



HIGH DESERT

New Construction Committee
10555 Montgomery NE
Building 1 Suite 100
Albuquerque, NM 87111
(505) 314-5862

VARIANCE REQUEST

Rules and Procedures for Granting a Variance From The High Desert Guidelines for Sustainability – *Estate, Premier or Builder Homes*

BACKGROUND

Section 11.7 Variance: Amended and Restated Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties (Declaration), recorded on August 18, 2011, states that “The NCC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the NCC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, the cost of compliance, or the terms of any financing shall not be considered a hardship warranting a variance.”

RULES AND PROCEDURES

General

1. A variance may be granted from compliance with any of the High Desert Guidelines for Sustainability (Guidelines) when, in the sole and absolute opinion of the NCC, unique circumstances dictate. These circumstances may include, but are not limited to, circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations. However, nothing shall estop the NCC from denying a variance in other circumstances.
2. The inability of an applicant to obtain approval of any governmental agency, the issuance of any permit, the cost of compliance, or the terms of any financing shall not be considered a hardship warranting a variance.

3. Prior construction, without NCC approval, or even in accordance with NCC approved plans, of a non-conforming element and required removal, or modification of such nonconforming element shall not be considered a hardship warranting a variance.
4. Building envelope variances to the Integrated Development Ordinance (IDO) present a unique circumstance. Building envelopes may be reconfigured or changed in size, if approved by the NCC. Further, the variance must be officially approved through the lot replat process defined by the City of Albuquerque Planning Department. Any replat of a Building Envelope or lot requires the signature of the Chair of the NCC and the President of the Board of Directors on the proposed replat, before the replat can be presented to the City for processing. The replat does not take effect until after the change is approved by the City and the replat is recorded by the County Clerk.
5. The NCC reviews carefully requests to reconfigure Building Envelopes because of the possibility that reconfiguration could negatively impact views from nearby lots and /or have negative environmental consequences, or other impacts and thereby be unacceptable. Approval of a Building Envelope reconfiguration by affected lot owners does not guarantee NCC approval. Any such approval is at the absolute discretion of the NCC and the Association President.
6. Generally, building envelope variances shall only be considered if there is a net zero effect. Net zero means that the reconfigured building envelope is of equal square footage as the originally approved/platted building envelope area but its parameters have changed. Specifically,
 - (i) Applicants must submit a survey showing the original building envelope and proposed increase and decrease to the building envelope indicating a net zero building envelope change. The increase and decrease must show the total square footage of the proposed changes. Further, an approved Grading and Drainage Plan also may be required at the sole discretion of the NCC showing the same information.
 - (ii) The applicant shall exchange proposed developed building envelope area with undeveloped open space area, to the greatest extent possible.
 - (iii) The applicant may be required to remove site improvements within the building envelope to compensate undeveloped open space area equal to, or in partial fulfillment of, the net zero building envelope area.
 - (iv) Building envelope variance requests must include written approval of such reconfiguration from all affected lot owners.
 - (v) Proposed building envelope changes that encroach into drainage easements or designated setback zones shall not be approved.
7. No variance approval shall:
 - (i) be contrary to the Declaration;
 - (ii) be effective unless in writing;
 - (iii) be contrary to city zoning or, other governmental ordinance or requirements;
 - (iv) be contrary to any Village Supplemental Design Guideline, unless also approved in writing by the specific village architectural control committee; or
 - (v) estop the NCC from denying a variance in other circumstances.

Applications for Variance

1. The applicant for a variance request must be the owner of the property, unless the owner specifically specifies, in writing, that the owner is being represented by another person.
2. If the submission for a variance is deemed incomplete, in the sole and absolute opinion of the NCC, the submission may be returned to the applicant, or denied.
3. Applications for a variance will be processed in accordance with the Declaration and must comply with the Declarations. Specifically, applicants are directed to Article XI ARCHITECTURAL STANDARDS for guidance when drafting requests. However, other sections of the Declaration also may apply.
4. All variance requests must be in writing using NCC Form - 4: Variance Request. The request must include the Guideline paragraph and page number from which a variance is requested, and include a written justification.
5. Applicants may be required to submit studies, maps, diagrams, photographs, models, sample materials, engineering reports, or other such information or materials and additional documentation be needed before considering a variance request.
6. The NCC may commission studies, maps, diagrams, photographs, models, engineering reports, investigations, or other such information or materials and presentations from professionals it deems necessary before considering a variance request. The committee reserves the right to charge the applicant for a variance application, or to have the cost of investigating and processing a variance application paid for by the applicant.
7. Plans submitted as part of the normal review process, as set forth in the Guidelines for Sustainability, shall not act as a request for a variance.
8. Applicants may request a hearing to present a variance request to the NCC. A written request is still required. The applicant may have experts such as, architects or engineers, present information at the meeting. The NCC also may hear from others including affected property owners.
9. The NCC shall give an applicant at least seven days' notice of a meeting at which a variance request will be heard. The applicant may waive the seven-day notice.
10. If the NCC does not act within 45 business days of the submission, as specified in Article XI, Section 4.b. of the Declaration, the variance request shall be deemed approved.
11. A denied variance request will not be heard again unless the request had been materially changed, as determined by the NCC.

NCC FORM – 4: VARIANCE REQUEST

Name _____

Village _____

Lot# _____

Address _____

E-mail _____

Phone # _____

Sustainability Guideline, Paragraph, and Page # _____

Variance Request _____

Justification _____
