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# VARIANCE INFORMATION

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## 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. A "**Major Variance**" is the relaxation of a specific requirement in the zoning regulations which 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 17.106.010.B;
- 4) Maximum Floor Area Ratio (FAR), except for One-Family Dwellings and Two-to Four-Family Dwellings;
- 5) Maximum size of Commercial or Industrial 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.

B. Minor Variance. A "**Minor Variance**" is the relaxation of a specific requirement in the zoning regulations which does not involve any of the provisions listed in Subsection A of this Section and exceeds the allowance for minor zoning exceptions in Subsection C of this Section.





# 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 and occupants 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 Design Review criteria set forth in the design review procedure in Chapter 17.136:

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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-Family Residential Facilities on a lot:** That, if the variance would relax a regulation governing maximum height, minimum yards, maximum lot coverage or maximum floor area ratio, the proposal also conforms with **at least one** of the following additional 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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