

ZONING TEXT AMENDMENT NARRATIVE

Purpose and Background

The Arizona Revised State Statute, 9-462.06(G) 2., asserts that the Board of Adjustment shall, "Hear and decide appeals for variances from the terms of the zoning ordinance only if, because of special circumstances applicable to the property, including its size, shape, topography or surroundings the strict application of the zoning ordinance will deprive the property of privileges enjoyed by other property in the same zoning classification in the same zoning district. Any variance granted is subject to conditions as will assure that the adjustment shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which the property is located," and ; "(H). A board may not (1) 1. Make any changes in the uses permitted in any zoning classification or zoning district, or make any changes in the terms of the zoning ordinance provided the restriction in this paragraph shall not affect the authority to grant variances pursuant to this article;" and/or "2. Grant a variance if the special circumstances applicable to the property are self-imposed by the property owner." The City of Glendale 1993 Zoning Ordinance, Sections 3.701- General and 3.706- Findings for a Variance mirrored the language and text of the State Statute.

With the adoption of the UDC, the general purpose for a variance was modified and three (3) state required findings for a variance were replaced with four (4) criteria. To comply with State Statute, Section 35.6.209 must be replaced with language in compliance with the statute.

The following are the proposed revised changes to UDC 35.6.209:

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35.6.209 Variances and Appeals

~~A. General Variances from zoning regulations pertaining to development standards; setbacks, lot dimensions, or other development standards where such a variance will not be detrimental to public interest, health, safety, or welfare. No variance shall be granted to permit a use not otherwise permitted in the applicable zoning district.~~

~~B. Variance Criteria~~

~~Relief from established development standards shall not be arbitrary nor open-ended or universal across multiple properties. Upon filing a variance for consideration, the applicant shall present evidence that demonstrates the following:~~

- ~~1. Existing unique circumstances or conditions on the subject property that prevents the universal application of the zoning standard.~~
- ~~2. The literal interpretation of the Unified Development Code would deprive the appellant of rights commonly enjoyed by other properties in the same zoning district.~~
- ~~3. Any hardship caused by the provisions of the Unified Development Code is more than personal inconvenience or a financial hardship and is not the result of actions by the applicant.~~
- ~~4. Granting the variance will not interfere with or alter the appropriate and legal use of adjacent conforming properties in the same zoning district.~~

A. Purpose

The purpose of a variance is to restore equity when, due to special circumstances or conditions, the ordinance restricts one 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. Findings for a Variance

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 same zoning district;
3. 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.
- c. The variance would constitute a change to the uses permitted in any zoning district.
- d. The variance would constitute a grant of special privileges inconsistent with the limitations on other properties in the zoning district.

D. Application Process

Applications for variances shall conform with the provisions of Section 35.6.202. Applications shall be made in the office of the Development Services Department on an application form with required documentation specified on guidelines provided by the Development Services Department and accompanied with required fees. After the Development Services Department has determined that an application is complete, the application shall be routed for formal review and comment by staff, and a public hearing with the Board of Adjustment will be scheduled.

~~D.~~ E. Appeal Decision; Interpretations

The Board of Adjustment may hear appeals to staff Interpretations. When hearing such an appeal, the Board shall consider the nature of the request and determine if staff's interpretation and/or decision was made in accordance with the intent of the guiding regulation, was made in accordance with known state or federal law, and if the decision advances the principles and values of the City of Glendale. The Board of Adjustment may confirm, overturn, or modify staff's decision.

~~E.~~ F. Decision; Variances

Variances The Board of Adjustment may approve, conditionally approve, or deny variance requests. In the event the Board of Adjustment determines that the applicant has provided adequate evidence that aligns with the conditions set forth above in Section 35.6.209.B, it may approve or conditionally approve the variance. Approval may be granted only upon the affirmative vote of the majority of the Board members present.

~~F.~~ G. 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.

G. H. Appeal to Superior Court

The City, the applicant, 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.

H. I. 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) 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 ensure compliance with the regulations or conditions of the approved variance.

I. J. 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) days from the date of denial.

J. K. 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.