

**CHAPTER 26
PLANNING AND ZONING
ARTICLE IX. BOARD OF ADJUSTMENTS**

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SECTION 26-IX-1 Creation.

The City hereby creates the Board of Adjustments of five (5) members to be appointed by the Mayor. Each member shall serve for a period of five (5) years, provided that the terms of members of the first board created under this chapter shall be such that the term of only one member shall expire each year. One member of the Planning Commission shall be a member of the Board of Adjustments. Any vacancy occurring on said board by reason of death, resignation, removal, or disqualification shall be promptly filled by the Mayor for the unexpired portion of such term. The City Council may remove any member of the Board of Adjustments for cause upon written charges and after public hearing, if one is requested.

The Board of Adjustments shall organize and elect a chairman and adopt rules in accordance with the provisions of this Chapter and State law. Meetings of the Board shall be held at the call of the chairman and at such times as the Board may determine. The chairman, or in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings, show the vote of each member upon each question, or if absent or failing to vote indicating such fact, and shall keep records of its examinations and other official actions; all of which shall be filed in the Cedar City Offices with the City Recorder.

SECTION 26-IX-2 Powers of the Board of Adjustments.

- (A) The Board of Adjustments shall hear and decide:
 - (1) Appeal from administrative decisions applying a zoning or subdivision ordinance, including appeals from:
 - (a) building permit denials based upon a failure to comply with zoning or subdivision ordinance; and
 - (b) administrative decision relating to subdivision plats;

- (2) Special exceptions to the terms of the Zoning Ordinance;
 - (3) Variances from terms of zoning ordinances; and
 - (4) Appeals from decisions approving or denying a conditional use permit.
- (B) The Board of Adjustments may make determinations regarding the existence, expansion, or modification of non-conforming uses.
- (C) The Board of Adjustments may interpret the zoning maps and pass upon disputed questions of lot lines, district boundary lines, or similar questions as they arise in the administration of the zoning regulations.

SECTION 26-IX-3 Variances.

- (A) In accordance with State law, the Board of Adjustments shall hear any person or entity desiring a waiver or modification of the requirements of zoning ordinance as applied to a parcel of property that he owns, leases, or in which he holds some beneficial interest, the Board of Adjustments may grant a variance from the terms of th zoning ordinance if:
- (1) Literal enforcement of the zoning ordinance would cause an un reasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance;
 - (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 effect the general plan and will not be contrary to the public interest; and
 - (5) The spirit of the zoning ordinance is observed and substantial justice is done.
- (B) In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship, the Board of Adjustments may not find an unreasonable hardship unless the alleged hardship (a) is located on or associated on the property for which the variance is sought; and (b) 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 zoning ordinance would cause unreasonable hardship, the Board of Adjustments 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, the Board of Adjustments 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 district.
- (E) The applicant shall bear the burden approving that all conditions justifying a variance have been met.
- (F) All variances run with the land.
- (G) The Board of Adjustments, and any other body, may not grant use variances.
- (H) In granting a variance, the Board of Adjustments may impose additional requirements on the applicant that will:
 - (1) Mitigate the harmful affects of the variance; or
 - (2) Serve the purpose of the standard or requirement that is waived or modified.

SECTION 26-IX-4 Special Exceptions.

To hear and decide requests for special exceptions or other special requests upon which such board is authorized to pass as herein set forth; provided, however, that the board shall not act upon matters which have not been specifically delegated to it by the terms of this chapter. Every decision of the Board of Adjustments shall be based upon findings of fact, and every fact and every finding of fact shall be supported in the record of the proceedings of the Board. The special exceptions or other special requests on which the Board of Adjustments shall be authorized to pass are:

- (A) To permit the building of a dwelling upon a lot which does not have frontage on a street, if an adequate easement is provided,
- (B) To interpret the zone map,
- (C) To reduce the amount of off-street parking required where sufficient off-street

parking is not readily available within the vicinity, and/or where acquisition of land for such use would cause exceptional hardships. Also to decide the number of off-street parking spaces which shall be required when the number is not specifically set forth in this ordinance.

- (D) The board of Adjustments may permit buildings to be constructed within seventy-five (75) feet from a natural flood channel, provided measures are taken which will adequately protect the buildings or structures from damage due to floods, will not increase the hazard of flood damage to surrounding lands and buildings, and will be located in accordance with the plan of flood drainage as approved by the City Council.
- (1) Such use is similar in character and nature to the uses permitted in the zone.
 - (2) Such use conforms to the basic characteristics of the zone in which it is added and is in harmony with the objectives and purposes of the zone.
 - (3) Such use is not likely to create any more traffic, or be more offensive due to noise, heat, dust, smoke, odor, glare, vibration or other objectionable influence than the minimum amount normally resulting from the other uses listed in the zone in which it is added. When any use has been added to any zone in accordance with this procedure, such use shall thereafter be deemed to be a permitted use within that zone.
- (E) Grant Home Occupations. The Board of Adjustments may grant home occupations in the R1, R-2, R-3, and RA-1 zones provided:
- (1) The home occupation is conducted entirely within a dwelling and is carried on only by members of the family residing in the dwelling, with the exception of Nursery Schools which may employ one additional person in an R-1 and R- 2 Zone and two or more additional persons in an R-3 zone.
 - (2) The home occupation does not involve the use of any accessory buildings or yard space for storage or activities outside of the dwelling not normally associated with residential use, except for Nursery Schools, in which case it is presumed that rear yard space is utilized and the rear yard space must be completely fenced with at least a six-foot (6') high fence.
 - (3) No commercial vehicles are used except one delivery truck which does not exceed one (1) ton capacity.

- (4) The home occupation is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character of the building from that of a dwelling.
- (5) Signs shall be limited to one non-flashing sign not larger in area than one and one half (1 ½) square feet. If lighted, the light shall be defused or shielded. Said sign must be located at least two (2) feet back of the property line.
- (6) Not more than the equivalent of twenty-five percent (25%) of the ground floor area of the dwelling is devoted to the home occupation. Nursery schools and day care centers need not designate a particular twenty-five percent (25%) of the ground floor area; however, the actual 25% of the ground floor area shall be utilized to calculate the maximum number of children allowed in the dwelling pursuant to Section 26-IX(E)(10)(b). Ground floor area is defined as the square footage computed in the outside measurements of the dwelling portion of the home on the ground floor level. Basement or basement level floor space shall not be used in computing ground floor area.
- (7) The home occupation shall be registered with the City License Division or Department.
- (8) In the opinion of the Board of Adjustments, the activities in connection with the home occupation are not contrary to the objectives and characteristics of the zone in which the home occupation is located.
- (9) Off-street parking will be provided which will, in the opinion of the Board of Adjustments, be adequate to accommodate all vehicles which will be parked on or about the premises by customers, clients, or occupants of the home, and that said off-street parking will be provided so that it will not decrease residential amenities in the area surrounding the home occupation.
- (10) In addition to the above requirements, home occupations for Nursery Schools may be granted by the Board of Adjustments provided that the proposed Nursery School has:
 - a. A maximum of sixteen children at any one time, including the occupant's own children;
 - b. That the portion of the dwelling used for the Nursery School contains floor space of at least twenty five square foot per child and alternate door

exits.

- (11) Before conducting a hearing on a home occupation request the Building Inspector shall have conducted an on-site inspection and shall make a report of his findings to the Board of Adjustments.

SECTION 26-IX-5 Other Powers and Duties.

- (A) Conditions. The Board of Adjustments may attach reasonable conditions or requirements to the granting of a variance or exception which the petitioner must comply with as a condition of the granting or approval and may attached a time limit on the exercise or non-exercise of any grant.
- (B) In performing the duties and powers as set forth herein, the Board of Adjustments is hereby empowered to reverse or affirm wholly or partly or modify the order, requirement, decision, or determination of the enforcing officer and may make such order or requirement as ought to be made; provided, however, that in interpreting and applying the provisions of this ordinance, the requirements contained herein shall be deemed to be the minimum requirements for the purposes set forth.
- (C) Authority Limited. The powers and duties of the Board of Adjustments are limited to administrative matters as herein set forth in this chapter. It shall not be the function of the Board of Adjustments to amend this ordinance or to correct what it may consider to be an unwise requirement. Nevertheless, the Board of Adjustments shall have administrative duties as set forth in this ordinance and within the limitations and intent of the provisions of this ordinance shall perform its duties and shall have the power to perform those acts as herein set forth and such administrative actions shall not be interpreted as unauthorized amendments to this ordinance.

SECTION 26-IX-6 Vote.

The concurring vote of three (3) members of the Board will be necessary to decide any matter upon which is required to pass.

SECTION 26-IX-7 Procedure.

Upon receipt of the APPLICATION TO APPEAR BEFORE THE BOARD OF ADJUSTMENTS, the Building Inspector shall forthwith transmit to the Board of Adjustments all papers constituting the record upon which the action appealed from was taken. The Board of Adjustments shall review the application and shall return the same to the Building Inspector with its recommendations pertaining thereto within thirty (30) days. Failure to return said application within thirty (30) days shall constitute approval. An appeal stays all proceedings in furtherance

of the action appealed from unless the Building Inspector certifies to the Board of Adjustments after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by restraining order which may be granted by the Board of Adjustments or by the District Court on application and notice to the Building Inspector and on due cause shown.

The Board of Adjustments shall fix a reasonable time for the hearing of the appeal, give public notice thereof by publication of notice at least five (5) days prior to the date of the hearing, as well as due notice to the parties in interest and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

SECTION 26-IX-8 Recourse from Decisions of Board.

Any person aggrieved by any decision of the Board of Adjustments may have and maintain a plenary action for relief therefrom in any court of competent jurisdiction provided that petition for such relief is presented to the court within thirty (30) days after the filing of such decision in the Office of the Board of Adjustments.