



APPEAL TO THE BOARD OF ADJUSTMENT

Any person or entity adversely affected by a decision administering or interpreting a zoning ordinance may appeal that decision to the Board of Adjustment by alleging that there is an error in any order, requirement, decision, or determination made by an official in the administration or interpretation of the zoning ordinance.

Below is a list of information that is required to be submitted with the application in order for City staff to process the request. If any of the required information is not submitted, the application will be considered incomplete and will not be accepted. Attached to this checklist is Chapter 14.05 Provo City Code, which explains the role of the Board of Adjustment and the appeal procedures.

Fee: \$600 + \$60 Noticing Fee

Staff will review the application and check the boxes if the information has been submitted. As part of the application, please provide the following:

1. Drawings

- Electronic Plans in PDF format (uploaded to application on your online account at provo.org/portal) that show:
- An accurate plan, drawn to scale, which helps demonstrate your position. You may also submit digital photographs of any size.

2. Supplementary Information

- Complete Notice of Appeal application on the Online Portal specifying grounds for appeal. Please refer to the specific provision of the ordinance involved and the interpretation that is claimed (see attached ordinance).

Please note: Section 14.02.010(5)(a), Hearings - Notice and Procedures, states, "All written documents and evidence from the applicant shall be received by the Community Development Department at least fourteen (14) days in advance of the public hearing". This statement is referring to any additional or supplementary materials turned in after the original application. It is not referring to the original application submission.

14.05.030. Appeals to Board - Powers and Duties.

The Board of Adjustment shall hear and decide appeals from zoning decisions applying this Title; variances from the terms of this Title; and may authorize special exceptions to the terms of this Title pursuant to the procedures and standards set forth in subsection (10) of this section.

- 1 The applicant or any person or entity adversely affected by a decision administering or interpreting a provision within this Title may appeal that decision applying the provision by alleging that there is error in any order, requirement, decision, or determination made by an official in the administration or interpretation of the provision.
- 2 Any officer, department, board, or bureau of the City affected by the grant or refusal of a building permit or by any other decision of the administrative officer or interpretation of a provision of this Title may appeal any decision to the Board of Adjustment.
- 3 The Board of Adjustment shall hear and decide appeals from Planning Commission decisions regarding conditional use permits.
- 4 The person or entity making the appeal has the burden of proving that an error has been made.
- 5 Only decisions applying this Title may be appealed to the Board of Adjustment.
- 6 A person may not appeal, and the Board of Adjustment may not consider, any zoning amendments to the Provo City Code.
- 7 Appeals may not be used to waive or modify the terms or requirements of a provision within this Title.
- 8 Interpretation. Upon appeal from a decision by an administrative official to decide any question involving the interpretation of any provision of this Title, including determination of the exact location of any zone boundary if there is uncertainty with respect thereto. With respect to the boundaries of the flood plain zone, the Board of Adjustment may use the Flood Insurance Rate Map (FIRM) to interpret the flood plain boundaries.

14.05.040. Procedure.

- 1 The Board of Adjustment shall act in strict accordance with the procedure specified by law and by this Title.
- 2 All appeals and applications made to the Board shall be in writing, on forms prescribed by the Board and within fourteen (14) days of the action or decision appealed from by filing a Notice of Appeal with the officer from whom the appeal is taken or with the Board of Adjustment. The officer from whom the appeal was taken shall forthwith transmit to the Board of Adjustment all papers constituting the record upon which the action appealed from was taken.
- 3 Every appeal or application shall refer to the specific sections of the Provo City Code involved, and shall exactly set forth the interpretation that is claimed, the use for which the conditional use permit is sought, or the details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted, as the case may be.
- 4 At least fourteen (14) days before the date of any hearing on an application of appeal to the Board of Adjustment, the secretary of such Board shall transmit to the Planning Commission a copy of the notice of the aforesaid hearing and shall request that the Planning Commission submit to the Board of Adjustment its advisory opinion on said application or appeal, and the Planning Commission shall submit a report or such advisory opinion prior to the date of said hearing.

- 5 An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the Board of Adjustment after the Notice of Appeal shall have been filed with him that by reason of facts stated in the Certificate, a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by restraining order which may be granted by the Board of Adjustment or by the district court on application and notice and due cause shown.
- 6 No action of the Board shall be taken on any case until after proper notice has been given and public hearing has been held. Upon the hearing, any party may appear in person or by agent or by attorney.
- 7 Every decision of the Board of Adjustment shall be by motion, each of which shall contain a full record of the findings of the Board in the particular case.
- 8 In exercising its powers, the Board of Adjustment may reverse or affirm, wholly or partly, or may modify the order requirement, decision, or determination as ought to be made, and to that end shall have all of the powers of the officer from whom the appeal is taken. The concurring vote of three (3) members of the Board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or agency or to decide in favor of the appellant on any matter upon which it is required to pass under any such section of the Provo City Code, or to affect any variation in such section of the Provo City Code.
- 9 Decisions of the Board of Adjustment become effective at the meeting in which the decision is made, unless a different time is designated in the Board's rules or at the time the decision is made.
- 10 Notices of public hearings required by this Title before the Board of Adjustment shall be given at least fifteen (15) calendar days before the hearing by publication or at least once in a newspaper of general circulation within Provo City. Such notice shall state the time and place of such hearing and shall include a general explanation of the matter to be considered and a general description of the area affected. Additional notice may be given as deemed necessary. (Am 1992-75, Am 1995-99, Am 2003-17)

14.05.050. Judicial Appeal.

- 1 Any person aggrieved by or affected by any decision of the Board of Adjustment may have and maintain a plenary action for relief from the District Court of competent jurisdiction, provided petition for such relief is presented to the court within thirty (30) days after the filing of such decision in the office of the Board of Adjustment or with the City Recorder.
- 2 The filing of a petition does not stay the decision of the board of adjustment.
- 3 Before filing the petition, the aggrieved party may petition the board of adjustment to stay its decision.
- 4 Upon receipt of a petition to stay, the board of adjustment may order its decision stayed pending district court review if the board of adjustment finds it to be in the best interest of the city.
- 5 After the petition is filed the petitioner may seek an injunction staying the board of adjustment's decision.