

PAGOSA LAKES PROPERTY OWNERS ASSOCIATION, INC.
VARIANCE APPLICATION

NAME \_\_\_\_\_ PHONE \_\_\_\_\_

MAILING ADDRESS: \_\_\_\_\_

E-MAIL: \_\_\_\_\_

ALTERNATIVE CONTACT NAME, PHONE, & EMAIL \_\_\_\_\_

PROPERTY ADDRESS: \_\_\_\_\_

BLOCK/LOT NUMBER \_\_\_\_\_ SUBDIVISION \_\_\_\_\_

This application is accompanied by an Application for Project Plan Review for this property and a Site Plan (Survey) showing the exact encroachment.

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, PILC and permit application. The undersigned certifies that they are Property Owner identified in this application. An "As Formed" Survey is required for setback variances and must be submitted to PLPOA staff at site inspection before concrete is poured. If any variance encroaches into a utility easement, written approval from the utility company is required at submittal. All Permit Fees for the variance and permit for project shall be paid.

Complete both pages

FOR PLPOA USE ONLY

DATE APPLICATION AND PLANS RECEIVED & COMPLETE: \_\_\_\_\_

RECEIVED FEE AMOUNT & TYPE: \_\_\_\_\_ DATE: \_\_\_\_\_

ACCOUNT# \_\_\_\_\_ PERMIT # \_\_\_\_\_

APPROVED / DISAPPROVED IN VANTACA

PAGOSA LAKES PROPERTY OWNERS ASSOCIATION, INC.
VARIANCE APPLICATION

- 1. \_\_\_\_\_ (initial) I am the owner of the property identified in this application.
2. \_\_\_\_\_ (initial) I and my contractor are responsible for reading, meeting, and following the requirements of the Project Permit Process, Project Agreement and the Rules & Regulations.
3. \_\_\_\_\_ (initial) I have submitted all required documents. (see section 4 & 8)
4. \_\_\_\_\_ (initial) I have paid all the required fees.
5. \_\_\_\_\_ (initial) Project permits are valid for six (6) months from date of approval.
6. \_\_\_\_\_ (initial) Variance approval is only valid for (1) one year unless the specific variance requested project has begun.
7. \_\_\_\_\_ (initial) Variance is not transferable unless the project as begun.
8. \_\_\_\_\_ (initial) An "AS-formed" survey (see Section 4.8) that verifies the approved location will be required and the Department of Community Standards (DCS) must review and approve the survey results before the foundation is poured.
9. \_\_\_\_\_ (initial) All structures will be constructed in accordance with the Project Permit Application, plans and specifications as submitted to and approved by the Environmental Control Committee (ECC).
10. \_\_\_\_\_ (initial) Any changes to the approved plan must be reviewed and approved by the ECC. Any deviation from the approved plans will result in a penalty as outlined in the PLPOA Neighborhood Rules and Regulations.
11. \_\_\_\_\_ (Initial) YOU (the current owner) have the primary responsibility to advise anyone to whom you convey the property to, of the permit status at the time of the conveyance and must notify PLPOA in writing in advance if the property is to be conveyed before construction is complete and the permit closed.
12. \_\_\_\_\_ (initial) Permission is granted to the ECC and/or its representatives to access the property to assure that the building being constructed conforms to the project permit that was approved by the ECC. In verifying these details, the ECC assumes no responsibility whatsoever for the structural aspects of the improvement being installed or constructed. The number of spot checks conducted is entirely at the discretion of the ECC and/or its representatives, but it is anticipated they may occur as follows:
A. Prior to consideration by the ECC, the property and building foundation corners shall be staked to assure the structure will be sited in accordance with the Site Plan, and all trees to be cut down shall be flagged.
B. During construction at various intervals.
C. Upon completion of construction to assure that materials, architectural design, and colors of the exterior conform to the approved plans and application details. Driveway size and materials, Lighting and Drainage will be monitor closely.
13. All construction work will take place between 7:00 a.m. and 7:00 p.m., local time, Monday through Friday; 8 a.m. to 7 p.m., local time, Saturday; and 9:00 a.m. and 7:00 p.m., local time, Sunday.
14. The property owner and contractor understand that, in the event that legal action is required to enforce the terms of this agreement or any of the terms contained in the PLPOA Project Permit Process, Declarations of Restrictions and/or Rules & Regulations affecting the Property Owner's property, that if the PLPOA prevails, the property owner will be required to pay reasonable attorney fees and costs incurred by the PLPOA.
15. All provisions in this agreement are binding upon the Owner and contractor and the initialing of certain provisions does not affect the validity or enforceability of any other provision.
16. Violation and Fine Schedule: In consideration for obtaining a building permit, the property owner and contractor agree that they are subject to fines for violations identified in Sections D, E and F of the Neighborhood Rules and Regulations. They also acknowledge that they are familiar with and will comply with all provisions of the Project Permit Process. The contractor also acknowledges that he/she has no outstanding fines, violations or citations from PLPOA.
17. Delinquent fines will be subject to collection utilizing all remedies available to the Association, to the extent permitted by law, including reasonable legal fees and costs of collection.

The owner attests that the information above is complete, correct, and all documents needed for approval have been submitted. Owner has read and agrees to abide by the sections of the Project Permit Process that pertains to the project, the Declaration of Restrictions for this subdivision, Project Agreement, and the Rules and Regulations of the Association.

Property Owners Signature and Date

Contractor Signature and Date

Property Owners Name (Print)

Contractor/Construction Company Name (print)

E-MAIL: \_\_\_\_\_ E-MAIL: \_\_\_\_\_

## Variance Guidelines for Unnecessary Hardship and Practical Difficulty Criteria

Seeking a variance is a legal process that allows property owners to build 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.

The PLPOA Declaration of Restrictions read:

“The Committee may allow reasonable variances and adjustments of these restrictions in order to overcome practical difficulties and prevent unnecessary hardships in the application of the provisions contained herein; provided, however, that such is done in conformity with the intent and purposes herein and provided also that in every instance such variance or adjustment will not be materially detrimental or injurious to other property or improvements in the neighborhood, the Subdivision.”

The courts have ruled that a practical difficulty or unnecessary hardship **cannot be self-created**, cannot be just showing that the property would be worth more if a variation were granted, and it cannot be just a demonstration that a property is better suited for a use that is prohibited than a use that is permitted.

In trying to define the practical difficulty or unnecessary hardship the members of the Environmental Control Committee making the decision on whether to support the variance will need to evaluate if:

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
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.

[The definition of Subdivision in our Declaration of Restrictions states that "Subdivision" refers to the aggregate of all Subdivisions within the Development (PLPOA).]

Examples of conditions under which a variance may be consider:

- 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 extensions into the setback
  - condition requiring extension into setbacks (e.g. large boulder or other immovable object, valuable stand of trees, etc.
- Site geography creates difficulties in placing a home or other improvement within a building envelope (e.g. irregularly shaped lot)
- When a change of circumstances since the Recording of the Declaration of Restrictions or an architectural standard has rendered such restriction obsolete:
  - 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.

In any case, the ECC must determine that the activity allowed by the variance will not have any material adverse effect on the Owners and Occupants of neighboring Lots and of the community as a whole and is consistent with the quality of living intended to be promoted hereby throughout the Community.