

ABOUT VARIANCES

This explains 1) what a "variance" is, 2) how variances fit into our efforts to shape our surroundings, and 3) how you can participate in the decision-making process.

What is a Variance?

Land use rules say what kinds of uses can go where in a community. They also regulate what happens on an individual piece of property. Things like building height limits and parking space requirements are examples of these kinds of rules. Typically these rules are found in a city or county's zoning code.

A landowner may feel that one or more rules impose a unique hardship. If so, one option is for the owner to request to be excused from complying with that rule. This is called a variance (because the owner is allowed to "vary" from the rules that usually apply).

General Concept

Landowners tend to ask for a variance when the physical aspects of property pose unique challenges. Examples include lot size, shape, terrain, location, or surroundings. For example, a lot with large heritage trees may need an exception to a setback requirement in order to be built on.

The goal of granting a variance is to enable property to be used in a practical manner. Variances are, in essence, permission to break rules that others must follow. As a result, variances are not granted easily.

When deciding whether to grant a variance, decision-makers must make written findings explaining why a variance is or is not justified. These explanations must be backed up with facts that also become part of the written record of the decision. Generally, financial hardship, community benefit, or the worthiness of the project is not a consideration in determining whether to approve a variance.

What if the problem is that a landowner wants to use property in a way that is not allowed in a zone? An example is someone who wants to locate a business in a residential zone. The solution to that problem would be to seek a zone change, not a variance.

Decision-Making Process

Decision-makers want to hear from those who have opinions or information about whether to approve a variance. If you want to share your thoughts, see "Preparing for Public Hearings" on the back of this sheet for some tips.

Key Questions

- What special circumstances justify granting a variance?
- How does enforcing of the rules deprive the property owner of privileges that others enjoy?
- What kinds of conditions can be imposed on a variance to make sure that everyone is treated fairly?

To Learn More

- Planner's Training Series, "The Variance" Governor's Office of Planning and Research (1997) available at www.ceres.ca.gov/planning/var/variance.htm#what_anchor
- *The Planning Commissioner's Handbook*, League of California Cities, 2005, Chapter 4: The Planning Framework (www.ca-ilg.org/pch4)
- California Government Code section 65906 (accessible from www.leginfo.ca.gov/calaw)
- Solano Press (www.solano.com) also offers a number of land use related publications for purchase

PREPARING FOR PUBLIC HEARINGS

Opportunities for Input: Meetings and Letters

There are a number of ways to share your views with decision-makers. One is to participate in public hearings or other kinds of gatherings during which public input is sought. Another is to send letters and other written materials in advance of a meeting.

General Communications Tips

- Focus Your Message

You may have lots of concerns. See if they can be grouped into categories or themes. Choose two or three of your most important themes or concerns to emphasize. Otherwise, you risk overloading your listeners and possibly diminishing your effectiveness. It's not how much you say, it's how well you say it.

Start with your basic position (for example, "I support the proposed specific plan"). Then explain your connection to the issue (for example, "I live in the neighborhood covered by the plan"). Then explain the reasons for your position. It can be persuasive to think about the values underlying these reasons. ("I believe the plan fairly balances the need for affordable housing with the need for urban open space.") Tie your position to larger community interests. ("For our businesses to thrive, we need workforce housing.")

- Organize Supporting Materials

You may have written materials you want to share with decision-makers. Make sure that you have at least enough copies for each member of the decision-making body plus one for staff. If you have a lot of documentation, think about submitting it in advance. A page explaining what a larger packet contains can be helpful.

To Participate in a Meeting

- Get the Agenda and Other Information

The meeting agenda explains what issues are up for discussion and provides other useful information. Agendas usually are prepared three days (72 hours) in advance of a meeting. Many agencies post agendas on their websites. Another option is to ask that an agenda be sent to you. You can also pick up a copy. Staff reports are another helpful source of information.

A Note about Civility

Your goal is to persuade decision-makers to see the issue your way. Focus on the merits of your position. Even if you disagree about what's best for the community in this situation, it doesn't mean someone is a bad person. Questioning others' motives or intelligence, being hostile, engaging in name-calling or making threats will not reflect well on you or the position you are urging.

No matter how passionate you are about an issue, conduct yourself in a way that will add to your credibility and standing as a thoughtful member of your community.

Staff may be able to tell you at what point public input will be sought at the meeting and what you need to do to be recognized to speak. Be prepared to wait until the item you are interested in is called.

- Indicate You Want to Speak

The presiding official will generally ask for people who want to speak to come forward. Some agencies use a speakers list to help the presiding official manage the meeting better (for example, if lots of people want to speak, there may be time limits for each speaker).

- Make Smart Use of Your Time

Listen carefully to what others say. Try to find common interests and values. Try to not repeat their comments (although you may want say if you agree what someone else said). If you are part of a group, coordinate your remarks to avoid repeating each other.

- Be Prepared for Questions

Answer as best as you can. It's okay to say that you don't know or that a given question would be a good one to research.

About Public Hearings

A public hearing is a relatively formal proceeding. A typical one involves:

- A report to decision-makers, given by a staff member or consultant who has been working on the item;
- A statement by the project applicant or proponent (the person asking for the decision); and
- Statements from members of the public who may 1) support the proposed action, 2) have concerns that they would like decision-makers to address, and 3) oppose the action under any circumstances.

The decision-making body will then decide what to do by voting. If it needs more time to get more information or think about the issues raised at the hearing, the body may postpone a decision until another meeting.