

CHAPTER 02-06 APPEALS AND VARIANCE AUTHORITY

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02-06-001 Purpose

The Appeals and Variance Authority is an administrative authority and limited in their powers and duty as a board.

The City Council makes the legislative decisions which include the following:

- a. Adopting the General Plan
- b. Adopting or amending the ordinances
- c. Rezoning property to a new classification
- d. Adopting a subdivision or variance or any other local law that will be placed in the ordinance books.
- e. Setting uniform, printed development standards, codes, and regulations that are applicable generally to land use within the City, as opposed to a specific development approval for a specific, isolated application.

The municipality by adopting its Land Use Ordinance establishes this appeal authority to hear and decide:

- a. Requests for variances from the terms of the Land Use Ordinances; and
- b. Appeals from decisions applying the Land Use Ordinances; and
- c. Require an adversely affected party to present to the Appeal Authority every theory of relief that it can raise in the Zone Court.

02-06-002 BOARD MEMBERSHIP

The Appeals and Variance Authority shall consist of five member Board and such alternate members as the Mayor, in consultation with the City Council, deems appropriate. Each member shall be appointed by the Mayor with the advice and consent of the City Council. Each member is appointed for a term of five years unless otherwise provided in this Chapter. The terms of the members of the Board shall be staggered such that the term of only one member shall expire in any calendar year. Terms of each of the members and the alternates shall expire on July 1 of the last year of their term. Alternate members shall serve in the absence of a member or members of the Board under rules established by the City Council. No more than two alternate members shall sit at any meeting of the Board at one time. Any member may be removed for cause by the Mayor upon written charges. The Mayor shall provide the member with a public hearing, if

such public hearing is requested by the member. Any vacancy occurring on said Board for whatever reason shall be filled by appointment as provided in this Section for the unexpired term of such member or alternate member whose office is vacant. Each member of the Board shall be a resident of the City.

02-06-003 ORGANIZATION AND MEETINGS OF BOARD

The Board shall elect a Chairperson and Vice-Chairperson from among the members, for a one year term. Meeting of the Board shall be held at the call of the Chairperson and at such other times as the Board may determine. The Chairperson or, in his/her absence, the acting Chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the board shall comply with the Utah Open Meetings Law.

The Board shall keep minutes of its proceedings showing the vote of each member upon each question, members absent, members failing to vote, a record of the Board's examination of evidence and other official actions. The minutes shall be immediately filed in the Planning and Land Use Department and shall be public record.

The Board shall adopt rules of policy and procedure consistent with this Chapter or State law. Said rules shall be submitted to the City Council for approval and may be altered, amended or changed in the same manner.

02-06-004 DUTIES AND POWERS OF THE BOARD

The Board shall have the duty and power to decide:

A. . Appeals

The applicant, a board or officer of the municipality, or any person adversely affected by the land use authority's decision administering or interpreting a land use ordinance may, within the time period provided by ordinance 14 days appeal that decision to the appeal authority by alleging that there is error in any order, requirement, decision, or determination made by the land use authority in the administration or interpretation of the land use ordinance.

B. Non Conforming Uses and Non Complying Structures Determinations

Nonconforming Use and Non Complying Structure determinations made by the Building Office and/or Land Use Administrator as provided in this chapter and Land Use Ordinance, and applications for the expansion of a non complying structures and noncomplying use shall be determined by the Board. These determinations shall be made and provided in accordance with the Utah State

Law, the General Plan and the non-conforming use and non complying structures section of this ordinance.

C. Variances

The Board shall have the power to hear and decide all applications for variance from the City Land Use Ordinance other than allowing a use in a zone which is not listed as a permitted or conditional use. Such decisions shall be made in accordance with State law; and shall meet other standards and requirements of Naples City Land Use Ordinance. Notwithstanding, the spirit of this ordinance must be observed and substantial justice done.

The Board shall hear and decide appeals from;

1. Any person or entity desiring a waiver or modification of the requirements of a land use 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 applicable appeal authority for a variance from the terms of the ordinance.

2. a. The appeal authority may grant a variance only if:

- (i) literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the Land Use Ordinances;
- (ii) there are special circumstances attached to the property that do not generally apply to other properties in the same zone;
- (iii) granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;
- (iv) the variance will not substantially effect the General Plan and will not be contrary to the public interest; and
- (v) the spirit of the Land Use Ordinance is observed and substantial justice done.

b. (i) In determining whether or not enforcement of the Land Use Ordinance would cause unreasonable hardship (2) (a), the Appeal Authority may not find an unreasonable hardship unless the alleged hardship:

(A) is located on or associated with the property for which the variance is sought; and

(B) comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood. (ii) In determining whether or not enforcement of the Land Use

Ordinance would cause unreasonable hardship under Subsection (2)(a), the appeal Board may not find an unreasonable hardship if the hardship is self-imposed or economic.

- (c) In determining whether or not there are special circumstances attached to the property under Subsection (2)(a), the Appeal Authority may find that special circumstances exist only if the special circumstances:
 - (i) related to the hardship complained of; and
 - (ii) deprive the property of privileges granted to other properties in the same zone.
- (3) The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.
- (4) Variances run with the land.
- (5) The Appeal Authority may not grant a use variance.
- (6) In granting a variance, the appeal authority may impose additional requirements on the applicant that will:
 - (a) Mitigate any harmful affects of the variance; or
 - (b) Serve the purpose of the standard or requirement that is waived or modified.

02-06-005 VARIANCES

A. Definition

A variance is a device which grants a property owner relief from certain provisions of the Land Use Ordinance when, because of the particular physical surroundings, shape, or topographical conditions of the property, compliance would result in a particular hardship enjoyed by other uses within the Land Use zone upon the owner, as distinguished from a mere inconvenience or a desire to reduce financial difficulties.

B. Variance Criteria

Unless otherwise provided in this Title, the Board may grant a variance from the requirements of any provision of the Land Use ordinance to the extent that such a grant shall be consistent with the provisions of this Section. The spirit of this ordinance must be observed and substantial justice done. Further, a previous variance can never set a precedent. Each case must be considered only on its individual merits. Before any variance may be granted, the applicant must show that: See 02-06-004 Variances.

02-06-006 APPEAL AND REQUESTS FOR VARIANCE

- A. Appeals and Requests for Variance - Time - Persons Entitled - Transmission of Papers

A written appeal from an interpretation, order or decision made by an administrative official in carrying out a provision of the Land Use Ordinance shall be filed by the aggrieved party with the City Recorder/secretary of the Boards, with a copy to the administrative official affected, within 14 calendar days from the date he is notified of the interpretation, order, or decision. An appeal or request for variance shall be accompanied by a fee, established by the City Council, which amount shall be used to defray the cost of notice and other expenses. An appeal stays all proceedings in furtherance of the action appealed, unless, by reason of facts stated in the certificate, a stay would, in the opinion the officer from whom the appeal is taken, 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 or by the zone court on application and notice and on good cause shown.

B. Notice of Hearing on Appeal - Right of Appearance

The Board 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; and shall decide the same within a reasonable time. At the hearing the requesting party shall appear in person or by agent or by attorney. Notice shall also be posted in a conspicuous place, on the property adjacent to and facing the nearest public street. "Adjoining property owners" shall mean all owners within 1,000 feet in each direction from the location for which the appeal or variance is requested, as determined from the tax records of the county. The applicant shall furnish the board with a complete list containing the names and last known addresses of such owners at the time the application is filed.

C. Powers of Board on Appeal

The Board shall have the following powers:

1. To hear and decide appeals wherein it is alleged that there is an error in any order, requirement, decision or determination made by the Land Use Administrator and/or Administrative official in the enforcement of the Land Use Ordinance.
2. To hear and decide special exceptions to the terms of the ordinance upon which such board is required to pass under such ordinance.
3. To authorize upon appeal such variance from the terms of the ordinance as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the ordinance will result in unnecessary hardship; provided that the spirit of the ordinance and General Plan shall be observed and substantial justice done. Before any variance may be authorized, the Board shall make a finding that:

- a. The variance will not substantially affect the General Plan of Land Use in the city and that adherence to the strict letter of the ordinance will cause difficulty and hardships, the imposition of which upon the petitioner is unnecessary in order to carry out the general purpose of the plan.
- b. Non-conforming uses and non complying structures use determinations attached to the property covered by the application which do not generally apply to other property in the same zone.
- c. That because of said special circumstances, property covered by the application is deprived of privileges possessed by other property in the same zone.
- d. Under no circumstances shall there be granted a variance to allow a use of property not permitted by the regulations for the Land Use in which such property is located.

Decision of Appeal

In exercising the above mentioned powers, such board may reverse or affirm, wholly or partially, 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 for whom the appeal is taken.

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.

Judicial Review of Boards Decision - Time Limitation

The City or any person adversely affected by final decision of the Board may appeal for relief there from in Zone Court; provided, petition for such relief is presented to the court within 14 calendar days after the filing of such decision in the office of the board.

Action on Variance - Withdrawal - Refund

Unless otherwise specified by the board, any order or decision of the board authorizing a variance shall expire if the applicant may voluntarily withdraw his appeal or request for variance at any time prior to a decision of the board. No person shall be entitled to claim refund of costs for any reason whatsoever.