



MARIN COUNTY  
COMMUNITY DEVELOPMENT AGENCY  
BRIAN C. CRAWFORD, DIRECTOR

**VARIANCE FACT SHEET**

**DEFINITION**

A Variance may be granted to vary or modify the strict application of the regulations or provisions contained in the Marin County Development Code in cases in which there are practical difficulties or unnecessary hardships in the way of such strict application. However, Variances cannot be granted for relief from use limitations, minimum lot size requirements, and density requirements. Specifically, Variances provide relief from standards relating to principal building height, floor area ratio, and setbacks from property lines.

All Variance applications will be processed as one of the following:

- **Administrative Variances.** The Community Development Agency Director (Director) shall approve, conditionally approve or deny all Variances from the provisions of this title relating to height limit variations of two feet or less, floor area ratio variations of two percent or less, and setback variations of forty percent or less. However, where significant policy questions are at issue, the application may require a public hearing before the Planning Commission.
- **Public Hearing Variances.** All other Variances from the provisions of this title not specifically cited in the Administrative Variance subsection, shall require a public hearing by the Deputy Zoning Administrator. However, where significant policy questions are at issue, the application may be referred to the Planning Commission.

Please note that the same mandatory findings to approve a Variance (described in further detail below) apply to both administrative and public hearing Variances. The administrative Variance is not easier than the public hearing Variance.

**MANDATORY FINDINGS**

The decision to approve or deny a Variance application must be based on findings established by Section 22.54.050 of the Marin County Code in compliance with California State law (Government Code Section 65906). *The findings, described in further detail below, cannot be made if a reasonable alternative project design would satisfy these concerns without requiring a Variance.*

The Review Authority may approve a Variance application, with or without conditions, only if **all** of the following findings can be made

- A. There are special circumstances applicable to subject property (e.g. location, shape, size, surroundings, or topography), so that the strict application of this Development Code denies the property owner privileges enjoyed by other owners in the vicinity and under identical zoning districts.
- B. That granting the Variance does not allow a use or activity which is not otherwise expressly authorized by the regulations governing the subject parcel.

## **MANDATORY FINDINGS (cont.)**

- C. That granting the Variance does not result in special privileges inconsistent with the limitations upon other properties in the vicinity and zoning district in which the property is located.
- D. That granting the Variance will not be detrimental to the public interest, health, safety, convenience, or welfare of the County, or injurious to the property or improvements in the vicinity and zoning district in which the property is located.

### ***Discussion regarding Variance limitations***

Variations are limited to those situations where the *peculiar physical characteristics of a site* make it difficult to develop under standard regulations. A variance is granted in order to bring the disadvantaged property up to the level of use enjoyed by nearby properties located in the same zoning district. For instance, where the steep rear portion of a residential lot makes the site otherwise undevelopable, a variance might be approved to reduce the front yard setback and thereby create sufficient room for a home on the lot. Similarly, a parcel's shape might preclude construction of an addition unless yard setback requirements are reduced by approval of a variance.

Review of a proposed variance must be limited *solely to the physical circumstances* of the property. The standard of hardship with regard to applications for variances relates to the property, not to the person who owns it or the location of existing structures on the property. Financial hardship, community benefit, neighbor's approval, or the worthiness of the project are not considerations in determining whether to approve a variance.

Furthermore, consideration of a variance must focus upon the zoning standard or standards from which an exception is being requested. A variance applicant may not earn immunity from one code provision merely by overcompliance with others.

Variations are only for use in unusual, individual circumstances related to the property. There is no basis for granting a variance if the circumstances of the project site cannot be distinguished from those on surrounding lots. For example, all things being equal, in a subdivision where lots are uniformly 40 feet wide, there is no basis for allowing one lot to be developed with reduced side yard setbacks.

The approval or denial of a variance does not create a precedent for subsequent variance requests. Because each variance is based upon special circumstances relating to the site for which it is proposed, the past grant or denial of variances for other properties in the area does not mandate similar action on the part of the hearing body.

A variance runs with the land. Subsequent owners of the land continue to enjoy the variance. The original land owner cannot transfer the variance to another site, nor can the local agency approve a variance on the condition that it remains owned by a particular person. A variance does not change the zoning of the project site, so it cannot permit uses other than those already allowed under existing zoning.

## **FOR FURTHER INFORMATION**

- Visit the Marin County Community Development Agency's public information counter at the Civic Center, Room 308, San Rafael, California, Monday through Friday (closed holidays), 8:00 a.m. – 4:00 p.m., or call (415) 499-6269.
- Please refer to Marin County Development Code Chapter 22.54. (For projects in the coastal zone, see Marin County Code Interim Title 22 Zoning Ordinance Chapter 22.86.)
- For more information regarding the Variance pursuant to California Government Code 65906, please visit the following website: [www.ceres.ca.gov/planning/var/variance.htm](http://www.ceres.ca.gov/planning/var/variance.htm)