

and consideration of the Planning Commission for a recommendation, with final approval by the City Council concurrent with public hearings on the proposed annexation.

(F) There shall also be attached to the annexation petition a full disclosure statement of any and all waters owned or historically utilized on the Property to be annexed, and a statement from the water Owner(s) as to the estimated value of the water or the price at which he or she is willing to sell the said water to the City.

(G) The annexation petition shall not propose annexation of any land Area proposed for annexation to a municipality in a previously filed petition that has not been granted, denied, or rejected.

(H) The annexation petition shall not propose annexation of any land Area being considered for incorporation under Utah State law.

(I) On the date of filing the annexation petition with the City Recorder, the petition sponsor(s) shall also deliver or mail a copy of the petition to the County Clerk of the county in which the Property is located and to the chair of the Planning Commission which has review authority or jurisdiction over the said Property.

(J) There shall be attached to the petition a comprehensive review and analysis of surrounding Property. See Section 15-8-5(E).

15-8-4. PROCEDURE FOR PETITION AND ANNEXATION PLATS.

The procedure for processing annexation petitions and plats shall be as follows:

(A) A petition and proper plat certified by a licensed surveyor shall be submitted to the City Recorder in accordance with Section 10-2-403(2)(C) of the Utah Code, Annotated, 1953, as amended, together with any other information required by the City staff to enable the staff to prepare an annexation impact report.

(B) Prior to City Council action on the petition, the petition and plat shall be reviewed by the Planning Director, who shall determine the feasibility of expanding the annexation boundaries and who shall prepare a written recommendation for consideration by the City Council.

(C) If the City Council accepts the annexation petition, the petition shall be delivered to the City Recorder for certification pursuant to Section 10-2-405 of the Utah Code, Annotated, 1953, as amended.

(D) If the annexation petition is certified by the City Recorder, the City Council shall provide for public notice ~~and shall set a hearing~~ as set forth in Section 10-2-406 of the Utah Code, Annotated, 1953, as amended.

(E) The Planning Commission, upon referral from the Planning Director, shall hold a public hearing and make a

recommendation on the annexation proposal, including the recommended zoning, to the City Council. After receipt of the Planning Commission's recommendation and after giving notice pursuant to Section 10-2-406 of the Utah Code, Annotated, 1953, as amended, the City Council shall hold a public hearing on all proposed annexations. After closure of the public hearing, the City Council may either grant ~~or~~ deny the annexation petition; provided, however, that protests to an annexation petition shall be dealt with as set forth in Section 10-2-407 of the Utah Code, annotated, 1953, as amended. Denial of or granting the petition under protest is subject to Section 10-2-408 of the Utah Code, Annotated, 1953, as amended. If City Council grants the annexation petition, it shall assign a zone to the annexed territory at the time the territory is annexed.

(G) Once the City Council enacts an ordinance annexing an unincorporated Area or adjusting a boundary all applicable zoning and Land Management Code sections shall apply to the annexed Property.

(H) Within thirty (30) days after enacting an ordinance annexing an unincorporated Area or adjusting a boundary, the City shall:

~~(1) — Record with the County Recorder a certified copy of the ordinance approving the annexation or boundary adjustment, together with the annexation plat or map prepared by a licensed surveyor and approved by the City, showing the new boundaries of the affected Area.~~

~~(2) — Filefile with the Lieutenant Governor of the State of Utah the amended Articles of Incorporation reflecting the annexation or boundary adjustment, as provided in Section 10-1-117 notice of annexation, as required by Section 10-2-425 of the Utah Code, Annotated, 1953, as amended.~~

~~(3) — Comply with the notice requirements of Section 10-1-116 of the Utah Code, Annotated, 1953, as amended.~~

(I) Upon receipt of the Certificate of Annexation from the Lieutenant Governor, the City shall record with the County Recorder:

(1) The original notice of annexation filed with the Lieutenant Governor;

(2) The Certificate of Annexation issued by the Lieutenant Governor;

(3) The original approved plat or map prepared by a licensed surveyor and approved by the City; and

(4) A certified copy of the ordinance approving the annexation.

(Amended by Ord. No. 06-22)

15-8-5. ANNEXATION PETITION REVIEW – AFTER CITY COUNCIL ACCEPTANCE OF PETITION.

(A) **STAFF REVIEW TEAM.** After approval of the annexation petition by the City Council, general annexation procedure shall comply with Utah State law; provided, however, that the City Council shall not take Final Action on any petition until the same has been reviewed by the Park City Planning Commission and by the staff review team. For purposes of annexation petition review, the staff review team shall be composed of at least the following, or their designees:

Planning Director, City Engineer, Director of Public Works, Fire Marshall, Police Chief, representatives from applicable utility providers, and Park City School District Superintendent.

(B) **ANNEXATION EVALUATION AND STAFF REPORT.** The staff review team will review each annexation and zoning request. The Planning Department will prepare a staff report with considerations and a staff recommendation to present to the Planning Commission. The staff report shall include an evaluation of the proposed annexation and shall include at least the following information:

- (1) The ability to meet the general annexation requirements as stated in Section 15-8-2 herein.
- (2) An accurate map of the proposed annexation Area showing the boundaries and Property ownership within the Area, the topography of the Area and major natural features, e.g., drainage, channels, Streams, wooded Areas,

Areas of high water table, Very Steep Slopes, sensitive Ridge Line Areas, Wildfire/Wildland Interface Zones, and other environmentally Sensitive Lands.

(3) Current and potential population of the Area and the current residential Densities.

(4) Land Uses presently existing and those proposed.

(5) Character and Development of adjacent Properties and neighborhoods.

(6) Present zoning and proposed zoning.

(7) A statement as to how the proposed Area, and/or its potential land Use will contribute to the achievement of the goals and policies of the Park City General Plan.

(8) Assessed valuation of the current Properties.

(9) Potential demand for various municipal services and the need for land Use regulation in the Area, e.g. consideration of the distance from existing utility lines, special requirements for Sensitive Lands review and fire protection in Wildfire/Wildland Interface Zones, location within hazardous soils Areas, and feasibility of snow removal from Public Streets.

(10) The effect the annexation will have upon City boundaries and whether the annexation will ultimately create potential for future islands, undesirable boundaries, and difficult service Areas.

(11) A specific timetable for extending services to the Area and how these services will be financed.

(12) Potential revenue versus service costs.

(13) An estimate of the tax consequences to residents of the Area to be annexed.

(14) Recommendations or comments of other local government jurisdictions regarding the annexation proposal and potential impact of the annexation on general county economic needs, goals, or objectives.

(15) Location and description of any Historic or cultural resources.

(C) CONDITIONS OF ANNEXATION APPROVAL AND ANNEXATION AGREEMENT. The City has established the following conditions, which must be met prior to completion of the annexation, unless the City Council finds that the circumstances of an annexation are such that a condition or conditions do not apply. These conditions shall be applied consistently for each Property; however, unusual or unique circumstances may emerge from time to time where special

conditions may be applied. The conditions of annexation approval shall be formalized as part of ~~the a~~ written annexation agreement prepared by the Planning Director, or designee.

The annexation agreement shall be reviewed by the Planning Commission and approved by City Council contemporaneously with the certified annexation petition. If approved the annexation agreement shall be signed by the petitioners and City Council and recorded with the Summit County Recorder.

-The annexation agreement shall include, but is not limited to the following conditions:

(1) Transfer of usable water rights as established by City policy sufficient to serve the proposed Development.

(2) Additional improvements as necessary, which may be required in order to improve the water system.

(3) Dedication of necessary Streets, trails, utilities, and Rights-of-Way consistent with the Subdivision standards of this Code.

(4) Phasing of the project to insure adequacy of public facilities may be required.

(5) Payment of park land acquisition fees, dedication of open space or conservation Areas, and payment of Development impact fees.

(6) Provision of Affordable Housing in accordance with the Affordable Housing Resolution 17-99, as in effect at the time of petition.

(7) Submittal of Site plans and architectural plans for review.

(8) Flood plain management or preservation of environmentally Sensitive Lands including compliance with the Sensitive Lands Overlay section of the Code.

(9) Analysis and survey of any Historic and cultural resources located on the Property.

(10) Analysis of the fiscal impacts of the Development as determined necessary by the City. The fiscal Impact Analysis format, including the revenue and cost assumptions, shall be approved by the City. If necessary, the City shall hire qualified experts to perform the fiscal Impact Analysis.

(11) Fees paid in lieu of satisfying certain conditions, as approved by Council action.

(12) Comprehensive review of surrounding Property as described below in Section 15-8-5(E).

(13) Any other condition reasonably related to a health, safety, or welfare issue or negative impact of the project.

(14) Annexations located within the Quinn' s Junction Area Study (QJAS) shall be found to be consistent with the findings and conclusions of the QJAS. Any annexation petition filed prior to the final approval of the QJAS by the City will be stayed pending Final Action on the study.

(D) **AMENDMENTS TO THE ANNEXATION AGREEMENT.**

Subsequent substantive amendments to the annexation agreement are subject to review and approval by the Planning Commission and City Council with adequate public notice and recordation with the Summit County Recorder.

(E) **COMPREHENSIVE REVIEW AND ANALYSIS OF SURROUNDING PROPERTY.**

A comprehensive land Use review and analysis of Property surrounding the proposed annexation must be completed and submitted with the annexation petition. This analysis of surrounding Property shall be in sufficient detail for the City to determine the long term community impacts of the proposed annexation on these Properties. This analysis must include, but is not limited to, all Property within one and one-half (1.2) miles of the boundaries of the proposed annexation. The Planning Director may modify the study Area up to one-half (0.5) mile more or less to achieve a suitable and logical study Area.

The review and analysis of surrounding Property shall be performed by a qualified land Use planner with assistance from other professionals, such as traffic engineers, civil

engineers, wildlife biologists, hydrologists, and soils scientists. The City reserves the option of selecting the qualified professionals to perform this analysis with the cost to be paid by the Applicant. The review and analysis shall include, but is not limited to a study of the following:

- (1) Slope, wetlands, vegetation, wildlife habitat, view corridors, existing Historic and cultural resources, and significant geological features.
- (2) Existing and proposed road systems.
- (3) Existing and proposed utilities and major utility extension plans.
- (4) Location of proposed open space, recreational Areas, and trail systems.
- (5) Existing and proposed land Uses including type and Density of residential Areas.
- (6) Existing and proposed locations of community facilities such as fire stations, schools, parks, recreation centers, etc.

(Amended by Ord. Nos. 06-22; 06-86)

15-8-6. MUNICIPAL INITIATION OF ANNEXATION.

It shall be the policy of the City to annex Areas meeting all of the following criteria

with or without receipt of a petition from the Property Owners:

- (A) The annexation is an island within or a peninsula contiguous to the City;
- (B) The majority of each island or peninsula consists of residential or commercial Development;
- (C) The Area proposed for annexation requires the delivery of municipal-type services; and
- (D) The City has provided most or all of the municipal-type services to the Area for more than one (1) year.
- (E) Annexation of the Area is supported by the goals of the Park City General Plan, including open space, land Use, Affordable Housing, recreation, growth management, and economic Development.

Such annexations shall be processed as provided under Section 10-2-418 of Utah Code, Annotated, 1953, as amended, including all noticing and public hearing requirements. This review shall be in addition to the review required in Section 15-8-5 herein.

If written protest to such annexation is timely filed and complies with Section 10-2-418 Subsection (3) of the Utah Code, Annotated, 1953, as amended, the City may not adopt an ordinance annexing the Area proposed for annexation, and the annexation proceedings under this section shall be considered terminated.

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TITLE 15 - LAND MANAGEMENT CODE (LMC)
CHAPTER 9 - NON-CONFORMING USES AND NON-COMPLYING STRUCTURES

Chapter adopted by Ordinance No. 00-25

CHAPTER 9 - NON-CONFORMING USES AND NON-COMPLYING STRUCTURES.

15-9-1. PURPOSE.

This Chapter regulates the continued existence of Non-Conforming Uses and Non-Complying Structures as defined in Chapter 15. While Non-Conforming Uses, Non-Complying Structures and improvements may continue, this Chapter is intended to limit enlargement, alteration, restoration, or replacement which would increase the discrepancy between existing conditions and the Development standards prescribed by this Code. In addition, Applications are reviewed to ensure that they are reducing the degree of non-conformity and improving the physical appearance of the Structure and site through such measures as landscaping, Building design, or the improved function of the Use in relation to other Uses.

15-9-2. DETERMINATION OF NON-CONFORMING OR NON-COMPLYING STATUS.

(A) **BURDEN ON OWNER TO ESTABLISH LEGALITY.** The Owner bears the burden of establishing that any Non-Conforming Use or Non-Complying Structure lawfully exists.

(B) **DETERMINATION OF STATUS.** The Planning Director shall determine the Non-Conforming or Non-Complying status of Properties. Any decision of the Planning Director may be appealed within ten (10) calendar days of the decision to the Board of Adjustment. Upon appeal, the Board of Adjustment shall conduct a hearing and shall review the matter under de novo standard of review.

(Amended by Ord. No. 06-35)

15-9-3. AUTHORITY TO CONTINUE.

(A) **CONTINUATION OF NON-CONFORMING USE.** A lawful Non-Conforming Use may continue subject to the standards and limitations of this Chapter.

(B) **CONTINUATION OF NON-COMPLYING STRUCTURE.** A Non-Complying Structure that was lawfully constructed with a permit prior to a contrary change in this Code, ~~may~~, may be used and maintained, subject to the standards and limitations of this Chapter.

15-9-4. ABANDONMENT OR LOSS OF NON-CONFORMING USE.

(A) **ABANDONMENT OF NON-CONFORMING USE.** A Non-Conforming Use that is discontinued for a continuous period of one (1) year is presumed abandoned and shall not thereafter be reestablished or resumed. Abandonment may also be presumed to have occurred if a majority of the primary Structure associated with the Non-Conforming Use has been voluntarily demolished without prior written agreement with the municipality regarding an extension of the Non-Conforming Use; or the primary Structure associated with the Non-Conforming Use remains vacant for a period of one (1) year.

Any party claiming that a Non-Conforming Use has been abandoned shall have the burden of establishing the abandonment.

Any subsequent Use of the Building, Structure, or land must conform ~~with~~ to the regulations for the Zoning District in which it is located.

(B) **REBUTTABLE PRESUMPTION OF ABANDONMENT.** The presumption of abandonment may be rebutted upon a showing that during such period:

(1) any period of discontinued Use caused by governmental actions or an Act of God without any contributing fault by the Owner and the Owner did not intend to discontinue the Use; or

(2) the Owner has been actively and continuously marketing the Building, Structure, or land for sale or lease with the Use and the Owner has been maintaining the Building, Structure, or land in accordance with the Uniform Building Code; or

(3) the Owner can demonstrate no abandonment of the Use.

The Property Owner shall have the burden of establishing that any claimed abandonment has not in fact occurred.

(Amended by Ord. No. 06-35)

15-9-5. MOVING, ENLARGING, OR ALTERING NON-CONFORMING USES.

No Non-Conforming Use may be moved, enlarged, altered, or occupy additional land, except as provided in this Section.

(A) **ENLARGEMENT.** A Non-Conforming Use may not be enlarged, expanded, or extended to occupy all or a part of another Structure or site that it did not occupy on the date on which the Use became non-conforming. A Non-Conforming Use may be extended through the same Building

or Structure provided no structural alteration of the Building or Structure is proposed or made for the purpose of the extension and the parking demand is not increased.

(B) **EXTERIOR OR INTERIOR REMODELING OR IMPROVEMENTS TO BUILDING OR STRUCTURE.**

Exterior or interior remodeling or improvements to a Structure containing a Non-Conforming Use shall be allowed provided there is no expansion of the area of the Non-Conforming Use.

(C) **RELOCATION OF BUILDING OR STRUCTURE.**

A Building or Structure containing a Non-Conforming Use may not be moved unless the Use shall thereafter conform to the regulations of the Zoning District into which the Building or Structure is moved.

(D) **CHANGE OF NON-CONFORMING USE TO ANOTHER NON-CONFORMING USE OR A CONFORMING USE.**

Except as provided in Section 15-9-5(E) below, no Non-Conforming Use may be changed to another Non-Conforming Use. Whenever any Non-Conforming Use is changed to a conforming Use, such Use shall not later be changed to any Non-Conforming Use.

(E) **HISTORICALLY SIGNIFICANT BUILDINGS EXCEPTION: CHANGE OF NON-CONFORMING USE TO ANOTHER NON-CONFORMING USE OF SIMILAR OR LESS-INTENSIVE LAND USE TYPE.**

Subject to the criteria below, a Non-Conforming Use located on a Lot or Parcel containing a Building or

Structure included on the Park City Historic Sites Inventory, may be changed to another Non-Conforming Use of a similar or less intensive land Use type. A Non-Conforming Use, which satisfies the criteria provided in Section 15-9-5(E)(4) herein shall be considered a similar or less intensive land Use type.

(1) **APPLICATION.**

Application for any Non-Conforming Use must be made upon forms provided by the Planning Department. Upon filing of a Complete Application, the City shall post the Property indicating that an Application for modification of a Non-Conforming Use has been filed and that more detailed information may be obtained from the City.

(2) **NOTIFICATION OF ABUTTING PROPERTY OWNERS.**

Notice shall be provided pursuant to the Notice Matrix in Chapter 1. See Section 15-1-19.

(3) **BOARD OF ADJUSTMENT HEARING.**

Within thirty (30) working days of the Planning Department's receipt of a Complete Application, and after giving public notice, the Board of Adjustment shall hold a public hearing on the Non-Conforming Use Application. The Board of Adjustment shall either grant the Application in whole or in part, with or without modifications or conditions, or deny the Application. The Board of Adjustment's

decision shall be made pursuant to criteria provided in Section 15-9-5(E)(4) below.

(4) **CRITERIA.** The Board of Adjustment shall approve an Application to change a Non-Conforming Use to another Non-Conforming Use if the Application complies with the following criteria:

(a) All reasonable measures will be undertaken to alleviate or reduce the incompatibility or adverse effects of the Non-Conforming Use or Building upon abutting Properties or in the neighborhood;

(b) All changes, additions, or expansions comply with all current laws except as to Use;

(c) The new Use will provide for enclosed storage of necessary equipment, materials, and refuse, rather than create a need for additional outside storage; and

(d) The new Use does not increase the parking requirement; or if there is an increase, the site plan meets the parking requirement and the Board of Adjustment finds that adjoining Properties and the

neighborhood will not be adversely impacted by the increased parking demand.

(F) **DAMAGE OR DESTRUCTION OF BUILDING OR STRUCTURE WITH NON-CONFORMING USE.** If a Building or Structure that contains a Non-Conforming Use is allowed to deteriorate to a condition that the Structure is rendered uninhabitable and is not repaired or restored within six (6) months after written notice to the Property Owner that the Structure is uninhabitable and that the Non-Conforming Use will be lost if the Structure is not repaired or restored within six (6) months; or the Property Owner has voluntarily demolished a majority more than 50% of the Gross Floor Area of the Structure of the Building that houses the Non-Conforming Use; or if a Building or Structure that contains a Non-Conforming Use is voluntarily razed, or is required by law to be razed, the Non-Conforming Use shall not be resumed, and the Building or Structure shall not be restored unless it is restored to accommodate a conforming Use within a complying Structure.

If a Building or Structure that contains a Non-Conforming Use is involuntarily destroyed in whole or in part due to fire or other calamity and the Structure or Use has not been abandoned, the Non-Conforming Use may be resumed and the Building or Structure may be restored to the condition prior to the destruction, provided such work is started within six months of such calamity, is completed within eighteen (18) months of work commencement, and the

intensity of Use is neither increased nor changed.

(G) LEGAL NON-CONFORMING RENTAL HOUSING USE. Enforcement of this Ordinance is not intended to terminate a legal Non-Conforming rental housing Use. No physical changes shall be required to a Structure containing a legal Non-Conforming rental housing Use unless the change is for the following:

- (1) The reasonable installation of a smoke detector that is plugged in or battery operated.
- (2) A ground fault circuit interrupter protected outlet on existing wiring;
- (3) Street addressing;
- (4) An egress bedroom window if the existing bedroom window is smaller than that required by current state building code; unless such change would compromise the structural integrity of the building or could not be completed in accordance with current building codes, including Setbacks and window well requirements.
- (5) An electrical system or plumbing system, if the existing system is not functioning or is unsafe as determined by an independent, licensed electrical or plumbing professional.
- (6) Hand or Guard rails.
- (7) Occupancy separation doors as required by the IBC.
- (8) The abatement of a Structure.

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

15-9-6. NON-COMPLYING STRUCTURES.

No Non-Complying Structure may be moved, enlarged, or altered, except in the manner provided in this Section or unless required by law.

(A) REPAIR, MAINTENANCE, ALTERATION, AND ENLARGEMENT.

Any Non-Complying Structure may be repaired, maintained, altered, or enlarged, provided that such repair, maintenance, alteration, or enlargement shall neither create any new non-compliance nor shall increase the degree of the existing non-compliance of all or any part of such Structure.

(B) MOVING. A Non-Complying Structure shall not be moved in whole or in part, for any distance whatsoever, to any other location on the same or any other lot unless the entire Structure shall thereafter comply with ~~conform to~~ the regulations of the zone in which it will be located.

(C) DAMAGE OR DESTRUCTION OF NON-COMPLYING STRUCTURE.

If a Non-Complying Structure is allowed to deteriorate to a condition that the Structure is rendered uninhabitable and is not repaired or restored within six (6) months after written notice is provided to the Property Owner stating that the Structure is uninhabitable and that the Non-Complying Structure or the Building that houses a Non-Complying Structure shall not be restored unless it is restored to comply with the

regulations of the Zoning District in which it is located.

If the Property Owner has voluntarily demolished, or is required by law to demolish, more than 50% of the Gross Floor Area of the Non-Complying Structure, is voluntarily razed or is required by law to be razed, the Structure shall not be restored unless it is restored to comply with the regulations of the Zoning District zone in which it is located.

If a Non-Complying Structure is involuntarily destroyed in whole or in part due to fire or other calamity and the Structure or Use has not been abandoned, the Structure may be restored to its original condition, provided such work is started within six months of such calamity, completed within eighteen (18) months of work commencement, and the intensity of Use is not increased.

(Amended by Ord. No. 06-35)

15-9-7. ORDINARY REPAIR AND MAINTENANCE AND STRUCTURAL SAFETY.

The Owner may complete normal maintenance and incidental repair on a complying Structure that contains a Non-Conforming Use or on a Non-Complying Structure. This Section shall not be construed to authorize any violations of law nor to prevent the strengthening or restoration to a safe condition of a Structure in accordance with an order of the Building Official who declares a Structure to be

unsafe and orders its restoration to a safe condition.

15-9-8. APPEALS.

The City or any Person with standing adversely affected by a decision of the Board of Adjustment under this Chapter may petition the District Court in Summit County for a review of the decision, Appeal from a Board of Adjustment decision made pursuant to this Chapter shall be made to the district court and not to City Council. And such review shall be made according to the requirements of the Utah State Code. Any Person applying to the district court for review of any decision made under the terms of this Chapter shall apply for review within thirty (30) days after the date the decision is filed with the City Recorder as prescribed by state statute.

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TITLE 15 - LAND MANAGEMENT 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)

15-10-4. GROUNDS 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. Appeals shall be considered by the Board of Adjustment on the record made before the Historic Preservation Board or Planning Commission. Appeals to the Board of Adjustment will review factual matters for correctness and determine the correctness of the decision of the land Use authority in its interpretation and application of the land Use ordinance. 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)

15-10-8. 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 may condition a variance by requiring the Owner to obtain a Building or other necessary permit within one (1) year of issuance of the variance, or the variance shall be null and void.~~

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

(IH) 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)

15-10-9. 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)