

CHAPTER 5

BOARD OF ADJUSTMENT

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8-5-1: APPOINTMENT, TERM, REMOVAL:

There is hereby created a board of adjustment, which shall consist of five (5) members, each to be appointed by the board of county commissioners for a term of five (5) years; provided, that the terms of the members of the first board so appointed shall be such that the term of one member shall expire each year. Any member may be removed for cause by the board of county commissioners upon written charge after public hearing if such public hearing is requested. Vacancies shall be filled for the unexpired term of any member whose term is not completed. The chairperson of the board shall be elected by the board members and shall serve a one year term. Successive elections are permitted. Unless otherwise provided, the county commission may serve as the board of adjustment.

8-5-2: POWERS AND DUTIES:

A. Appeals: It shall be the duty of such board to hear all appeals taken by the person aggrieved or by any officer, department, board or bureau of the county affected by any decision related to administration or enforcement of this title. Said board shall adopt rules for the regulation of its procedures and conduct of its duties not inconsistent with the provisions of this title or of the state law, which said rules shall be submitted to the board of county commissioners for approval prior to their adoption and which may be altered, amended or changed in the same manner.

B. Powers Specified: The board, after proper notice and public hearing, shall have the following powers, as set forth in Utah Code Annotated section 17-27a-701 et seq.:

1. Appeals: To hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision or refusal made by the planning commission based on or made in the enforcement of this title.

2. Variances: When by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the enactment of the regulation, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of the provisions of any regulation enacted under this title would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon, the owner of such property, to authorize, upon an appeal relating to said property, a variance from such difficulties or hardship, provided such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the master plan and this title.

8-5-3: ACTION BY BOARD:

In exercising the above mentioned powers, such board may, in conformity with the provisions of the law, reverse or affirm, wholly or partially, or may modify the order, requirements, decision or determination appealed from and may make such determination as ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken; provided, that before any variance may be granted, it shall be shown that special circumstances attached to the property covered by the application, which do not generally apply to other properties in the same zone; that because of said special circumstances, property covered by application is deprived of privileges possessed by other properties in the same zone; and that the granting of the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone.

8-5-4: VOTING OF BOARD:

The concurring vote of four (4) of the five (5) members of the board shall be necessary to reverse any order, requirement or determination of any such planning commission, or to decide in favor of the applicant on any matter on which it is required to pass, or to affect any such variation to this title.

8-5-5: MEETINGS AND RULES:

A. Meetings: Meetings of the board shall be held at the call of the chairperson and at such other times as the board may determine.

B. Conduct: The chairperson of said board of adjustment or in his absence, the acting chairperson, may administer oaths and compel the attendance of witnesses at such meetings, and all meetings shall be open to the public.

C. Notice: The board shall fix a reasonable time for any meeting and shall give at least thirty (30) days' public notice thereof. Where appeals are to be heard, thirty (30) days' public notice of the meeting and twenty (20) days' written notice by mail to last known address, shall be given all owners of real property located within a two hundred foot (200') radius of the property in question.

D. Minutes, Records: The board shall keep minutes of its proceedings showing the roll call of votes, upon all questions and shall keep records of its examinations and other official actions, all of which shall be filed in the office of said board and shall be public records.

E. Clerk: The board of county commissioners shall appoint a person to act as clerk of the board of adjustment.

8-5-6: APPEALS TO BOARD:

A. Authorized Appeals: Appeals to the board of adjustment may be taken:

1. By any person aggrieved by the inability to obtain a building permit, or by the decision of any administrative officer, or agency based upon or made in the course of the administration or enforcement of the provisions of this title.

2. By any officer, department, board or bureau of the county affected by the grant or refusal of a building permit or by other decision of an administrative officer or agency based on or made in the course of the administration or enforcement of the provisions of this title.

B. Theory Of Relief: The appellant shall provide the board of adjustment every theory of relief that can be raised in district court.

C. Fee: The appellant shall pay a fee to the county clerk in such amount as established by the board of county commissioners.

D. Records Transmitted: The planning commission shall transmit to

the board of adjustment all the papers constituting the record upon which the action appealed from was based.

8-5-7: AUTHORITY LIMITED:

It shall not be the function of the board of adjustment to correct what it may consider to be an unwise requirement in this title or to substitute its judgment in place of that of the board of county commissioners as to what is good or poor zoning. The board of adjustment may grant only those variances which are specifically mentioned in this chapter. Nevertheless, it shall be the duty of the board to recommend appropriate modifications or amendments to this title to the planning commission when in its opinion such modifications or amendments would more fully promote the objectives and purposes of this title.

8-5-8: FURTHER APPEAL TO COURT:

Any person aggrieved by any decision of the board of adjustment 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 adjustment.

8-5-9: REQUEST TO APPEAR FORM:

Requests to appear before the board of adjustment shall be in writing and shall be in the form as follows:

Date _____ Appeal No. _____

APPLICATION TO APPEAR BEFORE THE BOARD OF ADJUSTMENT

I (we) _____
(name)

of _____
(address)

do hereby apply to the board of adjustment of Daggett County, Utah, for a determination on the following matter:¹

The facts are as follows: The property covered by this appeal is located at _____ and is situated within the zone.

(signature of applicant)

Note: By law, the board of adjustment may consider only two (2) types of cases. These are outlined below. Please acquaint yourself with these provisions and indicate under which provisions you are making this appeal. State the facts fully. Use additional sheets, if necessary, and attach a plot plan, where appropriate, showing the location of the buildings now on the lot and the buildings on adjoining lots, if any.

POWERS OF THE BOARD OF ADJUSTMENT

- 1. The board of adjustment may consider cases where the applicant thinks the officer of the county is interpreting the zoning ordinance and map incorrectly.*
- 2. The board of adjustment may consider cases known as variances, where the person making the appeal can show that the strict application of the regulation would result in peculiar and exceptional narrowness, shallowness, or shape of his property at the time of the enactment of the controlling regulation, or because of exceptional topographic conditions or other conditions peculiar to the lot. However, the board of adjustment cannot grant a request which would be contrary to the spirit of the zoning ordinance or its objectives and purposes.*
- 3. The board of adjustment may approve, deny in whole or in part, or may attach conditions to the granting of the request.*

!SETLRM!! SETFNT!! SETTAB!