



Development Services
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Variance Application & Process Guide

Town of Gilbert
Planning Services Division

<http://www.gilbertaz.gov/departments/development-services/planning-development>

Variance Application Procedures

The following information is provided to assist in the preparation and submittal of an application for a Variance for a property within the Town of Gilbert.

A Variance provides a mechanism for relief from the strict application of the Zoning Code where strict application will deprive the property owner of privileges enjoyed by similar properties. A Variance may be granted with respect to dimensional and performance standards including, but not limited to, site dimensions, yards, height of structures, distances between structures, open space requirements, signage dimensions, fences, and walls. No application for a Variance from the use regulations of the Zoning Code will be accepted.

The following steps occur in the Variance process:

1. **Application Completeness**

For an application to be accepted, the Applicant must provide all of the required information described on the submittal checklist, as incomplete applications **will be** rejected.

2. **Forms/Review**

- a. Administrative Completeness Review (see Planning Division Project Review Timelines): Staff will review the application to make sure all required documents and information have been included. If required information is missing, Applicant will be notified that the application has been rejected until all required information is submitted. If the application is rejected, upon resubmittal, a new Administrative Completeness Review will be required.
- b. Substantive Review (see Planning Division Project Review Timelines): When complete, the application will be routed to Town staff and affected agencies for review and comment. After this review is completed, the comments are consolidated and returned to the Applicant. The Applicant is responsible for addressing staff comments, revising and amending the application as required, and submitting a complete set of revised plans for a second review to ensure all comments have been addressed to the satisfaction of the Town.
- c. If all comments and issues identified in the Substantive Review have not been addressed to the satisfaction of Staff in the resubmission, the application will be denied. In lieu of denial, the Applicant may, either in writing or electronically, agree to allow Gilbert to submit supplemental requests for additional information. If Gilbert issues a comprehensive written or electronic request or a supplemental request, the Substantive Review timeframes are suspended until the additional information is submitted by the Applicant.



3. **Neighborhood Notice**

The Town will prepare the Notice of Public Hearing setting forth the purpose, time, date and place of meeting for the Variance and provide a copy to the applicant. For each required public hearing the applicant must mail the Notice of Public Hearing by first class-mail at least fifteen (15) calendar days prior to the date of the hearing to the following:

- a. All property owners of record within three hundred (300) feet of the site unless the site is located within the General Plan Santan Character Area, in which case property owners within six-hundred sixty (660) feet are to be notified;
- b. All Homeowners Associations within one thousand (1000) feet of the site identified on the Maricopa County Assessor's website (www.maricopa.gov/assessor);
- c. All neighborhoods within one thousand (1000) feet of the site registered with the Town of Gilbert Neighborhood Services Office;
- d. To the owner if the application is initiated by a person other than the owner; and
- e. Any person or group who has requested notice in writing.

The Planning Manager may expand the notification area set forth in this section if it is determined that the potential impact of the project extends beyond the required notification boundary. The applicant must submit a signed affidavit of mailing prior to public hearing. Failure of the applicant to provide evidence of mailing will result in a postponement of the public hearing item. The applicant will be charged a fee for the postponement.

4. **Property Posting (Sign)**

The Town will prepare the Notice of Public Hearing Sign Template for the Variance and provide a copy to the applicant. Signs must be posted at least fifteen (15) calendar days prior to the date of the public hearing. The applicant is responsible for posting the sign on the property, subject to the following specifications and requirements:

- a. Posting, maintenance, and removal of signs are the responsibility of the applicant. The applicant must remove all signs within ten (10) days of the public hearing. If the sign is not removed on time, the Town will remove the sign and charge the applicant a removal fee;
- b. The applicant must submit a signed and dated affidavit of posting, and color photos of the posted signs prior to the public hearing; and
- c. Failure of the applicant to provide evidence of posting will result in a postponement of the public hearing. The applicant will be charged a fee for the postponement.

6. **Staff Reports**

After the staff comments have been addressed and the application has been scheduled for a public hearing, the Planning Division will prepare a report describing and evaluating the request and making a recommendation to the Zoning Hearing Officer. A copy of the staff report will be made available to the public and the applicant prior to the public hearing.

7. **Public Hearing**

The Zoning Hearing Officer will conduct a public hearing for variance applications a minimum of thirty (30) days after receipt of the request. The decision of the Hearing Officer will be based whether the variance request meets the findings required by state



statute (Arizona Revised Statutes A.R.S. 9-462.06). Hearings are held at the Town of Gilbert Community Development Building, 90 E. Civic Center Drive. The applicant or project representative must be present at the hearing. The Hearing Officer will approve, approve with modifications and/or conditions or deny the request.

8. Referral to Board of Adjustment

The Zoning Hearing Officer may, upon review of the facts of the application, determine that the case merits review by the Board of Adjustment. In such cases, the Hearing Officer will prepare a written statement of the reasons for referring the matter to the Board. Staff will schedule the matter for hearing at the next available Board of Adjustment hearing and submit the Hearing Officer's statement to the Board along with the staff report.

9. Appeal

Decisions of the Zoning Hearing Officer may be appealed to the Board of Adjustment pursuant to the procedures set forth in Section 5.2011: Procedures for Appeals. Appeals from decisions of the Zoning Hearing Officer and Board of Adjustment shall be filed within 30 calendar days of the decision.

10. Building Permits

Only after the variance has been approved if applicable Design Review Board approval, can a building permit be issued. All construction documents for a project must conform to exhibits approved by the Zoning Hearing Officer, including any conditions of approval. Permits may not be issued until the 30 day statutory appeal period has expired.

11. Inactive Cases

All applications are required by the Land Development Code to be actively pursued to a decision. If no activity has occurred on an application for 180 days, the application will be determined to be inactive, deemed to be withdrawn and the file will be closed. The applicant may submit a written request that the application remain active, with an explanation for the inactivity. The Planning Manager may grant an extension for up to 180 days for good cause if there is a reasonable belief that the application will be actively pursued during the extension period.



Variance Content Requirements

1. **Required Findings**
 - Narrative describing the proposed variance;
 - Narrative providing a detailed response to the four findings noted on Page 7.

2. **Site Plan**
 - Vicinity Map;
 - Scale, north arrow, and dimensions;
 - Net acres;
 - Required building setbacks;
 - Existing zoning on site and adjacent properties within 50 feet;
 - Property lines, easements, alleys, private streets, and adjacent rights-of-way and easements showing existing and future improvements, access points, signals, etc.;
 - Location of required building setbacks and spaces between buildings with dimensions;
 - Location and size of any existing/proposed building(s), structure(s), or land uses; and
 - Adjacent lot lines and/or structures within 50 feet;

3. **Elevations** (if applicable)
 - All elevations of each building proposed for the project;
 - Exterior dimensions;
 - Materials proposed; and
 - Location and type of lighting fixtures proposed.

4. **Sign Variance applications only** (Wall Mounted and Freestanding Signs)
 - Location and dimensions of existing signs; and
 - Location and dimensions of proposed signs.



Required Findings

A Variance cannot be granted unless evidence is presented that satisfies, at a minimum, the four conditions listed below, as mandated by Arizona Revised Statutes A.R.S. 9-462.06. Failure to adequately provide such information may result in a continuance or denial of the case.

The Zoning Hearing Officer or the Board of Adjustment may only approve a Variance after finding evidence that:

1. There are special circumstances applicable to the property, including its size, shape, topography, location, or surroundings, whereby the strict application of the zoning ordinance will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district;
2. Such special circumstances were not created by the owner or applicants;
3. The variance does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located; and
4. The variance will not be materially detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood, or the public welfare in general.





Variance Application

Project Name: _____

Address or Location: _____

Subdivision name: _____ Lot number: _____
(Residential request)

Request: Single Family Non-Residential
 Multi-Family

Request Details: _____

Land Development Code Section: _____

Tax Parcel Numbers: _____

Net Acres: _____ Zoning: _____

Property Owner: (Please print - all information must be provided)

Name (print): _____ E-mail: _____
Address: _____
City, Zip: _____
Phone: _____ Fax: _____

Signature*: _____ Date: _____

* A letter of authorization from the property owner is required if the application is not signed by the owner.

Applicant/Contact: (Please print - all information must be provided)

Company: _____
Contact Name: (print) _____ E-mail: _____
Address: _____
City, Zip: _____
Phone: _____ Fax: _____
Signature: _____ Date: _____

For Staff Use Only		
Submittal Date	_____	Case Number _____
Fee Paid	_____	EDEN Permit Number _____
Receipt Number	_____	EDEN Permit Type PVA





A.R.S. § 9-843. Prohibited acts by municipalities and employees; enforcement; notice

- A. A municipality shall not base a licensing decision in whole or in part on a licensing requirement or condition that is not specifically authorized by statute, rule, ordinance or code. A general grant of authority does not constitute a basis for imposing a licensing requirement or condition unless the authority specifically authorizes the requirement or condition.
- B. Unless specifically authorized, a municipality shall avoid duplication of other laws that do not enhance regulatory clarity and shall avoid dual permitting to the maximum extent practicable.
- C. This section does not prohibit municipal flexibility to issue licenses or adopt ordinances or codes.
- D. A municipality shall not request or initiate discussions with a person about waiving that person's rights.
- E. This section may be enforced in a private civil action and relief may be awarded against a municipality. The court may award reasonable attorney fees, damages and all fees associated with the license application to a party that prevails in an action against a municipality for a violation of this section.
- F. A municipal employee may not intentionally or knowingly violate this section. A violation of this section is cause for disciplinary action or dismissal pursuant to the municipality's adopted personnel policy.
- G. This section does not abrogate the immunity provided by section 12-820.01 or 12-820.02.



Variance Checklist

<u>Required Materials</u>	Applicant Checklist	Staff Verification
PDF copy on disk of ALL required items on checklist with images formatted no larger than 11" x 17" , saved in a single layer with no write protection	<input type="checkbox"/>	<input type="checkbox"/>
Submit hard copy of ALL required items below:		
Application	<input type="checkbox"/>	<input type="checkbox"/>
Fee (See Planning Fee Schedule)	<input type="checkbox"/>	<input type="checkbox"/>
Project Narrative and required findings	<input type="checkbox"/>	<input type="checkbox"/>
Proposition 207 Waiver Form with required Exhibits:		
• Exhibit A – Title Report..... <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Exhibit B – Legal Description & Map of Site..... <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Exhibit C – Requested action setting forth any modifications, changes, deletions, or additions..... <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Optional Information (i.e. letters from adjoining property owners, photos, sketches or letters of approval from Homeowner’s Association).....	<input type="checkbox"/>	<input type="checkbox"/>
Site Plan (Single Family Residential)		
• 1 copy – (11" x 17") laser print copy to scale	<input type="checkbox"/>	<input type="checkbox"/>
Site Plan (Multi-Family and Non-Residential)		
• 1 copy – (11" x 17") laser print copy to scale.....	<input type="checkbox"/>	<input type="checkbox"/>
Elevations (if applicable)		
• 1 copy (11" x17") laser print copy to scale.....	<input type="checkbox"/>	<input type="checkbox"/>
Neighborhood Notice		
A parcel map highlighting properties within 300 feet, or 660 feet for properties in the Santan Character Area. Homeowners Associations and neighborhoods within 1,000 feet of the property of the site.....	<input type="checkbox"/>	<input type="checkbox"/>
Typed names and addresses of all <u>property owners</u> identified on highlighted parcel map.....	<input type="checkbox"/>	<input type="checkbox"/>



Project No. _____

TOWN OF GILBERT

AGREEMENT TO WAIVE CLAIMS FOR DIMINUTION IN VALUE

PURSUANT TO A.R.S. § 12-1134

I/We, _____, (“Owner”) am/are all of the owner(s) of real property (“Property”) generally located at _____, consisting of approximately ____ acres, as shown in the evidence of ownership (*Exhibit A*) and is legally described and shown on the map in *Exhibit B*, both of which are attached to this Agreement.

The Property is subject to the land use laws of the Town of Gilbert, Arizona. For purposes of this Waiver, “land use law” shall be defined as set forth in A.R.S. § 12-1136.

I/We have requested that the Town take/approve the land use action (“Requested Action”) as set forth in *Exhibit C*, which is attached to this Agreement.

I/We acknowledge that as the request is processed for approval, changes may be made to the details and requirements for approval of the request. Some of these changes may materially alter the request, so that the final approval may be substantially different than originally requested. I/We understand and agree that execution of an additional waiver will be required for approval if the request is altered.

I/We acknowledge that the Requested Action may alter my/our rights to use, divide, sell or possess our Property, and that, pursuant to A.R.S. § 12-1134, as the owner of property directly regulated by a land use law, I/we may be entitled to compensation from the Town for diminution of value in the property if the action I/we have requested from the Town reduces the fair market value of the above described property.

By signing this Agreement, I/we hereby agree to waive any and all claims for diminution in value for the Property which may arise pursuant to A.R.S. § 12-1134 as a result of the Town’s actions, including but not limited to approvals, denials or conditions of approvals with respect to the above-described Requested Action.

I/we hereby further understand that the Town is acting in reliance upon my/our representations in this waiver.



