

Pagosa Lakes Property Owners Association
IMPROVEMENT DESIGN STANDARDS
&
PROJECT PERMIT PROCESS

SECTION 8: VARIANCES

8.1 GENERAL

- 8.1.1 Seeking a Variance is a legal process that allows Property Owners to construct Improvements, Buildings or Structures, or use land in a way that is contrary to the prevailing zoning regulations and use restrictions. Variances are meant to be used sparingly. Granting a variance should be based on a practical difficulty or an unnecessary hardship that is directly related to the Property and related uses. A Property Owner may apply for a Variance for any restriction of the Declaration of Restrictions that apply to a Subdivision.
- 8.1.2 In trying to define the practical difficulty or unnecessary hardship the members of the Environmental Control Committee making the decision on whether or not to support the Variance will need to evaluate if:
- 8.1.2.1 The Property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the restrictions in the Subdivision in which it is located; or
- 8.1.2.2 The plight of the Owner is due to unique circumstances as compared to other similarly platted Lots; and that the Variance, if granted, will not alter the essential character of the neighborhood, the Subdivision.
- 8.1.3 Examples of conditions under which a Variance may be considered:
- 8.1.3.1 Site topography or sloping conditions are atypical to the Lot as compared to other similarly zoned Lots:
- difficulty to stay within a height restriction
 - challenges with allowing adequate drainage
 - some other existing natural condition requiring extension into setbacks (e.g. large boulder or other immovable object, etc.)
 - Site geography creates difficulties in placing a home or other Improvements within a building envelope (e.g. irregularly shaped lot)
 - When a change of circumstances since the Recording of the Declaration of Restrictions or a architectural standard has rendered such restriction obsolete:

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- Laws restricting the power of the Association to restrict such Improvements (e.g. energy efficiency measures)
- Technological improvements to building materials
- In the judgment of the ECC the Owner's application would enhance the attractiveness of the neighborhood, the Subdivision

8.1.4 The applicant must describe how the Variance:

8.1.4.1 will overcome practical difficulties

8.1.4.2 will prevent unnecessary hardships

8.1.4.3 is not detrimental or injurious to other Property Owners

8.1.4.4 conforms to the intent (i.e. is mutually beneficial to the neighborhood) and purpose (i.e. enhances and protects the value, desirability and attractiveness of the neighborhood) of the Declaration of Restrictions.

8.2 VARIANCE APPLICATION

8.2.1 A Variance application per Section 8.7 must be completed and submitted with an application for Project Plan approval per Section 4.

8.3 NEIGHBOR NOTIFICATION

8.3.1 Neighbors within 300' of the Project Property line shall be notified at least 14 days prior to the project's ECC meeting date by first class mail that an application for a Variance has been made. Notice must include that their comments and opinions for approval or disapproval will be considered by the Committee. Failure to respond to the mailed notification will be considered neither an approval nor disapproval.

8.3.2 Neighbors will be allowed access to the Variance application and supporting data and information.

8.3.3 Neighbors shall be kept informed of actions taken on an application such as the initial hearing, deferrals, continuances, rescheduled hearings and of the final approval or disapproval.

8.4 PROCESS

8.4.1 The ECC will consider the application for a Variance at one of its regularly scheduled meetings at which time the applicant and neighbors may present information and discuss the application with the Committee.

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8.4.2 In arriving at the decision to approve or disapprove, the Committee will consider all the information available including the application request; written and verbal comments and responses from the applicant and from the neighbors; and data and information presented by the DCS. Approval or disapproval will be announced at the meeting.

8.5 RECONSIDERATION OF A COMMITTEE APPROVAL OR DISAPPROVAL

8.5.1 Any Property Owner may request in writing that the Committee reconsider a Variance approval or disapproval if they can show within ninety (90) days, that one of the following three conditions existed or now exists:

8.5.1.1 Information presented and reviewed by the Committee in reaching a decision has been discovered to be subsequently incorrect.

8.5.1.2 New information, not available at the time of the hearing, has subsequently become available.

8.5.1.3 Neighbors or other potentially affected parties were not properly or timely notified of the application or the hearing.

8.6 OTHER

8.6.1 Any Variance that approves encroachment into a setback will require an "As Formed" survey which must be provided to the Pagosa Lakes administration office. (per *Section 3.1.1.4*)

8.6.2 Any Variance that encroaches into a utility easement will also require written approval by the utility companies.

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SECTION 8.7 SAMPLE

NAME _____ PHONE _____

PROPERTY ADDRESS: _____ E-MAIL: _____

BLOCK/LOT NUMBER _____ SUBDIVISION _____

ALTERNATIVE CONTACT NAME, PHONE, & EMAIL _____

This application is accompanied by an Application for Project Plan Review for this property.

DESCRIPTION OF VARIANCE:

How it will overcome a practical difficulty and prevent unnecessary hardship:

How this will not be detrimental or injurious to other Property Owners:

How it conforms to the intent and purpose of the Declarations of Restrictions:

The undersigned grants PLPOA permission to release information from the association files to any interested Property Owner for the purpose of considering the variance application. Information will include but not be limited to copies and/or review of the Building plans with all its attachments and color samples, Site Plan and permit application. The undersigned certifies that they are Property Owner identified in this application. If an "As Formed" Survey is required, it must be submitted to the PLPOA office, and if any variance encroaches into a utility easement, I will get written approval from the utility company. All Permit Fees for the variance and permit for project have been paid.

OWNERS SIGNATURE _____ DATE _____

FOR PLPOA USE ONLY

DATE APPLICATION AND PLANS RECEIVED & COMPLETE: _____

RECEIVED FEE AMOUNT & TYPE: _____ DATE: _____

ACCOUNT# _____ PERMIT # _____

APPROVED / DISAPPROVED DATE: _____ EXPIRATION DATE: _____

Signatures:
