

TITLE 20 – ZONING ORDINANCE OF GENOLA

CHAPTER 4 APPEAL AUTHORITY

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20.04.01 ESTABLISHMENT AND AUTHORITY.

The Appeal Authority is hereby established in the Town of Genola. The Appeal Authority shall hear and decide requests for variances from the terms of Genola's land use ordinances and appeals from decisions applying the land use ordinances.

The Appeal Authority shall act in a quasi-judicial manner. The Appeal Authority shall serve as the final arbiter of issues involving the interpretation or application of land use ordinances. The Appeal Authority may not hear an appeal of a matter in which the appeal authority, or any participating member, had first acted as the land use authority.

20.04.02 APPOINTMENT-TERM

1. The Appeal Authority shall consist of an individual appointed by the Town Council by resolution.
2. If the appointed Appeal Authority is unable to act at the time of an appeal, the Town Council shall appoint a new Appeal Authority in their next regularly scheduled meeting.
3. The individual appointed to be the Appeal Authority shall not simultaneously be a member of the Planning Commission nor a member of the Planning Commission at the time of the decision which is being appealed.
4. The individual appointed to the Appeal Authority may or may not be a resident of the Town of Genola.

20.04.03 CONDITIONS PRECEDENT TO JUDICIAL REVIEW.

1. Each adversely affected person shall timely and specifically challenge a Land Use Authority's decision in accordance with the Town's ordinance.
2. An adversely affected party shall present to the Appeal Authority every theory of relief that it can raise in district court.

20.04.04

APPEALS.

1. The applicant or any other person (including any officer, department, or board of the Town of Genola) affected by a decision interpreting a land use ordinance may appeal that decision applying the land use ordinance by alleging that there is error in any order, requirement, decision, or determination made by an official in the interpretation of the land use ordinance.
2. An appeal must be made within thirty (30) days from the date of such decision by filing with the Town Clerk a written notice of appeal specifying the grounds thereof. When an appeal is taken from a decision of the Land Use Authority, the Town Clerk shall forthwith transmit to the Appeal Authority all papers, if any, constituting the record from which the action was appealed.
3. An appeal filed in accordance with this section stays all proceedings in the appeal action, unless the officer from whom the appeal is taken certifies to the Appeal Authority that by reason of facts stated in the certificate the stay would in his/her opinion cause imminent peril to life or property. In such cases, proceedings shall not be stayed otherwise than by restraining order which may be granted by the Appeal Authority or by the district court on application and notice and on due cause shown.
4. The Appeal Authority shall fix the time for hearing any appeal within thirty (30) days of the date of filing such appeal with the Town Clerk and shall give public notice thereof in accordance with the Utah Open and Public Meetings Act, as well as notice to the parties in interest.
5. Proceedings and hearings before the Appeal Authority shall be had pursuant to rules adopted by the Appeal Authority and in conformance with general principles of due process. Any party in interest may appear at such hearing in person, by agent, or by an attorney of his or her choice.
6. The person or entity making the appeal has the burden of proving that an error has been made.
7. The person or entity making the appeal must pay the fee as set by the Fee Schedule before a hearing shall be set.

20.04.05

VARIANCES

The Appeal Authority shall hear and decide applications for variances in accordance with the provisions of Utah Code Ann. §10-9a-702 et al., as the same may be amended from time to time.

The applicant shall bear the burden of proving all of the conditions justifying a variance have been met. Variances run with the land. The Appeal Authority may not grant use variances. In granting a variance, the Appeal Authority may impose additional requirements on the applicant that will mitigate any harmful effects of the variance or serve the purpose of the standard or requirement that is waived or modified.

20.04.05

STANDARD OF REVIEW

1. The Appeal Authority shall review all appeal matters “on the record,” including the review of all factual matters. The Appeal Authority shall only consider those materials presented and originally before the Land Use Authority in making the decision that is the subject of the appeal.
2. The Appeal Authority shall determine the correctness of a decision of the Land Use Authority in its interpretation and application of the land use ordinances.
3. Only those decisions in which a Land Use Authority has applied the requirements of the land use ordinances to a particular application, person, lot or parcel may be appeal to the Appeal Authority.
4. An Appeal Application shall not be used to waive, modify, or amend any requirements, provisions, or terms of the land use ordinances.

20.04.07

APPEAL AUTHORITY DECISION ON APPEAL

In exercising the above-mentioned powers the Appeal Authority may affirm, wholly or partly, or may modify the order, requirement, decision or determination of the land use authority.

20.04.08

DISTRICT COURT REVIEW OF APPEAL AUTHORITY DECISION.

1. No person may challenge a decision of a Land Use Authority in District Court until that person has exhausted all administrative remedies and received a final decision from the Appeal Authority, as provided by this ordinance.
2. Any person adversely affected by any decision of the Appeal Authority may petition the district court for a review of the decision within thirty (30) calendar days after the decision is final, pursuant to Utah Code. An Appeal Petition is barred unless it is filed with thirty (30) calendar days after the appeal Authority’s decision is final.
3. In the petition, the plaintiff may only allege that the Appeal Authority's decision was arbitrary, capricious, or illegal.
4. Appeal Authority – Review on the Record
 - a. The Appeal Authority shall transmit to the district court the record of its proceedings including its minutes, findings, orders and, if available, a true and correct transcript of its proceedings.
 - b. If the proceeding was taped, a transcript of that tape recording is a true and correct transcript for purposes of this subsection.
 - c. If there is a record, the district court's review is limited to the record provided by the Appeal Authority.
 - d. The court may not accept or consider any evidence outside the Appeal Authority's record unless that evidence was offered to the Appeal Authority

and the court determines that it was improperly excluded by the Appeal Authority.

- e. If there is no record, the court may call witnesses and take evidence.
5. The court shall affirm the decision of the Appeal Authority if the decision is supported by substantial evidence in the record.
6. Staying of Decision.
- a. The filing of a petition does not stay the decision of the Appeal Authority.
 - b. Before filing a petition under this section or a request for mediation or arbitration of a constitutional taking issue under Utah Code Annotated §13-43-204, the aggrieved party may petition the Appeal Authority to stay its decision.
 - c. Upon receipt of a petition to stay, the Appeal Authority may order its decision stayed pending district court review if the Appeal Authority finds it to be in the best interest of the Town.
 - d. After a petition is filed under this section or a request for mediation or arbitration of a constitutional taking issue is filed under Utah Code Annotated 13-43-204, the petitioner may seek an injunction from the district court staying the Appeal Authority's decision.

20.04.09

CONFLICT WITH STATE OR FEDERAL LAW

Nothing in this Chapter or in its interpretation, application or enforcement shall act or be allowed to operate in conflict with any state or federal law. Should there be a conflict between this § 12-5 and state or federal law, the state or federal law shall apply.

ⁱ Previous Versions and Ordinances