



Appeal Authority

20 North Main Alpine, UT 84004 • 801-756-6347 (Phone) • 801-756-1189 (Fax) • www.alpinecity.org

Variances (Article 2.3.3 Alpine City Development Code)

A variance is permission by the City to waive or alter a specific requirement of the Zoning Ordinance. Any person or entity desiring a waiver or modification of the requirements of a 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 ordinance. The Board of Adjustment may not grant a use variance. If a variance is granted, the variance runs with the land and the Board of Adjustment may impose additional requirements on the applicant that will mitigate any harmful effects of the variance or serve the purpose of the standard or requirement that is waived or modified.

There are five findings that, by Utah State law, must be made before a variance can be granted. The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.

1. "That 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."

The Board of Adjustment may not find an unreasonable hardship unless the alleged hardship is located on or associated with the property for which the variance is sought. The variance must come from circumstances particular to the property, not from conditions that are general to the neighborhood. In determining whether or not enforcement of the zoning ordinance would cause hardship, the Board of Adjustment may not find an unreasonable hardship if the hardship is self-imposed or economic.

2. "That there are special circumstances attached to the property that do not generally apply to other properties in the same zone."

The Board of Adjustment may not find that special circumstances exist only of the special circumstances relate to the hardship complained of by the property owner and deprive the property owner of privileges granted to other property owners in the same zone. These special circumstances can involve the shape, size, topography, location, or surroundings of the property - - in short, some physical constraint that is unique to the site. Special circumstances are not interpreted to be something intangible, such as a lack of knowledge of the Code or that misinformation was given at the time that the property was purchased. If the hardship is common to several properties, the variance cannot be granted. The proper remedy under such circumstances is a zoning amendment.

3. "That granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone."

A variance cannot be granted if it would pose any threat to the public health or safety. This includes concerns such as fire safety, structural stability, clearance, preservation of light and open space, and visual and aesthetic concerns. The granting of the variance must not result in substantial detriment to the adjacent property either in value or in a physical sense.

4. "That the variance will not substantially affect the general plan and will not be contrary to the public interest."

The proposed variance must comply with the intent of the general plan and zoning code of the city.

5. "That the spirit of the zoning ordinance is observed and substantial justice is done."

It must be demonstrated to the Board of Adjustment that you are seeking a property right that is generally enjoyed in the zone, not some additional privilege not generally enjoyed.

Submission Requirements:

- A completed application form signed by the property owner.
- One (1) D size (22"x 34") copies of the site plan drawn to scale.
- One (1) 8.5" x 11" reduction of all sight plans.
- Receipt showing payment of \$150.00 filing fee.
- Names and addresses of all property owners within 300 feet of the subject property.

Appeals from Land Use Decisions (Article 2.3.4 Alpine City Development Code)

Standards for Review of Appeals. The Hearing Officer shall hear and decide appeals from land use decisions applying or interpreting the land use ordinances, and shall comply with the following standards:

1. The applicant, a board or officer of the City, or any person adversely affected by the Land Use Authority's decision administering or interpreting a land use ordinance may appeal that decision to the Hearing Officer by alleging that there is error in any order, requirement, decision, or determination made by the Land Use Authority in the administration or interpretation of the land use ordinance.
2. The appeal must be filed within ten (10) days from the date of such decision by filing with the Zoning Administrator and with the Hearing Officer a written notice of appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Hearing Officer all the papers constituting the record upon which the action appealed from was taken.
3. An appeal filed in accordance with this section stays all proceedings in the appeal action, unless the Zoning Administrator certifies to the Hearing Officer, 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 Hearing Officer or by the district court on application and notice and on due cause shown.
4. The Hearing Officer shall fix a reasonable time for the hearing of any appeal within thirty (30) days of the date of filing such appeal with the Zoning Administrator.
5. Proceedings and hearings before the Hearing Officer shall be public and held pursuant to rules adopted by the City and in conformance with the Utah Open and Public Meetings Act and with the general principles of due process. The person or entity filing the appeal may appear at such hearing in person, by agent, or by an attorney of his/her choice and may present to the Hearing Officer any evidence or argument to support the contentions on appeal. The Land Use Authority that rendered the decision that is being appealed shall appear and present any evidence or argument it finds necessary to justify its decision. The Hearing Officer shall cause a record of his/her proceedings to be kept and shall make written findings and conclusions of all of his/her decisions.
6. The appellant has the burden of proving that the Land Use Authority erred.
7. The Hearing Officer shall presume that the decision of the Land Use Authority that is being appealed is correct, and shall only modify the decision if there is substantial evidence presented at the hearing of the Hearing Officer that the Land Use Authority erred in its application or interpretation of the land use ordinances.
8. Only decisions applying and interpreting the adopted land use ordinances of the City or requesting reasonable accommodations for persons with disabilities may be appealed to the Hearing Officer. A person may not appeal, and the Hearing Officer, in his/her duties as an Appeal Authority, may not consider, any appeal of a legislative decision of the City Council, such as a decision to adopt or amend any land use (zoning or subdivision) ordinance of the City.
9. Appeals may not be used to waive or modify the terms of requirements of the land use ordinance, except as specifically allowed by the ordinance.
10. The Hearing Officer shall render his/her decision on the appeal within fifteen (15) days from the date that the hearing is held. The Officer may affirm, wholly or partly, or may modify the order, requirement, decision or determination of the Land Use Authority.
11. A decision of the Hearing Officer takes effect on the date when the Officer issues a written decision, or as otherwise provided by ordinance. A written decision, or other event as provided by ordinance, constitutes a final decision under Subsection 10-9a-802(2)(a) or a final action under Subsection 10-9a-801(4) of the Utah State Code.

Submission Requirements:

- A completed application form signed by the property owner.
- Receipt showing payment of \$150.00 filing fee.



Application to Request Appeal Authority

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A request shall be filed with the Zoning Administrator of Alpine City and must contain the following information as a minimum and all other additional information that will help the Hearing Officer or Board of Adjustment make a decision.

Variance Appeal of a Land Use Decision

Name _____ Date _____

Address _____ Phone _____ Email _____

Describe the reasons of the request for variance/appeal _____

Variance

Address of the Property Involved _____

Chapter, Section, and Paragraph of the Alpine City Zoning Ordinance that you are seeking a variance from _____

Appeal of a Land Use Decision

Action of a Land Use Authority that is being appealed _____

Date of action by Land Use Authority _____

Applicant Signature _____ **Date** _____

FOR CITY USE ONLY

Appeal Authority Fee (\$150) Payment Type _____ Receipt # _____