

# Title 9 – Land Management Code

## Chapter 11

### FLEXIBLE APPROACHES

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#### **9-11-1: VARIANCES:**

- A. Purpose: A variance is intended to grant a property owner relief from the terms of this title where conditions are such (particular physical surroundings, shape or topographical conditions) that literal enforcement of this title would cause an unreasonable hardship upon the owner, as distinguished from a mere inconvenience or increased costs. A variance is not intended to disregard the spirit of the town general plan, this title, or design standards ([chapter 12](#) of this title). A variance may be requested for physical constraints to the lot that deprive the applicant of the reasonable use of his property when others similarly situated are entitled to make such use of their property.
- B. Review Procedures:
1. Application: An application for variance review must be filed with the town, and the required fee paid in advance. If, in the course of subdivision or building permit review, it is determined that a variance is required or desired, all further action shall be stayed until the applicant shall have obtained the variance.
  2. Appeal Authority Review: The appeal authority shall review the application in a hearing to be held within a reasonable time after the application is submitted. Notice to adjoining property owners is required pursuant to section [9-1-8](#) of this title. The appeal authority shall grant or deny the variance pursuant to the standards and conditions set forth by state law, Utah Code Annotated section [10-9a-702](#), as amended, and those set forth below.
- C. Standards For Review:
1. The appeal authority may grant a variance only if:

- a. Literal enforcement of this title would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of this title;
  - b. There are special circumstances attached to the property that do not generally apply to other properties in the same zone;
  - c. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;
  - d. The variance will not substantially affect the general plan and will not be contrary to the public interest; and
  - e. The spirit of this title is observed and substantial justice is done.
2. In determining whether or not enforcement of this title would cause unreasonable hardship under subsection C1 of this section, 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.
  3. In determining whether or not enforcement of this title would cause unreasonable hardship under subsection C1 of this section, the Appeal Authority may not find an unreasonable hardship if the hardship is self-imposed or economic.
  4. In determining whether or not there are special circumstances attached to the property under subsection C1 of this section, the Appeal Authority may find that special circumstances exist only if the special circumstances:
    - a. Relate to the hardship complained of; and
    - b. Deprive the property of privileges granted to other properties in the same zone.
  5. The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.
- D. Appeal: The town or any person aggrieved by a final decision of the appeal authority may appeal to a court of competent jurisdiction, provided the appeal is filed with the court within thirty (30) days after the decision of the appeal authority. (Ord. 08-016, 8-12-2008)

### **9-11-2: CONDITIONAL USE PERMIT:**

- A. Purpose: Although each zoning district is primarily intended for a predominant type of use (i.e., dwelling units in residential districts), there are a number of uses which the Town Council has identified that may be appropriate in a particular district if conditions are met that mitigate potential adverse impacts of the proposed use. For example, as a condition of approval, a bed and breakfast may be required to furnish adequate parking to accommodate all potential occupants of the home. The conditional use review is intended

to provide additional information necessary to assure compatibility and harmonious relationships between proposed uses, surrounding properties and the town in general.

B. Approval Required: Conditional use approval is required for the conditional uses in each zoning district. Conditional use approval may be revoked upon failure to comply with all conditions attached to the original approval of the conditional use as set forth in a conditional use permit.

C. Review Process:

1. Application:

a. An application for approval of a conditional use shall be filed with the building department on a form provided by the town. The application shall make clear whether the applicant is a business or individual leasing the property or whether the applicant is the owner of the property. In the event the applicant is a lessee or tenant of the property, the application must include written consent by the owners of all property on which the conditional use activity shall be conducted. (amd Ord. 15-018, 12-8-2015)

b. The appropriate fee from the consolidated fee schedule shall be submitted with the application.

c. Other information required to be submitted on or with the conditional use application can be found in [chapter 4](#) of this title, table 2.

2. Staff Review: Upon receipt of a completed conditional use application, the town staff shall conduct a review of the application. The Town Manager, or designee, shall prepare and deliver to the Planning Commission a written advisory report with a recommendation, including recommended conditions on the application.

3. Planning Commission Review And Action:

a. Within a reasonable time of receipt of a complete application, the Planning Commission shall give public notice consistent with section [9-1-8](#) of this title and hold a public hearing on the proposed conditional use. Members of the public may submit written comments to be part of the public hearing record or may present oral comments at the hearing.

b. Upon receipt of the town staff and other applicable agency recommendations, and input from the public hearing, the Planning Commission shall review the project and may impose reasonable conditions of approval which are designed to mitigate the reasonably anticipated detrimental effects of the proposed use. If the applicant accepts the conditions imposed, the Planning Commission may grant the conditional use permit. If the reasonably anticipated detrimental effects of the proposed conditional use cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards, the Planning Commission may deny the conditional use.

D. Standards For Review:

1. No conditional use permit may be issued unless the Planning Commission finds that the application meets the following standards and conditions:
    - a. Protects the safety of persons and property:
      - (1) Will not result in unreasonable traffic congestion or traffic hazards;
      - (2) Has adequate and necessary access for municipal services.
    - b. Will not exceed the obligations and/or financial capability of the town and will not require a level of community facilities and services greater than that which is available or which may be provided.
    - c. Will protect environmental values:
      - (1) Will not cause unreasonable air, water, groundwater, light or noise pollution;
      - (2) Does not have critically expansive soils, high water table, slope instability, or other soil problems which cannot be mitigated.
    - d. Consistent with the town General Plan:
      - (1) Will comply with the requirements of the zoning district in which the use is to be established and with all other requirements of this title;
      - (2) Will be compatible with the character of the neighborhood and surrounding structures in scale, mass and traffic circulation.
    - e. The applicant has assured performance of obligations by posting bond or other adequate security as determined necessary by the Planning Commission per [chapter13](#) of this title.
  2. With its approval, the Planning Commission may impose such conditions and safeguards to ensure compliance with the requirements, standards or conditions of this section. The violation of any condition, safeguard or commitment of record by the applicant shall be sufficient grounds for revocation of conditional use approval.
- E. Transferability: If the conditional use permit was requested by and granted to the owner of the underlying property, the conditional use permit is transferable with the title to the underlying property. If the permit was requested by and granted to a lessee or tenant of the underlying property, the permit is only transferrable to a new lessee following a review by the Planning Commission. Upon this transfer review, the Planning Commission may alter the conditions of the permit based up on the specific circumstances of the new lessee or tenant. The permit cannot be transferred off the site on which approval was granted. (amd. Ord. 15-018, 12-8-2015)
- F. Time Limit: The approval for the use shall expire unless the conditional use begins within a period of twelve (12) months from the date of conditional use approval. Any cessation in conditional use granted for a period of more than twelve (12) months shall result in the expiration of the permit (amd. Ord. 15-018, 12-8-2015)

- G. Modification: No approved conditional use may be modified, structurally enlarged or expanded unless the site plan is amended and reviewed and approved in accordance with the procedures and standards of this section.
- H. Related Permits And Requirements: A conditional use shall also be subject to all other procedures, permits and requirements of other applicable ordinances and regulations of the town. In the event of any conflict between the provisions of a conditional use permit and any other permit or requirement, the more restrictive provisions shall prevail. (Ord. 08-016, 8-12-2008)

### **9-11-3: RESIDENTIAL PLANNED DEVELOPMENT (RPD)**

#### **A. Purpose:**

The purpose of the residential planned development (RPD) is to encourage development patterns within residential zones which preserve treed open space, parks and trails through clustering concepts. Additionally, the RPD encourages underground parking and optimal placement of development on the parcel. In order to encourage such development, the RPD allows for flexibility from zoning standards and other than use and density. (amd. Ord. 15-018, 12-8-2015)

#### **B. Review Process:**

Residential Planned Developments (RPD) shall be reviewed and approved under the same land use authority provisions as the subdivision process. (amd. Ord. 15-018, 12-8-2015)

#### **C. Standards For Review:**

1. The applicant shall demonstrate the following:
  - a. The planned development is consistent with the Brian Head General Plan. (amd. Ord. 15-018, 12-8-2015)
  - b. The proposed development is in a residential zone and the proposed uses are consistent with the underlying zoning. (amd. Ord. 15-018, 12-8-2015)
  - c. The arrangements of structures and open spaces will not adversely affect adjacent properties. (For example, where deemed necessary by the Planning Commission, the lowest height and least intensity of buildings and uses shall be arranged around the boundaries of the development).
  - d. The development shall be in a single ownership at the time of application or filed jointly by all owners of the property. (amd. Ord. 15-018, 12-8-2015)
  - e. The proponents of the planned unit development have demonstrated to the satisfaction of the Planning Commission and Town Council that an organizational structure and financial plan is established for construction, phasing

and maintenance (including HOA responsibilities and budget projection for 10 years) to ensure sustainability of the project.

- f. Minimum landscape requirements identified in [Chapter 7](#) of this title shall be increased by additional 10% of the area of the parcel, and application shall include a detailed landscape plan. No departure from the approved landscape plan will be allowed during construction without prior consent of the Planning Commission. (amd. Ord. 15-018, 12-8-2015)
  - g. The landscape plan shall preserve a minimum of 50% of existing trees within the required landscape area. (amd. Ord. 15-018, 12-8-2015)
  - h. Easements are created to establish and maintain the continuity of existing and planned trails and ski ways with ownership and maintenance being the responsibility of the approved organizational structure, unless specifically accepted by the town.
  - i. The development is planned as a single project (with possible phasing) with continuity of building design, theme and uses (including HOA responsibilities and budget projection pursuant to State Code) to ensure sustainability of the project. (amd. Ord. 15-018, 12-8-2015)
  - j. Recreational or park elements such as a picnic area are encouraged and will count towards the landscaped area requirement. (amd. Ord. 15-018, 12-8-2015)
  - k. The majority of required parking shall be underground or garaged and shall be considered part of the buildable area. (amd. Ord. 15-018, 12-8-2015)
2. In cases where the applicant requests a waiver or flexibility from the zoning standards (excluding use and density, which may not be waived) they shall demonstrate the following:
- a. Any request to modify physical restrictions identified in [chapter 7](#) of this title shall be submitted for approval by the Planning Commission.
  - b. Special consideration has been given to preserving natural vegetation, land formations and topography. (amd. Ord. 15-018, 12-8-2015)

#### D. APPEALS:

A final decision of the land use authority may be appealed to the Appeal Authority following the procedures of subsection [9-3-2H](#) of this title, but must be filed within ten (10) regular business days of the decision. (Ord. 08-016, 8-12-2008)

### **9-11-4. MASTER PLANNED DEVELOPMENT AGREEMENT**

#### A. PURPOSE

The purpose of the Master Planned Development Agreement is to allow flexibility in commercial development which is consistent with the General Plan and which exceeds minimum standards set forth in the zoning ordinance with regard to open space, public recreational features, site and/or building design, etc.

## B. CRITERIA

The town may enter into a Development Agreement which:

1. Is consistent with the General Plan
2. Pertains to a parcel zoned as General Commercial or Village Commercial, or which will be re-zoned to General Commercial or Village Commercial concurrent with the Master Planned Development Agreement process.
3. Enables the town to obtain supplemental facilities or benefits which would not otherwise be obtained through existing regulations, standards or polices.
4. Assures quality development within the town as well as promotes the general health, safety and welfare of current and future town residents.

A development agreement may be approved by the Town Council without regard to the size of the development or the amount of density associated with such development. Such an agreement may allow for development which exceeds limits contemplated in the zoning requirements contingent upon satisfaction all of the foregoing criteria.

(Ord. 15-018, 12-8-2015)

## C. COMMENTS

Applicants for development agreements are encouraged to make comments to the town which enables the town to obtain supplemental facilities or benefits which would not otherwise be obtained through existing regulations, standards, or policies. The Town Council may consider commitments which may include, but shall not be limited to, the following:

1. The provision of open space, trails or other public recreational features and environmentally sensitive lands through dedication or other means.
2. The establishment and implementation of site design, building design, landscaping plans or other standards above and beyond established town requirements or existing development entitlements.
3. The reduction of density.

(Ord. 15-018, 12-8-2015)

## **9-11-5 DEVELOPMENT AGREEMENTS**

A development agreement may be approved by the Town Council either in connection with the approval of a development permit or as a separate approval at the election of the applicant. The decision by the Town Council to enter into a development agreement with an applicant is always discretionary; nothing in this code shall be interpreted or construed as requiring the Town Council to approve a development agreement under any circumstances. There is never an entitlement on the part of the applicant to the approval of a development agreement.

Prior approvals of separate development agreements, regardless of who the applicant was, shall have no bearing on new applications or imply any obligations on the part of the town with respect to future development.

#### A. SUBMITTAL REQUIREMENTS

A completed application for approval of a development agreement, whether included as part of a development permit application or submitted as a separate application, shall include the following information and documentation:

1. A properly acknowledge letter of authorization from the owner(s) of the land stating consent to proceed with the proposed development agreement and permitting a designated representative to process the application and negotiate terms of the agreement.
2. A narrative description of compliance with the applicable criteria under which the proposed agreement merits consideration.
3. A description of the specific commitments proposed by the applicant as described in section [11-4-3](#) of this chapter.
4. A draft of the proposed development agreement.
5. Such other reasonable information as the Town Manager or designee may require.

(Ord. 15-018, 12-8-2015)

#### B. PROCEDURE

Following a receipt of a completed application for a development agreement, the following process will be pursued:

1. **Staff Review:** The town shall review the application and determine whether it satisfies the criteria set forth in this chapter. Staff may suggest alterations to the proposed agreement with the applicant prior to forwarding a recommendation to the Planning Commission.
2. **Planning Commission Recommendation:** The Planning Commission will review the application and forward a recommendation to the Town Council. The Planning Commission may suggest alterations to the proposed agreement with the applicant prior to forwarding their recommendations.
3. **Town Council Adoption:** The Town Council will review the proposal and the Planning Commission's recommendation and may adopt the development by ordinance. The

Town Council may negotiate any alterations to the agreement with the applicant pursuant to the purposes and intents of this chapter prior to adoption.

All other noticing and adoption requirements will be consistent with the requirement for adoption for changes to the Land Management Code.

(Ord. 15-018, 12-8-2015)

#### C. RECORDING OF DEVELOPMENT AGREEMENT

Within thirty (30) days of final adoption of the approving and authorizing ordinance, the applicant shall submit a copy of the approved development agreement to the town for execution by the town and subsequent recording, together with the required recording fees. The development agreement shall become effective upon recordation. (Ord. 15-018, 12-8-2015)