



Variance



**Santa Clara County
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What is a Variance?

A variance is a procedure established by State law and the County Zoning Ordinance to enable administrative relief from development standards of the Zoning Ordinance when such deviation is justified by two required findings (see below). Variances may be granted when certain physical characteristics of the land (e.g.: size, shape and topography) warrant a deviation of the regulations to enable reasonable use and development of the property. The findings expressly prohibit the indiscriminate granting of special privileges.

Each variance is a unique case that is granted or denied on the basis of the documents, field inspections, and testimony presented at the public hearing. For a variance to be granted for a given situation, the Zoning Administrator must be able to clearly apply BOTH of the following two findings (§5.65.020):

- 1) that because of special circumstances applicable to subject property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance is found to deprive subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification; and
- 2) that the grant of a variance permit would not constitute a grant of special privilege inconsistent with the limitation upon other properties in the vicinity and zone in which subject property is situated.

Despite frequent misconceptions, the following arguments do NOT justify variance approval:

- A variance would result in more economical, practical, convenient, or profitable development of my property.
- My building exists as a violation, constructed without permits and not in compliance with development standards. I am applying for a variance to resolve the violation.

- The proposed building design and completed plans were based on a misinterpretation of the regulations or a miscalculation of the property line location.
- Several nearby properties are developed similarly to my proposal.
- The County has in the past granted comparable variances elsewhere.
- My proposal is an extremely minor deviation from the required standard.

If a variance is approved, the Zoning Administrator may include conditions deemed reasonable and necessary under the circumstances to preserve the integrity and character of the district and to secure the general purposes of the Zoning Ordinance and the General Plan.

Application Procedure

Application forms and a list of submittal requirements may be obtained at the Planning Office counter. The applicant must submit plans, mailing lists, copies of deeds, certain forms, and the current fee (see fee schedule) to the Planning Office. A staff member reviews the submitted materials to make sure all needed items and signatures are present. The application is taken in, a file number is assigned, and the applicant is given a receipt along with a copy of the submitted application form.

Processing involves creating a file, distributing copies of plans to various departments and agencies for review and recommendations, collecting and interpreting the various agency comments and recommendations, and evaluating the completeness of the application. When the application is deemed complete, it is scheduled for the next available hearing date.

At least 10 days prior to the variance hearing, the owner, applicant, and all property owners within 300 feet of the exterior boundaries (minimum of 24 properties) of the subject property are notified of the hearing. Notice of upcoming hearings is also published in the newspaper.

The Variance Hearing

The variance hearing is the formal conclusion of the review and decision-making process. At the hearing the Zoning Administrator summarizes the issues and considers public testimony. A decision to grant or deny the proposal is usually rendered at the close of the hearing. In some instances, an item may be taken under advisement or continued to a future hearing. Formal documentation of the decision is normally mailed to the applicant within a week of the decision.

Time Limitations

The time limit for a variance is normally two years from the effective date. If a building permit for the approved variance is not obtained within the allotted time period, the variance will expire.

An extension of time may be granted by the Zoning Administrator if an application is filed with the Planning Office prior to the expiration date. Applications for extensions of time must be accompanied by payment of a fee in an amount prescribed by the Board of Supervisors.

Appeals

The decision or any specific condition imposed by the Zoning Administrator may be appealed to the County Planning Commission within 15 calendar days. Appeals are filed, along with the current fee, at the Planning Office. The Planning Commission's decision may be subsequently appealed to the County Board of Supervisors.