

TOWN OF TAOS

# APPEAL

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## APPLICATION PACKET

PLANNING, COMMUNITY AND ECONOMIC DEVELOPMENT DEPARTMENT



# APPEAL APPLICATION

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



Appealing CASE NO \_\_\_\_\_ - \_\_\_\_\_

CASE NO APPEAL20 \_\_\_\_\_ - \_\_\_\_\_

## APPLICANT INFORMATION

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

## AGENT INFORMATION

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

## TYPE OF APPEAL (Please Check)

Appeal is from a decision of:

- Code Administrator to Planning & Zoning Commission
- Planning and Zoning Commission to Town of Taos Town Council
- Historic Preservation Commission to Town of Taos Town Council

APPEALING CASE NO \_\_\_\_\_ - \_\_\_\_\_

## APPEAL APPLICATION SUBMITTAL CHECK LIST

The following submittals are required in order to be placed on the Planning and Zoning (P&Z) Commission Agenda or Town of Taos Town Council Agenda for their next available regularly scheduled meeting. For P&Z Commission Please complete and submit 10 copies on 8 ½ x 11 paper of the requested information (except where otherwise indicated). For Town of Taos Town Council please submit 1 copy 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 an Appeal. Please contact staff with questions regarding the submittals required herein.

**\*NOTE: A NOTICE OF APPEAL SHALL BE FILED WITH THE CODE ADMINISTRATOR WITHIN TEN (10) WORKING DAYS OF EFFECTIVE DATE OF THE DECISION AS SET FORTH IN SUBSECTION 16.12.040.9(F) OF THE TOWN OF TAOS MUNICIPAL CODE**

- Completed Appeal Application
- Appeal Application Fee - \$500.00
- Owner's Affidavit (To be completed only when an applicant has an agent)
- A written notice of appeal shall state specifically the reason for appeal and each and every decision from which an appeal is taken
- 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 property within three hundred feet (300'), excluding public right of way, of the exterior boundary of the property which is the subject of the home occupation application
  - C. List of all persons or parties who signed in at any of the prior public hearings
- List of names and address of all property owners notified of the appeal application
- US Postal Service certified mail receipts and return receipts proving notification
- Proof of Notice of the public hearing on the appeal published in a newspaper of general circulation in the county.
- All required submittals as outlined in Section 16.12.080 Appeals

**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:**

Section 16.12.080 Appeals

Owner's Affidavit

Date Application Received: Stamped by Town of Taos.

### **16.12.080: APPEALS:**

Any final decision of the code administrator, commission, or historic preservation commission may be appealed as provided in this section 16.12.080. (Ord. 11-04, 2011)

#### **16.12.080.1: WHO MAY APPEAL:**

- A. Any person or public entity aggrieved by the decision of the code administrator, commission or historic preservation commission in the enforcement of these ordinances, resolutions, rules or regulations adopted pursuant to this section [16.12.080](#) may appeal to the commission or zoning authority. An appeal shall stay all the proceedings and furtherance of the action appealed unless the code administrator, commission, or historic preservation commission from whom the appeal is taken certifies that by reason of fact stated in the certificate, the stay would cause imminent peril of life or property. Upon certification, the proceedings shall not be stayed except by order of the district court after notice to the code administrator, commission, or historic preservation commission from whom the appeal is taken and due cause shown.
- B. When an appeal alleges that there is an error in any order, requirement, decision or determination by the code administrator, the commission or historic preservation commission in the enforcement of this title or any other ordinance, resolution, rule or regulation adopted pursuant to this section [16.12.080](#), the commission, historic preservation commission or zoning authority by a majority vote of all its members may:
1. Authorize, in appropriate cases and subject to appropriate conditions and safeguards, variances from the terms of this title not inconsistent with this title:
    - a. Which are not contrary to public interest;
    - b. Where, owing to special conditions, a literal enforcement of this title will result in unnecessary hardship; and
    - c. So that the spirit of this title is observed and substantial justice is done; or
  2. In conformity with sections 3-21-1 through 3-21-14 New Mexico Statutes Annotated, 1978:
    - a. Reverse any order, requirement, decision or determination of the code administrator, the commission or historic preservation commission;
    - b. Decide in favor of the appellant; or
    - c. Make any change in any order, requirement, decision or determination of the code administrator, the commission or historic preservation commission. (Ord. 11-04, 2011: Ord. 99-05, 1999)

#### **16.12.080.2: WHAT MAY BE APPEALED:**

- A. Only final decisions of the code administrator, commission or historic preservation commission may be appealed. A final decision is a written decision or action filed with the code administrator which effectively disposes of a matter pending before the code administrator, commission or historic preservation commission.
- B. Notwithstanding the provisions of subsection A of this section, an applicant may appeal: a refusal to take action; a refusal to make a decision favorable to the applicant; the denial of any application; or the imposition of unacceptable conditions or modifications, if the decision to be appealed would, as a practical matter, effectively dispose of the application in a manner which is adverse to the interests of

the applicant, even if other aspects of the application have not been finally acted upon. This subsection is intended to authorize appeals when further action by the commission, historic preservation commission, or the code administrator would be futile because a decision essential to ultimate approval of the application has been rendered in a manner which is adverse to the interests of the applicant. However, nothing herein shall be construed to prevent an applicant from proceeding through all administrative proceedings and waiting until all actions or decisions on the merits of the application have been issued or rendered before filing an appeal.

- C. In the event that an application requires multiple approvals, then a person or party aggrieved by an action or decision in favor of the applicant may not appeal until all actions or decisions regarding the merits of the application have been rendered or issued.
- D. No decision or action regarding the admissibility of evidence or the conduct of a hearing shall be deemed a final decision.
- E. No decision regarding a procedural matter shall be considered a final decision, unless such procedural action effectively disposes of a pending matter.
- F. Recommendations of a hearing officer, findings of fact and/or conclusions of law may not be appealed. Nothing herein shall prevent an aggrieved person or party from appealing a final decision accepting such recommendations, findings of fact or conclusions of law. (Ord. 11-04, 2011: Ord. 99-05, 1999)

#### **16.12.080.3: HOW TO APPEAL:**

- A. All appeals shall be initiated by filing a written notice of appeal with the code administrator on a form, the contents of which shall have been approved by the code administrator, and accompanied by 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.
- B. The written notice of appeal shall state specifically each and every decision from which an appeal is taken. (Ord. 99-05, 1999)

#### **16.12.080.4: WHEN TO APPEAL:**

A notice of appeal shall be filed with the code administrator within ten (10) working days of effective date of the decision as set forth in subsection [16.12.040.9F](#) of this chapter. (Ord. 99-05, 1999)

#### **16.12.080.5: APPEAL PROCEDURE:**

- A. Upon the filing of a notice of appeal, the code administrator shall, within seven (7) working days:
  - 1. Notify the chairperson of an appeal from any decision or failure to act of the code administrator; or
  - 2. Notify the mayor of an appeal from any decision or failure to act of the commission or the historic preservation commission.
- B. The commission, historic preservation commission, or zoning authority shall, upon receipt of a notice of appeal, schedule a public hearing on the appeal. The public hearing shall be held not less than thirty (30) days nor more than sixty (60) days after the date upon which the notice of appeal was filed.
- C. At the appellant's expense, notice of the public hearing on the appeal shall be given to all persons or parties who signed in at any of the prior public hearings, if any, and notice of the public hearing on the appeal shall be published in a newspaper of general circulation in the county. Notice shall be given and proven as provided in section [16.12.040.5](#) of this chapter with the appellant performing the duties assigned to the applicant, as follows:

1. Notice by publication shall be given per section [16.12.040.5](#) of this chapter;
2. Notice by certified mail, return receipt requested shall be given to persons or parties who signed in at the public hearing;
3. Proof of notice shall be filed with the code administrator pursuant to section [16.12.040.5](#) of this chapter; and
4. The failure to give proper notice or file proper proof thereof, shall cause the appeal to be withdrawn, per subsection [16.12.040.5K](#) of this chapter. (Ord. 11-04, 2011: Ord. 09-19, 2009: Ord. 99-05, 1999)

**16.12.080.6: APPEAL HEARING:**

A. The following persons or parties may participate in the public hearing on an appeal:

1. The appellant;
2. The code administrator and any other interested town employee or member of any town board, agency or commission;
3. Any aggrieved person or party who appeared and signed in at any of the prior public hearings, if any, in opposition to the appellant;
4. Any person or party who did not appear at any prior public hearing, whose interests are adverse to the appellant, who would be aggrieved by a decision in favor of the appellant, who can demonstrate good cause for failing to appear at a prior public hearing, and who should be allowed to participate in the interests of justice; and
5. If there were no prior public hearings regarding the matter raised on appeal, then any person or party who would be aggrieved by a decision in favor of the appellant.

B. The appeal hearing shall be de novo. All evidence, hearing transcripts, findings of fact, conclusions of law, and other records and documents shall be delivered by the code administrator to the commission, historic preservation commission, or zoning authority prior to the commencement of the appeal hearing.

C. The commission, historic preservation commission, or zoning authority may designate a hearing officer to conduct the appeal hearing.

D. Additional evidence may be allowed at the discretion of the person presiding at the appeal hearing.

E. Subsections [16.12.040.7A](#) through C of this chapter shall apply to the appeal hearing, with the mayor performing the duties of the chairperson if the appeal is to the town council. (Ord. 11-04, 2011: Ord. 99-05, 1999)

**16.12.080.7: DECISION ON APPEAL:**

A. Decisions on appeal shall be in writing. Any finding of fact or conclusion of law issued previously may be accepted by the commission, historic preservation commission, or zoning authority in its decision on the appeal. Any finding of fact or conclusion of law which is rejected or modified shall be accompanied by a written explanation of the rejection or modification. On appeal, the commission, historic preservation commission, or zoning authority shall have full and complete authority to accept, modify or reject any and all prior actions and determinations rendered in connection with the matter on appeal.

B. Except to the extent superseded by subsection A of this section, section [16.12.040.9](#) of this chapter shall govern appeals, with the town council performing the duties of the commission or historic preservation commission, if the appeal is before the town council. (Ord. 11-04, 2011)

**16.12.080.8: APPEALS FROM CODE ADMINISTRATOR:**

An appeal from a final decision of the code administrator as authorized in this section [16.12.080](#) shall be to the commission. All final decisions of the commission, including appeals from actions of the code administrator, may be appealed to the town council if in the town of Taos municipal limits or otherwise within the town's jurisdiction. (Ord. 09-19, 2009)

**16.12.080.9: CONSOLIDATION:**

If more than one appeal is filed on a matter, then appeals on the same matter may be consolidated by the commission, historic preservation commission, or zoning authority. Costs and other duties required of appellants hereunder shall be apportioned equitably among the appellants when appeals are consolidated. (Ord. 11-04, 2011)

**16.12.080.10: JUDICIAL REVIEW:**

Any final decision of the zoning authority may be appealed to a court of competent jurisdiction as allowed by law. A person aggrieved by a decision of the zoning authority may appeal the decision pursuant to section 39-3-1.1 New Mexico Statutes Annotated, 1978, as follows:

A. This provision applies to all zoning appeals from final authorities as required by section 39-3-1.1 New Mexico Statutes Annotated, 1978, zoning appeals;

B. Upon issuing a final decision, the zoning authority shall promptly:

1. Prepare a written decision that includes an order granting or denying relief and a statement of the factual and legal basis for the order;
2. File the written decision with the official public records of the town; and
3. Serve a document that includes a written decision and requirements for filing an appeal of the final decision on:
  - a. All parties whose rights are adjudged by the final decision, and
  - b. Every person who has filed a written request for notice of the final decision in that particular proceeding.

C. Unless standing is further limited by a specific statute, a person aggrieved by a final decision may appeal the decision to district court by filing in district court a notice of appeal within thirty (30) days of the final decision.

D. In a proceeding of judicial review of a final decision by the zoning authority, the district court may set aside, reverse or remand the final decision if it determines:

1. The zoning authority acted fraudulently, arbitrarily or capriciously;
2. The final decision was not supported by substantial evidence; or
3. The zoning authority did not act in accordance with law. (Ord. 99-05, 1999)



Owner's Affidavit  
(To be completed only when an applicant has an agent)

State of New Mexico )

) SS.

Town of Taos )

We/I \_\_\_\_\_  
(Please print full name(s))

Being duly sworn, depose and say that (I am) (we are) requesting a permit or application through the Town of Taos. Furthermore, (I) (we) hereby appoint \_\_\_\_\_  
To act as our authorized agent on our behalf on all matters pertaining to the processing and obtaining of said permit with the exception of legal documents for recording purposes.

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Address

Subscribed and sworn to before me this  
\_\_\_\_\_ Day of \_\_\_\_\_, 20 \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission Expires: \_\_\_\_\_