

## \*Granting a Variance\*

What is a Variance: A **variance** is a modification of a zoning requirement made necessary because some unique aspect of a parcel makes the requirement burdensome or unfair. Variances may be granted to adjust such zoning standards as setbacks or height limitations. The Utah Code authorizes local governments to grant variances.

The variance mechanism allows a local government to have a zoning ordinance which applies to all properties, while providing the flexibility to adjust the zoning regulations for a specific property when necessary.

See Utah Code [§ 10-9a-702](#) ; and [§ 17-27a-702](#)

When is a Variance Granted: The property owner must apply for a variance, and has the responsibility to show that a variance ought to be granted. The application will be heard by the local government's "appeal authority," which may grant a variance if it finds that:

- a. Unreasonable Hardship: Literal enforcement of the land use ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the ordinance.
- b. Special Circumstances: There are special circumstances attached to the property that do not generally apply to other properties in the same district.
- c. Granting variance is essential: Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone.
- d. Variance will not affect the general plan: The variance will not substantially affect the general plan and will not be contrary to the public interest.
- e. Spirit of the land use is observed: The spirit of the zoning ordinance is observed and substantial justice is done.

All five criteria must be found in favor of the variance in order for it to be valid. The unreasonable hardship may not be self-imposed or purely economic, and must arise from conditions unique to the property.

What is a Unreasonable Hardship: An "**unreasonable hardship**" refers to difficulty in complying with a zoning ordinance because of circumstances unique to the property. The hardship must relate to the property and not to conditions general to the area. A hardship may not be self-imposed or solely economic. A variance is not necessary if compliance is possible, even if the property owner has to alter desired plans.

What are Special Circumstances: "**Special circumstances**" refers to physical conditions unique to the property which relate to the hardship, and make compliance difficult or impossible. Special circumstances do not include self-imposed conditions, or economic concerns.

Enjoyment of a Substantial Property Right: It is necessary for the variance to relate to a substantial property right enjoyed by other nearby properties that would not be fully available unless the variance were granted. The right must be one enjoyed or available to nearby properties. A variance should not be granted to establish a property right that would not be available to other properties in the same area.

The Spirit of Zoning Ordinance and Public Interest: A variance is not an “escape clause” allowing an owner to disregard zoning regulations, but is rather a mechanism to adjust zoning requirements when necessary, so that all property owners may be treated with fairness. The health, safety, and welfare of the public, which is addressed by the local zoning ordinance, should be promoted and preserved.

Variances “Run with the Land”: A variance “**runs with the land**,” meaning that a future property owner may also rely on the variance. For example, if a setback requirement is reduced by a variance, a future property owner may erect a building up to the reduced setback. However, if the circumstances of the property have changed, the variance may need to be reevaluated.

Variances that Cannot be Granted: A variance may not allow a use that is prohibited (a “use variance”). Variances also may not be granted to alter building or fire codes.