

ATTACHMENT H
PMC SECTION 17.61.080.I (MODIFICATIONS FOR INDIVIDUALS
WITH DISABILITIES)

17.61.080 - Variances

- A. **Purpose.** The provisions of this Section allow for Variances (Section D.) from the development standards of this Zoning Code, Variances for Historic Resources (Section H.), and modifications for individuals with disabilities (Section I.).
1. **Special privileges prohibited.**
 - a. A Variance may only be granted when, because of special circumstances applicable to the subject property, including dimension, location, shape, size, or surroundings; geographic, topographic, or other physical conditions on the site or in the immediate vicinity; or from street locations or traffic conditions in the immediate vicinity, the strict application of this Zoning Ordinance denies the property owner privileges enjoyed by other property owners in the vicinity and under identical zoning districts, or creates an unnecessary, and non self-created hardship or unreasonable regulation which makes it obviously impractical to require compliance with the applicable development standards.
 - b. A Variance shall not be granted that would have the effect of granting a special privilege(s) not shared by other property owners in the vicinity and under identical zoning districts.
 2. **Does not extend to uses and notes.**
 - a. The power to grant Variances does not extend to allowable land uses and the notes on the land-use tables. In no case shall a Variance be granted to allow a use of land or structure not otherwise allowed in the zoning district in which the subject property is located. A Variance shall not be granted to the notes on the land-use tables contained in Articles 2 and 3.
 - b. Flexibility in allowable land uses is provided in Section 17.61.050 (Conditional Use Permits).
 3. **Does not extend to procedures.** A Variance shall not be granted to allow an adjustment to the procedural requirements of this Zoning Code.
- B. **Review authority.** Variances may be granted in compliance with the following:
1. The Hearing Officer may grant variances and Minor Variances in compliance with Subsection D., below; or
 2. Defer action and refer the application directly to the Board of Zoning Appeals (BZA).
- C. **Minor Variances.**
1. **Purpose.** Minor Variances are a form of Variance intended for adjustments that are determined to have lesser (minor) potential impacts and therefore require a modified review process.
 2. **Applicability.** The following applications for adjustments from the applicable development standards may be processed as a Minor Variance:

- a. Up to two permit applications, for a Minor Variance, Minor Conditional Use Permit, or Sign Exception, may be combined and processed under the Minor Variance/Minor Conditional Use Permit procedure.
- b. Alteration or expansion of a nonconforming structure that increases the difference between existing conditions and the current development standards and is an allowable Minor Variance under Table 6-4 (Allowable Minor Variances).
- c. Unless otherwise identified in Table 6-4, below, adjustments not exceeding 25 percent of the development standard may be processed as a Minor Variance.
- d. Applications for adjustments exceeding 25 percent of the development standard shall be processed as Variances, in compliance with Subsection D. below.

TABLE 6-4 - ALLOWABLE MINOR VARIANCES	
Types of Minor Variances Allowed	Maximum Adjustment Allowed
1. In all districts:	No limit on percent of adjustment
a. Front setback	
b. Side setback	
c. Rear setback	
d. Corner setback	
e. Fence or wall height	
f. Building height	Not exceeding an adjustment of 10 feet, or 5 feet in the HD overlay district
g. Appurtenance height	No limit on percent of adjustment

2. For projects subject to RS and RM-12 development standards, not including HD overlay standards — maximum floor area	Not exceeding an adjustment of 10 percent
3. In RM districts — minimum landscape area	

3. Procedures.

- a. Noticing of the public hearing shall be given in compliance with Chapter 17.76.
- b. The Zoning Administrator shall set a date and time on which the application will be considered.
- c. Notice shall be mailed and posted at least 14 days before the date set by the Zoning Administrator.
- d. The notice shall indicate that any interested person may request, in person or in writing, no later than one working day before the date set by the Zoning Administrator, that a hearing be held on that date.
- e. If no hearing is requested, the Hearing Officer's decision may be made without a public hearing.
- f. The Hearing Officer may also hold a hearing at the Hearing Officer's discretion.
- g. If a hearing is held, the Hearing Officer shall conduct the hearing in compliance with Chapter 17.76 (Public Hearings).

D. **Variances.** The Hearing Officer may grant an adjustment from the requirements of this Zoning Code governing only the following:

1. **Development standards.** Any development standard identified in Subsection C. (Minor Variances), above, where the requested adjustment exceeds the maximum limits for a Minor Variance;
2. **Dimensional standards.** Dimensional standards including distance-separation requirements, landscape and paving requirements, lighting, loading spaces, lot area, lot dimensions, parking areas, open space, structure heights, etc;
3. **Numerical standards.** Number of off-street parking spaces, loading spaces, landscaping, etc;
4. **Additional land-use regulations.** The additional land-use regulations which apply to each use classification; and
5. **Other.** Other standards including operational/performance standards relating to dust, glare, hours of operation, landscaping, light, noise, number of employees, etc.

- E. **Application requirements.** An application for a Variance shall be filed in compliance with Chapter 17.60 (Application Filing and Processing). The application shall be accompanied by the information identified in the Department handout for Variance applications. The applicant shall be responsible for providing the evidence in support of the findings required by Subsection G. (Findings and decision) below.
- F. **Notice and hearings.**
1. **Minor Variances.** The procedures identified in Subsection C.3. (Procedures), above, shall determine if a public hearing shall be required for the Zoning Administrator's decision on a Minor Variance.
 2. **Variances.**
 - a. A public hearing shall be required for all Variances considered by the Hearing Officer.
 - b. A public hearing shall be scheduled once the Director has determined that the application is complete.
 - c. Noticing of the public hearing shall be given in compliance with Chapter 17.76 (Public Hearings).
 - d. If taken under advisement, the Hearing Officer shall render a decision on the Variance application within 10 days following the final public hearing on the application.
- G. **Findings and decision.** Following a public hearing, if required, the review authority may approve a Variance (Major or Minor) application, with or without conditions, only after first finding that:
1. There are exceptional or extraordinary circumstances or conditions applicable to the subject site that do not apply generally to sites in the same zoning district;
 2. Granting the application is necessary for the preservation and enjoyment of a substantial property right of the applicant and to prevent unreasonable property loss or unnecessary hardship;
 3. Granting the application would not be detrimental or injurious to property or improvements in the vicinity of the subject site, or to the public health, safety, or general welfare;
 4. Granting the application is in conformance with the goals, policies, and objectives of the General Plan, and the purpose and intent of any applicable specific plan and the purposes of this Zoning Code, and would not constitute a grant of special privilege inconsistent with limitations on other properties in the vicinity and in the same zone district; and
 5. Cost to the applicant of strict compliance with a regulation shall not be the primary reason for granting the Variance.
- H. **Variances for Historic Resources.**
1. **Purpose.**
 - a.

A Variance for Historic Resources is intended to accommodate historic resources that are undergoing development, change in use or are being relocated.

- b. This unique type of Variance is designed to provide relief from the strict compliance with the development standards of this Zoning Code that may impair the ability of a historic resource to be properly used or to be relocated onto a new site.
- c. The Variance shall not allow a use of land or structure not otherwise allowed in the zoning district in which the subject property is located and only applies if the property has a historic designation or is required, as a condition of approval of the Variance, to submit an application for historic designation prior to completion of the proposed project or establishment of the proposed use.

2. Procedures.

- a. The Hearing Officer shall be the applicable review authority for Variances for Historic Resources.
- b. The procedures for a Variance for Historic Resources shall be the same as for a Minor Variance, including those for notice and hearing upon request.

3. Findings and decision. Following a public hearing, if required, the review authority may approve a Variance for Historic Resources application, with or without conditions, only after first finding that:

- a. The Variance for Historic Resource is necessary to facilitate the appropriate use of an existing historic structure;
- b. The Variance for Historic Resource would not adversely impact property within the neighborhood or historic district; and
- c. Granting the Variance for Historic Resource application would be in conformance with the goals, policies, and objectives of the General Plan and the purpose and intent of any applicable specific plan.

I. Modifications for individuals with disabilities.

1. Purpose. The purpose of this Subsection is to provide a mechanism through which the City may, in compliance with State and Federal law, grant reasonable modifications to the strict requirements of this Zoning Code where necessary to avoid discrimination against individuals with disabilities.

2. Procedures.

- a. The Hearing Officer shall be the applicable review authority for applications for the modifications.
- b. The application, notice, and hearing procedures for considering applications for modifications shall be in compliance with Subsection C.3. (Procedures) above.

- c. An individual with a disability, or designated representative, may request that any applicable development standard be modified to prevent discrimination against the individual on the basis of the individual's disability. The modifications shall not be granted to any applicable development standard relating to density, FAR, gross floor area, or lot coverage.
 - d. A modification granted for an individual with a disability shall be a personal accommodation for the individual applicant and shall not run with the land.
 - (1) Before the issuance of a Building Permit for the modification, the permittee shall execute a notarized statement that permits the City to inspect the affected premises at least annually to verify compliance with this Subsection and with any applicable conditions of approval.
 - (2) Before any transfer of interest in the premises, the permittee shall notify the transferee of the existence of the modification, the status of the modification, and the requirement that the transferee may apply for a new modification if qualified and necessary.
 - (3) Once the transfer takes effect, the modification shall have no further validity, and therefore shall be considered voluntarily relinquished by the permittee in compliance with Section 17.64.070 (Voluntary Relinquishments).
3. **Findings and decision.** Following a public hearing, if required, the review authority may approve the application for modification, with or without conditions, only after first finding that:
- a. The individual requesting the modification is a qualified individual with a disability;
 - b. The requested modification to the strict requirements of this Zoning Code is a reasonable modification on the part of the City made necessary by State or Federal laws designed to avoid discrimination on the basis of disability, and to ensure that the qualified individual with a disability has the opportunity to enjoy the rights, privileges, and opportunities available to residents or property owners, as applicable, in the same zoning district; and
 - c. All necessary conditions have been imposed to ensure that the modification shall not be detrimental to public health and safety.
- J. **Compliance with findings.** In approving a Variance or Minor Variance, the applicable review authority may impose conditions (e.g., buffers, landscaping and maintenance, lighting, parking, performance guarantees, property maintenance, signs, surfacing, traffic circulation, etc.) deemed reasonable and necessary to:
- 1. **Compliance with Section.** Ensure compliance with the general purpose of this Section, and the goals, policies, and objectives of the General Plan and the purpose and intent of any applicable specific plan;

2. **Special privileges prohibited.** Ensure that the approval does not grant special privileges inconsistent with the limitations on other properties in the vicinity and zoning district in which the property is located;
 3. **Compliance with findings.** Ensure that the approval would be in compliance with the findings required by Subsection G. (Findings and decision), above; and
 4. **Protect interests.** Protect the best interests of the surrounding property or neighborhood, and to preserve the public health, safety, and general welfare.
- K. **Concurrent processing.** If the project that is the subject of an application for a Tentative Map or Tentative Parcel Map in compliance with Title 16 (Subdivisions), or a Master Plan in compliance with Section 17.61.050, would require a Variance or Minor Variance, the applicable review authority for the underlying permit shall have the authority to also act upon the proposed Variance after first making the Variance findings required by this Subsection G. (Findings and decision) above.
- L. **Post approval procedures.** The procedures relating to appeals, changes, expiration, performance guarantees, and revocation that are identified in Article 7 (Zoning Code Administration), and those identified in Chapter 17.64 (Permit Implementation, Time Limits, and Extensions), shall apply following the decision on a Variance or modification application.

(Ord. 7372 § 4, 2021; Ord. 7160 § 56, 2009; Ord. 7099 § 40, 2007; Ord. 7057 § 22 (a—c), 2006; Ord. 7022 § 2 (part) 2005)