

VARIANCES and VARIANCE CONDITIONS

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WHAT IS A VARIANCE?

When an applicant cannot comply with a Code requirement, a variance to the Code is required. This is, in effect, a request to rescind a specific Code requirement for a specific project.

For example

A parking space is not permitted to be built on a slope over 15%. At the same time, the Code requires a specific quantity of parking spaces for a project.

WHAT IS A VARIANCE?

CONTINUED

So an applicant might need to request permission to allow a parking space to be built on a slope over 15% in order to provide the required quantity of parking spaces.

This request to rescind a Code requirement is a variance.

Most commonly, applicants seek to vary a requirement in LDC 25-8. For simplicity, I'll speak about variances to LDC 25-8.

WHAT IS A VARIANCE?

CONTINUED

There are two types of environmental variances:

1. Administrative variances
may be granted by Staff
2. Land Use Commission variances
may not be granted by Staff

WHAT IS A VARIANCE?

CONTINUED

The Code clearly states when and where Staff may grant an administrative variance.

Very few regulations in the Code may be varied administratively.

What is not an administrative variance must be a Land Use Commission variance.

One notable exception is the SOS requirement. This cannot be varied; Council action is required if an applicant cannot comply with SOS requirements.

WHAT IS A VARIANCE?

CONTINUED

When a variance is presented to the Environmental Commission, it is a Land Use Commission variance.

LAND USE COMMISSION VARIANCES

When Staff presents a Land Use Commission variance, we also recommend approval or denial of the variance request based on criteria in LDC 25-8-41 called the **findings of fact**.

The **findings of fact** are a series of questions intended to analyze the merit of the variance request.

LAND USE COMMISSION VARIANCES

CONTINUED

The Environmental Commission has the authority to consider factors beyond the findings of fact.

The Environmental Commission may accept or reject Staff's recommendation.

LAND USE COMMISSION VARIANCES

CONTINUED

The Environmental Commission votes to approve or deny the variance. This vote represents a *recommendation*.

After the Environmental Commission, the variance along with the Environmental Commission vote is presented to either Zoning and Platting Commission (ZAP) or Planning Commission (PC):

- ZAP if there is no neighborhood plan;
- PC if there is a neighborhood plan.

LAND USE COMMISSION VARIANCES

CONTINUED

The Zoning and Platting Commission (ZAP) and Planning Commission (PC) are Sovereign Commissions that exercise independent authority and make decisions.

The authority to approve or deny a Land Use Commission variance belongs to ZAP and PC.

Typically, ZAP or PC will vote in accordance with the direction given by the Environmental Commission.

LAND USE COMMISSION VARIANCES IN SUMMARY

Staff present a Land Use Commission variance to the Environmental Commission and provide a recommendation for approval or denial based on the findings of fact.



The Environmental Commission votes and may accept or reject Staff's recommendation. The Environmental Commission's vote represents a recommendation to ZAP or PC.



The variance is presented to ZAP or PC. ZAP or PC vote on the variance. ZAP or PC may accept or reject EV Commission's recommendation.

VARIANCE CONDITIONS

When an applicant requests a Land Use Commission variance, the applicant will typically be required to incorporate a design or construction element that exceeds Code requirements.

This is a *variance condition*.

VARIANCE CONDITIONS

CONTINUED

Staff requires variance conditions.

The Environmental Commission may make recommendations for additional variance conditions.

ZAP or PC may incorporate the Environmental Commission's recommendations into their recommendations, and make recommendations for additional variance conditions.

VARIANCE CONDITIONS

CONTINUED

What can a variance condition be?

- Public benefit;
- Aesthetic improvement; or
- Environmental benefit.

The general intent is for the variance condition to offset or mitigate the variance, where possible.

VARIANCE CONDITIONS

CONTINUED

General examples of variance conditions:

- enhanced landscape to offset the urban heat island effect;
- structural containment of fill to reduce the possibility of sediment transport during construction; and
- enhanced re-vegetation after construction activities are complete to improve riparian function.

VERIFYING A VARIANCE CONDITION

Before the site plan permit can be issued, Environmental Review must verify that the plan set complies with: Code; approved variance(s); and variance condition(s).

VERIFYING A VARIANCE CONDITION

CONTINUED

Some variance conditions are more verifiable than other variance conditions.

DIFFICULT VARIANCE CONDITIONS

Example 1 of a variance condition that is difficult to verify – no measurable item:

- Hypothetical variance condition: *The applicant will provide extra tree mitigation.*
- Concern: There is no quantity specified and an applicant could technically provide 1 extra tree.
- Remedy: Stipulate the quantity of extra mitigation - *The applicant will provide 50 extra inches of tree mitigation.*

DIFFICULT VARIANCE CONDITIONS

CONTINUED

Example 2 of a variance condition that is difficult to verify –
no action item:

- Hypothetical variance condition: *The applicant will investigate native plant revegetation options.*
- Concern: There is no verifiable action required of the applicant.
- Remedy: Stipulate a design requirement - *The applicant will utilize 100% native plants for all landscaping.*

DIFFICULT VARIANCE CONDITIONS

CONTINUED

Example 3 of a variance condition that is difficult to verify – timing:

- Hypothetical variance condition: *The landscape trees will completely shade the parking lot at full maturity.*
- Concern: City Staff cannot confirm compliance by the end of construction. There is no process to re-inspect the site at a future point to verify compliance with this variance condition.
- Remedy: Require twice as many parking lot trees.

DIFFICULT VARIANCE CONDITIONS IN SUMMARY

In summary, a variance condition will be more likely to be beneficial if:

- The variance condition has a clear measurable;
- The variance condition requires a specific action; and
- The variance condition can be checked on the plan set and verified by the end of construction (timing).

IMPORTANCE OF THE ENVIRONMENTAL COMMISSION

The Environmental Commission's recommendations help shape or influence policy in many ways.

Balances public interests to make informed recommendations to Land Use Commissions and Council

They help the Land Use Commission and Council get a more comprehensive understanding of what is at stake, and where the balance should be struck.

QUESTIONS? THANK YOU!

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