

Article 18. Variances

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Sec. 1801. Purpose and Objectives: The Zoning Administrator is empowered to grant Variances in order to prevent or to lessen such practical difficulties and unnecessary physical hardships inconsistent with the objectives of the Development Code as would result from a strict or literal interpretation and enforcement of certain of the regulations prescribed by this Development Code. A practical difficulty or unnecessary physical hardship may result from the size, shape or dimensions of a site or the location of existing structures thereon from geographic, topographic or other physical conditions on the site or in the immediate vicinity, or from population densities, street locations or traffic conditions in the immediate vicinity. The power to grant Variances does not extend to use regulations because of the flexibility necessary to avoid results inconsistent with the objectives of the Development Code is provided by the conditional use provisions of this Development Code.

Sec. 1802. Authority of Zoning Administrator: The Zoning Administrator may grant Variances to the regulations prescribed by this Development Code with respect to fences and walls, site area, width, frontage, depth, coverage, front yard, rear yard, side yards, height of structures, distance between structures, off-street parking, parking facilities and off-street loading facilities, in compliance with the procedures prescribed in this article.

Sec. 1803. Variance Application and Fee.

- A. Application for a Variance shall be made to the Zoning Administrator on the “Application for Variance” form, available on-line at www.countyofkings.com/planning or from the Community Development Agency, and shall include the following data:
1. **Applicant Certification:** Name, address, phone numbers, and signature of the applicant. Signatures shall be notarized when filing is done by mail or otherwise not witnessed by a representative of the Community Development Agency (“Planning Division”).
 2. **Property Owner Certification:** If the applicant is not the property owner or an agency with the power of eminent domain, the property owner(s) as shown on the latest equalized assessment roll must provide their name(s), address(es), phone number(s) and signature(s) indicating that the applicant is authorized to make an application on that property. The owner’s signature(s) shall be notarized when filing is done by mail or otherwise not witnessed by a representative of the Planning Division.
 3. A public utility company or other agency with powers of eminent domain may make an application without the



owner's authorization.

4. **General Parcel Information:** Site address and the Assessor's Parcel Number (APN) of the property.
5. Statement of the precise nature of the Variance requested and the practical difficulty or unnecessary physical hardship inconsistent with the objectives of the Development Code which would result from a strict or literal interpretation and enforcement of a specified regulation of this Development Code, together with any other data pertinent to the findings prerequisite to the granting of a Variance prescribed in Section 1807 below.

B. The application shall be accompanied by an accurate scale drawing of the site and any adjacent property affected, showing all existing and proposed locations of streets, property lines, uses, structures, driveways, pedestrian walks, off-street parking and off-street loading facilities and landscaped areas.

C. Application fees:

1. The application shall be accompanied by a fee set by resolution of the Board of Supervisors sufficient to cover the cost of handling the application as prescribed in this article.
2. If, pursuant to Section 112 of Article 1, the County determines that a project may incur extraordinary costs, the County may require the applicant to reimburse the County for extraordinary costs associated with processing such permits and entitlements and/or to indemnify the County from legal challenges to its action.

Sec. 1804. Investigation and Report: The Zoning Administrator shall make an investigation of the application and shall prepare a report thereon which shall be sent to the applicant. The Zoning Administrator's investigation shall include documentation of the results of consultation with representatives of the following agencies as appropriate:

- Kings County Public Works Department
- Kings County Building Official/Code Compliance Division
- Kings County Environmental Health Division
- Kings County Fire Department
- Kings County Assessor

Sec. 1805. Public Hearing Notice: The Zoning Administrator shall hold a public hearing on an application for a Variance. Such hearing shall be held within 45 days of the date when the application is complete. Notice of the hearing shall be given as set forth in Article 19, Section 1903 of this Development Code.

Sec. 1806. Public Hearing Procedure: At a public hearing, the Zoning Administrator shall review the application and the statements and drawing submitted therewith and shall receive pertinent evidence concerning the Variance, particularly with respect to the findings prescribed in Section 1807 below.

Sec. 1807. Action of the Zoning Administrator:

- A. The Zoning Administrator may grant a Variance to a regulation prescribed in this Development Code in compliance with Government Code Section 65906 as follows:
 1. Variances from the terms of the Development Code shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the Development Code deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification.
 2. Any Variance granted shall be the subject of such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated.



3. A Variance shall not be granted for a parcel of property which authorizes a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property.
 4. The granting of the Variance will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.
- B. The Zoning Administrator may grant a Variance to a regulation prescribed in this Development Code with respect to off-street parking facilities or off-street loading facilities as the Variance was applied for or in modified form, if, on the basis of the application, investigation and the evidence submitted, the Zoning Administrator makes the findings prescribed in paragraph A of this Section and the following additional findings:
1. Neither present or anticipated future traffic volumes generated by the use of the site or the uses of sites in the vicinity reasonably require strict or literal interpretation and enforcement of the specified regulation.
 2. The granting of the Variance will not result in the parking or loading of vehicles on public streets in such a manner as to interfere with the free flow of traffic on the street.
 3. The granting of the Variance will not create a safety hazard or any other condition inconsistent with the objectives of the Development Code.
- C. A Variance may be revocable, may be granted for a limited time period, or may be granted subject to such conditions as the Zoning Administrator may prescribe.
- D. The Zoning Administrator shall deny a Variance application if the findings necessary to grant the Variance cannot be made.
- E. Within five days following a decision by the Zoning Administrator on a Variance application or an application for extension of time for a Variance, or on the revocation of a Variance, the Zoning Administrator shall give written notice by mail of the decision to the applicant and to all persons in the same manner as provided in Section 1803 of this Development Code and to the Clerk of the Board of Supervisors.
- F. A Variance shall become effective eight days after mailing the notice of decision unless an appeal has been filed with the Planning Commission or the Board initiates proceedings to review the decision of the Zoning Administrator.

Sec. 1808. Appeals of Zoning Administrator and Planning Commission: The applicant or any other directly affected person or party may appeal the decision of the Zoning Administrator in writing, setting forth his or her reason for such appeal:

- A. Appeal to Planning Commission (“Commission”): Appeals shall be filed within eight days after the mailing of notices of such decision.
1. The appeal shall be filed with the Community Development Agency which will date stamp the appeal form.
 2. The appeal shall be accompanied by a fee set by the Board of Supervisors sufficient to cover the cost of processing the appeal as described in this Article.
 3. The appeal shall be placed on the agenda of the Commission's first regular meeting after the Zoning Administrator's decision which allows noticing requirements to be met.
 4. Documentary evidence in the case of an appeal of a decision by the Zoning Administrator must be submitted to the Community Development Agency at least five days prior to the scheduled date of the appeal hearing.
 5. The Commission shall review the Variance and, after a public hearing, shall approve, approve with conditions, or disapprove, based on the findings listed in Sections 1807.A and B above.
 6. The decision of the Commission shall be final unless appealed to the Board of Supervisors.



- B. Appeal to Board of Supervisors. Within eight days following the date of a decision of the Planning Commission on an application for, or extension of, a Variance, the applicant or any other directly affected person or party person may appeal the Commission's decision in writing, setting forth his or her reason for such appeal to the Board. The appeal shall state specifically in writing wherein it is claimed that there was an error or abuse of discretion by the Commission or wherein its decision is not supported by the evidence in the record.
1. The appeal shall be filed with the Community Development Agency which will date stamp the appeal form and then forward the original appeal form to the Clerk of the Board of Supervisors.
 2. The appeal shall be accompanied by a fee set by the Board of Supervisors sufficient to cover the cost of processing the appeal and providing notice as prescribed in this article.
 3. The appeal shall be placed on the agenda of the Board's first regular meeting after the Commission's decision which allows noticing requirements to be met.
 4. The appeal of a decision of the Planning Commission is limited to the issues and evidence submitted to the Commission during the original public comment period and public hearing. Only those issues reviewed by the Commission in their decision may be appealed to the Board. New issues raised, and evidence submitted, after the close of the Commission's public hearing shall not be considered by the Board for an appeal.
- C. An appeal may be withdrawn before the time that the review authority issues a decision. The applicant or the applicant's representative shall notify the Community Development Agency in writing that they wish to withdraw the appeal.
- D. No person shall seek judicial review of a County decision on a planning permit or other matter in compliance with this Development Code until all appeals to the Commission and Board have been first exhausted in compliance with this this Development Code.

Sec. 1809. Zoning Clearance and Building Permit: Before a building permit shall be issued for any building or structure proposed as part of the approved Variance permit, the Zoning Administrator shall certify, through the zoning clearance process in Section 1607 of this Development Code, that the proposed building location is in conformity with the site plan and conditions approved by the Zoning Administrator, Planning Commission, or the Board of Supervisors.

Sec. 1810. Lapse of Variance: A Variance which has been granted shall automatically lapse and become null and void 12 months following the date on which such Variance became effective, unless the Variance was granted for a longer period of time, or unless prior to the expiration of 12 months, a building permit is issued by the Building Official and construction is commenced and diligently pursued toward completion on the site which was the subject of the Variance application, or commencement of the activity if a building permit is not required.

Sec. 1811. Extension of Variance: A Variance which has been granted may be extended for an additional period of 12 months provided that prior to expiration of 12 months from the date when the Variance originally became effective, an application for extension of the Variance is filed with the Zoning Administrator.

- A. A Variance may be extended for additional periods of time by the Zoning Administrator, provided that prior to the expiration of the time period granted, an application for the extension of the Variance is filed with the Zoning Administrator. An application for extension of a Variance shall be filed and processed in the manner set forth in this Article for filing and processing the application for the original Variance.
- B. The Zoning Administrator may grant an application for extension of a Variance if he, or she, is able to make the findings prerequisite to the granting of a Variance prescribed and set forth in this Article. The application for extension of a Variance shall be denied if such findings cannot be made.
- C. Within 10 days following the date of a decision of the Zoning Administrator on an application for extension of a Variance, the decision may be appealed to the Planning Commission.
- D. If no appeal is filed within said 10 day period and if the Board of Supervisors within said 10 day period does not initiate proceedings to review the decision of the Zoning Administrator or Commission as provided herein, the decision of the



Zoning Administrator or Commission shall be final and conclusive.

Sec. 1812. Revocation of a Variance: When any applicable provision of this Development Code or when any condition or requirement of a Variance has not been complied with, the Zoning Administrator shall notify the permit holder of the Variance and shall give said person(s) a reasonable period of time within which to comply with said Development Code or condition or requirement. If the permit holder of the Variance fails to comply with the Development Code or with said condition or requirement within such period of time, the Zoning Administrator shall give written notice to the permit holder of the Variance that a hearing will be held by the Planning Commission on the matter of the revocation of the Variance.

- A. Written notice of the hearing shall be mailed or delivered to the permit holder not less than 10 days prior to the date of the hearing by either personal service of a copy of said notice on the permit holder of the Variance or by sending a copy of the notice by certified mail, return receipt requested, to said permit holder of the Variance. The notice shall state the reason or reasons why action is being taken for the revocation of the Variance. Notice shall also be mailed to the property owner of the subject real property, if the property owner is not the permit holder.
- B. At said hearing, the Planning Commission shall hear all relevant testimony concerning the Variance and the provisions of the Development Code which allegedly have not been complied with and the conditions or requirements which were imposed. If the Commission finds that any of the applicable provisions of the Development Code have not been complied with, then the Variance shall be revoked.
- C. If the Variance is revoked by the Commission, the permit holder of the Variance may within eight days following the date of the decision of the Commission, appeal the decision to the Board of Supervisors. Upon the making of the decision by the Commission to revoke the Variance, said Variance shall be automatically suspended.
- D. If an appeal is filed or if the Board initiates a review of the decision to revoke the Variance, the suspension shall remain in effect during the course of the appeal or review. If no appeal is filed within said eight day period as provided herein, and if the Board within said eight day period does not initiate proceedings to review the decision of the Commission as provided in Section 1808 of this Development Code the decision of the Planning Commission shall be final and conclusive.
- E. The appeal shall be filed with the Community Development Agency who will date stamp the appeal form and then forward the original appeal form to the Clerk of the Board of Supervisors. The appeal shall state specifically wherein it is claimed that there was an error or abuse of discretion by the Planning Commission or wherein the decision is not supported by the evidence in the record. Appeals must be based on evidence in the record.
- F. Within five days after the filing of an appeal, the Zoning Administrator shall transmit to the Clerk of the Board of Supervisors:
 - 1. The Variance application.
 - 2. The minutes of the public hearing on the application, if any.
 - 3. The report of the Zoning Administrator.
 - 4. The findings and decision of the Planning Commission on the Variance.
 - 5. The report of the Zoning Administrator on the failure of the appellant to comply with the provisions of the Development Code or with the conditions or requirements of the Variance, the minutes of the hearing on the matter or revocation and the findings and decision of the Commission on the matter of revocation of the Variance.
- G. Notice of the hearing of the appeal shall be given by the Clerk of the Board of supervisors not less than ten days prior to the time when the appeal will be considered by the Board of Supervisors, by mailing, postage prepaid, a notice of the time and place of the hearing to the applicant.
- H. Unless waived by the affected person(s), the hearing of the appeal shall be scheduled for the Board's first regular meeting after the filing of the appeal which allows noticing requirements to be met.



Sec. 1813. Action of the Board of Supervisors:

- A. When a decision of the Zoning Administrator on a Variance application or on an application for extension of a Variance, or on the revocation of a Variance is brought before the Board of Supervisors, either on appeal or on its own motion, the Board may affirm, reverse or modify the decision of the Zoning Administrator provided, however, that
 - 1. The Board may not reverse a decision of the Zoning Administrator denying an application for a Variance or denying an application for an extension of a Variance unless the Board, on the basis of the record transmitted by the Zoning Administrator, is able to make the findings prerequisite to the granting of a Variance as prescribed and set forth in Section 1807 above.
 - 2. The Board may not modify a decision of the Zoning Administrator granting a Variance or an application for an extension of a Variance unless the Board shall, on the basis of the record transmitted by the Zoning Administrator is able to make the findings prerequisite to the granting of a Variance as prescribed and set forth in Section 1807 above.
- B. A Variance application or an application for extension of a Variance which has been the subject of an appeal to the Board of Supervisors or which has been the subject of review by the Board, shall become effective three days after the date on which the application for the Variance permit or the application for extension of the Variance is granted and approved by the Board.
- C. The revocation of a Variance which has been the subject of an appeal to the Board of Supervisors or which has been the subject of review by the Board shall become effective three days after the decision of the Board to revoke the Variance.
- D. The decision of the Board shall be final and effective on the day of action, unless otherwise required by state law.
- E. The Clerk of the Board of Supervisors shall within three days after the date of the decision of the Board, give written notice of the decision, by mail, to the applicant and/or appellant (if the applicant is not the appellant) and to the Zoning Administrator.

Sec. 1814. New Application: Following the denial of a Variance application or the revocation of a Variance, no application for the same or substantially the same Variance on the same or substantially the same site shall be filed within 12 months of the date of denial of the Variance application or revocation of the Variance.

