

ORDINANCE NO. 2020-02

AN ORDINANCE OF THE TOWN COUNCIL OF CHARLESTON TOWN, UTAH, REPEALING SECTIONS 02.1109 THROUGH 02.1120 REGARDING THE LAND USE APPEAL AUTHORITY BOARD IN THEIR ENTIRETY AND ADDING SECTIONS 02.1110 AND 02.1111 ADDING AN APPEAL AND VARIANCE OFFICER AND APPEAL PROCEDURES FOR TITLE 02 LAND USE CODE AND TITLE 10 SUBDIVISION AND DEVELOPMENT CODE.

WHEREAS, Utah Code §10-9a-102 grants the Town Council of the Town of Charleston ("Town Council") the authority to enact ordinances that it considers necessary or appropriate for the use and development of land in Charleston Town ("Town"); and

WHEREAS, the Town Council has adopted Title 02 Land Use Ordinance of the Charleston Town Municipal Code ("Town Code"); and

WHEREAS, the Town Council desires to enact text amendments that change the manner in which appeals to Title 02 Land Use Ordinance and Title 10 Subdivision and Development Code are handled; and

WHEREAS, Section 10-9a-701 et seq. of the Utah State Code regulates the manner of which appeals to the Land Use Code are made; and

WHEREAS, the Town's Planning Commission held a public hearing, reviewed and made a recommendation concerning the subject text amendments on May 28, 2020; and

WHEREAS, the Town Council held a public hearing and reviewed the subject text amendments; and

WHEREAS, the Town Council finds that the subject text amendments will enhance the public health, safety and welfare, and will promote the goals of the General Plan.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF CHARLESTON TOWN, UTAH:

SECTION 1. Repeal. Town Code § 02.1109 Land Use Appeal Authority Created, Members, Terms of the Charleston Town Code is hereby repealed in its entirety.

SECTION 2. Repeal. Town Code § 02.1110 Organization, Meetings, Records of the Charleston Town Code is hereby repealed in its entirety.

SECTION 3. Repeal. Town Code § 02.1111 Powers and Duties of the Land Use Appeal Authority of the Charleston Town Code is hereby repealed in its entirety.

SECTION 4. Repeal. Town Code § 02.1111.01 Interpret Ordinance and Map of the Charleston Town Code is hereby repealed in its entirety.

SECTION 5. Repeal. Town Code § 02.1111.02 Grant Variance of the Charleston Town Code is hereby repealed in its entirety.

SECTION 6. Repeal. Town Code § 02.1111.03 Grant Certain Exceptions or Conditional Uses of the Charleston Town Code is hereby repealed in its entirety.

SECTION 7. Repeal. Town Code § 02.1111.04 Transitional Uses of the Charleston Town Code is hereby repealed in its entirety.

SECTION 8. Repeal. Town Code § 02.1112 May Attach Reasonable Conditions of the Charleston Town Code is hereby repealed in its entirety.

SECTION 9. Repeal. Town Code § 02.1113 May Reverse or Affirm Zoning of the Charleston Town Code is hereby repealed in its entirety.

SECTION 10. Repeal. Town Code § 02.1114 Authority Limited of the Charleston Town Code is hereby repealed in its entirety.

SECTION 11. Repeal. Town Code § 02.1115 Vote of the Charleston Town Code is hereby repealed in its entirety.

SECTION 12. Repeal. Town Code § 02.1116 Application to Appear Before the Land Use Appeal Authority of the Charleston Town Code is hereby repealed in its entirety.

SECTION 13. Repeal. Town Code § 02.1117 Procedure of the Charleston Town Code is hereby repealed in its entirety.

SECTION 14. Repeal. Town Code § 02.1118 Hearing of the Charleston Town Code is hereby repealed in its entirety.

SECTION 15. Repeal. Town Code § 02.1119 Action of the Land Use Authority of the Charleston Town Code is hereby repealed in its entirety.

SECTION 16. Repeal. Town Code § 02.1120 Recourse from Decision of the Board of the Charleston Town Code is hereby repealed in its entirety.

SECTION 17. Addition. Town Code § 02.1110 Land Use Appeal and Variance Officer as shown in Exhibit "show A", is hereby added.

SECTION 18. Addition. Town Code § 02.1111 Appeals and Appeals Process as shown in Exhibit "A", is hereby added.

SECTION 19. Severability. If any section, part or provision of this Ordinance is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other portion of this Ordinance and all sections, parts, provisions and words of this Ordinance shall be severable.

SECTION 20. Effective Date. This Ordinance shall become effective immediately upon publication or posting as required by law.

[SIGNATURE PAGE FOLLOWS]

PASSED AND ADOPTED by the Town Council of Charleston Town,
Utah, this 4th day of June, 2020 by the following vote:

	YES	NO	ABSENT
Council Member Vaughn Rasband	<u>X</u>	_____	_____
Council Member Darrell Nish	_____	_____	<u>X</u>
Council Member Jim Brown	<u>X</u>	_____	_____
Council Member Scott Solum	<u>X</u>	_____	_____
Mayor Brenda Kozlowski	<u>X</u>	_____	_____

Attest: Arlene Buehler
Arlene Buehler Town Clerk

By: Brenda Kozlowski
Mayor Brenda Kozlowski

Seal:



Approved as to form.

J. Mark Smith
Town Attorney

EXHIBIT "A"

02.1110: LAND USE APPEAL AND VARIANCE HEARING OFFICER:

A. **Creation and Appointment:** Pursuant to Utah Code section 10-9a-701 et seq., there is created in the Town an Appeal Authority. The Town Council shall appoint by resolution one or more Appeal and Variance Hearing Officers (also referred to in this section as "Hearing Officer") who will serve as the Appeal Authority for appeals of administrative land use decisions and variances.

B. **Authority and Jurisdiction:** A Hearing Officer shall have the following powers:

1. **Hear and Decide Appeals:** Unless otherwise specifically provided in this title or title 10, "Subdivision and Development Code", of this Code, a Hearing Officer shall hear and decide all appeals alleging that there is error in any final written decision of the Zoning Administrator, Planning Director, Town Engineer, or Planning Commission administering or interpreting this title or in title 10, "Subdivision and Development Code", of this Code.

2. **Authorize Variances:** The Hearing Officer may authorize, upon appeal, variances from the terms of this Ordinance pertaining to area and width of lot, size of yards, and height and size of buildings where owing to special conditions, peculiar to the property, a literal enforcement of the provision of this Ordinance would result in a hardship which is unnecessary in carrying out the intent of this Ordinance. 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.

a. The Hearing Officer 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. In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under Subsection 2. a., the Hearing Officer may not find an unreasonable hardship unless the alleged hardship:

i. is located on or associated with the property for which the variance is sought;
and

ii. comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.

iii. In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under Subsection (2)(a), the Hearing Officer 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 Hearing Officer 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.

d. The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.

e. Variances run with the land.

f. The Hearing Officer may not grant a use variance.

g. In granting a variance, the Hearing Officer may impose additional requirements on the applicant that will:

- i. mitigate any harmful effects of the variance; or
- ii. serve the purpose of the standard or requirement that is waived or modified.

3. Transitional Uses: Uses which are permitted on either portion of a lot, which lot is divided by a zone boundary line or which is contiguous with a zone boundary line, may be permitted to extend to the entire lot, but not more than one hundred (100) feet beyond the boundary line of such zone in which such use is permitted. Before a permit for such a use may be granted, however, the Hearing Officer must find that the comprehensive plan of zoning will be maintained and that a more harmonious mixing of uses will be achieved thereby.

4. Interpret Land Use Code and Land Use Map: It is the intent of this provision to provide a way whereby applicants who think that the Zoning Administrator is in error or does not interpret the provision of the Zoning Ordinance correctly to obtain a relief from such error in an expeditious without having to resort to the courts.

1. Duty to Interpret: The Hearing Officer shall hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision, or refusal made in the enforcement of his Ordinance.

2. Interpretation of the Land Use Map: The Hearing Officer shall also interpret the zone map and boundaries thereof in cases of dispute or disagreement.

5. Small Lots: Lots where a parcel of land at the time of the adoption of this Ordinance (circa 1973) is at least one and eight-tenths times as wide and one and eight-tenths times as large in area as required for a lot in the zone, the Hearing Officer may permit the division of a parcel into two lots, provided:

- a. Such division will not cause undue concentration of population;
- b. The characteristics of the zone in which the lot is located will be maintained; and
- c. In the opinion of the Hearing Officer, values in the area will be safeguarded adequately.

6. Reduce Off-street Parking Requirements: The Hearing Officer may approve substitute parking locations and may reduce the amount of off-street parking required provided:

- a. It can be shown that the time of use of the buildings or uses will be at different hours or days so that each use will have the amount of off-street parking available when the building or use is occupied;
- b. Sufficient off-street parking is readily available within the vicinity; and
- c. Where acquisition of land for such use is unnecessary in order to carry out the purposes of this Ordinance.

02.1111: APPEALS AND APPEAL PROCESS:

A. Parties Entitled to Appeal:

1. The Town, an applicant, or any other person or party adversely affected by a final written decision of the Zoning Administrator, Planning Director, Town Engineer, or Planning Commission administering or interpreting this title or title 10, "Subdivision and Development Code", of this Code may appeal the decision to a Hearing Officer.

2. If an appeal is regarding a landowner's property but the landowner is not the appellant or appellee, a Hearing Officer may determine the landowner's level of involvement in an appeal.

B. Time to File Appeal: A Hearing Officer may only consider appeals properly filed pursuant to this section within ten (10) days of the date the disputed final written decision was issued.

C. Application: All appeals are limited to the land use decisions on the record. "Record" means the land use application, public meeting/minutes, and any relevant public document held by the Town that specifically relates to the issue(s) on appeal. An appellant shall file an appeal in writing by submitting an online appeal application to the Town. A Hearing Officer may only consider an appeal if the appellant submitted a complete application within the time period provided in subsection B of this section. An appeal application is complete if it includes:

1. A completed application form provided by the Town.
2. Payment of applicable fees including those shown on the current year Town fee schedule.
3. A written statement that is no more than five (5) pages with one inch (1") margins, 12-point Times New Roman font, single spaced, that concisely:
 - a. Explains the appellant's standing to appeal;
 - b. Identifies the alleged error that is grounds for the appeal; and
 - c. Provides reasons the appellant claims the applicable decision was made in error.
4. All records (e.g., land use application, staff reports, and meeting minutes). The records may be attached to the written statement as an exhibit and, if so, the exhibits shall not be counted against the statement's page limit.

D. Stay of Proceedings Pending Appeal: An appeal stays all proceedings, unless the officer or decision making body that made the decision being appealed certifies to a Hearing Officer after the notice of appeal is filed with the Town Clerk that, by reason of the facts stated in the certificate, the stay would in the officer's or decision making body's opinion

cause imminent peril to life and property. In such case, proceedings shall not be stayed unless a Hearing Officer or the District Court grants a restraining order on application, notice, and due cause shown.

E. Notice of Hearing: After receiving an appeal application from the Town Clerk, a Hearing Officer shall fix a reasonable time and place for hearing the appeal during a public meeting. Thereafter, the Town Clerk shall publish an agenda at Town Hall and on the Town's website, give notice to the parties, and provide the appeal application to appellee.

F. Response and Representation: At least ten (10) days prior to the hearing, the appellee may submit to the Town Clerk a response to the appeal application that the Town Clerk shall give to a Hearing Officer and appellant. The response shall have the same restrictions listed in subsection C3 of this section. At the hearing, the parties may appear in person or by agent or attorney.

G. Hearing Officer: A Hearing Officer shall:

1. Act in a quasi-judicial manner and serve as the final arbiter of issues involving the interpretation or application of land use ordinances; and

2. May not entertain an appeal of a matter in which the Hearing Officer had first acted as the Land Use Authority.

H. Hearing and Decision Procedures:

1. Minutes: A Hearing Officer shall cause minutes to be kept of all proceedings before him or her and shall keep record of all other official actions, including written decisions. A Hearing Officer's minutes and official records shall be immediately filed with the Town Clerk as a public record and shall be retained according to applicable law.

2. Written Decision: A Hearing Officer shall file with the Town Clerk a written decision on each appeal that reverses or affirms, in whole or in part, the administrative decision being appealed.

- a. The written decision shall set forth the facts and law upon which the decision is made.

- b. If a Hearing Officer reverses any part of the administrative decision being appealed, the Hearing Officer shall remand the administrative decision to the officer or decision making body that made the decision for further proceedings consistent with the Hearing Officer's decision.

- c. The Town Clerk shall notify the parties of a Hearing Officer's decision by mail within ten (10) days of the decision's effective date.

- d. A decision of a Hearing Officer takes effect and is final on the date when the Hearing Officer issues a written decision.

3. Other Policies and Procedures: A Hearing Officer may formally adopt other policies and procedures that do not otherwise conflict with this section or other laws.

- I. Scope of Review: The scope of review is limited to factual matters on the record.

A Hearing Officer shall:

1. Determine whether the record on appeal includes substantial evidence for each essential finding of fact.

2. Receive no public comment, including witness testimony, and the parties may not present new evidence outside the record.

3. Determine the correctness of the interpretation and application of the plain meaning of the land use regulation.

J. Burden of Proof: The appellant has the burden of proving the appealed decision was made in error.

K. Judicial Review of Hearing Officer's Decision: The Town or any person adversely affected by any Hearing Officer's decision may file a petition for review of the decision with the District Court within thirty (30) days after the Hearing Officer's decision is final.

L. Stay of Decision: A Hearing Officer may stay his or her decision for thirty (30) days or until the District Court decides any appeal of the Hearing Officer's decision.