

ORDINANCE NO. 2016 - 19

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SOUTH JORDAN, UTAH, AMENDING SECTIONS 2.28.020 (POWERS; DUTIES; OBLIGATIONS), 16.04.370 (APPEALS), 17.08.010 (DEFINITIONS), 17.16.010 (PLANNING COMMISSION), 17.04.060.A (PUBLIC NOTICES), AND CHAPTER 17.16.020 (BOARD OF ADJUSTMENT) OF THE SOUTH JORDAN CITY MUNICIPAL CODE .

WHEREAS, Utah Code § 10-9a-102 grants the City Council of the City of South Jordan (the “City Council”) authority to enact ordinances that it considers necessary or appropriate for the use and development of land in the City of South Jordan (the “City”); and

WHEREAS, Utah Code § 10-9a-701 requires the City Council to establish one or more appeal authorities to hear and decide appeals from land use decisions and requests for variances from land use requirements; and

WHEREAS, the City Council previously designated the appeal authority as the Board of Adjustment in Title 17 of the South Jordan City Municipal Code (the “City Code”); and

WHEREAS, the City Council desires to designate Appeal and Variance Hearing Officers as the City’s land use appeal authority and to amend and clarify various related provisions and procedures in the City Code; and

WHEREAS, the Planning Commission of the City of South Jordan held a public hearing, reviewed and made recommendation concerning the subject text amendments; and

WHEREAS, the City Council held a public hearing and reviewed the subject text amendments; and

WHEREAS, the City Council finds that the subject text amendments will enhance the public health, safety and welfare, and will promote the goals of the General Plan.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SOUTH JORDAN, UTAH:

SECTION 1. Amendment. Sections 16.04.370 (Appeals), 17.08.010 (Definitions), 17.04.060.A (Public Notices), and Chapter 17.16.020 (Board of Adjustment) of the City Code are hereby amended as shown in Exhibit A attached hereto. Additionally, all references to “the board of adjustment” in Sections 2.28.020 (Powers; Duties; Obligations) and 17.16.010 (Planning Commission) are hereby amended to refer to “an Appeal and Variance Hearing Officer.”


SECTION 2. Severability. If any section, part or provision of this Ordinance is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other portion of this Ordinance and all sections, parts, provisions and words of this Ordinance shall be severable.

SECTION 3. Effective Date. This Ordinance shall become effective immediately upon publication or posting as required by law.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SOUTH JORDAN, UTAH, ON THIS 2 DAY OF August, 2016 BY THE FOLLOWING VOTE:

	YES	NO	ABSTAIN	ABSENT
Patrick Harris	<u>X</u>	___	___	___
Bradley Marlor	<u>X</u>	___	___	___
Donald Shelton	<u>X</u>	___	___	___
Tamara Zander	<u>X</u>	___	___	___
Christopher Rogers	<u>X</u>	___	___	___

Mayor: 
 David L. Alvord

Attest: 
 City Recorder

Approved as to form:


 Office of the City Attorney



EXHIBIT A

Amendments to Titles 16 and 17 of the City Code

16.04.370: APPEALS:

Appeals. Unless otherwise specifically provided in this Title, the City, an applicant, or Any other person or party aggrieved adversely affected by a final written decision of the community Development Services Director, City Engineer, or Planning Commission administering or interpreting this Title regarding any SRD, subdivision, condominium, site plan, building permit, conditional use permit, subdivision amendment or any provision or requirement of this title may appeal said that final decision to the city council in writing to a City Appeal and Variance Hearing Officer no later than fourteen (14) ten (10) days following the decision and according to the procedures and requirements of Section 17.16.020 (Appeal and Variance Hearing Officer).

Appeals of land use requirements referenced in this title may only be made to the board of adjustment as provided in title 17 of this code and by state law. Appeals of building code requirements may only be made to the board of appeals. Appeals of this title or to decisions listed above must be filed with the city recorder and resolved by the city council before any development application, building permit, or other development or construction related request potentially affected by the decision or appeal may be processed further. The city council will consider the appeal in a public meeting. The city council may deny the appeal, approve the appeal or approve the appeal with modifications. The city council will state the reasons for hearing the appeal in a public meeting prior to rendering a decision.

17.08.010: DEFINITIONS

APPEAL AUTHORITY: ~~The board of adjustment~~An Appeal and Variance Hearing Officer appointed by the City Council except where otherwise specifically designated in this ~~code~~Title or in Title 16 (Development Code).

VARIANCE: A waiver or modification of the requirements of the land use ordinance as applied to a parcel of property that is granted by ~~the board of adjustment~~an Appeal and Variance Hearing Officer.

17.04.060.A (Public Notices)

- A. Required Notice: The City Council, the Planning Commission, or an Appeal and Variance Hearing Officer shall schedule and hold Any statutorily required public hearing or public meeting shall be scheduled and held by the planning commission, board of adjustment or city council according to the provisions of this Title and state law. The City shall provide Notice of the date, place, and time of public hearings or public meetings shall be provided by the city at least ten (10) days before the date of the public hearing or public meeting, or such lesser or greater time as provided by state statute or City ordinance, by: 1) posting notice of the hearing or meeting on the South Jordan City's website page and publishing notice of the hearing or meeting in a newspaper of general circulation in the City, if one is available; and 2) by giving mailed written notice of the hearing to each affected entity. The City shall provide Aa copy of each staff report pertaining to a land use applicant shall be provided to that applicant at least three (3) business days prior to the public hearing or public meeting. If notice given under authority of this subsection is not challenged in accordance with applicable appeal procedures within thirty (30) days from the date of the public hearing or public meeting for which the notice was given, the notice is considered adequate and proper. The notice provided in required by this subsection may be referred to in this Title as "required notice". Each applicant shall pay the Costs of required notice for his or her applications shall be paid by the applicant.

17.16.020: ~~BOARD OF ADJUSTMENT:~~APPEAL AUTHORITY

17.16.020.010: APPEAL AND VARIANCE HEARING OFFICER

A. Creation and Appointment. Pursuant to Utah Code § 10-9a-701, et. seq. there is created in the ~~e~~City a board of adjustment (board)an appeal authority. The City Council shall appoint, ~~which shall consist of the mayor and city council members or other assigned person or body,~~ as approved by resolution one or more Appeal and Variance Hearing Officers (also referred to in this Section 17.16.020 as “Hearing Officer”) who will serve as the appeal authority for appeals of administrative land use decisions and variancesof the city council. ~~When convened, the board shall act in a quasi-judicial capacity.~~

~~Organization And Responsibilities Of Board:.~~ When acting as the board, the mayor shall act as the chairperson and shall have an equal vote. A quorum of the board shall consist of at least four (4) members. The vote of the majority of those members in attendance, but no less than three (3) members, shall be required to pass any motion before the board. The board may adopt rules in accordance with the provisions of this title. Meetings of the board shall be held at the call of the chairperson and at such other times as the board may determine in accordance with law. The chairperson, or in his or her absence, the acting chairperson 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 on each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations or other official actions; all of which shall be immediately filed with the office of the city recorder as a public record. All applicable statutory requirements for open meetings shall be followed.

B. ~~Powers Of The Board Of Adjustment~~Authority and Jurisdiction:. ~~The board~~A Hearing Officer shall have the following powers:

1. Hear Aand Decide Appeals:. ~~Unless otherwise specifically provided in this Title or Title 16 (Development Code), a Hearing Officer shall~~To hear and decide all appeals to ~~interpretations of this title where it is alleged that there is error in any final written decision of the Development Services Director, City Engineer, or Planning Commission administering or interpreting this Title or in Title 16 (Development Code)order, requirement, decision, or determination made by the administrating officer, South Jordan planning commission, or the land use authority, as defined by the city's development and planning and land use codes, title 16 of this code and this title, respectively, in the enforcement of this title or any ordinance adopted with regard thereto.~~
2. Authorize Variances:. ~~A Hearing Officer may~~To authorize a variance to any person or entity desiring a waiver or modification of the requirementsa land use requirement of this ~~¶~~Title as applied to a parcel of property that he or she owns, leases, or in which he or she holds some other beneficial interest upon ~~appeal~~application by the owner for a variance from the terms of this ~~¶~~Title.

17.16.020.020: APPEALS

A. Parties Entitled to Appeal. The City, an applicant, or any other person or party adversely affected by a final written decision of the Development Services Director, City Engineer, or Planning Commission administering or interpreting this Title or Title 16 (Development Code) may appeal the decision to a Hearing Officer.

~~DB.~~ Time To File Appeals To The Board. A Hearing Officer may only consider appeals properly filed pursuant to this Section within ten (10) days of the date the disputed final written decision was issued. Appeals to the board of any decision made under this title may be taken by any person aggrieved by such decision, or by any officer, department, board or bureau of the city affected by any decision of the administrative officer, South Jordan planning commission or the designated land use authority. Such appeal may be taken within fourteen (14) days by filing, with the city recorder, a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall transmit to the board all papers constituting the record upon which the action appealed from was taken.

C. Application. Appellants shall file their appeals in writing by submitting an appeal application to the City Recorder. A Hearing Officer may only consider an appeal if the appellant submitted a complete application within the time period provided in Subsection B. An appeal application is complete if it includes:

1. a completed application form provided by the Development Services Department;
2. payment of applicable fees including those shown on the current-year City Fee Schedule;
and
3. a written statement that:
 - a. concisely explains the appellant's standing to appeal;
 - b. identifies the alleged error that is grounds for the appeal;
 - c. provides reasons the appellant claims the applicable decision was made in error; and
 - d. every theory of relief that can be presented to a district court.

~~C. Decision On Appeal:~~ By majority vote, the board, acting in its capacity as a quasi-judicial body, may reverse or affirm, wholly or partially, or may modify an 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 or body from whom the appeal is taken.

~~ED.~~ Stay Of Proceedings Pending Appeal. An appeal stays all proceedings, unless the officer or decision making body from whom the appeal is taken that made the decision being appealed certifies to the board a Hearing Officer after the notice of appeal is filed with him or her the City Recorder; that, by reason of the facts stated in the certificate, the stay would in his or her the officer's or decision making body's opinion cause imminent peril to life and

property. In such case, proceedings shall not be stayed unless a restraining order, which may be granted by the board a Hearing Officer or by the district court grants a restraining order on application and, notice, and on due cause shown, is granted.

~~FE. Notice Of Hearing On Appeal: After receiving an appeal application from the City Recorder, The board a Hearing Officer shall fix a reasonable time and place for the hearing of the appeal during a public meeting. Thereafter, the City Recorder shall publish an agenda at City Hall and on the City's website, give notice thereof as well as due notice to the parties (to the city and the applicant parties, and provide the appeal application to appellee), and shall decide the same within a reasonable time.~~

F. Response and Representation. Prior to the hearing, the appellee may submit to the City Recorder a response to the appeal application that the City Recorder shall give to a Hearing Officer and appellant. At the hearing, the parties may appear in person or by agent or attorney.

G. Hearing and Decision Procedures.

1. Minutes. A Hearing Officer shall cause minutes to be kept of all proceedings before him or her and shall keep record of all other official actions, including written decisions. A Hearing Officer's minutes and official records shall be immediately filed with the City Recorder as a public record and shall be retained according to applicable law.
2. Written Decision. A Hearing Officer shall file with the City Recorder a written decision on each appeal that reverses or affirms, in whole or in part, the administrative decision being appealed.
 - a. The written decision shall set forth the facts and law upon which the decision is made.
 - b. If a Hearing Officer reverses any part of the administrative decision being appealed, the Hearing Officer shall remand the administrative decision to the officer or decision making body that made the decision for further proceedings consistent with the Hearing Officer's decision.
 - c. The City Recorder shall notify the parties of a Hearing Officer's decision by mail within ten (10) days of the decision's effective date.
3. Other Policies and Procedures. A Hearing Officer may formally adopt other policies and procedures that do not otherwise conflict with this Section or other laws.

~~GH. Standard of Review. Of Appeal: A Hearing Officer, Acting in its his or her quasi-judicial capacity, shall review all appeals based on the record below. an appeal before the board shall be reviewed as follows:~~

1. No Public Comment. A Hearing Officer shall not receive public comment and the parties may not present new evidence unless such evidence was improperly excluded below. The board may conduct a review of the record, or review the appeal application on a de novo basis.

2. Review for Correctness. A Hearing Officer shall determine the correctness of the decision at issue and shall uphold the decision unless it is not supported by substantial evidence in the record or is otherwise illegal. ~~In the event the board decides to review the appeal application de novo, the board shall follow the same procedure and evaluate the appeal application as set forth in this section.~~
3. Burden of Proof. The appellant has the burden of proving the appealed decision was made in error.

~~HI.~~ Judicial Review of Board Hearing Officer's Decision. The eCity or any person aggrieved ~~adversely affected~~ by any Hearing Officer decision ~~of the board~~ may appeal to the district court of competent jurisdiction by filing a plenary action for relief; provided, petition for such relief is presented to the court within thirty (30) days after the filing of such decision with the eCity ~~Recorder~~.

~~IJ.~~ Stay of Decision. A Hearing Officer may stay his or her decision for thirty (30) days or until the district court decides any appeal of the Hearing Officer's decision. ~~Government Immunity: The members of the board shall be deemed included in the definition of "employee" found in Utah Code Annotated section 63G-7-101 et seq., as amended.~~

17.16.020.030: VARIANCES

A. Parties Entitled to Request a Variance. Any person or entity desiring a waiver or modification of a land use requirement of this Title as applied to a parcel of property that he or she owns, leases, or holds some other beneficial interest may apply to a Hearing Officer for a variance after receiving a final written administrative decision or interpretation of the land use requirement from the Development Services Director or his or her designee.

B. Application. A Hearing Officer may only consider a variance request after a complete variance application has been submitted to the Development Service Department that includes:

1. a completed application form provided by the Development Services Department;
2. payment of applicable fees including those shown on the current-year City Fee Schedule; and
3. other relevant information identified by the Development Services Department or otherwise required to explain and justify the variance request (e.g., elevations, materials, site plans, and photographs).

C. Notice of Hearing. After receiving an appeal application from the City, a Hearing Officer shall fix a reasonable time and place for hearing the variance request during a public meeting. Thereafter, the City Recorder shall publish an agenda at City Hall and on the City's website, and give notice to the parties.

D. Response and Representation. Prior to the meeting, the City may submit to the City Recorder a response to the variance application that the City Recorder shall give to a Hearing Officer and applicant. At the meeting, the parties may appear in person or by agent or attorney.

E. Hearing and Decision Procedures.

1. No Public Comment. A Hearing Officer shall not receive public comment regarding a variance request.
2. Minutes. A Hearing Officer shall cause minutes to be kept of all proceedings before him or her and shall keep record of all other official actions, including written decisions. A Hearing Officer's minutes and official records shall be immediately filed with the City Recorder as a public record and shall be retained according to applicable law.
3. Written Decision. A Hearing Officer shall file with the City Recorder a written decision on each variance that grants or denies, in whole or in part, the variance request. The written decision shall set forth the facts and law upon which the decision is made. The City Recorder shall notify the applicant of the Hearing Officer's decision by mail within ten (10) days of the decision's effective date.
4. Other Policies and Procedures. A Hearing Officer may formally adopt other policies and procedures that do not otherwise conflict with this Section or other laws.

F. Standard of Review.

- a1. Variances: The board~~The board~~A Hearing Officer may grant a variance from a land use requirement only if:
 - ~~(1)~~a. ~~L~~iteral enforcement of the ~~ordinance~~requirement would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinance;
 - ~~(2)~~b. ~~T~~here are special circumstances attached to the property that do not generally apply to other properties in the same zone;
 - ~~(3)~~c. ~~G~~ranting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;
 - ~~(4)~~d. ~~T~~he variance will not substantially affect the ~~g~~General plan and will not be contrary to the public interest; and
 - ~~(5)~~e. ~~T~~he spirit of the land use ordinance is observed and substantial justice done.
- b2. Determination ~~O~~f Hardship: In determining whether or not enforcement of the land use ~~ordinance~~requirement would cause unreasonable hardship under ~~s~~Subsection B2a(1)E2a of this ~~s~~Section, ~~the appeal authority~~a Hearing Officer may not find an unreasonable hardship unless the alleged hardship:

- (1)a. ~~I~~is located on or associated with the property for which the variance is sought; and
 - (2)b. ~~C~~comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.
- e3. ~~Self-Imposed Or Economic Hardship~~: In determining whether or not enforcement of the land use ~~ordinance~~requirement would cause unreasonable hardship under s~~Subsection B2aE2a~~Subsection B2aE2a of this s~~Section~~Section, ~~the appeal authority~~a Hearing Officer may not find an unreasonable hardship if the hardship is self-imposed or economic.
- e4. ~~Determination Of Special Circumstances~~: In determining whether or not there are special circumstances attached to the property under s~~Subsection B2a(2)E2b~~Subsection B2a(2)E2b of this s~~Section~~Section, ~~the appeal authority~~a Hearing Officer may find that special circumstances exist only if the special circumstances:
- (1)a. ~~R~~relate to the hardship complained of; and
 - (2)b. ~~D~~eprive the property of privileges granted to other properties in the same zone.
- h5. ~~Additional Requirements~~: In granting a variance, ~~the board~~a Hearing Officer may impose additional requirements on the applicant that will:
- (1)a. ~~M~~itigate any harmful effects of the variance; or
 - (2)b. ~~S~~erve the purpose of the standard or requirement that is waived or modified.
- e6. ~~Conditions: Burden of Proof~~. The applicant ~~shall bears~~ the burden of proving that all of the conditions justifying a variance have been met.
- g7. ~~Prohibited~~: ~~The appeal authority~~A Hearing Officer ~~may~~shall not grant:
- a. a variance that is greater than the minimum variation necessary to relieve the unreasonable hardship the applicant can demonstrate;
 - b. a temporary variance; or
 - c. a use variance.
- fG. ~~Variance Provisions~~: ~~Vari~~ances run with the land.
3. ~~Zone Boundaries Dividing Single Parcels~~: ~~The board may, in appropriate cases, after public notice and hearing, determine and vary the zone boundary dividing a single parcel of land. The board may permit the extension of a use allowed in a zone into a more restricted use zone immediately adjacent thereto where the zone boundary line divides a parcel in single ownership. Such use may extend to the entire parcel; provided that in no case shall the use be extended to more than fifty feet (50') beyond the boundary line of such zone in which such use is authorized.~~

- H. Judicial Review of Hearing Officer's Decision. The city or any person adversely affected by any Hearing Officer decision may appeal to the district court of competent jurisdiction by filing a plenary action for relief; provided, petition for such relief is presented to the court within thirty (30) days after the filing of such decision with the City Recorder.
- I. Stay of Decision. A Hearing Officer may stay his or her decision for thirty (30) days or until the district court decides any appeal of the Hearing Officer's decision.