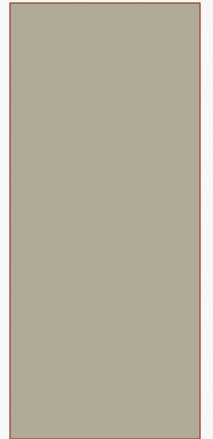


BOARD OF ADJUSTMENT PROCEDURES
ORDINANCE 2025-07

CODE TEXT AMENDMENT



TITLE 2.05 BOARD OF ADJ PROCEDURES

- Board of Adjustment hears application for variances
- Duties/limitations outlined in Code and State Law
- Difficult standard of proof – 5 separate showings
- Applications rare – 10 over past 20 years
- Because of infrequency of meetings, maintaining training of members is difficult, as is scheduling a time all three members can meet. Difficult to find and maintain members.
- Staff recommends an alternate member be appointed
- Current language conflates variance authority (BOA) and appeal authority (CC). Staff recommends removing language re appeals to avoid confusion.

VARIANCE

- All five of the following must be met for a variance to be granted:
 - 1. Literal enforcement of the land use ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the ordinance.
 - 2. There are special circumstances attached to the property that do not generally apply to other properties in the same district.

VARIANCE CONTINUED

- 3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone.
- 4. The variance will not substantially affect the general plan and will not be contrary to the public interest.
- 5. The spirit of the zoning ordinance is observed and substantial justice is done.

VARIANCE CONTINUED

- A "hardship" cannot be solely economic, and cannot be created by the property owner or a prior property owner.
- The "special circumstances" also cannot be economic or self-imposed, and must be unique to the property, not something that all properties in the area share.
- A variance may not be granted to allow a prohibited use, or alter a health or safety regulation (such as a building or fire code).
- Finally, a variance should not be granted simply because a property owner disagrees with a regulation and doesn't want to comply with the requirement.

PROPOSED CHANGES TO 2.05.010

2.05.010 Board Of Adjustment Created, Members, Terms

1. There is hereby created a Board of Adjustment, which shall consist of three members ~~and an alternate member~~, each to be appointed by the Mayor, with the advice and consent of the City Council. ~~Only three members will sit as a Board of Adjustment at any meeting.~~
2. The term of office for members of the Board of Adjustment shall be four years. ~~[Delete: Two consecutive four year terms shall be the limit for regular membership]~~
3. Each term shall continue until a successor is chosen and qualified, except in the case of the member's death, resignation, removal, or disqualification from holding office.
4. ~~[Delete: No person shall serve more than two consecutive terms on the Board of Adjustment. Partial Terms shall not be considered in determining whether a person has served two consecutive terms.]~~

PROPOSED CHANGES 2.05.050

2.05.050 Application To Appear Before The Board

- Any person may appeal to the Board of Adjustment by filing for a variance request in writing with the Zoning Administrator, and by paying a fee set by the City Council [~~Delete: provided such appeal is made within 45 days of the decision being appealed~~]. The request to appear before the Board of Adjustment shall be made on forms ~~available through the Planning Department~~ [~~Delete: furnished by the Zoning Administrator at least 15 days prior to the date of the hearing on the appeal.~~]

PROPOSED CHANGES 2.05.060

2.05.060 Procedure

Upon receipt of the application, the Zoning Administrator shall submit to the Board of Adjustment all information regarding the requested **variance** [**Delete: appeal**]. The Board of Adjustment shall review the application at a public meeting. [**Delete: hearing and shall return the same to the Zoning Administrator with its decision pertaining thereto within 60 days. Failure to return said application within 60 days shall constitute approval**]. A request [**Delete: appeal**] for a variance stays all proceedings [**Delete: in furtherance of the action appealed from**] pending a decision on the variance request unless the Zoning Administrator certifies to the Board of Adjustment, after the **variance request** [**Delete: notice of appeal**] shall have been filed with him/her, that by reason of facts stated in the certificate a stay would, in his/her 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 [**Delete: the Board of Adjustment**] the district court on application and notice to the Zoning Administrator and on due cause shown.

PROPOSED CHANGES 2.05.070

2.05.070 Hearings

- The Board of Adjustment shall establish a reasonable time [~~Delete: for the hearing of the appeal~~] to consider the variance request and give public notice thereof by publication as required by State Law and the Midway City Municipal Code. [~~Delete: The intent in requiring a hearing is to enable the Board of Adjustment to obtain facts surrounding the case which may not be evident, or which may not be shown in the record as submitted to the Board.~~]The decision of the Board shall be based upon the facts [~~Delete: and not upon expressions of support or protest, or lack of support or protect, which may be made at the hearing~~]. Any party may appear at the hearing in person or by agent. The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.

PROPOSED CHANGES 2.05.080

2.05.080 Action

- The Board of Adjustment shall make determinations [Delete: in harmony with the intent of Title and shall notify the appellant and Zoning Administrator of the action taken within ten days following their decision] consistent with Utah State Code. Decisions shall be made in the form of a motion at the public meeting.

POSSIBLE FINDINGS

- Variances are the only items heard by the Board of Adjustment
- Appeals are heard by the Midway City Council. Removing appeal language from Section 2.5 dealing with variances should reduce potential confusion regarding the scope of authority of the Board of Adjustment.
- State Code gives discretion to the City Council to determine procedures for how the Board of Adjustment operates, including items such as term limits.
- Longer term limits, or removal of term limits, should assist the City in retaining volunteers to serve on the Board of Adjustment and maximize the training opportunities for and institutional knowledge of members. The City Council could revisit the question of term limits if interest in serving on the Board of Adjustment increases.