

ARTICLE 22. VARIANCES

Sec. 2201. Purposes.

The zoning administrator is empowered to grant variances in order to prevent or to lessen such practical difficulties and unnecessary physical hardships inconsistent with the objectives of the zoning ordinance as would result from a strict or literal interpretation and enforcement of certain of the regulations prescribed by this ordinance. A practical difficulty or unnecessary physical hardship may result from the size, shape or dimensions of a site or the location of existing structures thereon from geographic, topographic or other physical conditions on the site or in the immediate vicinity, or from population densities, street locations or traffic conditions in the immediate vicinity. The power to grant variances does not extend to use regulations, because of the flexibility necessary to avoid results inconsistent with the objectives of the zoning ordinance is provided by the conditional use provisions of this ordinance.

(Ord. No. 269.33, § 47, 9-21-82)

Sec. 2202. Authority of zoning administrator.

The zoning administrator may grant variances to the regulations prescribed by this ordinance with respect to fences and walls, site area, width, frontage, depth, coverage, front yard, rear yard, side yards, height of structures, distance between structures, off-street parking, parking facilities and off-street loading facilities, in accordance with the procedures prescribed in this article.

(Ord. No. 269.33, § 47, 9-21-82)

Sec. 2203. Application and fee.

- A. Application for a variance shall be made on a form as prescribed by the zoning administrator which shall include the following data:
1. Name, address and signature of the applicant, and the property owner as shown on the latest equalized assessment roll if the applicant is not the property owner. Signatures shall be notarized when filing is done by mail or not witnessed by Planning Department representatives.
 2. A signed statement on the application or attached to it, that the applicant is the owner of the property or is the authorized agent of the owner. If the applicant is not the property owner, the owner must also sign and date the application, and indicate that the applicant is authorized to make an application on that property. The owner's signature shall be notarized when filing is done by mail or not witnessed by Planning Department representatives.
 3. A public utility company or other agency with powers of eminent domain may make an application without the owner's authorization.
 4. Address or description, and the Assessor's Parcel Number of the property.
 5. Statement of the precise nature of the variance requested and the practical difficulty or unnecessary physical hardship inconsistent with the objectives of the zoning ordinance which would result from a strict or literal interpretation and enforcement of a specified regulation of this ordinance, together with any other data pertinent to the findings prerequisite to the granting of a variance prescribed in Section 2207 below.
- B. The application shall be accompanied by an accurate scale drawing of the site and any adjacent property affected, showing all existing and proposed locations of streets, property lines, uses, structures, driveways, pedestrian walks, off-street parking and off-street loading facilities and landscaped areas.
- C. The application shall be accompanied by a fee set by resolution of the board of supervisors sufficient to cover the cost of handling the application as prescribed in this article.
- D. After the application has been filed with the county zoning administrator, he shall give notice to the applicant of the time when the application will be considered, and he may give notice of the time to any other interested party.
- E. An application shall not be deemed complete until the public review requirements pursuant to the *California Environmental Quality Act (CEQA)*, Public Resources Code Section 21000, et seq, have been completed.

(Ord. No. 269.33, § 47, 9-21-82; Ord. No. 269.65, §§ 158 and 159, 10-28-08)

Sec. 2204. Investigation and report.

The zoning administrator shall make an investigation of the application and shall prepare a report thereon which shall be sent to the applicant.

(Ord. No. 269.33, § 47, 9-21-82)

Sec. 2205. Public hearing, notice.

The zoning administrator shall hold a public hearing on an application for a variance. Such hearing shall be held within forty-five (45) days of the date when the application is complete.

Notice of the hearing shall be given as set forth in Article 18, Section 1803 of this ordinance.

(Ord. No. 269.33, § 47, 9-21-82; Ord. No. 269.41, § 17, 1-9-96; Ord. No. 269.44, § 41, 7-29-97; Ord. No. 269.65, §160, 10-28-08)

Sec. 2206. Public hearing; procedure.

At a public hearing, the zoning administrator shall review the application and the statements and drawing submitted therewith and shall receive pertinent evidence concerning the variance, particularly with respect to the findings prescribed in Section 2207 below.

(Ord. No. 269.33, § 47, 9-21-82; Ord. No. 269.65, § 161, 10-28-08)

Sec. 2207. Action of zoning administrator.

- A. The zoning administrator may grant a variance to a regulation prescribed in this ordinance with respect to fences and walls, site area, width, frontage, depth, coverage, front yard, rear yard, side yards, height of structures, distances between structures or landscaped areas as the variance was applied for or in modified form, if, on the basis of the application, investigation and the evidence submitted, the zoning administrator makes the following findings:
 - 1. Strict or literal interpretation and enforcement of the specified regulation would result in practical difficulty or unnecessary physical hardship inconsistent with the objectives of the zoning ordinance.
 - 2. There are exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property which do not apply generally to other properties classified in the same zoning district.
 - 3. Strict or literal interpretation and enforcement of the specified regulation would deprive the applicant of privileges enjoyed by the owners of other properties classified in the same zoning district.
 - 4. The granting of the variance will not constitute a grant of special privilege inconsistent with the limitations on other properties classified in the same zoning district.
 - 5. The granting of the variance will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.
- B. The zoning administrator may grant a variance to a regulation prescribed in this ordinance with respect to off-street parking facilities or off-street loading facilities as the variance was applied for or in modified form, if, on the basis of the application, investigation and the evidence submitted, the zoning administrator makes the findings prescribed in paragraph A of this section and the following additional findings:
 - 1. Neither present or anticipated future traffic volumes generated by the use of the site or the uses of sites in the vicinity reasonably require strict or literal interpretation and enforcement of the specified regulation.
 - 2. The granting of the variance will not result in the parking or loading of vehicles on public streets in such a manner as to interfere with the free flow of traffic on the street.
 - 3. The granting of the variance will not create a safety hazard or any other condition inconsistent with the objectives of the zoning ordinance.
- C. A variance may be revocable, may be granted for a limited time period, or may be granted subject to such conditions as the zoning administrator may prescribe.
- D. The zoning administrator may deny a variance application.
- E. A variance shall become effective upon the expiration of ten (10) days following the date on which the variance was granted unless an appeal has been filed with the planning commission.

(Ord. No. 269.33, § 47, 9-21-82; Ord. No. 269.58, § 9, 1-27-04)

Sec. 2208. Notice of action by zoning administrator.

Within five (5) days following the date of the zoning administrator's decision, the zoning administrator shall give written notices by mail of the decision to the applicant and to all persons in the same manner as provided in Section 2205 above.

(Ord. No. 269.33, § 47, 9-21-82)

Sec. 2209. Appeals.

Appeal to planning commission. The applicant or any other directly affected person or party may appeal the decision of the zoning administrator in writing, setting forth his or her reason for such appeal to the commission. Such appeal shall be filed with the zoning administrator within eight (8) days after the mailing of notices of such decision. The appeal shall be placed on the agenda of the commission's next regular meeting after the zoning administrator's decision. The commission shall review the variance and shall approve, approve with conditions, or disapprove, based on the findings listed in Sections 2207.A. and B above. The decision of the commission shall be final unless appealed to the board of supervisors.

Appeal to board of supervisors. The applicant or any other directly affected person or party person may appeal the commission's decision in writing, setting forth his or her reason for such appeal to the board of supervisors. Such appeal shall be filed with the clerk of the board within eight (8) days after the commission decision. The appeal shall be placed on the agenda of the board's next regular meeting after the appeal is filed. The board shall review the variance decision and shall approve, approve with conditions, or disapprove, based on the findings listed in Sections 2207.A. and B above. The decision of the board shall be final.

Where an appeal is from a decision of the zoning administrator on an application for an extension of a variance permit, the appeal shall be processed in the same manner as for an appeal of a variance application described above.

Notice of the hearing of the appeal before the planning commission shall be given by the zoning administrator not less than ten (10) days prior to the time when the appeal will be considered by the commission, by mailing, postage prepaid, a notice of the time and place of the hearing, to the applicant and to the appellant (if the applicant is not the appellant) and to all persons in the same manner as provided in Section 2205 above.

Notice of the hearing of the appeal before the board of supervisors shall be given by the clerk of the board of supervisors not less than ten (10) days prior to the time when the appeal will be considered by the board, by mailing, postage prepaid, a notice of the time and place of the hearing, to the applicant and to the appellant (if the applicant is not the appellant) and to all persons in the same manner as provided in Section 2205 above.

The appeal shall be accompanied by a fee set by the board of supervisors sufficient to cover the cost of processing the appeal as described in this Article. The board of Supervisors may, but is not required to, refund the appeal filing fee if the board of supervisors determines that the appeal has merit due to their finding that an error was made in the record that was not the fault of the appellant.

(Ord. No. 269.33, § 47, 9-21-82; Ord. No. 269.40, § 1, 10-4-94; Ord. No. 269.52, § 4, 10-17-00; Ord. No. 269.63, § 57, 4-25-06; Ord. No. 269.65, § 162, 10-28-08)

Sec. 2210. Review by board of supervisors.

Within ten (10) days following the date of a decision by the zoning administrator on a variance application or on an application for extension of a variance, or on the revocation of a variance, the board of supervisors, on its own motion, may initiate proceedings to review the decision of the zoning administrator.

(Ord. No. 269.33, § 47, 9-21-82; Ord. No. 269.63, § 58, 4-25-06)

Sec. 2211. Action of the board of supervisors.

When a decision of the zoning administrator on a variance application or on an application for extension of a variance, or on the revocation of a variance is brought before the board of supervisors, either on appeal or on its own motion, the board may affirm, reverse or modify the decision of the zoning administrator, provided, however, that the board of supervisors may not reverse a decision of the zoning administrator denying an application for a variance or an application for an extension of a variance, nor may the board of supervisors modify a decision of the zoning administrator granting a variance or an application for an extension of a variance unless the board of supervisors shall, on the basis of the record transmitted by the zoning administrator and on the basis of such additional evidence as may be submitted, be able to make the findings prerequisite to the granting of a variance as prescribed and set forth in Section 2207 above.

A variance application or an application for extension of a variance which has been the subject of an appeal to the board of supervisors or which has been the subject of review by the board, shall become effective three (3) days after the date on which the application for the variance permit or the application for extension of the variance is granted and approved by the board of supervisors.

The revocation of a variance which has been the subject of an appeal to the board of supervisors or which has been the subject of review by the board shall become effective three (3) days after the decision of the board of supervisors to revoke the variance.

The clerk of the board of supervisors shall within three (3) days after the date of the decision of the board, give written notice of the decision, by mail, to the applicant and/or appellant (if the applicant is not the appellant) and to the zoning administrator.

(Ord. No. 269.33, § 47, 9-21-82; Ord. No. 269.63, § 59, 4-25-06; Ord. No. 269.65, § 163, 10-28-08)

Sec. 2212. Building permit.

Before a building permit shall be issued for any building or structure proposed as part of the approved variance permit, the zoning administrator shall certify that the proposed building location is in conformity with the site plan and conditions approved by the zoning administrator or the board of supervisors. Before a building may be occupied, the building official shall certify that the site has been developed in conformity with the site plan and conditions approved by the zoning administrator or board of supervisors.

(Ord. No. 269.33, § 47, 9-21-82)

Sec. 2213. Lapse of variance.

A variance which has been granted shall automatically lapse and become null and void one year following the date on which such variance became effective, unless the variance was granted for a longer period of time, or unless prior to the expiration of one year, a building permit is issued by the building official and construction is commenced and diligently pursued toward completion on the site which was the subject of the variance application, or commencement of the activity if a building permit is not required.

(Ord. No. 269.33, § 47, 9-21-82; Ord. No. 269.56, § 60, 9-10-03)

Sec. 2214. Extension of variance.

A variance which has been granted may be extended for an additional period of one year provided that prior to expiration of one year from the date when the variance originally became effective, an application for extension of the variance is filed with the zoning administrator. An application for extension of a variance shall be filed and processed in the manner set forth in Article 22 of this ordinance which governs the filing and processing of applications for variances.

The zoning administrator may grant an application for extension of a variance if he, or she, is able to make the findings prerequisite to the granting of a variance prescribed and set forth in Article 22 of this ordinance. The application for extension of a variance shall be denied if such findings cannot be made.

Within ten (10) days following the date of a decision of the zoning administrator on an application for extension of a variance, the decision may be appealed to the board of supervisors. If no appeal is filed within said ten-day period and if the

board of supervisors within said ten-day period does not initiate proceedings to review the decision of the zoning administrator as provided herein, the decision of the zoning administrator shall be final and conclusive.

(Ord. No. 269.33, § 47, 9-21-82; Ord. No. 269.63, § 60, 4-25-06)

Sec. 2215. Revocation of a variance.

When any applicable provision of this ordinance or when any condition or requirement of a variance has not been complied with, the zoning administrator shall notify the permit holder of the variance and shall give said person(s) a reasonable period of time within which to comply with said ordinance or condition or requirement. If the permit holder of the variance fails to comply with the ordinance or with said condition or requirement within such period of time, the zoning administrator shall give written notice to the permit holder of the variance that a hearing will be held by the planning commission on the matter of the revocation of the variance.

Notice of said hearing shall be given not less than ten (10) days nor more than thirty (30) days prior to the date of the hearing by either personal service of a copy of said notice on the permit holder of the variance or by sending a copy of the notice by certified mail, return receipt requested, to said permit holder of the variance. The notice shall state the reason or reasons why action is being taken for the revocation of the variance.

At said hearing, the planning commission shall hear all relevant testimony concerning the variance and the provisions of the ordinance which allegedly have not been complied with and the conditions or requirements which were imposed. If the planning commission finds that any of the applicable provisions of the ordinance have not been complied with, then the variance shall be revoked.

If the variance is revoked by the planning commission, the permit holder of the variance may within eight (8) days following the date of the decision of the planning commission, appeal the decision to the board of supervisors. Upon the making of the decision by the planning commission to revoke the variance, said variance shall be automatically suspended. If an appeal is filed or if the board of supervisors initiates a review of the decision to revoke the variance, the suspension shall remain in effect during the course of the appeal or review. If no appeal is filed within said eight (8) day period as provided herein, and if the board within said eight (8) day period does not initiate proceedings to review the decision of the planning commission as provided in Section 2210 of this ordinance, the decision of the planning commission shall be final and conclusive.

The appeal shall be filed with the clerk of the board of supervisors and shall state specifically wherein it is claimed that there was an error or abuse of discretion by the planning commission or wherein the decision is not supported by the evidence in the record.

Within five (5) days after the filing of an appeal, the zoning administrator shall transmit to the clerk of the board of supervisors the variance application, the minutes of the public bearing on the application, if any, the report of the zoning administrator, the findings and decision of the planning commission on the variance, the report of the zoning administrator on the failure of the appellant to comply with the provisions of the ordinance or with the conditions or requirements of the variance, the minutes of the hearing on the matter or revocation and the findings and decision of the planning commission on the matter of revocation of the variance.

Notice of the hearing of the appeal shall be given by the clerk of the board of supervisors not less than ten (10) days prior to the time when the appeal will be considered by the board of supervisors, by mailing, postage prepaid, a notice of the time and place of the hearing to the applicant.

(Ord. No. 269.33, § 47, 9-21-82; Ord. No. 269.61, § 1, 3-29-05; Ord. No. 269.65, § 164, 10-28-08)

Sec. 2216. New application.

Following the denial of a variance application or the revocation of a variance, no application for the same or substantially the same variance on the same or substantially the same site shall be filed within one (1) year of the date of denial of the variance application or revocation of the variance.

(Ord. No. 269.33, § 47, 9-21-82)

Sec. 2217. Variance to run with the land.

A variance granted pursuant to the provisions of this article shall run with the land and shall continue to be valid upon change of ownership of the site or structure which was the subject of the planned unit development application.

(Ord. No. 269.42, § 17, 5-7-96; Ord. No. 269.65, § 166, 10-28-08)

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