

Joint Variance Application

If a variance is required, it must be approved before any permit requests will be considered. Variance is not valid unless approved, signed, and notarized by both the Alto Lakes Special Zoning District (ALSZD) and the Architectural Control Commission (ACC).

Property Data:

Date Filed:

Date Heard:

<i>Legal</i>	<i>Subd:</i>		<i>Unit:</i>		<i>Block:</i>		<i>Lot/Tract:</i>	
<i>Address</i>								

Property Owner:

<i>Name:</i>			
<i>Address:</i>			
<i>Phone:</i>		<i>Email:</i>	

Setbacks and Zoning

<i>Zoned:</i>	<input type="checkbox"/> R-1 Single family res.	<input type="checkbox"/> R-2 Multi-family res.	<input type="checkbox"/> C-N Neighborhood Comm.	<input type="checkbox"/> C-CC Country Club Comm.	<input type="checkbox"/> CS Community Services
<i>Existing Setbacks</i>	<i>Front</i>		<i>Rear</i>		<i>Sides</i>
<i>Proposed Setbacks</i>	<i>Front</i>		<i>Rear</i>		<i>Sides</i>
<i>Min 1st floor Sq Footage</i>			<i>Proposed 1st floor sq footage</i>		
<i>Min total heated</i>			<i>Proposed total heated</i>		
<i>Where the front footings will be located above the road, the height shall be measured from the average of the original grade along the rear footings of the dwelling. Where front footings will be located below the road, the height shall be measured from the average of the original grade along the front footings of the dwelling.</i>					<i>Height</i>
					<i>Proposed height</i>

Variations from the terms of the Zoning Ordinance or Covenants shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the Ordinance or Covenants deprives such property of privileges enjoyed by other property in the vicinity and under identical classification.

Variations may only be granted for hardships related to the physical characteristics of land providing that:

1. There are specific physical circumstances that distinguish the project site from its surroundings; and
2. These unique circumstances would create an unnecessary hardship for the applicant if the usual zoning standards were imposed.

Notice provisions: *A public hearing is required for all Applications for Variations. Hearings shall be held in accordance with the hearing and notice provisions below:*

1. The applicant shall place public notice in one newspaper of general circulation in Lincoln County at least fifteen days prior to the hearing.
2. Notice of the public hearing shall be mailed by the applicant, at least fifteen days prior to the hearing, by certified mail, return receipt requested to the owners, as shown by the public records of the Lincoln County, of lots within two hundred (200) feet, excluding public rights-of-way, for which application is made. If the requested action permits more than one building, the notification radius shall be increased to three hundred (300) feet, excluding public rights-of-way, of the boundary of the lot for which application is made. If the requested action is for improvements within the buffer area in the CC-C Zone, the notification radius shall be calculated as three hundred (300) feet from the boundary of the improvements.
3. The applicant shall be responsible for locating the persons entitled to notice.
4. When any of the lots immediately beyond the radius described herein is under the same ownership as the property that is the subject of the application, the owner of the lot(s) next adjacent, excluding public rights-of-way, shall be notified.
5. All persons having an interest in the Application shall be given an opportunity to be heard at the hearing. Written comments will be considered by the Commission however the Commission is not required to accept written comments as having a basis in evidence unless the author is present to be questioned.
6. Applicant shall provide to the Commission, an Affidavit of Publication, a list of property owners required to be notified, and receipts for all mailed notices.

The applicant bears the burden of proving that special circumstances exist to justify its granting. If the applicant fails to comply with the Zoning District Commission's requirements, fails to appear at a hearing, or requests deferment of the

hearing for more than sixty days past the date set in the published notice and/or written notice to property owners, the application shall be deemed to have expired.

1. Describe type and extent of variance requested: (Setback variances shall be limited for a specified intrusion into the setback and not for the entire setback.)

2. Identify specific physical characteristics that distinguish this site from surrounding sites:

3. Does this request represent the minimum deviation necessary from the Ordinance and Covenants? Explain.

4. Use of legal counsel in answering this question is strongly encouraged. Zoning Variances require the applicant provide a legal basis upon which the Commission may grant approval. Provide the legal basis (including reference to specific provisions in the Ordinance) upon which you believe the Zoning Commission may grant your variance.

By signing below property owner(s) acknowledge:

I understand that I am responsible for ensuring all requirements and necessary permits are provided, that all rules of the Covenants, Conditions & Restrictions (CC&Rs), Alto Lakes Golf & Country Club, Inc. (ALG&CC) Bylaws, Architectural Control Commission (ACC) Policy Guidelines, and Alto Lakes Special Zoning District (ALSZD) Ordinance are followed. Club office must verify Club bills and dues of the member of record and/or builders are in good standing. No permit or variance will be issued, nor plan be approved, or permit issued if either builder or member has current violations of restrictive covenants or building instructions. New plans submitted will not be approved if there are existing violations by either member or builder. Approved plans and permits will be on the job site during construction.

I understand that a non-refundable fee may be required and I am responsible for paying all applicable fees as described below and on the ACC and ALSZD Fee Schedules. I agree to have ACC fees billed and/or credited to my member account. Fees are billed when permits/variances are approved.

By signing below I authorize the ACC to charge and/or credit my ALGCC account for ACC permits and fees, and optionally: if appointing a representative I will check the box below and fill in name/contact of representative.

Signature of Property Owner

Signature of Property Owner

By assigning a representative below, and signing above, I acknowledge that I have read the CC&R's, ALG&CC Bylaws, ACC Policy Guidelines, and ALSZD Ordinance, and will comply with same. I appoint the individual or firm named below to appear, speak, and act on my (our) behalf with respect to matters involving the ACC and the ALSZD. This appointment shall expire in six months or earlier by notice to the ACC and/or ALSZD.

<i>Representative:</i>			
<i>Address:</i>			
<i>Phone:</i>		<i>Email:</i>	

Property owner(s) hereby certify, under penalty of law, that:

- 1) Survey/plat submitted with this application show all improvements which are existing or to be constructed or installed under this permit and
- 2) No improvements other than those specifically described above will be constructed.
- 3) I authorize ACC to charge and/or refund my ALGCC account for ACC permits and fees.

Affidavit is required for appointment of Owner's Representative:

State: _____)

ss.

County: _____)

This instrument was acknowledged before me on this _____ day of _____, year _____.

My Commission Expires: _____

Notary public

Section 29 – Variances and Conditional Use Permits

- A. **Purpose.** Establish requirements and procedures for the granting of Variances and Conditional Use Permits that meet the requirements State Statutes including but not limited to 3-21-8-C-1 NMSA 1978.
- B. **Applications.** The Property Owners or properly designated representative shall initiate the process by filing an Application for a Variance or a Conditional Use Permit. While it is strongly suggested that the applicant have an informal discussion with the Zoning Commission before filing an application in order to be advised of any requirements or policies relevant to the request, applicant is solely responsible for meeting the requirements of the ordinance. Each application shall include all information required by the Commission's Application Handbook. Inaccurate or incomplete information may cause a delay in the hearing process.
- C. **Hearing.** A public hearing is required for all Applications for Variances, Conditional Use Permits, and Appeals. Hearings shall be held in accordance with the hearing and notice provisions below:
1. The applicant shall place public notice in one newspaper of general circulation in Lincoln County at least fifteen days prior to the hearing.
 2. Notice of the public hearing shall be mailed by the applicant, at least fifteen days prior to the hearing, by certified mail, return receipt requested to the owners, as shown by the public records of the Lincoln County, of lots within two hundred (200) feet, excluding public rights-of-way, of the boundary of the lot for which application is made. If the requested action permits more than one building, the notification radius shall be increased to three hundred (300) feet, excluding public rights-of-way, of the boundary of the lot for which application is made. If the requested action is for improvements within the buffer area in the CC-C Zone, the notification radius shall be calculated as three hundred (300) feet from the boundary of the improvements.
 3. The applicant shall be responsible for locating the persons entitled to notice.
 4. When any of the lots immediately beyond the radius described herein is under the same ownership as the property that is the subject of the application, the owner of the lot(s) next adjacent, excluding public rights-of-way, shall be notified.
 5. All persons having an interest in the Application shall be given an opportunity to be heard at the hearing. Written comments will be considered by the Commission however the Commission is not required to accept written comments as having a basis in evidence unless the author is present to be questioned.
 6. Applicant shall provide to the Commission, an Affidavit of Publication, a list of property owners required to be notified, and receipts for all mailed notices.
- D. **Burden of Proof.** The applicant bears the burden of proving that special circumstances exist to justify its granting. If the applicant fails to comply with the Zoning District Commission's requirements, fails to appear at a hearing, or requests deferment of the hearing for more than sixty days past the date set in the published notice and/or written notice to property owners, the application shall be deemed to have expired.
- E. **Variances.**
1. **Generally.** Variances from the terms of the Zoning Ordinance shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the Ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification.

Variations may only be granted for hardships related to the physical characteristics of land providing that:

- a. There are specific physical circumstances that distinguish the project site from its surroundings; and
- b. These unique circumstances would create an unnecessary hardship for the applicant if the usual zoning standards were imposed.

2. **Limitations on Variations.**

- a. A variance does not change the zoning of the project site. It cannot permit uses other than those already allowed under existing zoning.
- b. Variations are limited to those situations where the peculiar physical characteristics of a site make it difficult to develop under standard regulations. A variance is granted in order to bring the disadvantaged property up to the level of use enjoyed by nearby properties in the same zone. For instance, where the steep rear portion of a residential lot makes the site otherwise undevelopable, a variance might be approved to reduce the front yard setback and thereby create sufficient room for a home on the lot. Similarly, a parcel's shape might preclude construction of a garage unless side yard setback requirements are reduced by approval of a variance.
- c. Variations are only for use in unusual, individual circumstances. There is no basis for granting a variance if the circumstances of the project site cannot be distinguished from those on surrounding lots. For example, all things being equal, in a subdivision where lots are uniformly 40 feet wide, there is no basis for allowing one lot to be developed with reduced side yard setbacks.
- d. If development within a particular area is commonly leading to requests for consideration of variations, then the District should reassess the standards of the applicable zone and, if necessary, change them.
- e. Setback variations shall be limited for a specified intrusion into the setback and not for the entire setback.

3. **Requirements.** Variations are granted only when all of the following findings can be made:

- a. **Unique Circumstance.** That because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the requirements of the Zoning Ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification. A Variance cannot be granted for a self-imposed hardship.
- b. **No Special Privilege.** That the Variance will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zoning district in which such property is situated. In other words, the Variance is necessary to enjoy a basic property right available to other similarly zoned properties in the vicinity.
- c. **No Unauthorized Use.** The Variance does not authorize a use or activity that is not otherwise expressly authorized by the zoning regulations for the zoning district in which the subject property is located. A Variance cannot be granted to the Zoning Ordinance land use regulations.

d. **No Adverse Impacts.** The Variance will not be detrimental or injurious to property or improvements in the vicinity of the development site, or to the public health, safety, or general welfare.

4. **Approval.** Approval of Variances shall require a majority vote of the members of the Zoning Commission present. If approved, the Commission shall be required to make findings supporting its decision. If an application is denied, the denial shall constitute a finding that the applicant has not shown that the conditions required for approval exist. No application for a variance which has been denied wholly or in part shall be resubmitted for a period of six months from the date of the order of denial, except on grounds of new evidence or proof of change of conditions found to be valid by the Zoning Commission.

F. **Conditional Use Permits.**

1. **Generally.** Certain Conditional Uses, as defined for each Zone defined by the Ordinance, may, under certain circumstances, be acceptable. When such circumstances exist, a Conditional Use Permit may be granted. The permit may be issued for a specified period of time, with automatic cancellation at the end of that time unless it is renewed, or conditions may be applied to the issuance of the permit and periodic review may be required. The permit shall be granted for a particular use and not for a particular person.

2. **Limitations on Conditional Use Permits.** No conditional use permit shall be given for a use that is not listed as a conditional use in the particular Zone in which it is proposed to be located. The Zoning Commission shall consider the effect of the proposed use upon the health, safety and general welfare of occupants of surrounding lands, existing and anticipated traffic conditions, including parking facilities, on adjacent streets and land, the impact upon the natural environment, and the effect of the proposed use upon the Land Use Plan. The Zoning Commission may grant the application by motion, imposing such conditions and safeguards as it deems necessary, or it may deny the application. In reviewing conditional uses in residential areas, the Zoning Commission shall consider particularly the response of adjoining property owners.

3. **Approval.** Approval of Conditional Use Permits shall require a majority vote of the members of the Zoning Commission present. If approved, the Commission shall be required to make findings supporting its decision. If an application is denied, the denial shall constitute a finding that the applicant has not shown that the conditions required for approval exist. No application for a conditional use permit which has been denied wholly or in part shall be resubmitted for a period of six months from the date of the order of denial, except on grounds of new evidence or proof of change of conditions found to be valid by the Zoning Commission.

G. **Notice of decision.** The applicant shall be notified in writing of the action taken by the Zoning Commission within 30 days of the public hearing. If the application has been granted, the Variance or Conditional Use Permit shall be issued upon the signature of the Chairman or Vice-Chairman of the Zoning Commission, and any conditions, automatic termination date, or period of review shall be stated on the notice.

H. **Appeal.** Decisions of the District Zoning Commission issued during a public hearing may be appealed. Every owner of property that lies within the radius of properties requiring notification shall have standing to file an appeal. The District Zoning Commission may, in its sole discretion, grant any other interested party standing to file an appeal.

1. Notice of intent to appeal any decision of the District Zoning Commission shall be filed in writing within fifteen days from the date of the decision. The Notice shall state the legal basis upon which the appellant(s) believe the decision is in error. Notice must be mailed to the District Zoning

Commission by **Certified Mail** with Return Receipt and must be accompanied by the Filing Fee for Appeal of Variance or Conditional Use Permit.

2. The District Zoning Commission shall schedule a public hearing on the appeal not less than forty-five days nor more than sixty days following receipt of the Notice of Appeal. The District Zoning Commission shall notify appellant of the hearing date by Certified Mail.
 3. Upon receipt of the notice of hearing date, Appellant(s) shall be required to meet the notification provisions of paragraph C above.
 4. The District Zoning Commission shall be provided with all appeal documentation not less than fifteen days prior to the scheduled hearing.
 5. The decision on the appeal shall require approval of a minimum of three (3) members of the District Zoning Commission.
 6. The appeal decision of the District Zoning Commission shall be final; however, the appellant may appeal the Commission's decision to District Court.
- I. **Agreement.** The property owner is required to agree to the following minimum conditions for inclusion in all Variances and Conditional Use Permits:
1. To file the approved Variance or Conditional Use Permit with the County Clerk within 30 days following the date of approval by the Zoning Commission.
 2. To obtain all necessary approvals and permits prior to commencing work on any improvements for which the Variance or Conditional Use Permit is granted.
 3. To commence any work for which the Variance or Conditional Use Permit is granted within six months from the date of approval and to complete all work within one year of date of approval unless alternative dates are specified in the agreement.
- J. **Conditions.** Any conditions attached to the granting of the Variance or Conditional Use Permit are deemed necessary to protect the public health, safety, and general welfare. Such conditions may include requirements relative to:
1. Open space and buffers.
 2. Walls, fences and signs.
 3. Surfacing of parking areas.
 4. Location of points of vehicular egress and ingress.
 5. Landscaping and maintenance thereof.
 6. Noise, vibration, odor, lighting, and health hazards.
 7. Such other conditions as will make possible the development of the district in an orderly, efficient manner, and in conformity with the intended purpose of this ordinance.
- K. **Revocation.** If the conditions and safeguards set by the Zoning Commission are violated, the Variance or Conditional Use Permit, following a public hearing before the Zoning Commission, may be revoked by a majority vote of the Zoning Commission.
- L. **Fees.** Fees, in the amount specified in **Appendix E: Fee Schedule** shall accompany each application and appeal. When an application or appeal is withdrawn after scheduling and advertising for public hearing by the District Zoning Commission, the filing fee shall not be refunded to the applicant.

Example letter to neighbors within 200 ft.

From Applicant:
Joe Member
123 Alto street address
Alto, NM 88312

January 32, 2016

To Property Owner:
Jane Neighbor
123 Mailing Address Rd
City, State 88312

RE: Application to Alto Lakes Special Zoning District for Variance regarding _____.

Property for which application(s) submitted:
Address: 123 Alto Lakes St
Full Legal: Alto Lakes Subdivision Unit 33, Block 1, Lot 1

Dear Property Owner:

You are being given this notice that ___(Name)___ has filed an application for a Variance Permit. Copies of the application are included with this notice. Your property is located within 200 feet (300 feet if more than one building is involved) of the applicant's property line.

The Public Hearing on this application will be on ___(Date)___ in the Alto Lakes Golf and Country Club clubhouse during the Commission's Regular Meeting, which begins at 9:00 am. You are invited to testify at this hearing. In lieu of a personal appearance, you may submit a signed written objection or statement of support to: ALSZD, PO Box 578, Alto, NM 88312. Any written objection must be received by the ALSZD no later than one day before the above date set for the hearing.

Sincerely,
Attachment(s):
 Zoning Application -Conditional Use/Variance
 Plat of proposed improvements

Example ad

Legal # 10662 (Published 8/5, 8/17, 8/12 & 8/14/2015) ALTO LAKES SPECIAL ZONING DISTRICT NOTICE OF PUBLIC HEARING Notice is hereby given that the Alto Lakes Special Zoning District Commission will hold a public hearing on ___(date)___, during its Regular Meeting which begins at 9:00 am in the Alto Lakes Golf and Country Club clubhouse to hear public testimony and vote on the application of ___(Name)___ for the granting of a Variance applicable to the property located at ___(Legal address)___ commonly known as ___(Street Address)___.

