



## **Land Use Authority**

76 North Main Street  
Kanab, Utah 84741  
(435) 644-4966 or 644-4951  
smcbride@kane.utah.gov

### **PROCEDURES TO REQUEST A VARIANCE**

The following requirements shall be met in order to request a Variance from the Appeal Authority:

1. Aggrieved party has ten (10) calendar days, from receipt of written decision, to file an application for a Variance. The application may be obtained from the Kane County Land Use Authority Office, or on the Kane County web-site.
2. Present a Development Plan. This plan is to show the proposed or existing buildings, fences, landscaping, etc. In addition, it will have the public roads, any unusual terrain or anything of a mitigating nature.
3. Pay the required fee-\$500.00 (applicant is responsible for any extra fees if the cost to process this application exceeds \$500).
4. Appear before the Appeal Authority

The Appeal Authority may approve, modify and approve or deny the Variance Request. He shall base his decision on the following three criteria:

1. The use is necessary or desirable and will contribute to the general well-being of the community.
2. The use will not be detrimental to the health, safety or general welfare of persons living or working in the vicinity, or injurious to property or improvements in the vicinity.
3. The use is in harmony with the intent of the Master Plan and the zone in which it is located.

If the Appeal Authority denies the Variance Request, you may appeal to any court of competent jurisdiction; provided petition for such relief is presented to the court in writing within thirty (30) days after the filing of such decision in the office of the Appeal Authority.

Fee: \_\_\_\_\_  
Paid: \_\_\_\_\_

**APPLICATION FOR VARIANCE**

Owner Name: \_\_\_\_\_ Date: \_\_\_\_\_

Address: \_\_\_\_\_ Phone: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

E-Mail \_\_\_\_\_

LOCATION AND LEGAL DESCRIPTION OF SUBJECT PROPERTY: (photos & documents suggested)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CURRENT ZONE : \_\_\_\_\_

INTENDED USE AND REASON FOR VARIANCE:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature of owner or authorized representative \_\_\_\_\_

A variance may be revoked upon failure to comply with the conditions imposed with the original approval of the permit.

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Appeal Authority Action: APPROVE \_\_\_\_\_ DENY \_\_\_\_\_

COMMENTS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Appeal Authority \_\_\_\_\_ Date \_\_\_\_\_

## 1. Characteristics of Variances:

- a. Involve a waiver or modification of the requirements of a land use ordinance as applied to a parcel of property;
  - b. Do not vary the use of property;
  - c. Run with the land.
2. **Requested by Property Owner.** A variance may be requested by a person who owns, leases, or holds some other beneficial interest in a parcel of property that is to be the subject of the variance request.
3. **Required Findings.** A variance may only be granted **if all of the following findings are made on the record:**
- a. 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. An unreasonable hardship can only be found when the alleged hardship:
    - i. Is located on or associated with the property and not from conditions that are general to the neighborhood;
    - ii. Comes from circumstances peculiar to the property, and not from conditions that are general to the neighborhood;
    - iii. Is not self-imposed;
    - iv. Is not primarily economic, although there may be an economic loss tied to the special circumstances of the property;
  - b. There are special circumstances attached to the property that do not generally apply to other properties in the same zone. The appeal authority may find that special circumstances exist only if the special circumstances:
    - i. Relate to the hardship complained of; and
    - ii. Deprive the property owner of privileges granted to other properties in the same zone;
    - iii. Are not simply differences between the property and others in the area;

- c. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone; and
  - d. The variance will not substantially affect the general plan and will not be contrary to the public interest; and
  - e. The spirit of the land use ordinance is observed and substantial justice done.
4. **Burden.** The applicant bears the burden of proving that all the conditions justifying a variance have been met.
5. **Conditions.** In granting a variance, the appeal authority may impose additional requirements on the applicant that will:
- a. Mitigate any harmful effects of the variance; or
  - b. Serve the purpose of the standard requirement that is waived or modified.
6. **Substantial Evidence.** Decision granting a variance must be supported by findings and substantial evidence in the record of the proceedings where the decision to grant the variance was made.