



CHAPTER 10

BOARD OF ADJUSTMENTS

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10.BOARD OF ADJUSTMENTS

2 PURPOSE AND INTENT

The purpose and intent of this chapter is to provide for the establishment of the Board of Adjustment for the City of Clinton in accordance with Chapter 2A of the Utah Code Annotated. Said Board shall be established to grant relief from this Zoning Ordinance only under certain and special circumstance.

3 APPOINTMENT, TERM AND REMOVAL³⁸

1.The Board of Adjustment shall consist of six (6) total members, five (5) of whom are to be appointed by the mayor with the advice and consent of the city council, and the sixth shall be a member of the planning commission, designated by the Chairman of the commission with the advice and consent of

the commission. The commission member of the board shall serve as an ex-officio member of the commission and shall not be a voting member. Otherwise the commission member shall have the same powers and duties as the other appointed members of the board.

2.Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. Terms of office of the five citizen members of the board shall be staggered at intervals to provide uniformity and continuity of policy. Such appointed citizen members shall serve for a period of five (5) years and at staggered intervals, but in any event, each member of the board of adjustments shall serve until the expiration of the term for which he is appointed and until a successor is appointed and qualified. The planning commission representative to the board shall serve a one year term and only while serving on the planning commission.

3.The city council may appoint associate members of such board, and in the event that any regular member be temporarily unable to act owing to absence from city, illness, interest in a case before the board or any other cause, his place may be taken during such temporary disability by an associate member designated for the purpose.

4.Any member may be removed for cause by the appointing authority upon written charges and after public hearing, if such public hearing is requested.

4 ORGANIZATION AND MEETINGS

The Board of Adjustments shall organize and elect a Chairman and adopt rules in accordance with the provisions of any ordinance adopted pursuant to this Ordinance. Meetings of the Board shall be held at the call of the Chairman and at such other 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, showing 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 immediately filed in the office of the Board and shall be a public record.

5 APPEALS

Appeals to the Board of Adjustments may be made by any person aggrieved by his inability to obtain a building permit, or by the decision of any administrative officer, or agency based upon or made in the course of his administration or enforcement of the provisions of the Zoning Ordinance. Appeals to the Board of Adjustments may be taken by any officer, department, Board or bureau of the City affected by the grant or refusal of a building permit or by any other decision of the administrative officer or agency based on or made in the course of the administration or enforcement of the provisions of the Zoning Ordinance. The time within which such appeal must be made, and the form or other procedure relating thereto, shall be as specified in the general rules to govern the procedure of such Board of Adjustments or in the supplemental rules of procedure adopted by such Board provided further, that said rules and regulations shall be available to the public at the office of the City Recorder at all times.

6 STAY OF PROCEEDINGS PENDING APPEAL

An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal was taken 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 and on due cause shown.

7 NOTICE OF HEARING OF APPEAL

Right of Appearance. The Board of Adjustments shall fix a reasonable time for the hearing of the appeal, give public notice thereof as well as due notice to the parties in interest, and shall decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney. Parties in interest shall be all property owners within a 300-foot radius of the property in question.

8 POWERS OF BOARD ON APPEAL

The Board of Adjustments shall have the following powers:

- 1.To hear and decide appeals where it is alleged by the appellant that there is an error in any order, requirement, decision or refusal made by an administrative official or agency based on or made in the enforcement of the Zoning Ordinance.
- 2.To hear and decide, in accordance with the provisions of any such ordinance, requests for special exceptions or for interpretation of the map or for decisions on other special questions on which such Board is authorized by any such ordinance to pass.
- 3.Whereby reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the enactment of the regulations, or by reasons of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any regulation enacted under this act would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon, the owner of such property, to authorize on

an appeal relating to said property, a variance from such strict application so as to relieve such difficulties or hardship, provided such relief may be granted without substantially impairing the intent and purpose of the zone plan and Zoning Ordinance and without substantial detriment to the public good. Before any variance may be authorized, however, it shall be shown that:

- a. The variance will not substantially affect the comprehensive plan of zoning in the City and that adherence to the strict letter of the Ordinance will cause difficulties and hardships, the imposition of which upon the petitioner is unnecessary in order to carry out the general purpose of the plan.
 - b. Special circumstances attached to the property covered by the application which do not generally apply to the other properties in the same district.
 - c. Because of said special circumstances, property covered by application is deprived of privileges possessed by other properties in the same district; and that the granting of a variance is essential to the enjoyment of a substantial property right possessed by other property in the same district.
4. To permit the building of a dwelling upon a lot which does not have frontage on a street.
5. To interpret the zoning map and Zoning Ordinance.
6. To reduce the amount of off-street parking required, where acquisition of land for such use would cause exceptional hardship.
7. Where a zone boundary line divides a lot in single ownership at the time of the passage of this Ordinance, permit the extension of a use of building stated on the portion of such lot which lies in the less restricted zone into the more restricted zone, provided that such extension shall be subject to all regulations of the less restricted zone and shall extend not more than one hundred (100) feet into the other portion of the lot in the more restricted zone.
8. Permit for a period not to exceed one (1) year in a residential zone a temporary building or use of a commercial or industrial nature which building or use is incidental and necessary to the construction of the residential development.

9. To permit a non-conforming use to be changed to another use permitted in the same or a more restricted zone than the one in which the non-conforming use would be a permitted use; and which, in the opinion of the Board of Adjustments either by general rule or on decision in a specific case, will be out of harmony or incongruous with existing and prospective uses in the neighborhood to a less degree than is the non-conforming use that it replaces, with respect to noise, odor, atmospheric emission or pollutant, or physical hazard, and to no greater degree with respect to traffic related to the proposed use, display or use of illumination, general activity, probable duration of the proposed use, or other factors having a bearing on the harmonious relation of one use to another.

10. To permit the relocation on a lot of non-conforming building or structure occupied by a non-conforming use, provided the building or structure shall comply with all the height, yard and area requirements in the zone in which it is located.

9 DECISION ON APPEAL

In exercising the above-mentioned powers, such Board may in conformity with the provisions of this article reverse, or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

10 VOTE NECESSARY FOR REVERSAL

The concurring vote of three members of the Board shall be necessary to reverse any order, requirement or determination of any such administrative official, or to decide in favor of the appellant on any matter upon which it is required to pass under any such Ordinance, or to effect any variation in such ordinance.

11 JUDICIAL REVIEW OF BOARD'S DECISION: TIME LIMITATION

The City or any person aggrieved may have and maintain a plenary action for relief there from in any court of competent jurisdiction; provided, petition for such relief is presented to the court within thirty days after the filing of such decision in the office of the Board.

12 TIME LIMITATION ON VARIANCE

In the event the Board of Adjustments does grant a variance in accordance with the provisions of this chapter, alterations in accordance with the variance must be activated within six months after the date the variance is granted or the variance becomes null and void. The time limit of the variance may be extended an additional six months by the Board of Adjustments, only if the petitioner shows adequate cause to the Board that circumstances necessitate a time extension.