

ORDINANCE NO. 2005-1-O

AN ORDINANCE ESTABLISHING A BOARD OF ADJUSTMENT

Be it ordained by the Legislative Body of the Township of Apple Valley, Utah as follows:

1. Statutory Authority
2. Purpose
3. Findings
4. Number of Members; Appointment; Term and Removal; Vacancies
5. Organization of Board; Meetings; Quorum
6. Vote Necessary
7. Powers and Duties
8. Appeals to Board Or Request For Variance
9. Routine and Uncontested Matters
10. Stay of Proceedings
11. Notice of Hearing; Right of Appearance; Brief
12. Decision
13. Judicial Review of Board's Decision; Time Limitation
14. Action on Variance; Withdrawal; No Refund
15. Repeal of Title 10, Chapter 2 of the Zoning Ordinance of Washington County
16. Effective Date

1. Statutory Authority.

The statutory authority for enacting this ordinance is Utah Code Annotated Sections 10-3-701, 10-3-702 and 10-9-701 *et seq.* (1953, as amended).

2. Purpose.

The purpose of this ordinance is to establish a board of adjustment for Apple Valley Township ("Apple Valley") in order to provide for just and fair treatment in the administration of Apple Valley's Zoning Ordinance, to ensure that substantial justice is done and to exercise the powers and duties set forth in Utah Code Annotated, Sections 10-9-701 through 708, as amended. This ordinance defines the number and terms of the members, the mode of appointment, and the procedures for filling vacancies and removal from office, and other details relating to the organization and procedures of the board of adjustment.

3. Findings.

A. Apple Valley was incorporated by the State of Utah on the 14th day of October 2004.

B. Apple Valley has previously adopted the Zoning Ordinance of Washington County (Ordinance No. 2004-1-O), which includes provisions for a county board of adjustment (Title 10, Section 2).

C. The residents of Apple Valley would benefit from the establishment of a municipal board of adjustment.

D. Creation of a municipal board of adjustment would necessitate repealing Title 10, Section 2 of the Zoning Ordinance of Washington County.

4. Establishment of Board of Adjustment.

A. Apple Valley hereby establishes a municipal board of adjustment, which is comprised of five (5) regular members, plus whatever number of alternate members that the Apple Valley Mayor considers appropriate. One member, but not more than one, of the planning commission may be a member of the board of adjustment. The terms of the members of the board of adjustment shall be five (5) years, except that the terms of the board of adjustment members shall be adjusted so that the term of one member expires each year. Any member or alternate member may be removed for cause by the mayor upon the filing of written charges with the mayor and after a public hearing, if requested. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

B. At the request of the chairperson or acting chairperson, up to two (2) alternate members may serve at any duly called meeting of the board of adjustment where less than five (5) regular members are present.

5. Organization of Board; Meetings; Quorum.

The board of adjustment shall organize and elect a chairperson and adopt rules. Meetings of the board shall be held at the call of the chair and at such other times as the board may determine. A quorum shall consist of three (3) members. The chair, or in the chair's absence, the acting chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public pursuant to Utah Code Annotated title 52, chapter 4, open and public meetings. Except as otherwise permitted by law, the board shall keep minutes of its proceedings showing the vote of its examinations and other official actions. The board's records shall be immediately filed in the office of the board and shall be a public record. The board may have its proceedings contemporaneously transcribed by a court reporter or a tape recorder.

6. Vote Necessary. The concurring vote of three members of the board of adjustment is necessary to reverse any order, requirement, decision, or determination of any administrative official or agency or to decide in favor of the appellant. Decisions of the board of adjustment become effective at the meeting in which the decision is made,

unless a different time is designated in the board's rules or at the time the decision is made.

7. Powers and Duties.

A. Hear and Decide: The board shall hear and decide:

1. Appeals from zoning decisions applying the zoning ordinance;
2. Special exceptions to the terms of the zoning ordinance; and
3. Variances from the terms of the zoning ordinance.

B. Nonconforming Uses: The board shall make determinations regarding the existence, expansion or modification of nonconforming uses.

C. Conditional Use Permits Not Considered: The board shall not hear or decide appeals regarding the approval or denial of a conditional use permit inasmuch as the town council specifically retains that authority unto itself.

8. Appeals to Board Or Request For Variance.

A. Procedure; Time Limit: An applicant or any person or entity adversely affected by an administrative decision applying a zoning ordinance may appeal that decision by alleging that there is error in any order, requirement, decision or determination made by an official in the administration or interpretation of the zoning ordinance. Such appeal must be commenced within thirty (30) calendar days of the adverse order, requirement, decision or determination by filing a written notice of appeal with the board of adjustment. A copy of the notice of appeal must indicate the decision appealed from and identify the parties making the appeal. Any person or entity desiring a waiver or modification of the requirements of the zoning 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 zoning ordinance. Any appeal or request for variance must include a list containing the names and addresses of adjoining property owners. Adjoining property owners include all owners of property within a five hundred foot (500') radius of the property affected by the appeal or request for variance as shown on the tax rolls of the county.

B. Fee: An appeal or request for a variance shall be accompanied by a fee, established by the town council, which amount shall be used to defray the costs of administering the board of adjustment, including, but not limited to, costs of advertising and publishing notice.

9. Routine and Uncontested Matters.

A. Official May Be Appointed: The mayor may appoint an administrative official to decide routine and uncontested matters before the board of adjustment. The board of adjustment shall:

1. Designate which matters may be decided by the administrative official.
2. Establish guidelines for the administrative official to comply with in making decisions.

B. Appeal: Any person affected by a decision of the administrative official may appeal the decision to the board of adjustment as provided in this ordinance.

10. Stay of Proceedings. An appeal stays all proceedings in furtherance of the action appealed from, unless the official from whom the appeal is taken, after receiving the notice of appeal, certifies in writing with specificity to the board of adjustment the reasons why a stay would cause imminent peril to life or property. In such case, the board of adjustment may lift the stay, upon notice to the parties, with an opportunity to respond.

11. Notice of Hearing; Right of Appearance; Brief. The board of adjustment shall fix a reasonable time for the hearing of an appeal or request for variance, shall give public notice thereof as well as due notice to the parties in interest, including adjoining property owners. The board of adjustment may require such written briefs or memorandum of the parties, as the board deems advisable. At the hearing, the appellant shall appear in person or by agent or attorney.

12. Decision. In exercising its powers, the board of adjustment may 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 official from whom the appeal is taken. The board shall make a decision on any appeal or request for variance within a reasonable time following the hearing.

13. Judicial Review of Board's Decision; Time Limitation. Any person adversely affected by a final decision of the board of adjustment may petition the district court for review of the decision as permitted by law. Such a petition is barred unless filed within thirty (30) days after the board of adjustment's decision is final. The board of adjustment may order its decision stayed pending district court review if the board of adjustment finds it to be in the best interest of the township.

14. Action on Variance; Withdrawal; No Refund. Unless otherwise specified by the board, any order or decision of the board authorizing a variance shall expire if the applicant fails to obtain a building permit within one year from the date of the decision. Any applicant may voluntarily withdraw the appeal or variance request at any time prior to a decision of the board. No person shall be entitled to claim a refund of costs for any reason whatsoever.

15. Repeal of Title 10, Chapter 3 of the Zoning Ordinance of Washington County.

Title 10, Chapter 2 of the Zoning Ordinance of Washington County, which was adopted by Apple Valley, is hereby repealed.

16. Effective Date.

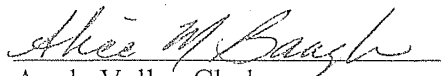
This ordinance takes effect ten (10) days after its passage. Following its passage but prior to the effective date, a copy of the Ordinance shall be deposited with the Town Clerk and a complete copy of the Ordinance shall be posted in three (3) public places within the boundaries of Apple Valley as required by law.

APPROVED AND ADOPTED this 6<sup>th</sup> day of January 2005.

APPLE VALLEY TOWNSHIP

  
MARY REEP  
Mayor

ATTEST:

  
Alice M. Baugh  
Apple Valley Clerk

Council Member Evan Brown voted AYE  
Council Member Kathy Pugmire voted AYE  
Council Member Jan Hirschi voted AYE  
Mayor Mary Reep voted AYE

COUNCIL MEMBER DALE KINGSLEY VOTED AYE