

TOWN OF TAOS

# VARIANCE

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## APPLICATION PACKET

PLANNING, COMMUNITY AND ECONOMIC DEVELOPMENT DEPARTMENT



# VARIANCE APPLICATION

Planning, Community and Economic Development Department  
 400 Camino de la Placita  
 Taos, NM 87571  
 Phone (575-751-2016  
 Fax (505) 751-2026



CASE NO PZ20\_\_\_\_ - \_\_\_\_\_

## PROPERTY OWNER INFORMATION

Name			
Mailing Address			
City ST ZIP Code			
Telephone Phone		Cell Phone	
E-Mail Address			

## AGENT INFORMATION

Name			
Mailing Address			
City ST ZIP Code			
Telephone Number		Cell Phone	
E-Mail Address			

## ZONING INFORMATION

Physical Address		Zone		Acreage of Subject Property	
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## VARIANCE REQUESTED

VARIANCE TYPE	REQUIRED	REQUESTED
Front Yard Setback		
Side Yard Setback		
Rear Yard Setback		
Lot Size		
Lot Width		
Lot Coverage		
Number of Parking		
Sign Variance		
Other (Please state)		

## FINDINGS OF FACT

Pursuant to Chapter 15.08 of the Town of Taos Land Use Development Code of the Town of Taos Municipal Code applicants seeking a Variance consideration by the Town of Taos Planning and Zoning Commission shall demonstrate how failure to grant the variance would result in such practical difficulties

as to make it unreasonable to apply the strict letter of the Code. A variance from such terms shall not be granted by the commission unless and until the applicant demonstrates the following.

**A**

1. State how the variance is the minimum action necessary to afford relief to the applicant.

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2. State facts to establish that there are no other means available to the applicant to achieve the benefit sought by the applicant.

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**B**

1. State facts to establish that the applicant has good and sufficient cause for the variance.

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2. The Variance requested is not substantial.

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**C**

1. State how failure of the Commission to grant the variance would result in such practical difficulties as to make it unreasonable to apply the strict letter of the Code to the property which is the subject of the variance application.

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**D**

1. The practical difficulties were not created by the applicant.

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**E**

1. The granting of the variance will not create a danger to the public hearing, safety or welfare.

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2. The granting of the variance will not cause extraordinary public expense, create a nuisance or cause a significant detriment to nearby properties.

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**PLEASE NOTE: In evaluating the variance application, the Commission shall ensure that reasonable consideration is given to the character of the zone, the conservation of property values, the applicable provisions of the Town's Master Plan and to promote the general purposes and intent of the Code so that its spirit is observed, public health, safety and welfare are protected and substantial justice done.**

## VARIANCE APPLICATION SUBMITTAL CHECK LIST

The following submittals are required in order to be placed on the Planning and Zoning Commission Agenda for their next available regularly scheduled monthly meeting. Please complete and submit 10 copies on 8 ½ x 11 paper of the requested information (except where otherwise indicated). Information will be due as seen fit by the Site Development Review Staff of the Town of Taos Planning, Community and Economic Development Department. Incomplete, inadequate or late submittals will result in delay or rejection of the request for a Variance. Please contact staff with questions regarding the submittals required herein.

### \*NOTE: ALL DRAWINGS MUST BE DRAWN TO SCALE

- Completed Variance Application
- Variance Application Fee - \$250.00
- Owner's Affidavit (If application submitted by an Agent)
- Legal description of property
- Copy of registered deed
- Vicinity Map
  
- Site Plan (minimum size 24" by 36") and Survey Plat (minimum scale 1" = 20'). Site plan shall depict all existing and proposed structures, setbacks, parking area and other applicable strict/standard requirements. Please see "Site Development Plan" in Section 16.20.080.6 Variance Site Development Plan Requirements of the Town of Taos Land Use Development Code.
  
- Property Owner information on file with the County Assessor as follows:
  - A. Copy of the tax map (including map number) depicting subject property and adjacent property
  - B. List of owners of record listed on file for adjacent properties within 300' of property line
  
- Must adhere to the requirements of section 16.20.080.6 of the Town of Taos Municipal Code
  
- Submit a narrative explaining how the use applied for will meet the requirements of Section 16.12.040.5 Application Procedure and 16.20.080.6 Variance Site Development Plan Requirements. (The Variance will not create a danger to the public health, safety or welfare, nor cause an extraordinary expense, nor create a nuisance.)

**Agreement and Signature**

I, the undersigned, understand that any discussions and/or other communications between any authorized representative for this application and any/all Town of Taos Staff members regarding this application do not constitute the entire review of this application and that additional and/or alternate conditions and/or requirements above and beyond those that may have been discussed may be required. I also realize that failure to include applicable application material(s) may result in the rejection of my application or delays in the approval process. I also certify that the signature(s) affixed to this application are those for the property owner and authorized agent. If I am the agent, I am including an owner's affidavit.

Property Owner Name (printed)	
Signature	
Date	
Agent Name (Printed)	
Signature	
Date	

**Attached:**

16.08 Definitions – 16.08.020.3 General - Variance

16.20.080.6: Variance Site Development Plan Requirements

16.12.040.5: Application Procedure

Owner's Affidavit

Date Application Received: Stamped by Town of Taos.

**DEFINITIONS 16.08.020.3: GENERAL:**

VARIANCE: An approved deviation or departure from the development standards of the zone in which the property is located or the performance standards of [chapter 16.20](#) of this title, or the expansion of a permitted use in the zone in which the property is located under this title. Variances cannot be sought for uses that are not permitted by this title. In evaluating a variance application, the commission shall ensure that reasonable consideration is given to the character of the zone, the conservation of property values, the applicable provisions of the town's master plan, and to promote the general purposes and intent of this title so that its spirit is observed, public health, safety and welfare are protected, and substantial justice done. The commission shall not grant a variance unless it determines that:

- A. The variance is the minimum action necessary to afford appropriate relief and no other means are available to achieve the benefit sought by the applicant;
- B. The applicant has shown good and sufficient cause and the variance sought is not substantial;
- C. Failure to grant the variance would result in such practical difficulties as to make it unreasonable to apply the strict letter of this title to the property which is the subject of the variance application;
- D. The practical difficulties were not created by the applicant; and
- E. The granting of the variance will not create a danger to the public health, safety, or welfare, cause an extraordinary public expense, create a nuisance or cause a significant detriment to nearby properties.

**16.20.080.6: VARIANCE SITE DEVELOPMENT PLAN REQUIREMENTS:**

- A. The site development plan shall contain the following basic information, where applicable; provided, that the code administrator may require additional information as is deemed reasonably necessary to properly interpret and evaluate such plan:
  - 1. Where applicable, the variance site development plan shall be accompanied by: a) a site threshold assessment (STH) form obtained from the code administrator; and b) the applicant's narrative statement outlining, at a minimum, the following:
    - a. A statement addressing the consistency (or lack of consistency) of the proposed zone change with the policies of the town of Taos;
    - b. How the proposed zone change is consistent with the criteria for approval of a variance as set forth in the definition of "variance", section [16.08.020.3](#) of this title.
- B. The variance shall consist of at least two (2) parts, one of which shall reflect existing conditions, and one of which shall show proposed land form alterations, improvements and structures, utilities, circulation patterns, land uses and all other detail necessary to describe the proposed variance. The site development plan shall contain the following basic information, where applicable; provided, the code administrator may require additional information or more detail as is deemed reasonably necessary to properly interpret and evaluate such plan:
  - 1. Existing Conditions:
    - a. Boundary survey with a legal description of all property in the development;
    - b. Description of existing sizes, locations and arrangements of the buildings, structures, public and private parking areas, land uses, dedicated/reserved parks and open spaces, both on the property and within three hundred feet (300') of the property;
    - c. Description of existing topography, if applicable;
    - d. Location, size and names of existing public and private streets, public rights of way, alleys, walkways and trails, both on the property and within three hundred feet (300') of the property;
    - e. Location and description of all existing easements, noting purpose and grantee of the easement, both on the property and within three hundred feet (300') of the property;

- f. The layout and improvement standards of existing pedestrian and bicycle ways, parking areas, and loading areas. The site development plan shall show the detailed arrangement of existing parking and loading spaces and the locations of ingress and egress points;
  - g. The location of existing signs, fences, walls and landscaped areas, including a description of existing vegetation and size, location of significant vegetation and other environmental features;
  - h. Locations and size of existing acequias and watercourses, including a description of existing drainage plan and any existing or proposed method of treatment or correction of flooding problems.
2. Proposed Changes:
- a. Proposed changes to the site development plan affected by the variance request, if applicable:
    - (1) Architectural plans including building footprints, floor plans, elevations and/or exterior perspectives, and exterior details of all improvements. Construction level detail of floor plans, elevations and/or perspective drawings, and exterior details of all proposed improvements, if applicable;
    - (2) Private and public streets, pedestrian and bicycle ways, parking areas, loading areas and the proposed plan for circulation of vehicles, goods and pedestrians, including any on site or off site traffic mitigation measures;
    - (3) Arrangement of proposed parking and loading spaces and the locations and design improvements of ingress and egress points;
    - (4) Identification of any such trees or other significant environmental features that are to be removed;
    - (5) Drawings of the location, design and size of any proposed signs, fences, or walls;
    - (6) Detailed description and location of any proposed open spaces including dedicated open spaces and park sites and reserved open spaces, together with proposed instruments, such as irrevocable offers of dedication, deeds, improvement bonds, covenants, conditions and restrictions, or easements that will effectively implement such projects and/or dedications;
    - (7) Conceptual description of any proposed method of treatment in conformance with the town of Taos storm drainage ordinance or correction of flooding problems, and documentation that acequia rights of way will be respected.

C. Prior to the final public hearing before the commission, additional information, where applicable, shall be supplied provided the commission and/or code administrator may require additional information as is deemed reasonably necessary to properly interpret and evaluate the plan. (Ord. 04-12, 2004)

**16.12.040.5: APPLICATION PROCEDURE:**

This section governs applications for development of any type which is not governed administratively by the code administrator pursuant to section [16.12.040.4](#) of this chapter. Nothing herein shall be deemed to relieve an applicant from complying with all other provisions of this title, both substantive and procedural, and state law.

A. The applicant shall submit to the code administrator a completed application in writing, on forms, the content of which has been approved by the code administrator, along with the fee established pursuant to appendix A attached to ordinance 99-05 and available to the public at the office of the code administrator, in good funds. The application shall be complete before it is accepted by the planning department and shall contain not less than all of the following information:

- 1. The name(s) and address(es) and phone numbers of the owner(s) and, where applicable, the name and address of any lessee and/or owner's agent and a document providing that the owner's agent is authorized to act on behalf of the owner;



2. A description and the location of the property for which the application is requested;
3. A specific description of the application requested;
4. The basis for requesting the application approval, including a statement of the hardship which the applicant will suffer if the application is denied;
5. Any other information deemed necessary by the code administrator;
6. For a plat vacation, the application shall also be signed and filed by all owners of the land subject to the application for plat vacation, and be accompanied by a statement of all owners of the land, duly attested, designating the subject plat or portion thereof proposed.

B. The code administrator shall accept and shall review only a completed application and the development proposed and the code administrator shall advise the applicant of all approvals required under the code and all other applicable ordinances of the town administered by the code administrator. This information is to be provided for the convenience of the applicant and orderly processing of the application. However, at all times, the provisions of this title and other applicable ordinances of the town shall govern the application and proposed development. Accordingly, representations by the code administrator shall not preclude the town from requiring that all applicable approvals be obtained, even if the code administrator did not advise the applicant that such an approval would be necessary.

C. The code administrator shall review the application for compliance with the requirements of this title, and if the application is complete and in compliance with this title, then the code administrator shall forward the application, with all relevant documents, exhibits, submissions and any findings of the code administrator and other town staff, to the hearing officer, DRC, commission or the historic preservation commission, as appropriate, within thirty (30) working days, or at such other time as may be reasonable not to exceed sixty (60) days, from the date the completed application is accepted by the planning department.

D. When the application is complete, in compliance with this title and submitted to the hearing officer, the DRC, commission or the historic preservation commission, as appropriate, pursuant to subsection C of this section, the code administrator shall schedule a preliminary presentation before the DRC. At the preliminary presentation, the applicant shall have the opportunity to informally explain the proposed development to the DRC.

E. At or after the preliminary presentation, the code administrator, on behalf of the DRC, shall inform the applicant of the order in which the various required approvals will be processed.

F. After the applicant has submitted all the necessary and required documents to the code administrator prior to the preliminary hearing, a public hearing shall be scheduled. The code administrator shall, in consultation with the DRC, commission, historic preservation commission, or hearing officer, as appropriate, schedule the time, place and date of the public hearing on the application. The code administrator shall notify the applicant in writing, by mail, or electronic delivery, of time, place and date of such public hearing and it is the responsibility of the applicant to provide necessary public notice prior to such public hearing as set forth in subsections G through J of this section.

G. No zoning regulation, restriction or boundary shall become effective, amended, supplemented or repealed until after a public hearing at which all parties in interest and citizens shall have an opportunity to be heard.

H. Following the scheduling of a public hearing, the applicant shall post notice of the filing of the application and the time, place and date of the public hearing. The notice shall be posted prominently for public view on the land, dwelling or other structure which is the subject of the application not less than fifteen (15) days prior to such hearing.

I. At the applicant's expense, the applicant shall cause to be published, on forms, the content of which has been approved by the code administrator, notice of the time, place and date of the public hearing in a newspaper of general circulation in the county. The notice must be published once, not less than fifteen (15) days prior to the date of the public hearing. Alternately, the applicant may elect to request the town provide the required public notice at the cost of said notice plus a service fee as set by the town council.

J. At the applicant's expense, the applicant shall mail or personally serve public notice to the last known address of each landowner as shown by the records of the county assessor. If mailed, public notice shall be sent by certified mail, return receipt requested, from the U.S. postal service or first class mail with full postage attached thereto, in a timely manner to the required parties. In the event of a protest as to notice received by any interested party, then the burden shall be on the applicant to establish that service has been accomplished to the satisfaction of the entity hearing the application. Electronic return receipts are acceptable as provided by the U.S. postal service. Town staff may provide a list and map of the adjacent property owners as known by the town to assist the applicant however the applicant must verify the accuracy and completeness of said list with the Taos County assessor's office. The notice shall be on forms, the content of which has been approved by the code administrator and the notices must be mailed not less than fifteen (15) days prior to the date of such public hearing. Landowners within three hundred feet (300'), excluding public right of way, of the exterior boundary of property which is the subject of the application shall receive written notice of the time, place and date of the public hearing. However, when a change in zoning is proposed for an area of one block or less, notice of the public hearing shall be mailed by certified mail, return receipt requested, to the owners, as shown by the records of the county assessor, of lots of land within the area proposed to be changed by a zoning regulation and within one hundred feet (100'), excluding public right of way, of the area proposed to be changed by zoning regulation. In addition, with a change in zoning application, if the notice by first class mail to the owner is returned undelivered, the zoning authority shall attempt to discover the owner's most recent address and shall remit the notice by certified mail, return receipt requested, to that address. Alternately, the applicant may elect to request the town provide the required public notice, either by certified mail or first class mail as provided herein, at the cost of said notice plus a service fee as set by the town council.

K. Prior to the public hearing, the applicant shall deliver a list of the names and addresses of all landowners notified of the application to the code administrator. Attached to the list shall be United States postal service certified mail receipts showing evidence of the proper mailing of the notices and all return receipts received from the postal service showing delivery of the notices on or before the date of the hearing, or the signature of each landowner notified by personal service, or an affidavit of the applicant attesting that all mailings were sent, first class mail with full postage attached thereto, in a timely manner to the required parties. Alternately, the applicant may elect to request the town provide the required public notice at the cost of said notice plus a service fee as set by the town council. In the event of a protest as to notice received by any interested party, the burden shall be on the applicant to establish that service has been accomplished to the satisfaction of the entity hearing the application.

L. If the applicant fails to give proper notice, or fails to file proper proof of notice, then the public hearing shall be postponed. If, after two (2) consecutively scheduled public hearings, proper notice is not given, or proper proof of notice is not filed, then the application shall be deemed withdrawn, the application fee forfeited and no further action shall be taken thereon without a new application being filed by the applicant. Failure to receive notice due to inaccuracies contained in the records of the Taos County assessor shall not constitute a failure to provide sufficient notice.

M. If an application is for a special use permit (excluding special use permits for a cellular tower or antenna), variance or conditional use permit, a site development plan containing the elements listed in section [16.20.080.4](#) of this title is required for a special use or conditional use permit or section [16.20.080.6](#) of this title for a variance, and there is a two (2) step procedure for commission review:

1. Preliminary presentation before the DRC; and
2. Public hearing before the commission at which the commission shall approve, approve with modifications or conditions, or deny.

N. If an application is for a special use permit for a cellular tower or antenna<sup>1</sup>, a site development plan containing the elements listed in section [16.20.080.4](#) of this title is required, and there is a three (3) step procedure for review:

1. Preliminary presentation before the DRC;
2. Public hearing before the commission, at which the commission shall recommend approval, approval with modifications or conditions, or denial; and
3. Public hearing before the town council.

O. If an application is for a provisional permit to increase commercial and industrial gross size area limitations, a site development plan containing the elements listed in section [16.20.080.4](#) of this title is required, and there is a three (3) step procedure for review:

1. Preliminary presentation before the DRC;
2. Public hearing before the commission, at which the commission shall recommend approval, approval with modifications or conditions, or denial; and
3. Public hearing before the town council.

P. If an application is for establishment of a planned unit development overlay zone, then a preliminary schematic site development plan containing the elements listed in section [16.20.080.1](#) of this title is required, and there is a three (3) step procedure for review leading to establishment of the overlay zone:

1. Preliminary presentation before the DRC;
2. Public hearing before the commission, at which the commission shall recommend approval, approval with modifications or conditions, or denial; and
3. Public hearing before the town council at which time the planned unit development overlay rezoning and preliminary schematic site development plan are approved or rejected.

In the event that the requested planned unit development overlay zone and preliminary schematic site development plan are approved by the town council, development of the property may not proceed until a final site development plan has been submitted and approved by the commission in accordance with section [16.20.080.2](#) of this title.

Q. If an application is for a zone change to other than a planned unit development overlay zone, or for zone designations of newly annexed territory, a site development plan containing the elements stated in section [16.20.080.5](#) of this title is required, and there is a three (3) step procedure for review:

1. Preliminary presentation before the DRC;
2. Public hearing before the commission, at which the commission shall recommend approval, approval with modifications or conditions, or denial; and
3. Public hearing before the town council at which the council approves or rejects the zoning change(s).

R. If an application is for a certificate of appropriateness, see section [16.16.220.12](#) of this title for the historic overlay zone review process.

