



# Planning Department Variance Procedure and Checklist

**Justification:** A Variance is a way of obtaining relief from a land use development standard or zoning requirement of the City's Municipal Code which should not be applied to a project, because of some unusual circumstance relating to the physical characteristics of the property. California State law provides that a Variance can only be granted when the strict application of the Code would deprive the property of privileges enjoyed by other properties in the vicinity under identical zoning, because of special circumstances applicable to the property. These special circumstances include size, shape, topography and location or surrounding.

The law also states a Variance shall not constitute a grant of special privilege inconsistent with the zoning limitations on other properties in the vicinity and in the same zone (Government Code Section 65905). Finally, the Government Code prohibits granting a Variance to authorize a land use or activity not normally allowed by the zoning covering the property. The Municipal Code in Section 10-3.1402 allows granting a Variance only when positive findings can be made in regard to the above requirements. An application must explain how the requested Variance will satisfy the required findings.

**Application:** An application for a Variance must include submittal of the following:

- An application form signed by the property owner
- The applicable filing fee (Cont the Planning Department for applicable fees.)
- Ten (10) copies of a Site Plan clearly depicting the property for which the Variance is requested
- A letter stating the reasons for the request and establishing a basis for its consideration by the Planning Commission.

Applicants should discuss the project with the Planning Department Staff to determine the details of the application requirements. Applicants should note that incomplete plans submitted for formal processing may be returned for correction. Therefore, applicants are encouraged to submit copies of a preliminary plan for Staff Report prior to formal submittal. The Planning Department Staff will review and comment on the plan, so that necessary changes or additions can be made prior to preparation of the final application and the submittal deadline.

**Review Process:** Upon receipt of the application, the Planning Department Staff will prepare a public hearing notice and arrange for publication prior to the public hearing. Notices will also be mailed at least then (10) days prior to the hearing to property owners within 300 feet of the property. A request for comment will be sent to City Departments and local agencies that may be affected by the application. If deemed necessary, a meeting with the property owner may be requested.

Upon receipt of comments, the Planning Staff will prepare a Staff Report for the Planning Commission. The Staff Report will contain an evaluation of the proposal and may include alternatives or recommendations for conditions of approval. The Staff Report and meeting agenda will be sent to the Planning Commission and the applicant on the Thursday preceding the public hearing. Questions on the Staff Report may be directed to the Planning Staff prior to the hearing.

**Planning Commission Action:** At the public hearing, input will be obtained from the applicant and any interested parties. It is the policy of the Commission to require that the applicant/property owner or his authorized representative to be present at the public hearing. At the conclusion of the public hearing, the Planning Commission may 1) take action the request or continue the matter for preparation of additional information; and 2) may approve, conditionally approve or deny the Variance application. Any person dissatisfied with the action of the Planning Commission may appeal said action. Appeals must be filed within ten (10) days of the action. Such appeals must be filed in triplicate with the City Clerk and shall state the grounds of the appeal. The appeal must be accompanied by the required filing fee.

**City Council Action on Appeals:** Upon receipt of an appeal, within the specified ten (10) day period, a public hearing will be scheduled and notice given in the same manner as that prescribed for the Commission hearing. The appeal body may affirm the action, reverse it or modify it in whole or part. A fourth/fifths vote is required to grant, in whole or part, an appeal of an application denial.

**Expiration of Variance Applications:** The Variance approval is valid for a period of six (6) months, except where construction has actually commenced and diligently prosecuted to completion. Otherwise, the Variance shall automatically become null and void and of no effect.