

# TOWN OF PORTOLA VALLEY

## VARIANCES

### **What Is A Variance?**

A variance is a procedure established by State law and included in the Town's Zoning Ordinance whereby an applicant can request relief from strict adherence to the standards set forth in the Zoning Ordinance. This procedure exists in recognition of the fact that in some cases, very unusual conditions exist that make it virtually impossible to comply with the zoning standards such as building setbacks, etc. In such cases, the variance procedure allows for documentation of the unusual conditions and, pursuant to the documentation, relief or conditional relief from zoning standards. Potential applicants are advised that the Town makes very careful reviews of applications with respect to the requirements of the Town's Zoning Ordinance and State law.

Minor variances are not considered to have a significant effect on the environment and are categorically exempt from the requirements of the California Environmental Quality Act (CEQA), as outlined in the guidelines for implementing CEQA.

### **Do I Need A Variance?**

The Planning Department will help you determine whether or not you may need a variance, explain the zoning ordinance standards, and indicate how they pertain to your particular property and building desires. If it is found that your plans do not comply with a particular zoning standard, a brief check will be made with Planning staff on the possibility of a variance and/or other options for ordinance compliance. If you decide to request a variance, the procedures described below should be followed.

### **How Do I Apply and How Much Does It Cost?**

Application forms and filing information are available at Town Hall, 765 Portola Road, at the Building Counter. An application requires a filing fee and a deposit for professional services. The filing fee is \$2,455 and the deposit for services is \$3,500. Please refer to the separate schedule of fees and deposits.

### **How Are Variances Reviewed and Decided?**

Each variance is a special and unique case which must be decided on its own merits. Variances may only be granted on the basis of evidence considered at a public hearing before the Planning Commission, which sits as the Board of Adjustment when it considers variances. Prior to the hearing, the application is reviewed by the Planning staff for conformance with the provisions of the General Plan and Zoning Ordinance and, as appropriate, is circulated to other staff members and volunteer committees for review and comment. In particular, review by the ASCC is required (see the handout on Architectural and Site Plan Review for ASCC review procedures). Planning staff then prepares a report on the request and, at least five days prior to public hearing, submits it to the applicant and Board of Adjustment with a recommendation for action.

The Planning Department will fix a time and place for the variance hearing and will mail notice of the hearing to the applicant and all property owners within 300 feet of the exterior boundaries of the property upon which the application has been made.

The Zoning Ordinance states that a variance may be granted if the Board of Adjustment makes ALL of the following findings (§ 18.68.070.A of the Municipal code):

1. That there are exceptional or extraordinary circumstances or conditions applying to the property involved or to the intended use of the property, that do not apply generally to other property or uses in the same (zoning) districts;
2. That owing to such exceptional or extraordinary circumstances the literal enforcement of the provisions of the title (Zoning) would result in practical difficulty or unnecessary hardship;
3. That such variance is necessary for the preservation of a substantial property right of the petitioner, possessed by other property in the same (zoning) district;
4. That the granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity or in the (zoning) district in which the property of the applicant is located;
5. That the grant of the variance will not constitute a grant of special privilege inconsistent with the limitations on other properties classified in the same zoning district;
6. That the granting of such variance will be in harmony with the general purpose and intent of this title and the General Plan.

Section 18.68.070.B of the Municipal Code specifically states that "If the facts do not establish that all of the six conditions set forth in subsection A of this section apply to the subject case, the Board of Adjustment shall deny the requested variance." THIS DIRECTION IS TAKEN VERY SERIOUSLY BY THE BOARD OF ADJUSTMENT, AND EACH OF THE SIX REQUIRED FINDINGS IS JUDGED CAREFULLY BEFORE A DECISION IS MADE. During the course of the public hearing, opportunity is provided for anyone wishing to comment on the variance to provide input to the Board's decision. The concerns of neighbors potentially directly affected by the variance are important to the Board's final position on the required findings. With this in mind, it is often helpful to submit with an application package, a signed statement of the neighbors' attitudes towards the variance request.

If the Board of Adjustment determines it can make the required findings, it will approve the variance, often with conditions deemed reasonable and necessary to preserve the integrity of the zoning district and to secure the general purposes of the General Plan and Zoning Ordinance. Such conditions normally include conformance with the site plan, architectural and landscaping drawings or statements submitted in support of the application, or modification of such materials found necessary to protect the public health, safety and

general welfare. Further, in some unique cases more restrictive building standards may be required (e.g., requiring a reduced height limit in order to mitigate the effects of a variance for front yard encroachment).

### **How Long Does It Take and When Does A Variance Become Effective?**

It usually takes from 4 to 8 weeks from the time an application is filed to the time the Board of Adjustment completes its review and action on a variance request. Some more complicated applications may take longer, especially if there is significant neighbor reaction to the proposal, or if geologic data must be developed in support of the required findings.

Unless appealed, a variance becomes effective on the 15th day after approval of the Board of Adjustment. Further, unless otherwise specified in the variance action, the permit must be exercised within one year of its effective date.

### **What Happens if My Request Is Denied?**

If the Board of Adjustment denies a variance request, the decision may be appealed to the Town Council as described in the next section. If the denial is not appealed, then no application for a variance for the same or substantially the same exception to the zoning standard on the same or substantially the same site may be filed within one year of the date of denial.

### **Appeals**

Any persons dissatisfied with the decision of the Board of Adjustment may appeal to the Town Council. The appeal must be filed with the Town Clerk AND the Board of Adjustment within 15 days of the Board of Adjustment decision by completing appropriate forms and paying a required filing fee and deposit. The deposit will be used by the Town to prepare a report to the Town Council on the appeal. Within a reasonable period of time, the Town Council will hold a fully noticed public hearing and render a decision on the appeal.

### **Are There Any Special Concerns I Should Be Aware Of?**

Yes. The Town has very special and important geologic hazard mapping and application review policies and procedures. These affect all applications to varying degrees. You may have to file more than one application in support of your request. Please check with the Planning Department at Town Hall regarding these matters PRIOR to preparing any development plans.