



PLANNING COMMISSION STAFF REPORT

PLANNING COMMISSION HEARING JANUARY 21, 2004
Agenda Item #11

Request: Amendment to Division 84 (Variances) of the Sutter County Zoning Code to amend the required criteria to be consistent with variance requirements in the State Planning, Zoning, and Development Laws and to modify the processing procedures for variances.

Location: N/A

APN: N/A

Files: Zoning Code Amendment #03-05

Planner: Steve Geiger

Applicant	Property Owner
Sutter County Board of Supervisors 1130 Civic Center Blvd. Yuba City, CA 95993	N/A

Staff Recommendation

Recommend to the Board of Supervisors that they approve Zoning Code Amendment #03-05.

Project Description

The project proposes to amend Division 84 of the Sutter County Zoning Code by amending the required criteria for variance approval to be consistent with those contained in the State Planning, Zoning, and Development Laws. The amendment also proposes to modify the processing procedures for variances so that the Planning Commission will forward a recommendation to the Board of Supervisors, who will make the final decision to approve or deny the variance. Minor wording modifications are also proposed for consistency and clarity.

Background

This item was originally initiated by staff in order to revise the section of the Zoning Code that addresses variances to make the required criteria for approval consistent with the State's Planning, Zoning, and Development Laws. During a study session held subsequent to the initiation, the Board directed staff to modify the processing

procedures for variances so that the Planning Commission will make a recommendation and the Board will make the decision to approve or deny all variance applications.

According to Curtin's California Land Use and Planning Law (2003 edition), a variance is a method by which a property owner may seek relief from the strict terms of the Zoning Code. An approved variance allows the owner a waiver from the Zoning Code standards to build a structure that would not otherwise be permitted under the current zoning regulations. The justification for a variance is that the owner would suffer unique hardship under the general zoning regulations because his or her particular parcel is different from others in the area to which the regulation applies. (Government Code Section 65906).

Variances may not be granted to allow a use that is not otherwise permitted by the zoning regulations. Variances instead allow deviations from regulations on physical standards such as building setbacks from property lines, height limitations, lot coverage, parking requirements, etc. The concept of a variance is that the property owner is allowed to use his or her property in a manner that is consistent with the established regulations, with minor variations that will place the owner on an equal basis with other property owners in the same zone district. Variances must also be consistent with the County's General Plan.

Analysis

Section 1500-8412 of the Zoning Code specifies four standards, or criteria, that must be met in order to approve a variance. The following are the current criteria:

- 1. That special circumstances apply to the property, including size, shape, topography, location or surroundings;**
- 2. That the strict application of the Zoning Ordinance deprives the property of privileges enjoyed by other property in the vicinity and under identical zoning classification; and**
- 3. That the granting of the variance will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and district in which the property is located.**
- 4. That the variance from the strict interpretation of this code represents the minimum deviation possible to enable reasonable development of the property.**

The State Planning, Zoning, and Development Laws (Section 65906) specifically address variances and the criteria necessary for their approval. Staff has reviewed the State Law and compared it with the existing Zoning Code criteria. Staff has also reviewed Curtin's California Land Use and Planning Law (2003 edition) and other planning publications with regard to variances. Based on this research, staff recommends that the following revised new list of criteria be adopted for consideration of variances:

- 1. Due to special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the Zoning Code deprives the property of privileges enjoyed by other property in the vicinity and under identical zoning classification.**
- 2. Granting of the variance shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone district in which the property is located.**
- 3. Granting of the variance shall not authorize a use or activity which is not otherwise expressly authorized by the zoning classification governing the property.**

Section 65906 of the State Planning, Zoning, and Development Laws combines existing Criteria #1 and #2. For consistency with State law, staff recommends that existing Criteria #1 and #2 contained in the Zoning Code be combined as noted in #1 of the revised criteria list above.

Existing Criterion #3 is nearly identical to what is contained in State Law. Staff recommends that Criterion #3 be changed to Criterion #2 and that it read as shown above.

Proposed Criterion #3 is currently listed in the "Purpose" section of Division 84 (Section 1500-8410) but not in the criteria section. Since it is included in Section 65906 of the State Law, staff recommends that it be added as Criterion #3. The proposed changes to Division 84 of the Zoning Code are shown on Attachment A of the staff report (new text in italics, deleted text stricken out).

In addition to modifying the criteria for approval of a variance, the Board of Supervisors requested that staff also change the Zoning Code to modify the processing procedures for variances. The Board has indicated to staff that they wish to make the determination to approve or deny all variances. Currently, the Planning Commission reviews variance applications and makes a decision of whether to approve or deny the application. The action can then subsequently be appealed to the Board of Supervisors. With this change in the processing procedures, the Planning Commission will now provide a recommendation to the Board on variances, similar to General Plan amendments and rezones, and the Board will make the final decision. On projects where multiple applications are involved including a variance, the Planning Commission will make a recommendation on all of the applications and the Board will make the final decision on the variance as well as the other application(s) involved. Changes to Division 84 to reflect these modifications are shown on Attachment A.

Environmental Analysis

An Initial Study was prepared for this project in accordance with the California Environmental Quality Act and the Guidelines. The study revealed that the project, as proposed, would not have a significant impact on the environment. Therefore, if the

Planning Commission wishes to approve the project, staff recommends the Commission adopt the attached Negative Declaration.

Findings

CEQA

Based upon information contained in this staff report and/or testimony received at the public hearing, the Planning Commission recommends the following findings:

1. In accordance with the California Environmental Quality Act and the Guidelines, an Initial Study was prepared to analyze the potential impacts of the proposed project for the subject property. The study revealed that the project, as proposed, would not create a significant impact on the environment. No written comments have been provided which present evidence that the project will have a significant impact on the environment. Therefore, the proposed Negative Declaration attached to this staff report is appropriate.
2. The Planning Commission has independently reviewed, analyzed, and considered the Initial Study and Negative Declaration prior to making its recommendation on the project and finds that the Negative Declaration reflects the independent judgment of the County of Sutter.

General Plan

3. The proposed changes to the Zoning Code are consistent with the General Plan.

Recommended Action

Should the Planning Commission agree with staff's recommendation, the following motions would be appropriate:

1. "The Planning Commission recommends that the Board of Supervisors find the proposed negative declaration was prepared in accordance with the California Environmental Quality Act and the Guidelines."
2. "The Planning Commission recommends that the Board of Supervisors approve Zoning Code Amendment #03-05, based on the recommended findings contained in this staff report."

Attachments

- A. Proposed revisions to Division 84 (Variances)
- B. Proposed Negative Declaration and Initial Study
- C. Section 65906 of State Planning, Zoning, and Development Laws

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DIVISION 84 VARIANCES

1500-8410 Purpose:

The County realizes that under certain circumstances an applicant, while attempting to comply with the provisions of the zoning code as strictly interpreted, may because of certain physical conditions related to the site, such as size, shape, dimensions, topography, or unique setting, experience practical difficulties and/or unnecessary physical hardships which are inconsistent with this code's purpose. This Division is intended to provide a mechanism whereby the ~~Planning Commission~~ Board of Supervisors may grant relief from the applicable provision of the Zoning Code *provided that certain criteria are met.*

~~A variance shall not be granted for a property which authorizes a use or activity which is not otherwise expressly authorized by the zone regulation governing the property.~~

1500-8412 Application and Fee:

(a) Application for a variance shall be made in writing on a form prescribed by the Community Services Department and shall be accompanied by a fee as established by resolution of the Board of Supervisors and such other fees as may be necessary to process any required environmental document. The application shall be accompanied by plans, elevations, statements and other evidence showing *that:*

~~(1) — That special circumstances apply to the property, including size, shape, topography, location or surroundings;~~

~~(2) — That the strict application of the zoning ordinance deprives the property of privileges enjoyed by other property in the vicinity and under identical zoning classification; and~~

~~(3) — That the granting of the variance will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and district in which the property is located.~~

~~(4) — That the variance from the strict interpretation of this code represents the minimum deviation possible to enable reasonable development of the property.~~

(1) Due to special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the Zoning Code deprives the property of privileges enjoyed by other property in the vicinity and under identical zoning classification.

(2) Granting of the variance shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone district in which the property is located.

(3) Granting of the variance shall not authorize a use or activity which is not otherwise expressly authorized by the zoning classification governing the property.

1500-8414 Public Hearing - Notice:

Notice for hearing shall be provided in a manner consistent with Section 1500-8214 of this Chapter.

1500-8416 Action by Planning Commission and Board of Supervisors:

A. Single Application Decisions

Following the public hearing, the Planning Commission shall make a finding of facts showing whether the ~~qualifications~~ *criteria* under Section 1500-8412 (a) (1), (2), ~~(3) and (4)~~ through (3) are ~~applicable, and~~ met. The Planning Commission shall then forward a recommendation for approval or denial to the Board of Supervisors, who shall hold a public hearing with regard to the application. The Board of Supervisors shall grant the adjustment only if it finds that these ~~conditions~~ *criteria* do apply and that such variance is ~~in harmony~~ *consistent* with the general purpose of this Chapter. The Board of Supervisor's decision shall be final. ~~Any variance granted shall be subject to 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. The action of the Planning Commission shall become final within ten (10) days unless an appeal is filed pursuant to Section 1500-8418 of this Chapter.~~

B. Multiple Application Decisions

In the case of multiple applications ~~in which one or more project requires the Board of Supervisors action~~, the Planning Commission shall forward their recommendation ~~only on all of the applications~~. The Board of Supervisors shall consider and decide all of the applications.

1500-8418 Appeal:

~~Appeal from any finding or action by the Planning Commission shall be made pursuant to Division 3 - Appeals of this Chapter.~~

1500-8419 New Applications Following Denial:

Following the denial of a variance application or revocation of a variance, no application for a variance for the same or substantially the same variance on the same or substantially the same site shall be filed within six (6) months from the date of the denial or revocation thereon.

1500-8420 Revocation:

(a) In any case where the conditions of granting of a variance have not, or are not, complied with, the Board of Supervisors shall give notice to the permittee of intention to revoke such variance at least ten (10) days prior to hearing thereon. After conclusion of the hearing, the Board of Supervisors may revoke such variance.

(b) In any case where a variance has not been used within one (1) year after the date of granting thereof, without further action by the Board of Supervisors, the variance granted shall be null and void.