

# VARIANCE INFORMATION

## What is a Variance?

A Variance is permission to depart from the development regulations in the zoning code. Variances provide the discretion and flexibility to resolve difficulties or hardships that may be inappropriate where special or extraordinary circumstances occur on the property.

These circumstances do not mean economic hardship; rather, they refer to topographic or physical attributes of the site that do not allow for the development standards of the Zoning District to be applied.

## When is a Variance needed?

A Variance may be needed in order to develop property when the strict application of a zoning regulation, such as maintaining a required yard area, cannot be met because of a physical limitation on the specific piece of property.

For example, a property owner of a hillside lot finds that the required front yard setback prohibits building a garage on the only flat part of the yard. All of the neighboring houses are built on flat lots and have garages. A Variance may be able to provide the relief needed from the strict adherence to the setback so that the garage can be built.

## Major versus Minor Variance

A **Major Variance** involves any of the following provisions:

- 1) Allowable activity types or facility types;
- 2) Maximum number of living units;
- 3) Minimum lot area, except in the situation mentioned in Section 17.106.010B;
- 4) Maximum floor-area ratio;
- 5) Maximum size of Commercial or Manufacturing establishments;
- 6) Restriction on over-concentration of Residential Care, Service-Enriched Permanent Housing, Transitional Housing, and Emergency Shelter Residential Activities as set forth in Section 17.102.212B;
- 7) Any variance application that requires development of an Environmental Impact Report;
- 8) Any variance application referred by the Director of City Planning to the City Planning Commission for decision.

A **Minor Variance** is a variance which does not involve any of the provisions listed above.

## REQUIRED VARIANCE FINDINGS PURSUANT TO SECTION 17.148.050

Variations are granted only when all of the first five of the following findings can be made (variances for projects involving one or two residential dwellings units on a single lot are only granted when all six of the following findings can be made):

<b>Unique Circumstance that is Specific to the Property</b>	The strict compliance with the specified regulation would result in practical difficulty or unnecessary hardship inconsistent with the purposes of the zoning regulations, due to unique physical or topographic circumstances or conditions of design; or as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution improving livability, operational efficiency or appearance.
<b>Minimizes the Differences Between Properties in the Same Zoning District</b>	That strict compliance with the regulations would deprive the applicant of privileges enjoyed by owners of similarly zoned property; or as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution fulfilling the basic intent of the applicable regulation. <sup>1</sup>
<b>No Adverse Impacts to the Neighborhood</b>	That the variance, if granted, will not adversely affect the character, livability, or appropriate development of abutting properties of the surrounding area, and will not be detrimental to the public welfare or contrary adopted plans or development policy.
<b>No Special Privilege</b>	That the variance will not constitute a grant of special privilege inconsistent with limitations imposed on similarly zoned properties or inconsistent with the purposes of the zoning regulations.
<b>Project Complies with the Regular Design Review Criteria</b>	That the elements of the proposal requiring the variance (e.g. elements such as buildings, walls, fences, driveways, garages and carports, etc.) conform with the regular design review criteria set forth in the design review procedure at Section 17.136.050.

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<sup>1</sup> The finding of unique circumstance is slightly different for Adult Entertainment activities. Please refer to the full text of Section 17.148.050 of the Zoning Ordinance for the language for these activities.



**No Increase In the Loss of Sunlight, Views, or Privacy For the Neighbors**

*-or-*

**Design is Consistent With a Majority of the Neighbors**

*(Required only for projects involving one or two residential dwelling units on a single lot)*

That, if the variance would relax a regulation governing maximum height, minimum yards, maximum lot coverage or building length along side lot lines, the proposal also conforms with **at least one** of the following criteria:

- a. The proposal when viewed in its entirety will not adversely impact abutting residences to the side, rear, or directly across the street with respect to solar access, view blockage and privacy to a degree greater than that which would be possible if the residence were built according to the applicable regulation and, for height variances, the proposal provides detailing, articulation or other design treatments that mitigate any bulk created by the additional height;

**-OR-**

- b. Over 60 percent of the lots in the immediate vicinity are already developed and the proposal does not exceed the corresponding as-built condition on these lots and, for height variances, the proposal provides detailing, articulation or other design treatments that mitigate any bulk created by the additional height. The immediate context shall consist of the five closest lots on each side of the project site plus the ten closest lots on the opposite side of the street (see Illustration I-4b); however, the Director of City Planning may make an alternative determination of immediate context based on specific site conditions. Such determination shall be in writing and included as part of any decision on any variance.



# CITY OF OAKLAND VARIANCE FINDINGS

*A Variance is permission to depart from the development regulations in the zoning district. Variances provide the discretion and flexibility to resolve difficulties or hardships that may be inappropriate where special or extraordinary circumstances occur on the property. These circumstances do not mean economic hardship; rather, they refer to topographic or physical attributes of the site that do not allow for the development standards of the Zoning District to be applied.*

*Proposals requiring a Variance may only be granted upon determination that the proposal conforms to the following Variance criteria set forth in Section 17.148.050:*

**Please indicate the way in which the proposal meets the following required criteria. Attach additional sheets if necessary.**

1. Strict compliance with the specified regulations would result in practical difficulty or unnecessary hardship inconsistent with the purposes of the Zoning Regulations, due to unique physical or topographic circumstances or conditions of design; or, as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution improving livability, operational efficiency, or appearance:

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2. Strict compliance with the regulations would deprive the applicant of privileges enjoyed by owners of similarly zoned property; or as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution fulfilling the basic intent of the applicable regulation:

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3. The variance, if granted, will not adversely affect the character, livability, or appropriate development of abutting properties or the surrounding area, and will not be detrimental to the public welfare or contrary to adopted plans or development policy:

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4. The variance will not constitute a grant of special privilege inconsistent with limitations imposed on similarly zoned properties or inconsistent with the purposes of the Zoning Regulations:

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5. That the elements of the proposal requiring the variance (e.g. elements such as buildings, walls, fences, driveways, garages and carports, etc.) conform with the Regular Design Review criteria set forth in the design review procedure at Section 17.136.050:

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6. That the proposal conforms in all significant respects with the Oakland General Plan and with any other applicable guidelines or criteria, district plan, or development control map which have been adopted by the Planning Commission or City Council:

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7. **For proposals involving one or two residential dwelling units on a lot:** That, if the variance would relax a regulation governing maximum height, minimum yards, maximum lot coverage or building length along side lot lines, the proposal also conforms with **at least one** of the following criteria:

a. The proposal when viewed in its entirety will not adversely impact abutting residences to the side, rear, or directly across the street with respect to solar access, view blockage and privacy to a degree greater than that which would be possible if the residence were built according to the applicable regulation and, for height variances, the proposal provides detailing, articulation or other design treatments that mitigate any bulk created by the additional height:

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**-OR-**

b. Over 60 percent of the lots in the immediate vicinity are already developed and the proposal does not exceed the corresponding as-built condition on these lots and, for height variances, the proposal provides detailing,



articulation or other design treatments that mitigate any bulk created by the additional height. The immediate context shall consist of the five closest lots on each side of the project site, plus the ten closest lots on the opposite side of the street (see Illustration I-4b); however, the Director of City Planning may make an alternative determination of immediate context based on specific site conditions. Such determination shall be in writing and included as part of any decision on any variance.

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