.

### **3.13 PUBLIC USES TO CONFORM TO GENERAL PLAN.**

(1) After the legislative body has adopted a general plan no street, park or other public way, ground, place, or space, no publicly owned building or structure, and no public utility, whether publicly or privately owned, may be constructed or authorized until and unless it conforms to the current general plan.

### **3.14 BIENNIAL REVIEW OF MODERATE INCOME HOUSING ELEMENT OF GENERAL PLAN.**

(1) The legislative body of each city shall biennially:

(a) review the moderate income housing plan element of its general plan and its implementation; and

(b) prepare a report setting forth the findings of the review.

- (2)** Each report under Subsection (1) shall include a description of:
- (a) efforts made by the city to reduce, mitigate, or eliminate local regulatory barriers to moderate income housing;
  - (b) actions taken by the city to encourage preservation of existing moderate income housing and development of new moderate income housing;
  - (c) progress made within the city to provide moderate income housing, as measured by permits issued for new units of moderate income housing; and
  - (d) efforts made by the city to coordinate moderate income housing plans
-

and actions with neighboring municipalities.

(3) The city council of each city shall send a copy of the report under Subsection (a) to the Department of Community Development and the association of governments in which the city is located.

(4) In a civil action seeking enforcement or claiming a violation of this section or of Subsection 3.10(3)(b), a plaintiff may not recover damages but may be awarded only injunctive or other equitable relief.

### **3.15 PREPARATION AND ADOPTION OF LAND USE ORDINANCE OR ZONING MAP.**

(1) The Planning Commission shall:

(a) provide notice as require by Subsection 1 .18(1)(a);

(b) hold a public hearing on a proposed land use ordinance or zoning map;

(c) prepare and recommend to the legislative body a proposed land use ordinance or ordinance and zoning map the represent the planning commission's recommendation for regulating the use and development of land within all or any part of the area of the municipality.

(2) the city council shall consider each proposed land use ordinance and zoning map recommended to it by the planning commission, and after providing notice as required by Subsection 1.1 8(2)(c) and holding a public meeting, the city council may adopt or reject the ordinance or map either as proposed by the planning commission or after making any revision the municipal legislative body considers appropriate.

### **3.16 ZONING DISTRICTS.**

(1) (a) The city council may divide the territory over which it has jurisdiction into zoning districts of a number, shape, and area that it considers appropriate to carry out the purposes of this chapter.

(b) Within those zoning districts, the city council may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings and structures, and the use of land.

(2) The city council shall ensure that the regulations are uniform for each class or kind of buildings throughout each zoning district, but the regulations in one zone may differ from those in other zones.

(3) (a) There is no minimum area or diversity of ownership requirement for a zone designation.

(b) Neither the size of a zoning district nor the number of landowners within the district may be used as evidence of the illegality of a zoning district or of the invalidity of a municipal decision.

### **3.17 TEMPORARY LAND USE REGULATIONS.**

(1) (a) The city council may, without prior consideration of or recommendation from

the planning commission, enact an ordinance establishing a temporary land use regulation for any part or all of the area within the municipality if:

- (i) the city council makes a finding of compelling, countervailing public interest; or
- (ii) the area is unregulated.

(b) A temporary land use regulation under Subsection (1 )(a) may prohibit or regulate the erection, construction, reconstruction, or alteration of any building or structure or any subdivision approval.

(c) A temporary land use regulation under Subsection (1 )(a) may not impose an impact fee or other financial requirement on building or development.

(2) The city council shall establish a period of limited effect for the ordinance not to exceed six months.

**(3)** (a) The city council may, without prior planning commission consideration or recommendation, enact an ordinance establishing a temporary land use regulation prohibiting construction, subdivision approval, and other development activities within an area that is the subject of an Environmental Impact Statement or a Major Investment Study examining the area as a proposed highway or transportation corridor.

(b) A regulation under Subsection (3)(a):

- (i) may not exceed six months in duration;
- (ii) may be renewed, if requested by the Transportation Commission created under Section 72-1-301, for up to two additional six-month periods by ordinance enacted before the expiration of the previous regulation; and

(iii) notwithstanding Subsections (3)(b)(i) and (ii), is effective only as long as the Environmental Impact Statement or Major Investment Study is in progress.

### **3.18 AMENDMENTS AND REZONING. (Amended Ord. No. 2010-24)**

**(1)** The City Council may amend;

- (a) The number, shape, boundaries, or area of any zoning district;
- (b) any regulation of or within the zoning district, or
- (c) any other provision of a land use ordinance.

**(2)** The City council may not make any amendment authorized by this subsection unless the amendment was proposed by the planning commission or was first submitted to the planning commission for its recommendation.

**(3)** The city council shall comply with the procedure specified in Section 3.15 for land use regulations and 3.16 for zoning maps in preparing and adopting any amendment.

(4) No application for an amendment to the land use regulations or zoning map designations shall be reconsidered by the City Council or the Planning Commission within two years of the final decision of the City Council upon the prior application, if the new application proposes the same amendment to the land use regulations or includes the same zoning map designation and includes any of the same property that was described in the previous application. The restrictions contained in this subsection shall not apply to a requested zoning map amendment, if the previous application included a proposed zone and a specific proposed use in that zone and the new application

includes the same zoning district, but the proposed use has been changed by the applicant. Any application for a zoning map amendment that includes a specific proposed use as a part of the application, shall only be approved on condition that the actual use of the property is limited to the proposed use specified in the application. The Zoning Administrator shall make an initial determination as to whether or not an application should be considered pursuant to this subsection. If the application is denied by the Zoning Administrator as being in violation of this subsection, the applicant may appeal that decision to the Planning Commission, by filing a written notice of appeal with the Zoning Administrator within seven (7) days of receipt of the Zoning Administrator's decision. If the application is accepted by the Zoning Administrator and an affected party does not agree with said decision, that party may file a written appeal with the Planning Commission, provided that the appeal is filed with the Zoning Administrator at least seven (7) days prior to the time the Planning Commission is scheduled to make its final recommendation on the application. Any party aggrieved by the decision of the Planning Commission with respect to this subsection, may file a written appeal with the City Council, provided that the appeal is filed with the City Recorder within seven (7) days of the decision of the Planning Commission. If the City Council overturns the decision of the Planning Commission that terminates consideration of an application because it was deemed to be in violation of the provisions of this subsection, the City Council shall remand the matter back to the Planning Commission for a recommendation on the application. The Planning Commission and City Council may also terminate consideration of an application at any time, if it determines that the application is prohibited by this subsection. The Decision of the City Council on a determination of whether or not an application is in conformity with the provisions of this subsection shall be final. (Amended Ord. No. 2010-24)

### **3.19 APPEAL AUTHORITY**

- (1) The Grantsville City Board of Adjustment is hereby designated as an appeal authority for Grantsville City, to act in its individual jurisdiction.
- (2) In order to provide for just and fair treatment in the administration of local land

use ordinances, and to insure that substantial justice is done, Grantsville shall appoint a board of adjustment to exercise the powers and duties provided in this part.

(3) The board of adjustment shall consist of five members and whatever alternate members that the mayor, with the advice and consent of the city council, considers appropriate. The mayor shall appoint the members and alternate members, with the advice and consent of the city council, for a term of five years. The mayor shall appoint members of the first board of adjustment to terms so that the term of one member expires each year.

(4) No more than two alternate members may sit at any meeting of the board of adjustment at one time. The city council shall make rules establishing a procedure for alternate members to serve in the absence of members of the board of adjustment.

(5) the mayor may remove any member of the board of adjustment for cause if written charges are filed against the member with the mayor. The mayor shall provide the member with a public hearing if he requests one.

(6) the mayor, with the advice and consent of the city council, shall fill any vacancy. The person appointed shall serve for the unexpired term of the member or alternate member whose office is vacant.

### **3.20 ORGANIZATION AND PROCEDURES.**

(1) The board of adjustment shall:

(a) organize and elect a chairperson; and

(b) adopt rules that comply with any ordinance adopted by the city council.

(2) The board of adjustment shall meet at the call of the chairperson and at any other times that the Board of Adjustment determines.

(3) The chairperson, or in the absence of the chairperson, the acting chairperson, may administer oaths and compel the attendance of witnesses.

(4) All meetings of the board of adjustment shall be open to the public in compliance with Title 52, Chapter 4, Open and public meetings, Utah Code Annotated. The board of adjustment shall:

(a) keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating that fact;

(b) keep records of its examinations and other official actions;

(5) The board of adjustment may, but is not required to, have its proceedings contemporaneously transcribed by a court reporter or a tape recorder;

(6) The board of adjustment shall file its records in the office of the zoning administrator.

(7) The concurring vote of three members of the board of adjustment is necessary to reverse any order, requirement, decision, or determination of any administrative official or agency to decide in favor of the appellant.

(8) Decisions of the board of adjustment become effective at the meeting in which the decision is made, unless a different time is designated in the board's rules or at the time the decision is made.

(9) The city council may fix per diem compensation for the members of the board

of adjustment based on necessary and reasonable expenses and on meetings actually attended.

### **3.21 POWERS AND DUTIES.**

- (1) The Board of Adjustment shall:
  - (a) hear and decide appeals from decisions applying the land use ordinance;
  - (b) hear and decide special exceptions to the terms of the land use ordinance; and
  - (c) hear and decide variances from the terms of the land use ordinance.
- (2) The board of adjustments may make determinations regarding the existence, expansion, or modification of non conforming uses.

### **3.22 APPEALS.**

(1) The applicant or any other person or entity adversely affected by a decision administering or interpreting a land use ordinance may appeal that decision applying the land use ordinance by alleging that there is error in any order, requirement, decision, or determination made by an official in the administration, interpretation, or enforcement of the land use ordinance within 30 days of the decision.

(2) Any officer, department, board, or bureau of Grantsville City affected by the grant, or refusal of a building permit or by any other decisions of the zoning administrator in the enforcement and administration of the land use ordinance may appeal any decision to the board of adjustment. The appellant has the burden of proving that the land use authority erred.

(3) Only decisions applying the ordinance may be appealed to the board of adjustment.

(4) A person may not appeal, and the Board of Adjustment may not consider, any land use ordinance amendments.

(5) Appeals may not be used to waive or modify the terms or requirements of the land use ordinance.

(6) In making an appeal, an adversely affected party shall present to the appeal authority every theory of relief that it can raise in district court.

### **3.23 HEARING OFFICER.**

- (1) The Mayor, with the consent of the City Council, may appoint a hearing officer to decide routine and uncontested matters before the Board of Adjustment. The Board of Adjustment shall:
  - (a) designate which matters may be decided by the hearing officer; and
  - (b) establish guidelines for the hearing officer to comply with in making decisions.

(2) Any person affected by a decision of the hearing officer may appeal the decision to the Board of Adjustment as provided in this part.

### 3.24 DUE PROCESS

- (1) Each appeal authority shall conduct each appeal and variance request as provided in local ordinance.
- (2) Each appeal authority shall respect the due process rights of each of the participants.

### 3.25 VARIANCES.

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

(2) The Board of Adjustment may grant a variance only if:

(a) literal enforcement of the land use ordinance would cause a hardship for the applicant that is not necessary to carry out the general purpose of the land use 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 land use ordinance is observed and substantial justice done.

(3) In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under this subsection, the board of adjustment may not find an unreasonable hardship unless:

(a) the alleged hardship is located on or associated with property for which the variance is sought; and

(b) the alleged hardship comes from circumstances peculiar to the property, not from conditions that are general in the neighborhood.

(4) In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship the board of adjustment may not find an unreasonable hardship if the hardship is self-imposed or economic.

(5) In determining whether or not there are special circumstances attached to the property under Section 3.23(2)(b), the board of adjustment may find that special circumstances exist only if they:

(a) relate to the hardship complained of, and

(b) deprive the property of privileges granted to other properties in the same district.

- (6) The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.
- (7) Variances shall run with the land.
- (8) The board of adjustment and any other body may not grant use variances.
- (9) In granting a variance, the board of adjustment may impose additional requirements on the applicant that will:
  - (a) mitigate any harmful effects of the variance; or
  - (b) serve the purpose of the standard or requirement that is waived or modified.

### **3.26. APPEAL OF BOARD OF ADJUSTMENT DECISION TO DISTRICT COURT.**

(1) Any person adversely affected by any decision of a board of adjustment may petition the district court for a review of the decision, within 30 days after the decision is final. In the petition, the plaintiff may only allege that the board of adjustment's decision was arbitrary, capricious, or illegal.

### **3.27. ZONING ADMINISTRATOR AUTHORITY AND DUTIES.**

(1) The zoning administrator is a land use authority and is authorized as an enforcing officer for all chapters of this land use ordinance. The zoning administrator shall be appointed by the mayor with the advice and consent of the city council. Assistant zoning administrators may also be appointed in the same manner as the administrator and shall have the same authority as the zoning administrator. The zoning administrator is hereby authorized to enforce this code and all provisions thereof, and shall do so by any legal means available to him, including but not limited to the following:

- (a) Advise the building official on the issuance of building permits. When the zoning administrator gives written notification to the building official and applicant that an intended use, building, or structure would be in violation of this code, such written notification shall be presumption of illegality and the building official shall not issue a building permit for such use, building, or structure. (If the offices of building official and zoning administrator are held concurrently by one person, this person shall detail the violation in writing on the permit refusal notification.)
- (b) Inspect the uses of buildings, structures or land to determine compliance with the code. Such inspections shall be made at reasonable times.
- (c) Issue notices of violation wherever buildings or lands are being used contrary to the provisions of this code. (This shall be done by providing notice in writing on any person engaged in said use and posting such notice on the premises.)
- (d) Inform the mayor or city council of all code violations and recommend specific courses of action with regard to such violations which are not being resolved through established zoning procedures.
- (e) Maintain a file of code violations and action to be taken on such violations.
- (f) Upon authorization in the matrix of any zoning district, the zoning administrator, shall approve a conditional use permit if reasonable conditions can be imposed to mitigate the reasonably anticipated detrimental effects of the proposed use in

accordance with applicable standards in which a conditional use permit is required by the use regulations of that zoning district or elsewhere in these ordinances.