

Part 7 Appeal Authority and Variances

10-9a-701 Appeal authority required -- Condition precedent to judicial review -- Appeal authority duties.

- (1) Each municipality adopting a land use ordinance shall, by ordinance, establish one or more appeal authorities to hear and decide:
 - (a) requests for variances from the terms of the land use ordinances;
 - (b) appeals from decisions applying the land use ordinances; and
 - (c) appeals from a fee charged in accordance with Section 10-9a-510.
- (2) As a condition precedent to judicial review, each adversely affected person shall timely and specifically challenge a land use authority's decision, in accordance with local ordinance.
- (3) An appeal authority:
 - (a) shall:
 - (i) act in a quasi-judicial manner; and
 - (ii) serve as the final arbiter of issues involving the interpretation or application of land use ordinances; and
 - (b) may not entertain an appeal of a matter in which the appeal authority, or any participating member, had first acted as the land use authority.
- (4) By ordinance, a municipality may:
 - (a) designate a separate appeal authority to hear requests for variances than the appeal authority it designates to hear appeals;
 - (b) designate one or more separate appeal authorities to hear distinct types of appeals of land use authority decisions;
 - (c) require an adversely affected party to present to an appeal authority every theory of relief that it can raise in district court;
 - (d) not require an adversely affected party to pursue duplicate or successive appeals before the same or separate appeal authorities as a condition of the adversely affected party's duty to exhaust administrative remedies; and
 - (e) provide that specified types of land use decisions may be appealed directly to the district court.
- (5) If the municipality establishes or, prior to the effective date of this chapter, has established a multiperson board, body, or panel to act as an appeal authority, at a minimum the board, body, or panel shall:
 - (a) notify each of its members of any meeting or hearing of the board, body, or panel;
 - (b) provide each of its members with the same information and access to municipal resources as any other member;
 - (c) convene only if a quorum of its members is present; and
 - (d) act only upon the vote of a majority of its convened members.

Amended by Chapter 92, 2011 General Session

10-9a-702 Variances.

- (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 affect 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 under Subsection (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 authority 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) relate 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.

Renumbered and Amended by Chapter 254, 2005 General Session

10-9a-703 Appealing a land use authority's decision -- Panel of experts for appeals of geologic hazard decisions.

- (1) 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, 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.
- (2)
 - (a) An applicant who has appealed a decision of the land use authority administering or interpreting the municipality's geologic hazard ordinance may request the municipality

to assemble a panel of qualified experts to serve as the appeal authority for purposes of determining the technical aspects of the appeal.

- (b) If an applicant makes a request under Subsection (2)(a), the municipality shall assemble the panel described in Subsection (2)(a) consisting of, unless otherwise agreed by the applicant and municipality:
 - (i) one expert designated by the municipality;
 - (ii) one expert designated by the applicant; and
 - (iii) one expert chosen jointly by the municipality's designated expert and the applicant's designated expert.
- (c) A member of the panel assembled by the municipality under Subsection (2)(b) may not be associated with the application that is the subject of the appeal.
- (d) The applicant shall pay:
 - (i) 1/2 of the cost of the panel; and
 - (ii) the municipality's published appeal fee.

Amended by Chapter 326, 2008 General Session

10-9a-704 Time to appeal.

- (1) The municipality shall enact an ordinance establishing a reasonable time of not less than 10 days to appeal to an appeal authority a written decision issued by a land use authority.
- (2) In the absence of an ordinance establishing a reasonable time to appeal, an adversely affected party shall have 10 calendar days to appeal to an appeal authority a written decision issued by a land use authority.

Amended by Chapter 240, 2006 General Session

10-9a-705 Burden of proof.

The appellant has the burden of proving that the land use authority erred.

Enacted by Chapter 254, 2005 General Session

10-9a-706 Due process.

- (1) Each appeal authority shall conduct each appeal and variance request as provided in local ordinance.
- (2) Each appeal authority shall respect the due process rights of each of the participants.

Enacted by Chapter 254, 2005 General Session

10-9a-707 Standard of review for appeals.

- (1) A municipality may, by ordinance, designate the standard of review for appeals of land use authority decisions.
- (2) If the municipality fails to designate a standard of review of factual matters, the appeal authority shall review the matter de novo.
- (3) The appeal authority shall determine the correctness of a decision of the land use authority in its interpretation and application of a land use ordinance.
- (4) Only those decisions in which a land use authority has applied a land use ordinance to a particular application, person, or parcel may be appealed to an appeal authority.

Enacted by Chapter 254, 2005 General Session

10-9a-708 Final decision.

- (1) A decision of an appeal authority takes effect on the date when the appeal authority issues a written decision, or as otherwise provided by ordinance.
- (2) A written decision, or other event as provided by ordinance, constitutes a final decision under Subsection 10-9a-801(2)(a) or a final action under Subsection 10-9a-801(4).

Amended by Chapter 240, 2006 General Session