

•Community Development Department•

Bill Wright • Director
Telephone (801) 336-3780
Fax: (801) 336-3789

Mayor • Steve Curtis
City Manager • Alex R. Jensen
Asst. City Manager • James S. Mason



Board of Adjustment Application

Updated 1/14/08

The City is constantly changing and therefore requires guidance for orderly growth. The Layton City Master Plan provides the general guidance as to how various areas of the City should develop. The Zoning Ordinance is the principal tool used to actually control growth, improve the physical environment of the City and protect property values through the regulation of land uses. However, occasionally a particular piece of property presents a situation where strict application of the Zoning Ordinance would cause an "unnecessary hardship". State law allows the Board of Adjustment to grant a "variance" to alleviate this property hardship.

BOARD OF ADJUSTMENT AUTHORITY - Utah State law grants the Board of Adjustment its authority. State law establishes very specific guidelines, which restrict the Board's power and authority. The following guidelines provide the framework under which the Board must consider a variance request.

Special circumstances apply to the property covered by the application, which do not generally apply to the other property in the same zoning district imposing an unnecessary hardship on the applicant. "Unnecessary hardship" and "difficulties and hardship", as used in this Section, shall mean: a hardship peculiar to the property and not created by any act of the owner. In this context, personal, family or financial difficulties, loss of prospective profits and neighboring violations are not hardships justifying a variance; and

That because of the special circumstances, the property owner is deprived of privileges possessed by other property owners in the same zoning district and the granting of the variance is essential to the enjoyment of a substantial property right possessed by other property owners in the same zoning district; and

The variance will not substantially affect the Master Plan of the City and adherence to the strict letter of the ordinance will cause difficulties and hardship, the imposition of which is not necessary to carry out the general purpose of the Plan.

In other words, the variance can only be granted if it will not affect the City Master Plan and strict adherence to the law would cause "unnecessary property hardships" peculiar to this property and not created by the owner. The hardship must be caused by the property itself. Personal, family or financial difficulties do not qualify. The property must have special circumstances which differ from nearby properties, and which deprive this property of privileges other nearby properties enjoy. The variance would be essential for this owner to have the same property rights the other owners have.

The Board of Adjustment does not write the ordinances and cannot break the law. Zoning ordinances are established by the City Council and are applied equally to all the citizens. A variance request must be evaluated in respect to the criteria and must meet all three guidelines

- Unnecessary property hardships due to physical circumstances
- Variance will not substantially affect the Master Plan of City
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in order to be approved. The fact that it "does not harm" or is "not bad" is not justification for a variance. The Board cannot rewrite the ordinances for one case. Consequently, each case must be considered on its own merits and neighboring violations or previous variances do not set a precedent.

WHAT IS A VARIANCE - A variance is the waiving of the strict requirements of the Zoning Ordinance when there are peculiar conditions inherent in the property, which cause a hardship. The following conditions, in addition to the hardship criteria outlined in the Zoning Ordinance, must be considered in order to approve your proposal.

1. Literal enforcement of the ordinance would result in unnecessary hardship.
2. Reasons must be substantial, serious, compelling and unique to the particular property-
3. It will not adversely affect the public health, safety, morals and welfare of Layton City.

REQUESTS THAT ARE NOT CONSIDERED JUSTIFIABLE - A hardship is a problem that you create yourself. For instance, if your house is built in such a manner that you cannot expand the living room without encroaching into a required yard, you will be creating the situation/problem and the ordinance does not recognize that as a legitimate hardship. Likewise, the fact that it might cost you less money to add an extension in a required front yard rather than adding to the house where the addition would be permitted out-right, is not a hardship.

The important point is whether you are deprived of property rights, not desires. Financial hardship is not considered a legitimate reason for seeking a variance, nor are personal health situations.

Often you will not be aware of the fact that your proposed addition or other desired improvements do not comply with city zoning ordinances until you apply for a building permit. The staff of the Planning and Zoning Division will assist you in making application to the Board of Adjustment.

EXAMPLES OF VARIANCE REQUESTS THAT MAY BE JUSTIFIABLE - An extra wide utility easement, which interferes with the buildable area of a lot, may justify encroachment into a required yard area.

Due to a steep hillside towards the rear portion of your building lot a request for a variance is applied for so that the home may be built closer to the front property line than what the ordinance allows.

Unusual size, shape or topography of a lot may justify some variance from what would normally be required under the ordinance.

APPLICATION REQUIREMENTS - Complete the application form for the Board of Adjustment. In preparing your application be as detailed and specific as possible. Incomplete or inadequate information may result in your case being delayed or possibly denied. The Board cannot grant a variance simply because an applicant has requested it. The burden of proof rests upon you as the applicant to show that each of the above criteria is met. If you fail to support your request, the Board cannot approve your application.

You must submit a plot plan drawn to scale on a minimum size paper of 8 1/2" x 11" include the following information:

Actual lot dimensions

Size and locations of all existing and proposed structures and improvements, including fences, driveways and storage sheds.

Distances between all improvements and property lines.

Building elevations, floor plans and any other pertinent information, if applicable.

There must be a computer printout of all the property owners within 300 feet of the outer boundaries of your property. Notification of your proposal will be sent to all adjacent properties that are not owner occupied.

There is a non-refundable application fee of **\$250.00** to help defray the costs of advertising and staff review.

Please remember that the information you submit will be the basis for review by the Board of Adjustment. Be as complete as possible. If you have any questions, please ask for assistance by calling 546-8520 and ask for Planning and Zoning.

PUBLIC HEARINGS - The Board of Adjustment meets the first Tuesday of the month and you must submit your application at least fifteen days (15) in advance of the hearing date. As part of the public notification, a public hearing sign will be posted at the subject property approximately one week before the meeting. The public hearing by the Board of Adjustment begins at 5:00 p.m. in the City Council Chambers, Layton City 437 Wasatch Blvd. You or your appointed representative must be present at the public hearing at 5:00 p.m. to explain your case and answer questions.

Typically, the Board will make a decision on your request the night of the public hearing. They will either approve, approve with conditions, continue, or deny the application.

APPEALING A BOARD OF ADJUSTMENT DECISION - Any person wishing to appeal a decision of the Board of Adjustment must file such an appeal in the District Court within 30 days of the filing of the decision.

APPEAL

APPLICATION TO APPEAR BEFORE THE BOARD OF ADJUSTMENT

NAME OF PETITIONER (S) _____

Mailing Address _____

Phone Number _____ Date of Application _____

Address of Subject Property _____

Assessors Parcel Number (Tax I.D) _____ - _____ - _____

FEE: \$250

Application fee paid: Date _____ Receipt # _____

The Board of Adjustment may hear and decide the following types of cases. Please check the type of appeal that applies to your case:

_____ (1) To hear and decide appeals where it is alleged that there is error in any order, requirements, decision or determination made by an administrative official based on or made in the enforcement of the Zoning Ordinance.

_____ (2) To determine, 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 this ordinance will result in unnecessary hardship; provided that the spirit of the ordinance shall be observed and substantial justice done. Before any variance may be authorized, the Board shall find specifically all of the following conditions exist:

- (a) That the variance will not authorize the operation of a use other than those uses specifically enumerated for the district in which is located the property for which the variance is sought.
- (b) That the development or use of the property for which the variance is sought, if limited by a literal enforcement of the provisions of this ordinance, cannot yield a reasonable return in service, use or income as compared to adjacent conforming property in the same district.

- (c) That the variance will not substantially or permanently injure the appropriate use of the adjacent conforming property in the same district.
- (d) That the variance will not alter the essential character of the district in which is located the property for which the variance is sought.
- (e) That the variance will not weaken the general purpose of this ordinance or the regulations herein established for the specific district.
- (f) That the variance will be in harmony with the spirit and purposes of this ordinance.
- (g) That the variance will not adversely affect the public health, safety or welfare.
- (h) That the variance will not substantially affect the comprehensive plan of zoning in the city and that adherence to the strict letter of the ordinance will cause difficulties and hardships, the imposition of which upon the petitioner is unnecessary in order to carry out the general purpose of the plan.
- (i) Special circumstances attached to the property covered by application which do not generally apply to the other property in the same district.
- (j) That because of said special circumstances, property covered by application is deprived of privileges possessed by other properties in the same district; and that the granting of the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district.

_____ (3) To hear and decide matters referred to the Board by the Planning Commission or its agents as required by certain sections of the zoning ordinance.

Briefly describe the situation you are asking the Board to hear. Include in the description how the appeal meets the criteria noted above. (attach additional pages if necessary).

The petitioner has the responsibility to provide the names and address of all property owners of record within 100 feet of the subject property. The information may be obtained from the Davis County Treasure's Office. Please list those affected below:

Name	Address

Where the appeal deals with construction of any kind, the petitioner must submit five (5) copies of a site plan. The plan must be accurately drawn at a scale that will sufficiently show all existing and proposed structures and significant features on the site. When necessary, structures on adjacent properties may also be required to be placed on the plan as determined by the City.

I certify that to the best of my knowledge the information provided in this application is true and correct and the authority to apply for an appeal is vested in me.

Petitioner Date

STATE OF UTAH)
) SS
COUNTY OF DAVIS)

On this day of 20, personally appeared before me (Petitioner (s), the signer (s) of the above and foregoing Petition for Appeal, who acknowledged to me that they executed the same.

NOTARY PUBLIC

FOR OFFICIAL USE ONLY

ZONING OF SUBJECT PROPERTY _____
DATE APPLICATION RECEIVED _____
DATE NOTICE OF PUBLICATION SENT _____
DATE (S) PUBLISHED IN NEWSPAPER _____
DATE OF PUBLIC HEARING _____

ACTION TAKEN BY THE BOARD: APPROVED _____ DENIED _____