

SECTION 877

VARIANCES

A. CONDITIONS NECESSARY TO GRANTING OF A VARIANCE

A Variance may be granted only when all of the following conditions exist in reference to the property being considered.

1. There are exceptional or extraordinary circumstances or conditions applicable to the property involved which do not apply generally to other property in the vicinity having the identical zoning classification.
2. Such Variance is necessary for the preservation and enjoyment of a substantial property right of the applicant, which right is possessed by other property owners under like conditions in the vicinity having the identical zoning classification.
3. The granting of a Variance will not be materially detrimental to the public welfare or injurious to property and improvement in the vicinity in which the property is located.
4. The granting of such a Variance will not be contrary to the objectives of the General Plan.

B. PROCEDURE

1. Initiation of Proceedings

A proceeding for the consideration of a Variance may be initiated by the Commission, Board or verified application.

2. Application

a. Filing

Application for a Variance shall be filed by the owner or lessee of the property for which the Variance is sought, or by the authorized representative of either the owner or lessee.

b. Form and Contents

Application shall be made to the Commission on forms furnished by the Public Works & Development Services Department and shall set forth in detail the reasons for the requested Variance, shall show how the conditions set forth in Section 877-A are satisfied, and shall provide other information as may be prescribed by the Commission to assist in determining the validity of the request.

(Amended by Ord. T-252 adopted 12-9-80)

c. Verification

The Director shall verify the accuracy and completeness of the application. The date of verification shall be noted on the application. Such verification shall be made within fifteen (15) days of the filing of such application.

d. Formal Acceptance

If the application is found to be accurate and complete, it shall be formally accepted. The date of formal acceptance shall be noted on the application. Acceptance of the application does not constitute an indication of approval.

3. Filing Fee

When the application for a Variance is filed, a fee as provided in Section 879 shall be paid for the purpose of defraying the costs incidental to the proceedings.

4. Department Investigation

The Public Works & Development Services Department shall investigate the facts bearing on the case to provide information necessary for action consistent with the intent and purpose of this Division.

(Amended by Ord. T-252 adopted 12-9-80)

5. Commission Public Hearing Date and Notice

- a. The hearing date shall be set by the Director for not less than fifteen (15) nor more than forty (40) days after the formal acceptance of an application.
- b. Notice of all public hearings shall be given by mail as hereinafter provided and shall contain the time and place of the hearing and other pertinent data presented in the application.
- c. Notice shall be mailed not less than ten (10) days before the date set for the hearing to owners of property within a radius of three hundred (300) feet of the external boundaries of the property described in the application, using for this purpose the last known name and address of such owners as are shown on the latest adopted tax roll of the County.
- d. For minor deviations not requiring notice, see Section 877-E.

6. Commission Public Hearing and Decision

- a. The Commission shall, not less than ten (10) days after the legal notice of a public hearing on a Variance Application, hold said public hearing.
- b. A decision by a majority vote of the members of the Commission voting shall be final unless the application was filed and heard concurrently with any application requiring a Board hearing or unless the decision is appealed. A tie vote shall constitute denial.

(Added by Ord. 490.171 re-adopted 4-24-79)

- c. The Commission shall announce its decision by resolution within ten (10) days after the conclusion of the hearing. Said resolution shall approve, approve with stated conditions, or disapprove the application. The resolution shall be filed with the Clerk of the Board and mailed to the applicant at the address shown in the application.

(Amended by Ord. 490.171 re-adopted 4-24-79)

C. APPEAL OF COMMISSION DECISION

1. a. An appeal may be made by the applicant, a County Department Director, any member of the Board or by a property owner within three hundred (300) feet of the external boundaries of such property. Exception: Property owners in the R-C (Resource Conservation), TPZ (Timberland Preserve), A-E (Exclusive Agricultural), AL (Limited Agricultural), A-2 (General Agricultural), R-R (Rural Residential), R-A (Single Family Residential-Agricultural), AC (Agricultural Commercial), and RCC (Rural Commercial Center) Districts shall have the right of appeal if any part of their property is within one mile of the external boundaries of the subject property measured along a direct line. The appeal shall be made by filing a written notice of appeal with the Clerk of the Board within fifteen (15) days of the Commission's action stating the reasons therefore. Such hearing shall be de novo, except where the appeal is to a condition imposed or not imposed in which event the hearing and the decision of the Board shall relate only to such condition.

(Amended by Ord. 490.44 adopted 7-2-68; Ord. 490.84 adopted 4-10-73; Ord. 490.171 re-adopted 4-24-79; Ord. 490.196 adopted 3-11-80)

- b. The appeal of a Commission decision on any application filed and heard concurrently with other applications shall require a Board hearing of each of those applications.

(Added by Ord. 490.101 adopted 9-10-74)

2. Board Public Hearing Date and Notice

- a. The hearing date shall be set by the Clerk of the Board and shall be held not less than fifteen (15) nor more than forty (40) days after the expiration date for the filing of an appeal.
- b. Notice shall be given as provided in Section 877-B.5.b and c.

3. Board Public Hearing and Decision

- a. The Board shall, not less than ten (10) nor more than forty (40) days after the legal notice of a public hearing on a Variance Application, hold said public hearing, which hearing shall be de novo and the same conditions set forth in Section 877-A must exist.
- b. Any interested person may appear at said hearing and submit evidence; that such person may include an individual who is not entitled to appeal a decision of the Commission or receive notice of the hearing as provided herein.
- c. The Board decision shall be made within forty (40) days of the hearing and shall be final unless appealed to a court of competent jurisdiction. In the event such action is not appealed within thirty (30) days following the Board decision, it shall be presumed that the petitioner to a court has not acted with the due diligence in asserting his rights and the action of the County shall be deemed to be final.

D. VOIDING OF VARIANCES

1. The Commission may revoke any Variance for noncompliance with the conditions set forth in granting said Variance after notice and hearing. Upon instruction from the Commission, the Public Works and Planning Department shall cause ten (10) days notice of hearing to be given to the holder of the Variance which is being considered for revocation together with such other persons set forth in Section 877-B.5.b and c. The action of the Commission in revoking any Variance may be appealed to the Board in the same manner and by the same person as an appeal from a decision of the Commission in granting or denying a Variance.

(Amended by Ord. T-091-374 adopted 8-23-16)

2. Each Variance granted under the provisions of this Section shall become void when:
 - a. The construction authorized by said Variance is not commenced within one (1) year after the granting of said Variance or is not pursued diligently to completion, or
 - b. There is a cessation in the occupancy or use of land or buildings authorized by such Variance for a period in excess of one (1) year.
 - c. The parcels authorized by said Variance are not created within one (1) year after the granting of said Variance or an application for tentative map is not filed within said one (1) year. However, in the case of a Variance for which a tentative or vesting map has been timely filed, expiration of said Variance shall be concurrent with the expiration date of the tentative or vesting map and may be extended in the same manner as said map.

(Added by Ord. T-026-287 adopted 11-12-85)

3. Where circumstances beyond the control of the applicant cause delays which do not permit compliance with the time limitation established in Section 877-D.2, the Commission may grant a maximum of two one (1)-year extensions of time. Application for such extension of time must set forth in writing the reasons for the extension and must be filed with the Public Works & Development Services Department before the expiration of the Variance.

(Amended by Ord. T-091-374 adopted 8-23-16)

E. VARIANCE PERMITTED INVOLVING MINOR DEVIATION

1. When, in the public interest, the Director may consider and render decisions on applications involving minor deviations from the provisions of this Division, limited to the following:

(Amended by Ord. T-252 adopted 12-9-80)

- a. Area and lot dimension requirements may be reduced by not more than ten (10) percent of that required in the District.

(Amended by Ord. 490.27 adopted 5-31-66)

- b. Yard requirements may be reduced by permitting portions of a building or structure to extend into and occupy not more than ten (10) percent of the area of a required yard.

(Amended by Ord. 490.16 adopted 11-17-64)

- c. Maximum building height requirements may be increased by not more than ten (10) percent.
- d. The reconstruction or remodeling of nonconforming buildings may be permitted if, in the said Director's judgement, it will bring such buildings and subsequent use into greater conformity with the use permitted in the district.
- e. Wall and fencing requirements in the "C," "M," and "T-P" Districts may be waived, provided that adjacent "R" District parcels are proposed for non-residential use as shown on an adopted general plan.

(Added by Ord. 490.51 adopted 11-19-68)

(Sec. 877-E.1 amended by Ord. 490.44 adopted 7-2-68; Ord. 490.100 adopted 7-16-74; and Ord. 490.101 adopted 9-10-74)

- 2. Such decision shall be based on the provisions of Section 877-A.
- 3. The Director shall make such decisions within fifteen (15) days of the date of the filing of such application.

(Amended by Ord. T-252 adopted 12-9-80)

- 4. The denial by the said Director of an application involving a minor deviation shall not prohibit or affect the right of the applicant to file an application for a Variance under Section 877-B.

F. REAPPLICATION FOR A VARIANCE

No person, including the original applicant, shall re-apply for a similar Variance on the same land, building or structure within a period of one (1) year from the date of the final decision on such previous application, unless such decision is a denial without prejudice.