

TOWN OF BLUFF ORDINANCE NO. 2022-451

AN ORDINANCE ENACTING A VARIANCE PROCESS WITH RESPECT TO TOWN LAND USE CODES.

The following describe the intent and purpose of this ordinance:

- a. From time to time the Town reviews its ordinances in response to the concerns and needs of the Bluff community.
- b. Utah law authorizes local governments to enact variance ordinances to provide flexibility where the strict application of zoning rules would result in unreasonable hardship to landowners.
- c. The Town recognizes that the strict application of land use ordinance requirements may result in unintended hardships due to the size, shape, topography, or other specific attributes of land parcels. Therefore, a variance process is appropriate to mitigate those hardships and permit development that would otherwise be prohibited.
- d. It is the intention of the Town to allow variances where justified, but not to reward a self-created hardship or allow land uses not otherwise permitted in a given zoning district.

Therefore, the Town enacts the following:

Section 6.50.100 Variances

A. General Criteria. A person who owns, leases, or has a beneficial interest in a parcel of land may apply for a variance seeking to modify the strict application of the provisions of this Title to that specific parcel. The Town may grant a variance only if:

- i) strict enforcement of the ordinance(s) would cause an unreasonable hardship to the applicant;
- ii) there are special circumstances applicable to the subject property that do not apply to other parcels in the same zoning district;
- iii) granting of the variance would be essential to the enjoyment of a substantial property right possessed by other properties in the same zoning district;
- iv) the spirit and intent of the provisions of this Title would not be harmed, nor would the variance be harmful to the public interest; and
- v) granting of the variance would not result in an unreasonable or excessive negative impact on neighboring land parcels.

B. Submittals. The applicant shall submit an application on the forms supplied by the Town, together with the application fee. The application shall be signed by the property owner, lessee, or other person having a beneficial interest in the subject property and include a full description of the scope of the variance sought. The applicant must attach a scaled plan

drawing accurately depicting the subject parcel boundaries, structures, roads, utilities, and relevant land features. The applicant may attach photographs, or such other materials as will assist the Town in reviewing the application.

C. Review Procedure. The Planning & Zoning Commission (the Commission) will review a complete application for a variance; if an application is incomplete the Town will promptly notify the applicant as to any deficiencies.

1. A variance application shall be heard in a public hearing; the applicant and the public shall be provided reasonable advance notice of the date, time, and place of the hearing.

2. The hearing shall be conducted in a quasi-adjudicatory manner, and with due regard to fairness to the applicant and all interested persons. The hearing shall be recorded, and the Commission shall keep an accurate record of all evidence or other materials (including written comments) reviewed in the matter.

3. The Commission shall first invite the applicant to present evidence or testimony in support of the application. Second, interested persons shall be permitted to offer evidence or testimony either for or against the application. Third, the applicant shall be allowed to offer rebuttal evidence or testimony responding to evidence offered by others. Members of the Commission may ask questions of all hearing participants.

4. The rules of evidence shall not apply in a variance hearing. However, in its deliberations the Commission may weigh the strength and credibility of all evidence in the record.

D. Burden of Proof. The applicant has the burden of proof to show that all requirements of this section have been established.

E. Use Variance Prohibited. No variance shall be granted to permit or authorize a use of land which is prohibited by zoning restrictions applicable to the subject parcel of land. For purposes of illustration only, a variance to allow the operation of a business on a parcel in which the zoning prohibits business uses would be prohibited.

F. Decision to be Issued in Writing; Conditions. The Planning & Zoning Commission may grant the application for a variance, in whole or in part, or deny the application. If it grants the variance, the Planning & Zoning Commission may impose additional conditions that will: i) mitigate the harmful effects of the variance; or ii) serve the purpose of the standard or requirement that is modified.

1. The decision of the Planning & Zoning Commission shall be in writing and shall contain its findings of fact that support the decision. The decision shall be signed by the chairperson of the Commission and dated.

G. Variance to Run with the Land; No Expansion Permitted. Once issued, a variance may continue indefinitely and may be transferred to successive owners of the subject parcel to which the variance applies. A variance shall be confined to the scope described in the written decision.

