

PROPOSED AMENDED CHAPTER

Chapter 17.66 – VARIANCES AND MINOR DEVIATIONS

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17.66.010 - Purpose.

- A. When practical difficulties, unnecessary hardships, or results inconsistent with the general intent and purpose of this title would occur from its strict interpretation or enforcement, a variance or minor deviation from the provisions of this title may be granted under such conditions as may be deemed necessary to secure the public health, safety, and welfare and ensure that substantial justice be done, not only to the applicant but to persons and other property that might be affected by such variance or minor deviation.
- B. No variance or minor deviation may be granted to allow a use not permitted in the applicable zone established by this title.
- C. No variance or minor deviation granted under the specific circumstances of this chapter will be construed as an amendment to this title.

17.66.020 – Application process.

An application for a variance or minor deviation must be filed and will be reviewed in accordance with Chapter 17.91 (Uniform Procedures) of this title.

17.66.030 - Decision-making authority for variances.

- A. Planning Commission. In general, the planning commission will have primary authority to act on an application for a variance except in the circumstances outlined in subsection (B).
- B. City Council. The city council will act on an application for a variance where: (1) there is an appeal of the planning commission decision; (2) the majority of the city council orders a review of the planning commission decision; or (3) there are multiple entitlements or approvals required for the proposed project, and at least one of which requires city council approval, in which case the planning commission will prepare a recommendation and findings for the city council.

17.66.040 - Public hearing date and notice.

- A. The department will set the hearing date (initially before the planning commission)

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following compliance with the California Environmental Quality Act.

- B. Notice of the public hearing will be provided in accordance with Chapter 17.92 (Public Hearing Notice Procedures) of this title.

17.66.050 - Public hearing conduct, findings, decision, notice, and appeal or review.

- A. Hearing Conduct. At the hearing, the reviewing body may consider all relevant evidence, including but not limited to applicable staff reports and public testimony. The hearing maybe continued to a definite date and time without additional public notice.
- B. Findings. In issuing their decision, the reviewing body must consider and make findings on the following:
 - 1. Because of special circumstances applicable to the subject property, including size, shape, topography, location or surroundings, the strict application of this title deprives such property of privileges enjoyed by other property in the vicinity and same zoning district.
 - 2. The variance will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and the same zoning district and is subject to any conditions necessary to assure compliance with this finding.
 - 3. The variance will not be materially detrimental to the public welfare or injurious to property and improvements in the zoning district and vicinity in which the property is located.
 - 4. The variance is consistent with the general purpose and intent of the general plan and this title.
 - 5. The variance will not authorize a use or activity which is not otherwise expressly authorized by the zone regulations governing the property.
- C. Decision.
 - 1. Failure to make all of the required findings under subsection (B)(1)-(5) will require denial of the application.
 - 2. The decision will set forth the findings and any conditions deemed necessary to protect the health, safety and welfare of persons or property in the vicinity of the use and in the city as a whole. The findings will be based on substantial evidence in view of the whole record.
- D. Notice. The decision and findings of the planning commission will be filed with city council within ten days after its announcement of a decision, and a copy of the decision will be sent by certified mail to the applicant at the address shown on the application.
- E. Appeal. Except for recommendations to the city council, the action of the planning commission is final unless appealed pursuant to the procedures in Chapter 17.94 (Appeals) of this title.

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- F. City Council Review. The city council, by majority vote of its total membership and at any time within 30 days of notice of the planning commission's decision may issue an order of review, de novo, relating to the approval of a variance.
- G. Effective Date.
 - 1. Decisions of the planning commission will become effective after the expiration of the time limits for an appeal and a city council order of review.
 - 2. Decisions of the city council will be effective upon the date specified in the decision.

17.66.060 - Modification.

A request for changes to a variance will be treated as a new application. The proposed modifications will be considered by the body which granted the variance at a public hearing noticed and conducted in the same manner as required for the initial granting of the variance. No such modification may be granted unless the granting body can make all of the findings in Section 17.66.050(B) of this chapter. The decision to modify a variance by the planning commission will be subject to appeal or city council review, taken in the time and manner set forth in this chapter.

17.66.070 - Expiration.

Any variance will be void if the use or development associated with the variance approved is not commenced within the time specified in the resolution approving such variance, or, if no time is so specified, if commencement does not occur within one year from the date the variance is granted. The granting body, upon good cause shown by the applicant, may extend the time limitation imposed for a period not to exceed one year. Notwithstanding the foregoing, any variance approved in conjunction with the approval of a tentative map or tentative parcel map will be extended for the same period of time that a tentative map or tentative parcel map may be extended pursuant to Chapter 16.04 (County Subdivision Code) of this code.

17.66.080 - Revocation.

A variance may be revoked or modified in accordance with the procedures set forth in Section 17.91.100. (Revocation/Modification) of this title.

17.66.090 - Minor deviations.

- A. Circumstances. The director may grant certain minor deviations to established development standards in the following circumstances, provided the request is consistent with the general plan, does not create additional conflicts with any other provisions of this title, and does not adversely affect any adjacent or nearby properties, or the general public health, safety, and welfare:
 - 1. A decrease of not more than ten percent of the required building site lot size, width or depth.
 - 2. A decrease of not more than ten percent of the required front, side, or rear yard setback.

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3. An increase of not more than ten percent in the permitted height of the fence or wall, with the exception of fenced recreational enclosures.
4. An increase of not more than ten percent of the permitted projection of eaves, overhangs, etc., into any required front, rear or side yard.
5. An increase of not more than ten percent in the maximum allowable lot coverage.
6. An increase of not more than ten percent in the permitted height of buildings.
7. A single story addition built along existing building lines that encroaches into a side yard where that side yard was legally established but is nonconforming.
8. The permitted height of solid material fencing allowed in the rear and side setbacks where there is a grade differential of more than 36 inches between adjoining lots in any residential zone.
9. An encroachment into a required front yard of a developed residential lot, which does not project closer to the front property line than the forwardmost building line.

B. Procedure.

1. Application. Application for a minor deviation must be made and will be reviewed in accordance with Chapter 17.91 (Uniform Procedures) of this title.
2. Notice of Filing. Notice of the filing of a complete application will be given to all owners of contiguous and adjacent properties (within a 500 foot radius) by regular mail at least 10 days prior to the rendering of a decision by the director.
3. Director Decision. The director may grant, deny, or grant with conditions, the application. Notice of the decision will be mailed to the applicant and all owners of contiguous and adjacent properties (within a 500 foot radius). The decision of the director will be final unless timely appealed to the planning commission in accordance with the applicable provisions of Chapter 17.94 (Appeals) of this title.
4. Any appeal to the planning commission, or subsequently to the city council, will be subject to the applicable provisions of Chapter 17.94 (Appeals) this title.