



CITY COUNCIL MEETING STAFF REPORT

DATE OF MEETING: March 18, 2025

NAME OF APPLICANT: Midway City

AGENDA ITEM: Code Text Amendment of Title 2.05 Board of Adjustment Procedures - Modifications to clean up provisions to match Process and Procedures.

ITEM: 8

Public hearing for a proposed amendment to Title 2 of the Municipal Code. The proposed amendment is to section 2.05, Board of Adjustment. The proposed amendment would do away with term limits to address the difficulty of attracting volunteers for this committee and amend procedures to match established processes and procedures.

BACKGROUND & ANALYSIS:

Midway City's Board of Adjustment hears applications for variances. Their duties and limitations are outlined in Section 2.05 of the Midway City Code and in Utah State law. Applications for variances historically have been rare in Midway so this section of code is not reviewed frequently. Staff recently reviewed this section of code and proposes some cleanup changes to bring the process into compliance with historical procedures and to address the reality that it is difficult to find volunteers to participate on the Board of Adjustment and training is more involved than on some other boards. Consequently, staff is recommending doing away with term limits.

The BoA has a narrow scope of power and duty. The authority of the BoA is to decide if proposed variances meet the standards established in State Code in order for those variances to be granted. The standards cited in State Code are quite demanding and therefore it is not common for variances to be approved. There is a common misconception with the general public

that if a land use ordinance restricts them then a variance is easy to obtain. Once they discover what is required in order for a variance to be approved, most decide not to pursue the variance. For this reason, the BoA does not meet very often.

Staff has found that over the past 20 years, the BoA has met approximately 9 times and discussed 10 variances. The most recent meeting was in February of 2025, but the application did not meet the requirements of State Code and consequently was denied. Because of the infrequency of Board of Adjustment meetings, it is difficult to keep the BoA members trained. Training is important when considering variances because State Code requires that five separate issues be addressed with each variance. Understanding those five issues and having the ability to make correct decisions that will stand up in court is difficult to ask of a group that meets on average about once every three years. Also, most citizens that apply to be part of a board, commission, or committee in the City do so to be involved. Those who become members of the BoA find it difficult to be involved when they are not required to meet for years at a time.

Staff also recommends that an alternate committee member be appointed in the event a member of the Board is unable to meet. It is becoming increasingly difficult to find times when all three board members can meet, and we had the recent experience of needing to replace a board member, which resulted in holding a variance request in abeyance until we could refill the position.

Finally, the current language conflates the Board of Adjustment's authority to consider variance requests with appeal authority, which the Board of Adjustment does not have. Appeals are heard by the City Council. Because of this, the current language, which intermingles variance and appeal terms, creates potential confusion and Staff recommends removal of language regarding appeals on the basis that appeals fall to City Council.

A copy of the Current Midway Code Chapter 2.05.010 with proposed revisions outlined in blue is attached for review and consideration

Because the proposed amendment is to Chapter 2.05 of the Code, rather than Chapter 16, it did not go through Planning Commission Review.

POSSIBLE FINDINGS:

- Variances are the only items heard by the Board of Adjustment in Midway.
- Appeals are heard by the Midway City Council. Removing appeal language from Section 2.5 dealing with variances should reduce potential confusion regarding the scope of authority of the Board of Adjustment.
- State Code gives discretion to the City Council to determine procedures for how the Board of Adjustment operates, including items such as term limits.

- Longer term limits, or removal of term limits, should assist the City in retaining volunteers to serve on the Board of Adjustment and maximize the training opportunities for and institutional knowledge of members. The City Council could revisit the question of term limits if interest in serving on the Board of Adjustment increases.

ALTERNATIVE ACTIONS:

1. Approval. This action can be taken if the City Council feels that the proposed language is an acceptable amendment to the City’s Municipal Code.
 - a. Accept staff report
 - b. List accepted findings
2. Continuance. This action can be taken if the City Council feels that there are unresolved issues.
 - a. Accept staff report
 - b. List accepted findings
 - c. Reasons for continuance
 - i. Unresolved issues that must be addressed
 - d. Date when the item will be heard again
3. Denial. This action can be taken if the City Council feels that the proposed language is not an acceptable amendment to the City’s Municipal Code.
 - a. Accept staff report
 - b. List accepted findings
 - c. Reasons for denial

PROPOSED CONDITIONS:



Midway

ORDINANCE
2025-07

**AN ORDINANCE TO AMEND CHAPTER 2.05 OF THE
MIDWAY CITY MUNICIPAL CODE TO MODIFY BOARD
OF ADJUSTMENT PROCESSES AND PROCEDURES**

WHEREAS, pursuant to Utah Code Section 10-9a-509 the Midway City Council may formally initiate proceedings to amend city ordinances; and

WHEREAS, Midway City staff recently reviewed Section 2.05 of its Municipal Code regarding its Board of Adjustment and its processes and procedures; and

WHEREAS, Midway City staff feels that updates and adjustments to this section of the Code are necessary, including removing term limits for Board of Adjustment members and adding an alternate member in the event a member of the Board is unable to meet; and

NOW THEREFORE, be it ordained by the City Council of Midway City, Utah, as follows:

The following Sections of Chapter 2.05 shall be amended as follows:

2.05.010 Board of Adjustment Created, Members, Terms

1. There is hereby created a Board of Adjustment, which shall consist of three members **and an alternate member**, each to be appointed by the Mayor, with the advice and consent of the City Council. **Only three members will sit as a Board of Adjustment at any meeting.**
- ~~2.~~ The term of office for members of the Board of Adjustment shall be four years. ~~Two consecutive four year terms shall be the limit for regular membership.~~
3. Each term shall continue until a successor is chosen and qualified, except in the case of the member's death, resignation, removal, or disqualification from holding office.
- ~~4.~~ ~~No person shall serve more than two consecutive terms on the Board of Adjustment. Partial terms shall not be considered in determining whether a person has served two consecutive terms.~~

(2014-13 Section Amended, eff. 8/13/2014; 2020-10, Sub-Section B Amended, eff. 2/24/2021)

2.05.020 Powers and Duties

The Board of Adjustment shall have the power to authorize such variance from the terms of Title 16 as provided and governed by the Municipal Land Use Development and Management Act.

2.05.030 Authority Limited

The powers and duties of the Board of Adjustment are limited to granting or denying variances as set forth in the Utah Municipal Land Use Development and Management Act. The Board of Adjustment shall not have the authority to amend Title 16 nor to correct what it may consider to be an unwise requirement.

2.05.040 Vote

The concurring vote of ~~at least~~ three members of the Board shall be necessary to decide upon any matter upon which it is required to pass.

2.05.050 Application to Appear Before the Board

Any person may appeal to the Board of Adjustment by filing for a variance request in writing with the Zoning Administrator, and by paying a fee set by the City Council. ~~, provided such appeal is made within 45 days of the decision being appealed.~~ The request to appear before the Board of Adjustment shall be made on forms ~~furnished by the Zoning Administrator~~ available through the Planning Department. ~~at least 15 days prior to the date of the hearing on the appeal.~~

2.05.060 Procedure

Upon receipt of the application, the Zoning Administrator shall submit to the Board of Adjustment all information regarding the requested ~~appeal variance~~. The Board of Adjustment shall review the application at a public ~~hearing meeting~~. ~~and shall return the same to the Zoning Administrator with its decision pertaining thereto within 60 days. Failure to return said application within 60 days shall constitute approval.~~ An ~~appeal request~~ for a variance stays all proceedings ~~in furtherance of the action appealed from~~ pending a decision on the variance request unless the Zoning Administrator certifies to the Board of Adjustment, after the ~~notice of appeal variance request~~ shall have been filed with him/her, that by reason of facts stated in the certificate a stay would, in his/her 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 to the Zoning Administrator and on due cause shown.

2.05.070 Hearings

The Board of Adjustment shall establish a reasonable time ~~for the hearing of the appeal to consider the variance request~~ and give public notice thereof by publication as required by State Law and

the Midway City Municipal Code. ~~The intent in requiring a hearing is to enable the Board of Adjustment to obtain facts surrounding the case which may not be evident, or which may not be shown in the record as submitted to the Board.~~ The decision of the Board shall be based upon the facts. ~~and not upon expressions of support or protest, or lack of support or protest, which may be made at the hearing.~~ Any party may appear at the hearing in person or by agent. The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.

2.05.080 Action

The Board of Adjustment shall make determinations ~~in harmony with the intent of Title and shall notify the appellant and Zoning Administrator of the action taken within ten days following their decision~~ consistent with Utah State Code. Decisions shall be made in the form of a motion at the public meeting.

2.05.090 Recourse From Decision

Any person aggrieved by any decision of the Board of Adjustment may have and maintain a plenary action for relief therefrom in any Court of competent jurisdiction, provided that petition for such relief is presented to the Court within the time limits required by State Law.

This ordinance shall take effect upon publication as required by law.

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PASSED AND ADOPTED by the City Council of Midway City, Wasatch County, Utah
this ____ day of _____, 2025.

	AYE	NAY
Council Member Jeff Drury	_____	_____
Council Member Lisa Orme	_____	_____
Council Member Kevin Payne	_____	_____
Council Member Craig Simons	_____	_____
Council Member JC Simonsen	_____	_____

APPROVED:

Celeste Johnson, Mayor

ATTEST:

Brad Wilson, City Recorder

APPROVED AS TO FORM:

Corbin Gordon, City Attorney

(SEAL)