

Torrey Town Variance Policy  
Ordinance No. XXX

**A. General Provisions**

1. Any person or entity desiring a waiver or modification of the requirements of Torrey Town land use ordinances as applied to a parcel of property that such person owns, leases or in which such person holds some other beneficial interest, may apply to the Torrey Town's designated appeal authority for a variance from the terms of such ordinances. An application for variance shall be filed with the town clerk. The variance application shall contain the following information:

- a. A description of the requested variance, together with a designation of the ordinance provision from which relief is being requested;
- b. The manner in which the variance will be applied and its effect upon adjacent properties;
- c. A site plan and all other plans necessary to show the manner in which the requested variance will be applied, drawn to scale; and
- d. The appropriate filing fee as established by resolution of the town council.

2. No application for a variance from this title may be set for public hearing unless the town staff has reviewed the application and determined the application to be appropriate and complete. If the town staff determines that the application complies with the provisions of this section, said application shall be forwarded to the appeal authority, as designated by Torrey Town Ordinance #XXX. If the town staff determines that an application does not comply with the provisions of this section, the town staff shall return the incomplete application to the applicant and provide a written explanation for the rejection.

3. Upon receipt of an application for variance by the appeal authority, the appeal authority shall schedule a public hearing, which shall be noticed in accordance with Utah State code. At the public hearing, the appeal authority may grant, grant with conditions, deny said variance, or continue consideration at a later date. If consideration of the variance is adjourned within thirty five (35) days following the closing of the public hearing on an application for variance, the appeal authority shall act on the application at a public meeting held in conformance with Utah Code Annotated title 52, chapter 4, Open and Public Meetings Act.

**B. Standards: The appeal authority may grant a variance only if:**

1. Literal enforcement of the provisions of this title would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of Torrey Town's general plan or land use ordinances;
2. There are special circumstances attached to the property that do not generally apply to other properties in the same district;
3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other properties in the same district;
4. The variance will not substantially affect the general plan and will not be contrary to the public interest; and
5. The spirit of the land use ordinance is observed and substantial justice is done.

**C. Unreasonable Hardship:** In determining whether or not enforcement of this title would cause unreasonable hardship under subsection B1 of this section, the appeal authority may not find an unreasonable hardship unless the alleged hardship:

1. Is located on or associated with the property for which the variance is sought; and
2. Comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.

**D. Self-Imposed Hardship or Economic Hardship:** In determining whether or not enforcement of this title would cause unreasonable hardship under subsection B1 of this section, the appeal authority may not find an unreasonable hardship if the hardship is self-imposed or economic.

**E. Special Circumstances:** In determining whether or not there are special circumstances attached to the property under subsection B2 of this section, the appeal authority may find that special circumstances exist only if the special circumstances:

1. Relate to the hardship complained of; and
2. Deprive the property of privileges granted to other properties in the same district.

**F. Burden Of Proof:** The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.

**G. Conditions Running With the Land:** Variances are conditions that run with the land.

**H. Use Variances Prohibited:** The appeal authority may not grant use variances which allow a use in a zoning district which is not a permitted use for that district.

**I. Additional Requirements:** In granting a variance, the appeal authority may impose additional requirements on the applicant that will:

1. Mitigate any harmful effects of the variance; or
2. Serve the purpose of the standard or requirement that is waived or modified.

**J. Appeals:** Any person adversely affected by a final decision of the appeal authority on an application for variance may file a petition for review of the decision with the district court within thirty (30) days of the appeal authority's final decision. The right to file a petition for review is lost if the petition is not filed within thirty (30) days of the appeal authority's final decision.

**K. Lapse and Renewal of Variance:**

1. A variance shall lapse and shall become void one year following the date on which the variance became effective unless prior to the expiration of the one year period:

- a. A building permit is issued and construction is commenced and diligently pursued toward completion on the site which was the subject of the variance application; or
- b. A permit is issued authorizing the subject of the variance application; or
- c. The site is occupied if no building permit or certificate of occupancy is required; or
- d. The variance is renewed as provided in subsection K2 of this section.

2. A variance may be renewed for one additional period of no more than one year in length; provided, that at least sixty (60) days prior to the expiration of one year from the date when the variance became effective, an application for renewal of the variance is filed with the town clerk. The applicant shall clearly demonstrate that:

- a. In spite of the good faith efforts of the applicant, circumstances beyond the applicant's control have prevented the timely pursuit of the project and completion of the necessary requirements within the original time frame; or
- b. The applicant has completed substantial property improvements; incurred substantial nonrecoverable monetary expenditures or commitments; or has completed supporting project related improvements or retained the services for preparation of supporting data in reliance upon the approval of the request.

3. In either instance, the applicant is, in good faith, continuing to diligently pursue implementation of the proposal to the degree authorized by the town.

**L. Revocation:** A variance granted by the appeal authority and subject to conditions may be modified or revoked, after notice and hearing, if the appeal authority finds one or more of the following:

1. That the variance was obtained by misrepresentation or fraud; or
2. That the conditions imposed upon said variance have not been complied with.

**M. One Year Bar on Refiling:** Following the denial or revocation of a variance application, no application for the same or essentially the same variance on the same lot, parcel or site shall be filed within one year of the date of denial or revocation of the variance.

**N. Variance Related to Plans Submitted:** Unless otherwise specified at the time a variance is granted, it shall apply only to the plans and drawings, or any insubstantial modifications thereto, submitted as part of the application.

**O. Request for Reconsideration:** The appeal authority may reconsider a decision on a variance upon request by an aggrieved party. Requests for reconsideration are not subject to the one year ban on refiling in subsection M of this section. Any reconsideration of a variance decision will be heard and reviewed through the same process as the original variance application. The appeal authority is not obligated to reverse or change a decision based on reconsideration. The request for reconsideration will be evaluated according to the standards in subsection B of this section. The person making the request for reconsideration must pay a variance application fee when the reconsideration hearing is scheduled. Requests to reconsider a variance decision may only be granted when all of the following criteria have been met:

1. New, supplemental, additional or clarified information or evidence is available that was not presented at the variance hearing and such information or evidence will significantly impact a finding of fact the appeal authority relied upon when making the decision.
2. The request for reconsideration is made within thirty (30) days from the date the appeal authority issues a written decision.