TOWN OF PARADISE VALLEY

Board of Adjustment Rules & Regulations

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Chair

Requirements for Application for Variance

A. Who may apply?

The owner or agent.

B. Requirements for application:

Completed application form (and any other information or documents relevant to the application).

Scheduling and Advertising of Hearing

A. Applicants will be required to submit their materials (including electronic materials such as a PowerPoint presentation that the applicant would like to use at the public meeting) before the first date on which an advertisement for the hearing is published in a newspaper of general circulation (the "Cut-off Date"). This will generally be at least fifteen days before the Board's hearing date. Materials submitted after the Cut-off Date and time shall not be distributed to the Board and would not be considered at the public meeting or hearing on the applicant's matter. If the applicant believes that the consideration of materials submitted after the Cut-off Date need to be placed before the Board, then the applicants' public hearing date shall then be continued to another suitable date and the applicant shall pay the costs of re-advertising, re-noticing, and/or re-posting a public hearing. Applicants who have missed the Cut-off Date shall not distribute materials at the public meeting (each a "Hand-out") unless the Hand-out is a copy of materials that were already submitted prior to the Cut-off Date. Any electronic materials submitted by an applicant, including PowerPoint presentations, shall remain the same as those presented prior to the Cut-off Date and may not contain any new or updated slides or graphics. Submittals or written statements by the general public shall be submitted at least twenty-four (24) hours prior to the posted public meeting time in order for the staff to be able to assemble and distribute them to the Board prior to the meeting time. If a resident or member of the general public cannot make a public hearing date and time and has a late submittal of material, including an email ("Late Public Submittal Material"), the Late Public Submittal Material may be given to another member of the public who can present that Late Public Submittal Material at the public hearing. Because the Late Public Submittal Material will be first presented at the public meeting, the member of the public shall also be required to have at least ten (10) copies of the Late Public Submittal Material available for distribution (one for each Board Member, and one copy for the staff, the applicant, and the minutes-taker). Residents and/or the general public may also submit their own written materials or comments at the public meeting, provided that they have at least (10) copies available to distribute. PowerPoint presentations by the general public shall not be permitted; provided, however, a member of the general public may hand-out a printed copy of the PowerPoint "slides" that such member of the public desires to present, provided that at least ten (10) copies of the PowerPoint "slides" are submitted for distribution.

~~A.~~ B. When an applicant has completed an application and paid the required fee, a hearing shall be scheduled, which shall be no later than sixty (60) days from the date of filing of the application.

~~B.~~ C. A hearing on an application for a variance shall be held only after:

1. One publication of a notice of the time, place and ate of such hearing in an official newspaper of the Town, or in a newspaper of general circulation in the Town, at least fifteen (15) days prior to such hearing; and

2. The posting of a notice of the time, place, and date of such hearing on the affected property for at least fifteen (15) days prior to the date of such hearing.

Chair and Acting Chair

A. The Chair of the Board shall preside at all Board meetings.

B. In the absence of the Chair, the members present at any meeting shall elect a member to be Acting Chair, and such Acting Chair shall exercise all powers and prerogatives of the Chair until such time as the Chair is present.

Procedure for Board Meetings

A. All meetings of the Board shall be held at the Paradise Valley Town Hall, 6401 E. Lincoln Drive, or other location selected by the Chair.

B. Time for meetings:

1. Regular Meetings:

   The Board shall hold regular meetings as needed on the first Wednesday of each month at 6:00 p.m., except that when the date set, hereby for any regular meeting is a legal holiday for the Town of Paradise Valley, the regular meeting shall be held on the next following Wednesday. The Board may hold work sessions at 5:30 p.m. to discuss agenda items or other items as called for.

2. Special Meetings:

   Special meetings of the Board may be called at any time by the Chair, provided that each member personally receives notice of such meeting, in person, by telephone, or in writing, at least forty-eight (48) hours prior to such meeting.

C. Quorum Requirements:

A Quorum of the Board is four members.

D. Decisions and Actions by Majority Vote:

1. All decisions and actions of the Board shall be by an affirmative vote of a majority of those members present and voting.

2. The vote or abstention from voting, of every individual member, on all matters voted upon, shall be recorded in the minutes of the meeting by the Board Secretary. A member shall vote "yes", "no", or expressly abstain from a voting.

3. No member who is present at a meeting of the Board shall abstain from voting unless:

   a. the member was not present for all or a portion of the hearing on the subject to be voted upon, or

   b. the member has a conflict of interest as provided by law, or

   c. because of certain facts, the member cannot fairly and impartially consider and vote on the subject because of his personal interest in the subject or his prejudice on the subject.

4. When a member of the Board abstains from voting, he shall publicly state the reason for such abstention prior to the consideration of the item by the Board.

5. If there is a tie vote on any matter before the Board, the matter shall automatically be continued to the next regular meeting, or at the option of the Chair, the matters may be continued to a special meeting if (a) the date and time of such special meeting is announced at the time of such tie vote; and (b) the party or parties formally appearing before the Board on such matter all consent to the matter being continued to such special meeting. If there is a tie vote on any matter and the matter is continued to a subsequent meeting pursuant to the preceding sentence, and there is another tie vote at the subsequent meeting, the subsequent tie vote shall be deemed to be a negative vote, and the matter shall be treated as having failed to be approved by the Board.

E. Any person recognized by the Chair may speak and address the Board to express his opinion on any matter before the Board. The Chair may require any person who wishes to speak to the Board or to present evidence to the Board, to take an oath which shall be administered by the Chair. If the Chair reasonably believes it is necessary to do so, to expedite the Board's action on a matter, the Chair may impose reasonable time limits upon the oral statements of

any persons wishing to speak and address the Board. If a spokesperson for an identified group of residents (such as a HOA officer or an attorney, the "Spokesperson") desires to speak on behalf of that group, a larger amount of time will be allotted, but not in excess of fifteen minutes unless the Chair finds that there are particularly detailed and difficult matters involved in the case. The Chair shall advise the members of a group that has selected a Spokesperson that if the members desire to speak individually at the meeting, the members shall limit their time and avoid any repetition of matters already addressed by the Spokesperson.

~~Any person may submit written comments to the Board on any matter before the Board~~. Upon the request of any party, a certified court reporter shall record the proceedings of all or any portion of a meeting. Such party shall arrange for the attendance of a certified court reporter and pay all related expenses. If a transcript of all or any portion of the Board proceedings is prepared and completed, a copy shall be furnished to the Board by and at the expense of the party ordering or causing the transcript to be prepared and completed.

F. Motion to Reconsider: A motion to reconsider any action taken by the Board may be made only on the day the action is taken or at the next regular meeting of the Board. A motion to reconsider must be made by a Member of the Board who voted one the prevailing side of the motion but may be seconded by any other Member. A question failing by virtue of a tie vote may be reconsidered by motion of any Member of the Board. The motion may be made at any time. It shall be debatable. Nothing herein shall be construed to prevent any Member of the Board from making or remaking the same or any other motion at a subsequent meeting of the Board. If a Member of the Board desires to make a motion to reconsider after the Board has already voted on a matter, then the Member shall contact the Chair and the Community Development Director within fifteen (15) days of the meeting at which the Board took the action that the Member desires to have the Board reconsider indicating that they would like to have a motion to reconsider the matter placed on the next Board agenda; whereupon the Town staff shall distribute notice to persons who have registered with the Town staff that they desire notice of any meeting where a particular property or matter is placed on an agenda. If the motion to reconsider passes, then the Board shall then take the matter up for discussion and possible action at the same meeting at which the motion to reconsider passed.

~~F.~~G. All or any part of the Board meeting may be reported by any person in attendance by means of a tape recorder, camera or other means of sonic or pictorial reproduction, provide that there is no active interference with the conduct of the meeting.

~~G.~~H. The Order of Business of all regular Board meetings shall be:

1. Call to Order

2. Roll Call

3. Approval or Amendment of Minutes of Previous Meeting

4. Regular Business of the Board

5. Adjournment

~~H.~~I. Presumption against unsuccessful applicant for variance.

When an applicant for a variance is denied or disapproved by the Board and the reason for such denial or disapproval is not stated in the motion for such denial or disapproval, there shall be a rebuttable presumption that the applicant has failed to prove and he or she has qualified for a variance by proving that he or she has met all of the criteria in A.R.S. §9-462.06.

Conditions and Duration of Variances

A. The Board may grant a variance subject to certain reasonable conditions or limitations. Where such a condition or limitation is imposed, the variance shall be valid if the condition or limitation is complied with, but the variance shall automatically be revoked and void and of no force and effect if, at any time, such a condition or limitation is not complied with.

B. Once granted by the Board, a variance shall run with the land in perpetuity unless (1) the variance is expressly limited in duration; or (2) provided otherwise by law; or (3) the variance is revoked.

Assistance from Town Staff

A. Upon request from the Chair of the Board, the Town Manager shall, by himself or through a subordinate, endeavor to provide any information or assistance requested whch may assist the Board or any member of the Board.

B. The Town Planning Director shall attend all meetings of the Board and may comment on any matter before the Board.

PURSUANT TO A.R.S. §9-462.06 C and §2-5-3 C of the Code of Ordinances of the Town of Paradise Valley, the Board of the Town of Paradise Valley hereby makes, publishes, adopts and promulgates these rules and regulations to govern its proceedings and carry out its duties under Town law.

Appendix A - Appeal Hearing Procedure

I. Chair states the name of the case and invites the staff to present the facts related to the appeal.

II. Chair invites the appellant, or appellant's attorney, to step to the podium, to introduce himself, and to present the witnesses to be sworn in.

III. Chair invites witnesses to step forward and face the staff table for swearing in.

IV. Staff rises, asks witnesses to raise their right hands and repeat swearing in statement after him.

V. Chair invites applicant/attorney to present argument and invite witnesses to speak as needed.

VI. Chair invites interested citizens who wish to speak to be sworn in.

VII. Chair invites interested citizens to speak.

VIII. Board members are invited by the Chair to ask questions of the attorney, witnesses and/or staff.

IX. Board deliberates.

X. Chair calls for a motion, and a second.

XI. Voting, either by roll call, hand signal, or voice vote.

XII. The results of the voting are declared by the Secretary.

XIII. Board moves to next item of business.

Appendix B - Variance Hearing Procedure

I. Chair states the name of the case and asks for the staff report.

II. Staff presents its report and recommendation; Board is invited to ask questions.

III. Applicant/representative presents case; Board is invited to ask questions.

IV. Chair opens the public hearing and asks speakers to state name and address.
(Board is invited to ask questions of each speaker after they conclude their remarks.)

A. Chair invites anyone in favor of the proposal to speak.

B. Chair invites anyone opposed to the proposal to speak.

C. Applicant/representative is invited to rebut/clarify/conclude.

V. Chair closes public hearing.

VI. Board members are invited by the Chair to ask applicant/representative and/or speakers questions.

VII. Board deliberates.

VIII. Chair calls for a motion, and a second.

IX. Voting, either by roll call, hand signal, or voice vote.

X. The results of the voting are declared by the Secretary.

XI. Board moves to next item of business.

Town of Paradise Valley
Variance Criteria

The following code requirements must be met for the Board of Adjustment to grant a variance. Please provide evidence to satisfy the conditions below. Attach additional sheets as necessary.

1. *"Such variance...will serve not merely as a convenience to the applicant, but [is] necessary to alleviate some demonstrable hardship or difficulty so great as warrant a variance under the circumstances."* (Town Code Section 2-5-3(C)2).

2. The *"special circumstances, hardship, or difficult [do not] arise out of misunderstanding or mistake..."* (Town Code Section 2-5-3(C)4(b)).

3. "Such variance from ... the strict application of the terms of (the Zoning Ordinance] ... are in harmony with its general purposes and intents ...· (Town Code Section 2-5-3(C)2).

4. *"The special circumstances, hardship or difficulty applicable to the property are [not} self-imposed by the property owner, or predecessor..."* (Town Code Section 2- 5-3(C)4).

5. *"Because of special circumstances applicable to the property, including its size, shape, topography, location, or surroundings, the strict application of the zoning ordinance will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district.* " (Arizona Revised Statutes 9- 462.06(G)(2)).

6. The variance would not *"constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located."* (Arizona Revised Statutes 9-462.06(G)(2)).