



Citizen Participation
Plan Final Report

Zoning Text Amendment
Section 3.700, Variance and Appeals.
ZTA21-02

City-Wide

Dated, September 2, 2022

Description of the proposed Text Amendment:

A Zoning Text Amendment to amend the zoning ordinance to amend the regulations regarding the Variance process and requirements as set forth in Section 3.700 Variances and Appeals.

The draft verbiage for the proposed text amendment reads as follow:

That the Zoning Ordinance of the City of Glendale, Arizona, Article 3, Section 3.700 is hereby amended to read as follows:

Section 3.700 Variances and Appeals.

Ord. No. 2531, § 1, adopted Oct. 24, 2006, repealed App. A, §§ 3.701—3.707, 3.710. Furthermore, said ordinance renumbered App. A, §§ 3.708, 3.709, 3.711—3.714 as §§ 3.701—3.706.

3.701 GENERAL.

APPEALS TO THE BOARD OF ADJUSTMENT, SET FORTH IN SECTION 3.103(E), MAY BE MADE BY ANY PERSON AGGRIEVED OR BY ANY OFFICER, DIVISION, OR BOARD OF THE CITY AFFECTED BY ANY DECISION OR INTERPRETATION MADE BY THE PLANNING MANAGER WHILE ADMINISTERING THIS ORDINANCE. A VARIANCE FROM THE TERMS OF THIS ORDINANCE MAY BE REQUESTED BY ANY PERSON OR THEIR AUTHORIZED AGENT HAVING AN INTEREST IN THE REAL PROPERTY AFFECTED BY THE REQUEST.

3.702 APPLICATION.

APPLICATIONS SHALL CONFORM WITH THE PROVISIONS OF SECTION 3.300. APPEALS AND VARIANCE REQUESTS SHALL BE MADE ON AN APPLICATION FORM SPECIFYING THE GROUNDS FOR THE APPEAL OR VARIANCE WITH OTHER REQUIRED DOCUMENTATION AS SPECIFIED BY THE PLANNING MANAGER INCLUDE THE APPROPRIATE FEE. AN APPLICATION FOR AN APPEAL OF ANY DECISION OR INTERPRETATION MADE BY THE PLANNING MANAGER SHALL BE FILED WITH THE PLANNING DIVISION WITHIN THIRTY (30) CALENDAR DAYS OF THE DATE OF THE DECISION OR INTERPRETATION. AFTER THE PLANNING DIVISION HAS DETERMINED THAT AN APPLICATION IS COMPLETE, A PUBLIC HEARING WITH THE BOARD OF ADJUSTMENT WILL BE SCHEDULED.

ANY VARIANCE APPLICATION, REQUIRED FEES AND OTHER DOCUMENTATION BEING SUBMITTED DUE TO A PENDING ENFORCEMENT ACTION BY THE CITY SHALL BE COMPLETED AND FILED WITH THE PLANNING DIVISION WITHIN SIXTY (60) DAYS OF THE DATE ON THE VIOLATION NOTICE.

3.703 EFFECT OF APPLICATION.

ANY VARIANCE OR APPEAL APPLICATION, UNLESS OTHERWISE PROVIDED BY LAW, SHALL STAY ALL PROCEEDINGS IN THE MANNER APPEALED FROM, UNLESS THE PLANNING MANAGER CERTIFIES THAT A STAY WOULD CAUSE IMMINENT PERIL TO LIFE OR PROPERTY. IN SUCH CASES, PROCEEDINGS WILL NOT BE STAYED EXCEPT BY A RESTRAINING ORDER GRANTED BY THE BOARD OF ADJUSTMENT, OR BY A COURT OF RECORD ON APPLICATION AND NOTICED TO THE PLANNING MANAGER.

3.704 PUBLIC NOTICE.

THE BOARD OF ADJUSTMENT SHALL HOLD AT LEAST ONE (1) PUBLIC HEARING ON THE APPLICATION FOR VARIANCES AND APPEALS. PRIOR TO THE PUBLIC HEARING, NOTICE SHALL BE PROVIDED AS FOLLOWS:

- A. A NOTICE SHALL BE PLACED IN THE NEWSPAPER OF GENERAL CIRCULATION OF THE AREA, OR AS MAY BE DESIGNATED BY THE CITY COUNCIL FOR LEGAL PUBLIC NOTICES. THE NOTICE SHALL DESCRIBE THE TYPE AND NATURE OF THE REQUEST AND BE PUBLISHED AT LEAST FIFTEEN (15) CALENDAR DAYS PRIOR TO THE DATE OF THE SCHEDULED HEARING;
- B. A NOTICE SHALL BE POSTED ON OR NEAR THE PROPERTY IN AT LEAST ONE (1) LOCATION ON A FORM PRESCRIBED BY THE PLANNING DIVISION FOR SUCH PUBLIC NOTICE. THE POSTED NOTICE SHALL BE PLACED ON THE PROPERTY AT LEAST FIFTEEN (15) CALENDAR DAYS PRIOR TO THE DATE OF THE SCHEDULED PUBLIC HEARING. IT SHALL NOT BE THE RESPONSIBILITY OF THE CITY TO MAINTAIN THE POSTING ONCE ERECTED;
- C. A NOTICE BY FIRST CLASS MAIL SHALL BE MADE TO ADJACENT OR ADJOINING NEARBY PROPERTY OWNERS WHO ARE POTENTIALLY AFFECTED AS DETERMINED BY THE PLANNING MANAGER;
- D. NOTWITHSTANDING THE NOTICE REQUIREMENTS SET FORTH IN THIS SECTION, THE FAILURE OF ANY PERSON OR ENTITY TO RECEIVE NOTICE SHALL NOT CONSTITUTE GROUNDS FOR ANY COURT TO INVALIDATE THE ACTION FOR WHICH THE NOTICE WAS GIVEN.

3.705 FINDINGS FOR APPEALS.

WHEN CONSIDERING AN APPEAL OF A DECISION OR INTERPRETATION MADE BY THE PLANNING MANAGER, THE BOARD OF ADJUSTMENT SHALL MAKE ITS DETERMINATION BASED ON THE FOLLOWING FINDINGS:

- A. THE PLANNING MANAGER DID NOR DID NOT EVALUATE ALL RELEVANT PROVISIONS OF THIS ZONING ORDINANCE;
- B. THE PLANNING MANAGER DID OR DID NOT CONSIDER ALL RELEVANT INFORMATION RELATED TO THE DECISION OR INTERPRETATION;

C. THE PLANNING MANAGER'S DECISION WAS IN ERROR.

IF THE BOARD OF ADJUSTMENT DETERMINES THAT THE DECISION OR INTERPRETATION MADE BY THE PLANNING MANAGER WAS MADE IN ERROR, THE RESULTING DECISION BY THE BOARD SHALL NOT CONSTITUTE AN AMENDMENT TO THE ORDINANCE BY PERMITTING A USE WHICH IS NOT OTHERWISE ALLOWED, OR WAIVE THE DEVELOPMENT STANDARDS OF THE ZONING DISTRICT IN WHICH THE PROPERTY IS LOCATED.

3.706 FINDINGS FOR A VARIANCE.

- A. THE PURPOSE OF A VARIANCE IS TO RESTORE EQUITY WHEN, DUE TO SPECIAL CIRCUMSTANCES OR CONDITIONS, THE ORDINANCE RESTRICTS ONE (1) PROPERTY MORE SEVERELY THAN OTHER PROPERTIES IN THE SAME ZONING DISTRICT. THE CIRCUMSTANCES OR CONDITIONS MUST BE BEYOND THE CONTROL OF THE OWNER AND RELATE TO THE PROPERTY AS OPPOSED TO THE OWNER. PERSONAL HARDSHIP OR INCONVENIENCE DOES NOT JUSTIFY A VARIANCE. THE BURDEN OF PROOF IS ON THE PROPERTY OWNER.
- B. THE BOARD OF ADJUSTMENT SHALL MAKE THE FOLLOWING FINDINGS BASED ON THE EVIDENCE IN THE RECORD PRIOR TO GRANTING A VARIANCE:
1. THERE ARE SPECIAL CIRCUMSTANCES OR CONDITIONS APPLICABLE TO THE PROPERTY INCLUDING ITS SIZE, SHAPE, TOPOGRAPHY, LOCATION, OR SURROUNDINGS WHICH WERE NOT SELF IMPOSED BY THE OWNER;
 2. DUE TO THE SPECIAL CIRCUMSTANCES, THE STRICT APPLICATION OF THE ZONING ORDINANCE WOULD DEPRIVE THE PROPERTY OF PRIVILEGES ENJOYED BY OTHER PROPERTIES IN THE SAME CLASSIFICATION IN THE SAME ZONING DISTRICT;
 3. THE VARIANCE IS THE MINIMUM NECESSARY TO ALLEVIATE THE PROPERTY HARDSHIP; AND
 4. GRANTING THE VARIANCE WILL NOT HAVE A DETRIMENTAL EFFECT ON THE PROPERTY, ADJOINING PROPERTY, THE SURROUNDING NEIGHBORHOOD, OR THE CITY IN GENERAL.
- C. THE BOARD OF ADJUSTMENT SHALL NOT GRANT A VARIANCE WHEN:
1. THE SPECIAL CIRCUMSTANCES APPLICABLE TO THE PROPERTY ARE SELF-IMPOSED BY THE OWNER. THIS INCLUDES:
 - a. A HARDSHIP THAT HAS BEEN INTENTIONALLY, KNOWINGLY, OR RECKLESSLY CREATED.
 - b. THE FAILURE OF THE OWNER TO CONSIDER OTHER REASONABLE ALTERNATIVES WHICH DO NOT REQUIRE A VARIANCE.

2. THE VARIANCE WOULD CONSTITUTE A CHANGE TO THE USES PERMITTED IN ANY ZONING DISTRICT.
3. THE VARIANCE WOULD CONSTITUTE A GRANT OF SPECIAL PRIVILEGES INCONSISTENT WITH THE LIMITATIONS ON OTHER PROPERTIES IN THE ZONING DISTRICT.

3.707 CONDITIONAL APPROVAL.

THE BOARD OF ADJUSTMENT MAY PLACE CONDITIONS ON THE VARIANCE TO ASSURE THAT THE ADJUSTMENT AUTHORIZED WILL NOT GRANT SPECIAL PRIVILEGES INCONSISTENT WITH THE LIMITATIONS ON OTHER PROPERTIES IN THE VICINITY.

3.7018. Effective date of the variance or appeal.

The decision of the board of adjustment shall be final thirty (30) calendar days from the date of the public hearing unless an appeal is filed as provided for in this ordinance.

3.7029. Appeal to Superior Court.

The City or any person aggrieved by a decision of the Board of Adjustment may within thirty (30) calendar days of the Board's decision, file a complaint for special action in Superior Court in accordance with A.R.S. § 9-462.06(K) now in effect or as it may be amended from time to time.

(Ord. No. 1772, 7-23-93; Ord. No. 2260, § 7, 6-11-02; Ord. No. 2531, § 1, 10-24-06)

3.70310. Modification of a Variance.

Any alteration or expansion of a project for which a variance was approved shall comply with all current provisions and regulations of this Zoning Ordinance. Any request for modification or other change in conditions of approval of the variance shall be reviewed according to provisions of this article as a new application.

(Ord. No. 1772, 7-23-93; Ord. No. 2531, § 1, 10-24-06)

3.70411. Revocation of a Variance.

When provisions of this ordinance related to the variance, or conditions or stipulations, made a part of the variance approval, have not been satisfied, the variance may be revoked as follows:

The Board of Adjustment shall, by first class mail, notify the holder of the variance of its intention to hold a hearing to consider revocation of the variance. The notice shall be made at least fifteen (15) calendar days prior to date of the scheduled hearing. At the hearing, the Board of Adjustment shall consider evidence from all interested parties, and after deliberation, may revoke the variance or take any actions as may be necessary to insure compliance with the regulations or conditions of the approved variance.

(Ord. No. 1772, 7-23-93; Ord. No. 2531, § 1, 10-24-06)

3.70512. Re-application.

Where a variance or appeal has been denied, no application for a variance or appeal for the same or substantially the same issue on the same or substantially the same site shall be filed within one hundred eighty (180) calendar days from the date of denial.

(Ord. No. 1772, 7-23-93; Ord. No. 2531, § 1, 10-24-06)

3.70613. Applicability of the Variance.

Except as may be otherwise stipulated or provided in this Zoning Ordinance, a variance granted pursuant to provisions of this article shall run with the land and continue to be valid upon a change of ownership of the site or structure which was subject to the variance.

(Ord. No. 1772, 7-23-93; Ord. No. 2531, § 1, 10-24-06)

Public Notification Technique:

The City of Glendale has determined formal letters to introduce the proposed Zoning Text Amendment is the most appropriate public notification technique for this project. Interested Parties have until August 31, 2022, to provide feedback.

On August 9, 2022, staff mailed notification letters advising a text amendment to the district interested parties list and the city-wide interested parties list. The letter provided a draft description of the Zoning Text Amendment and provided options to interact with staff with questions or comments on the proposed text amendment (a copy of the notification letter is attached as Exhibit A). Also, citizens can review the proposed text amendment language within this Final Copy of the Citizen Participation Plan or by receiving the notification letter and this can also be found on the City's Planning Division webpage.

The Planning Division has a list of all persons notified via the district interested parties list and the city-wide interested parties list. The Planning Division did not identify any other persons or agencies requiring notification.

A schedule with final dates for completion of the Citizen Participation Process:

8/01/2022 – Citizen Participation Plan

8/09/2022 – Notification Letters Mailed Out

8/26/2022- Notice of Public Hearing postcards mailed out

8/31/2022- Public Posting on Webpage and Newspaper

8/31/2022 – Deadline to receive comments.

9/02/2022 – Citizen Participation Final Report.

9/22/2022 – Planning Commission Public Hearing

10/27/2022 – City Council Public Hearing

All legal and posting requirements for public hearings have been met.

Public Response from the Notification Letter or Direct Communication with staff:

There have not been any responses or concerns from the public regarding the text amendment.

Summary of Citizen Participation Process:

The Planning Department staff has made every reasonable effort to be transparent. Staff has met the Citizen Participation Process's intent by ensuring opportunities for the City of Glendale citizens to obtain additional information, have questions answered, and provide feedback to staff on the proposed Zoning Text Amendment.

The Zoning Text Amendment application is necessary to provide transparency for a revised Section 3.700: Variance and Appeals process.