

**PARK CITY MUNICIPAL CODE**  
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**TITLE 15 - LAND MANAGEMENT CODE (LMC)**  
**CHAPTER 10 - BOARD OF ADJUSTMENT**

*Chapter adopted by Ordinance No. 01-17*

**15-10-1. ESTABLISHMENT OF BOARD.**

In order to avail the City of the powers provided in Chapter 9 of Title 10 of the Utah Code (1953, as amended), there is hereby created a Board of Adjustment, which shall consist of five (5) members. There shall also be one non-voting alternate to vote when a regular member is absent. Members shall be appointed by the Mayor with the advice and consent of the City Council. The Council may fix per diem compensation for the members of the Board of Adjustment by resolution, based on necessary and reasonable expenses for meetings actually attended. All members of the Board of Adjustment shall reside within the City limits, and are deemed to have resigned if they move their residence from the City limits.

**15-10-2. TERM OF OFFICE.**

Each member of the Board of Adjustment shall serve for a term of five (5) years or until his successor is appointed and qualified provided that the term of the members of the first Board so appointed shall be such that

the term of one member shall expire each year on June 1. Vacancies shall be filled in the same manner as the original appointment for the balance of the unexpired term.

*(Amended by Ord. No. 09-10)*

**15-10-3. POWERS AND DUTIES.**

(A) The Board of Adjustment shall hear and decide:

- (1) Appeals from zoning decisions applying Title 15, Land Management Code;
- (2) Variances from the terms of the Land Management Code.
- (3) Appeals and call-ups of Final Action by the Planning Commission at the request of the City Council for City Development applications.
- (4) Appeals of Final Action by the Planning Staff on Historic District Design Review applications when the Historic Preservation Board takes part in the review and Final Action.

(5) Appeals of Final Action by the Historic Preservation Board on Determination of Significance applications.

(B) The Board of Adjustment shall make determinations regarding the modification of Non-Conforming Uses and shall hear appeals on the determination of Non-Conforming or Non-Complying status by the Director of the Planning Department, as provided in Title 15, Chapter 9.

*(Amended by Ord. Nos. 06-35, 10-11; 12-37; 15-35)*

#### **15-10-4. GROUND FOR REMOVAL.**

Any Board member who is absent for two (2) consecutive regularly scheduled meetings, or a total of four (4) regularly scheduled meetings per year may be called before the City Council and asked to resign or be removed for cause by the Mayor, with the advice and consent of City Council. Additionally, the Mayor, with the advice and consent of City Council, may remove any member of the Board of Adjustment for cause if written charges are filed with the Mayor, against the member. The Mayor shall provide the member with a public hearing if the member requests one.

*(Amended by Ord. No. 06-35)*

#### **15-10-5. ORGANIZATION.**

(A) **CHAIR.** The Board of Adjustment shall elect one of its members to serve as Chair for a term of two (2) years at its first

meeting following the date of expiration of terms in June. The Chair may be elected to serve for one (1) consecutive additional term, but not for more than two (2) successive terms. If the Chair is absent from any meeting where a quorum would otherwise exist, the members may appoint a Chair Pro Tem to act as Chair solely at that meeting.

(B) **QUORUM.** No business shall be conducted unless at least three (3) members of the Board, not counting the alternate, are present.

*(Amended by Ord. No. 09-10)*

#### **15-10-6. MEETINGS.**

Meetings of the Board shall be held at the call of the Chair and at such other times as the Board may determine.

(A) **WITNESSES.** The Chair of the Board of Adjustment or in his absence, the Chair Pro Tem, may administer oaths and compel the attendance of witnesses at such meetings, and all meetings shall comply with Title 52, Chapter 4, Open and Public Meetings, of the Utah Code, as amended.

(B) **MINUTES.** Written minutes shall be kept of all Board meetings. Such minutes shall include:

(1) The date, time and place of the meeting.

(2) The names of members present and absent.

(3) The substance of all matters proposed, discussed, or decided, and a record, by individual member, of votes taken.

(4) The names of all citizens who appeared and the substance in brief of their testimony.

(5) Any other information that any member requests be entered in the minutes.

The minutes are public records and shall be available within a reasonable time after the meeting.

*(Amended by Ord. No. 09-10)*

#### **15-10-7. APPEALS.**

Also see Section 15-1-18. The Board shall hear and decide appeals from an Applicant or any other Person or entity, including any officer or board of the City, adversely affected by a final decision administering or interpreting the Land Management Code which alleges that there is an error in any order, requirement, decision or determination of the Land Management Code.

The appeal must be made in writing and submitted to the Planning Department within ten (10) days of the decision. The Board may, in conformity with the provisions of the Code, 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 administrative official, board, or commission from whom the appeal is taken. The Person or entity making the appeal has the burden of proving that an error has been made.

A Person may not appeal, and the Board of Adjustment may not consider, any amendments to the Land Management Code, or appeals of Conditional Use permits or Master Planned Developments, which shall be appealed to the City Council, unless specifically requested by the City Council for City Development. Appeals may not be used to waive or modify the terms or requirements of the Land Management Code.

The Board of Adjustment shall review factual matters de novo and it shall determine the correctness of the decision of the land use authority. The scope of review of the Board of Adjustment is limited to issues brought to the land use authority. Appeals shall be heard by the Board of Adjustment within forty-five (45) days of the date that the appellant files an appeal unless all parties, including the City, stipulate otherwise.

*(Amended by Ord. Nos. 06-35; 09-10; 10-11; 15-35)*

#### **15-10-8. VARIANCE.**

(A) Any Person or entity desiring a waiver or modification of the requirements of the Land Management Code as applied to a Parcel or Property that he/she owns, leases, or in which he/she holds some other

beneficial interest may apply to the Board of Adjustment for a variance from the terms of the Land Management Code.

(B) An Application for variance review must be filed with the Planning Department, and the required fee paid in advance. The Application shall state the nature of the hardship and the nature of the variance requested. If the request for a variance is a result of a denial of any Building Permit or Conditional Use approval, the Application shall so state, and all documents on file concerning the matter shall be forwarded to the Board for review as a part of the request. The Applicant or the City may present any information as might be reasonably required by the Board in evaluating the request.

(C) Variances shall be granted only if all of the following conditions are found to exist:

(1) Literal enforcement of the Land Management Code would cause an unreasonable hardship for the Applicant that is not necessary to carry out the general purpose of the Land Management Code;

(2) There are special circumstances attached to the Property that do not generally apply to other Properties in the same zone;

(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; and

(5) The spirit of the Land Management Code is observed and substantial justice done.

(D) (1) In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under Subsection 15-10-9(C)(1), the Board of Adjustment may not find an unreasonable hardship unless the alleged hardship is located on or associated with the Property for which the variance is sought and comes from circumstances peculiar to the Property, not from conditions that are general to the neighborhood.

(2) In determining whether or not enforcement of the Land Management Code would cause unreasonable hardship under Subsection 15-10-9(C)(1), the Board of Adjustment may not find an unreasonable hardship if the hardship is self-imposed or economic.

(E) In determining whether or not there are special circumstances attached to the Property under Subsection 15-10-9(C)(2), the Board of Adjustment may find that special circumstances exist only if the special circumstances relate to the hardship complained of and deprive the Property of privileges granted other Properties in the same zone.

The Applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.

(F) Variances run with the land.

(G) The Board of Adjustment and any other body may not grant a Use variance.

(H) In granting a variance, the Board of Adjustment may impose additional requirements on the Applicant that will:

(1) mitigate any harmful affects of the variance; or

(2) serve the purpose of the standard or requirement that is waived or modified.

*(Amended by Ord. No. 06-35; 12-37; 15-35)*

#### **15-10-9. PERSONS ENTITLED TO APPEAR.**

At the hearing on any matter before the Board of Adjustment, any Person aggrieved or interested in the matter may appear in person or through his attorney to testify on the matter. The Applicant shall have the right to respond to testimony offered in opposition to the Application.

#### **15-10-10. DECISION.**

Decisions of the Board of Adjustment become effective at the meeting in which the Board adopts written findings of fact, conclusions of law and conditions of

approval, unless a different time is specifically designated by the Board.

#### **15-10-11. VOTE NECESSARY.**

The concurring vote of three (3) members of the Board shall be necessary to reverse any order, requirement, or determination of any such administrative official, board, or commission, or to decide in favor of the Applicant.

#### **15-10-12. JUDICIAL REVIEW OF BOARD DECISION.**

The City or any Person adversely affected by any decision of the Board of Adjustment may petition the District Court in Summit County for a review of the decision. In the petition, the plaintiff may only allege that the Board of Adjustment decision was arbitrary, capricious, or illegal.

*(Amended by Ord. No. 09-10)*