

CITY OF ALBANY
PLANNING AND ZONING AGENDA
STAFF REPORT

Agenda date: July 13, 2010
Prepared by: LJ
Reviewed by:

ITEM/ **6a**
SUBJECT: **Planning Application 10-043. Design Review. Variance.** Request for Design Review Approval to allow a 143 square foot addition to an existing single family home. A variance is also requested to allow encroachments into the rear, side, and front setbacks.

SITE: 1083 Peralta

APPLICANT/ OWNER: Arkin Tilt Architects for Kent Sparling and Vanessa Lowe

ZONING: R-1 (Single-Family Residential)

STAFF RECOMMENDATION

Staff recommends that the Planning and Zoning Commission discuss the request for design review approval and a variance for construction of a 143 square foot addition to an existing single-family home, and provide direction to Staff and the applicant.

If the Commission wishes to approve the project at this public hearing, findings and conditions of approval are attached.

BACKGROUND/PROJECT DESCRIPTION

The subject property is a 3,150 square foot lot with an existing 1,470 sq. ft. split-level single-family home. The applicant is requesting approval for a 143 sq. ft. addition to the existing home. The project would involve enclosing an existing upper floor balcony at the rear of the home, and constructing a new bay window on the lower floor beneath. The applicant also is proposing to extend the existing front porch, construct a new rear deck, add a cupola to provide access to a roof deck, and excavate approximately 80 cubic yards to create habitable space on the lower floor. The majority of the lower floor will not be counted in the FAR calculations because the average height of the ceiling at the perimeter is less than 5'-0".

The FAR will increase from .47 to .48. In addition, the height of the home would increase to approximately 24'.

ENVIRONMENTAL ANALYSIS

Staff has determined that the proposed project is categorically exempt from the requirements of CEQA per Section 15303, "New Construction or Conversion of Small Structures" of the CEQA Guidelines, which exempts small additions.

DISCUSSION OF KEY ISSUES

Floor Area Calculations

Significant new floor area, totaling 908 square feet, is proposed to be added to the residence on the lower level. The proposed floor area has an average height from grade to finished floor above of 4.85 feet, and thus does not count towards floor area ratio calculations. (The perimeter height calculations can be found on the color diagrams on the top of sheet A 2.0.)

Variances

Under state law, the granting of variances require specific factual findings. In this particular case, with a width of 50' and depth of 63', the lot is unusual in size and shape for an R-1 district. Due to this irregularity, the existing home currently has nonconforming setbacks on all sides.

Strict interpretation of the City's zoning standards would limit future expansion of the home to an area between the kitchen and living room. This open area is within the drip line of a large redwood tree that is an element of the property that the City should strive to protect. Thus, given the relatively small size of the existing home, staff believes that the Commission can make findings that some degree of variance does not constitute a grant of special privilege. The issue for the Commission to consider is at what point does the extent of the requested variances cross over into a request that you would not be inclined to allow in a similarly sized conventional R-1 parcel (e.g., 30 foot by 100 foot parcel).

Variance for Rear Addition:

The applicant is proposing to enclose rear the balcony, which would require a variance for approval. The proposed addition is an efficient way to increase the size of the bedroom, and does not encroach into the rear yard setback further than the existing balcony.

The existing rear setback is 15'-9", where 20 feet is required. The enclosure of the rear balcony, which will create a 10'-9" rear setback. The bulk of the addition is at the rear, northeast corner of the home. The northern side setback is 2'-10" where 5'-0" is required.

Variance for Rear Deck

The applicant has proposed a new rear deck that will encroach into the rear setback. The deck, which would sit approximately 6 feet above grade, is proposed to encroach 17 feet into the rear setback, leaving approximately 3 feet between the edge of the deck and the rear property line. Existing landscaping along the property line shields the porch from neighboring homes.

Per the municipal code, a deck is allowed to encroach into the rear yard setback by 6 feet. The proposed deck exceeds this limit by 11 feet. Because of the shallow lot, the 6 foot limit would restrict the applicant from constructing a rear porch altogether. It is possible, therefore, that findings for a variance can be made for an encroachment into the rear yard for a deck. However, a deck of the proposed size and height above grade is not essential to the function of the home. The Commission may want to discuss the dimensions of the deck to determine whether it is appropriate to grant a variance for the deck as proposed.

Variance for Front Porch

The applicant is proposing to extend the front porch an additional foot into the front yard setback to create a larger porch. A corresponding area below grade will be excavated to increase space for storage. The Municipal Code allows front porches to extend 6 feet into the front setback. In its current condition, the existing front porch exceeds that limit. The front porch currently extends an additional 5 feet from the front wall of the home, and sits 11 feet from the front setback area.

The proposed extension of the porch improves the functionality of the entry to the home, but is not essential to the function of the home. Thus, and the Commission may want to discuss whether or not it is appropriate to grant a variance for the front porch to further encroach into the front setback.

Design Review

The existing home is a stucco house with a Spanish tile flat roof, and a gabled roof above the front entry. The home has double-hung windows and divided-light casement windows on the front façade.

The proposed addition on the main level is located at the rear of the home and not visible from the street front. The addition will be of contemporary style with board and batten finish and flat, trellis roofs. The windows along the addition will be divided-light casement windows to match the front of the home. The contrast in style provides visual interest to the home, and is complementary to the existing design.

The proposed cupola at the roof will be visible from across Peralta. A corner window is proposed on the southwest corner of the cupola, with divided-light casement windows to match the existing. A glass door is proposed on the southern side of the cupola, providing access to the roof. Three small awning windows are proposed on the southern side of the cupola.

A new rear deck is proposed on the upper floor, adjacent to the balcony addition, and a set of French doors will lead out onto to it. A new rear door and window will be located on the lower level, below the deck. Stairs will lead from this lower door up to the backyard.

No new windows are proposed on the northern elevation. The southern elevation will include several new windows along the proposed lower floor, including a set of corner casement windows. French doors, partially below grade, are also proposed on the northern side of the home. Stairs will lead up to the side yard from these doors.

Overall, Staff believes the applicant has proposed an attractive addition, with a style that will complement the existing home, and an addition of habitable area that will have a nominal impact on the massing and appearance of the existing home.

Green Building Requirements

The applicant has provided a green points checklist and has received 135 points, well exceeding the required 50 green points. Energy-efficient windows, recycled flyash foundation, and passive solar heating are just some of the measures taken to meet the green points requirements.

Appeals:

The Albany Municipal Code provides that any action of the Planning and Zoning Commission may be appealed to the City Council if such appeal is filed within 14 days of the date of action. Appeals may be filed in the Community Development Department by completing the required form and paying the required fee.

Attachments:

1. Analysis of Zoning Requirements
2. Findings
3. Conditions
4. Application
5. Green Points Checklist

ATTACHMENT 1 - ANALYSIS OF COMPLIANCE WITH ZONING REQUIREMENTS

20.12 Zoning Districts and Permitted Uses

General Plan: Low Density Residential
 Zoning: R-1 - Single-Family Residential

20.16 Land Use Classifications

Single family residential

Surrounding North - SFR East - SFR
 Property Use South - SFR West - SFR

20.20.080 Secondary Residential Units.

Not applicable.

20.24.020 Table of Site Regulations by District.

	Existing (approx.)	Proposed (approx.)	Requirement
Setbacks			
Front (east)	11'	No change	15'
Side (north)	2' 10"	3'-9" at addition	5'
Side (south)	3'	No Change	5'
Rear (west)	16'	28'-10"	20'
Area			
Lot Size	3.150	No Change	--
Lot Coverage	38%	44%	50%
Maximum Height	20'	24'	28' max.

20.24.030 Overlay District Regulations.

Not applicable.

20.24.040 Hillside Residential Regulations.

Not applicable.

20.24.050 Floor-Area-Ratio.

	Existing (approx.)	Proposed	Requirement
Lot Size	3,150	No change	--
Floor Area			
Garage*	187	187	
Lower floor **	271	1,179	--
Main-floor ***	1199	1259	
Upper Level		28	
Total	1,657	2,653	--
Total Counted	1,470	1,498	--
Floor Area Ratio	.47	.48	.55

* 187 square feet exempted from "total counted" as permitted by MC 20.24.050 for enclosed parking spaces.

** 908 square feet exempted because average perimeter height from grade to finished floor is less than 5 feet

*** 60 sq. ft. exempted from "total counted" as permitted by MC 20.24.050 for enclosed staircases.

20.24.060 Setback Areas, Encroachments.

See Discussion of Key Issues

20.24.100 Distances between Structures.

Not applicable.

20.24.110 Fences, Landscaping, Screening.

Not applicable

20.24.130 Accessory Buildings.

Not applicable

20.28 Off-Street Parking Requirement.

See Discussion of Key Issues

20.40 Housing Provisions

Not applicable.

20.44 Non-conforming Uses, Structures and Lot

Not applicable.

20.48 Removal of Trees

Not applicable

20.52 Flood Damage Prevention Regulations

Not applicable.

20.58 Art in Public Places Program

Not applicable.

20.100.030 Use Permits.

Not applicable.

20.100.040 Variances.

Not applicable.

20.100.010 Common Permit Procedures.

Public notice of this application was provided on July 2, 2010 in the form of mailed notice to property owners and occupants within a 100-foot radius, and posted in three locations.

20.100.050 Design Review.

See Discussion of Key Issues.

ATTACHMENT 2 - FINDINGS

Findings for Design Review approval (Per section 20.100.050.E of the AMC)

Required Finding	Explanation
<p>1. <i>The project conforms to the General Plan, any applicable specific plan, applicable design guidelines adopted by the City of Albany, and all applicable provisions of this Chapter.</i></p>	<p>The General Plan designates this area for residential development. Additionally, the project meets City zoning standards for location, intensity and type of development.</p>
<p>2. <i>Approval of project design is consistent with the purpose and intent of this section, which states "designs of projects...will result in improvements that are visually and functionally appropriate to their site conditions and harmonious with their surroundings, including natural landforms and vegetation. Additional purposes of design review include (but are not limited to): that retention and maintenance of existing buildings and landscape features are considered; and that site access and vehicular parking are sufficient."</i></p>	<p>The proposal is in scale and harmony with existing development in the vicinity of the site. The architectural style, design and building materials are consistent with the City's Residential Design Guidelines. The project will not require significant grading or excavation. The project will not require the removal of any mature trees. The project will not create a visual detriment at the site or the neighborhood.</p> <p>The proposed addition is small in size, attractive in appearance, and is in scale with the surrounding neighbors. The addition will have matching stucco siding and windows. The contrasting rooflines provide visual interest to the home.</p>
<p>3. <i>Approval of the project is in the interest of public health, safety and general welfare.</i></p>	<p>The proposed project will not be detrimental to the health, safety, convenience and welfare of those in the area and would not adversely impact property, improvements or potential future development in the area. The proposed addition is at the rear of the home, with the bulk of the addition on the northern side of the lot, adjacent to the rear yard and garage of a multifamily unit. The windows are well-placed and the addition should have little to no impact on adjacent neighbors. The maximum height will increase to 22'-11". The addition will create an attractive home with an FAR of 44%, which is modest in scale, and fitting for the neighborhood.</p>
<p>4. <i>The project is in substantial compliance with applicable general and specific Standards for Review stated in Subsection 20.100.050.D.</i></p>	<p>The project as designed is in substantial compliance with the standards as stated, including access, architecture, natural features, coordination of design details, and privacy.</p>

Findings for Variance (Per section 20.100 of the AMC)

Required Finding	Explanation
<p>1. <i>Unique Site Characteristics. That there are exceptional or extraordinary circumstances applying to the property involved, including size, shape, topography, location or surroundings, and</i></p>	<p>With a width of 50' and depth of 63', the lot is unusual in size and shape for an R-1 district.</p>
<p>2. <i>Preservation of Property Rights. That the strict application of this Chapter deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification; and</i></p>	<p>The existing home is relatively modest in size, and strict interpretation of the City's zoning standards would limit future expansion of the home to an area between the kitchen and living room.</p>
<p>3. <i>No Special Privilege. That such variance will not constitute a grant of special privilege inconsistent with limitations imposed on similarly zoned properties; and</i></p>	<p>The proposed project meets all other site regulations and results in a project with a floor area ratio well below maximum potentially allowed.</p>
<p>4. <i>Adverse Impacts. That the granting of such variance will not be materially detrimental to the public welfare or materially injurious to the property or improvements in the vicinity; and</i></p>	<p>Due to landscaping and lot configuration, the variances will not be visible from the street and will have less impact on neighboring properties than would be experienced on a conventional residential property.</p>
<p>5. <i>Limitations. That such variance does not permit a use other than a use permitted in the zoning district in which the site is located, increase the permitted residential density, or establish a newly-created lot that does not meet the minimum lot area or minimum lot width requirements of the zoning district.</i></p>	<p>The structure will remain a single-family home.</p>

ATTACHMENT 3
COMMUNITY DEVELOPMENT DEPARTMENT CONDITIONS OF APPROVAL

GENERAL PROJECT CONDITIONS

- Gen-1 **Project Approval.** This Design Review and Variance approval is for Kent Sparling and Vanessa Lowe, as substantially shown and described on the project plans, except as may be modified by conditions herein. Plans include preliminary master site plan prepared by Arkin/Tilt Architects, date received July 9, 2010, architectural plans (project perspectives, building sections, and floor plans, all as presented to the Planning and Zoning Commission on July 13, 2010. For any condition herein that requires preparation of a Final Plan where the project developer has submitted a conceptual plan, the project developer shall submit final plan(s) in substantial conformance with the conceptual plan, but incorporate the modifications required by the conditions herein for approval by the City.
- GEN-2 **Project Approval Expiration.** This Design Review approval expire on July 27, 2011 (one year from the date on which this approval becomes effective) or at an alternate time specified as a condition of approval, unless [a building permit has been issued and construction diligently pursued; a certificate of occupancy has been issued; the use is established; the use permit, variance or design review approval is renewed]. The approval may be renewed by the Community Development Director for a period up to an additional two (2) years, provided that, at least ten (10) days before expiration of one (1) year from the date when the approval becomes effective, an application for renewal of the approval is filed with the Community Development Department. The Community Development Director may grant a renewal of an approval where there is no change in the original application, or there is no request to change any condition of approval.
- Gen-3 **FEES.** The applicant shall pay any and all City and other related fees applicable to the property, as may be modified by conditions herein. Fees shall be based on the current fee structure in effect at the time the relevant permits are secured, and shall be paid before issuance of said permit or before any City Council final action approval. Notice shall be taken specifically of Plan Check, Engineering, Fire and Inspection Fees. The project developer shall also reimburse the City for direct costs of planning; building and engineering plan check and inspection, as mutually agreed between the City and developer.
- GEN-4 **Appeals.** The Albany Municipal Code provides that any action of the Planning staff may be appealed to the Planning and Zoning Commission, and any action of the Planning and Zoning Commission may be appealed to the City Council as per the procedures described in Section 20.100.080. The City Clerk will then schedule the matter for the next available City Council meeting.

- GEN-5 **Requirement for Building Permit.** Approval granted by the Planning and Zoning Commission does not constitute a building permit or authorization to begin any construction or demolish an existing structure. An appropriate permit issued by the Community Development Department must be obtained before constructing, enlarging, moving, converting, or demolishing any building or structure within the City.
- GEN-6 **Fire Department Approval.** As part of a building permit application, the applicant shall submit written documentation that all requirements of the Albany Fire Department have, or will be, met to the satisfaction of the AFD.
- GEN-7 **Engineering Approval.** As part of a building permit application, the applicant shall submit written documentation that all requirements of the Public Works Department have, or will be, met to the satisfaction of the City Engineer.
- GEN-8 **Construction Hours.** Construction activity shall be restricted to the hours of 8:00 a.m. to 6:00 p.m. Mondays through Saturdays, and 10:00 a.m. to 6:00 p.m., Sundays and legal holidays, unless otherwise approved in writing by the City Engineer for general construction activity. Failure to comply with construction hours may result in stop work orders or other administrative actions.
- GEN-9 **Archeological Remains.** In the event subsurface archeological remains are discovered during any construction or preconstruction activities on the site, all land alteration work within 100 feet of the find shall be halted, the Community Development Department notified, and a professional archeologist, certified by the Society of California Archeology and/or the Society of Professional Archeology, shall be notified. Site work in this area shall not occur until the archeologist has had an opportunity to evaluate the significance of the find and to outline appropriate mitigation measures, if deemed necessary. If prehistoric archeological deposits are discovered during development of the site, local Native American organizations shall be consulted and involved in making resource management decisions.
- GEN-10 **Modifications to Approved Plans.** The project shall be constructed as approved. Planning staff may approve minor modifications in the project design, but not the permitted land use (per MC 20.12). A change in an item requiring discretionary approval and any other changes deemed appropriate by the Planning staff shall require further Planning and Zoning Commission approval through the Design Review process.
- GEN-11 **Hold Harmless Agreement.** Pursuant to Government Code Section 66474.9, the applicant (including any agent thereof) shall defend, indemnify, and hold harmless, the City of Albany and its agents, officers and employees, from any claim, action, or proceeding against the City or its agents, officers or employees to attack, set aside, void, or annul the City's approval concerning this application, which action is brought within the time period provide for in Section 66499.37. The City will promptly notify the applicant of any such claim action or proceeding and cooperate fully in the defense.

- GEN-12 **Public Improvements Standards.** Public improvements shall be designed and constructed in accordance with the City's Standard Specifications and Standard Details, unless specifically waived in writing by the City Engineer.
- GEN-13 **Title 24 Standards.** All construction shall be designed and built in accordance with California Title 24 handicap accessibility standards. Appropriate details and specifications shall be incorporated into the plans and submitted at time of building permit application.
- GEN-14 **Energy Conservation Standards.** All buildings shall be designed in accordance with the State of California energy conservation standards for non-residential buildings. The necessary plans and documentation shall be submitted at time of building permit application.

ARCHITECTURE CONDITION

- ARCH-1 **Material Samples.** Samples of final exterior materials and the proposed color palette shall be submitted for review and approval by the Community Development Department as part of building permit application.
- ARCH-2 **Final Architectural Drawings.** The applicant shall submit final architectural elevations, details and revisions for the review and approval of the Community Development Department as part of building permit application.
- ARCH-3 **Window Recess.** All new windows shall be recessed two inches from face of building to provide adequate shade and shadow and to promote visual relief. Final window details shall be submitted for review and approval at the time of building permit application.
- ARCH-4 **Non-Reflective Glazing.** Any glazing material shall be non-reflective.

LIGHTING CONDITIONS

- LGHT-1 **Exterior Lighting.** All exterior lighting shall be installed in such a manner that glare is directed away from surrounding properties and rights-of-way. If required, exterior light fixtures shall be equipped with "cut off" lenses to minimize light and glare spill over onto adjacent properties.
- LGHT-2 **Shielding of Lighting.** Prior to the certificate of occupancy, all accent lighting shall be directed downward and, if necessary, fixed with cut-off lenses to ensure that no glare spills onto neighboring properties.

LANDSCAPING CONDITIONS

- LNDS-1 **Street Tree Requirement.** The applicant shall apply for one street tree before the issuance of the building permit. The City's Environmental Resource Assistance

will determine the type and location of the tree and may waive this requirement if site conditions will not reasonably support establishment of a new tree.

PUBLIC WORKS DEPARTMENT CONDITIONS

GENERAL ENGINEERING CONDITIONS

- ENGR-1 **Title Report.** A recent preliminary title report for the property, prepared within six months of the date of application, shall be submitted to the City Engineer for review. If any interior lot line(s) exist, the applicant must obtain approval of a minor lot line adjustment from the City to remove the interior lot line(s), and cause that lot line adjustment to be recorded before any building permits will be issued.
- ENGR-2 **Geo-Technical Report.** The applicant shall submit, as part of a building permit application, a geotechnical investigation report prepared by a California certified engineering geologist and geotechnical engineer, if determined necessary by the City Engineer. The investigation shall specifically address any hazards of surface fault rupture in accordance with the Alquist-Priolo Special Study Zones Act. Any mitigation measures or conditions requiring further review noted during the Planning process shall be fully addressed prior to plan check.
- ENGR-3 **Backflow Device.** Any required water service for fire protection purposes shall be equipped with a City approved backflow device. Services for irrigation purposes also require a separate City approved backflow prevention device.

GRADING CONDITIONS

- GRAD-1 **Grading Permit.** Any grading required in association with the project shall require a grading permit from the Community Development Department. To obtain this permit, the applicant shall submit a grading plan, indicating the extent and volumes of earth proposed to be moved. A grading permit is subject to 2001 California Building, Appendix 33.
- GRAD-2 **Demolition Permit.** Site demolition shall not occur until construction permits are issued for the development project. All demolition shall be in accordance with permits issued by the City and Bay Area Air Quality Management District (BAAQMD).
- GRAD-3 **Water on Site.** The site shall be graded so as to prevent rainfall runoff originating from improved areas on the project site from crossing onto adjoining private property. Building floor elevations shall be above the FEMA-mapped 100-year flood plain as established by a licensed civil engineer. Provide the elevation and compaction certificates during and upon the completion of grading required by the Uniform Building Code and in conformance with the recommendations of the geotechnical engineer's report. Shore and dewater all excavations in accordance with the requirements of the geotechnical engineer's report.

- GRAD-4 **Flooding Damages.** The project developer shall execute an assumption of risk, indemnification and hold harmless agreement as required by the City. The agreement, in substance, shall state that the project developer, and any successor in interest, shall assume all risk for damages to the project and to project improvements, flooding caused by surface water intrusion, stormwater runoff, or water under the ground surface pressing on or flowing or seeping through foundations, walls, floors, or paved surfaces, basements, whether paved or not, or windows, doors or other openings, and shall indemnify and hold the City harmless from any claims of such damages, including third-party claims, of such damage or of such damages or of damages arising from rainfall runoff which is not prevented from leaving the project site in violation of Condition GRAD-3.
- GRAD-5 **Dust Control Program.** A dust control program shall be prepared by the project developer and approved by the Community Development Department and City Engineer before issuance of a grading permit. The dust control plan shall address such items as covering stockpiled material, frequent watering of graded areas, revegetating graded areas, speed limits for grading equipment and similar items.
- GRAD-6 **Stormwater Pollution Prevention Plan.** The project developer shall submit a Stormwater Pollution Prevention Plan (SWPPP) for review by the City before the issuance of a building or grading and/or building permit. The SWPPP shall be consistent with standards adopted by the Regional Water Quality Control Board and the City of Albany Clean Water Program and implemented by the project general contractor, all subcontractors and suppliers of material and equipment. Construction site cleanup and control of construction shall also be addressed in the SWPPP. The project developer shall be responsible for SWPPP compliance. A copy of the SWPPP shall be kept at the construction site at all times.

INFRASTRUCTURE CONDITIONS

- INFR-1 **Sewer System Requirements.** The sewer system for the subject building shall comply with Chapter 15 of the Albany Municipal Code and to the satisfaction of the City Engineer before Final Inspection approval of the construction permit.
- INFR-2 **Two-Way Cleanout.** Installation of a two-way curbside cleanout shall be required per Chapter 15 of the Albany City Code. This applies to all properties, including properties with a valid upper sewer lateral certificate of compliance. All 2-way curbside clean outs shall be fitted with a loose cap in accordance with the City's standard detail SS6.
- INFR-3 **Property Run-off Requirements.** All runoff from impervious surfaces shall be intercepted at the project boundary and shall be collected and conducted via an approved drainage system through the project site to an approved storm drain facility, as determined by the City Engineer. Development that contributes additional water to the existing drainage system shall be required to complete a hydraulic study and make improvements to the system as required to accommodate the expected ultimate peak water flow and to stabilize erosive banks that could be impacted by additional storm water flow.

- INFR-4 **Roof Drainage.** Roof drainage from the structure shall be collected via a closed pipe and conveyed to an approved storm drain system off the street curb. No concentrated drainage of surface flow across sidewalks shall be permitted. Alternative natural treatment measures are subject review and approval by the City Engineer.
- INFR-5 **Hydraulic Calculations.** The applicant shall submit hydraulic calculations, prepared by a California licensed civil engineer, necessary to determine if the existing water and sewer mains that serve this lot have available capacity for the addition of the proposed development. If capacity is not available, sewer and water mains of adequate size shall be designed and secured prior to issuance of building permits and constructed in a manner acceptable to the City Engineer prior to occupancy release, unless determined otherwise by the City Engineer.
- INFR-6 **Completion of Off-Site Improvements.** Off-site improvements, as required by the City Engineer, shall be complete before issuance of a Certificate of Occupancy unless alternatives are approved in writing by the Albany City Engineer.

PUBLIC IMPROVEMENTS CONDITIONS

- PUBIM-1 **Encroachment Permit.** The applicant shall obtain an encroachment permit from the Engineering Division before commencing any construction activities within any public right-of-way or easement.
- PUBIM-2 **Debris Removal.** All mud, dirt or construction debris carried off the construction site onto adjacent streets shall be removed each day. No materials shall be discharged onto a sidewalk, street, gutter, storm drain or creek.
- PUBIM-3 **Damage to Street Improvements.** Any damage to street improvements now existing or done during construction on or adjacent to the subject property, shall be repaired to the satisfaction of the City Engineer at the full expense of the applicant. This shall include sidewalk repair, slurry seal, street reconstruction or others, as may be required by the City Engineer.
- PUBIM-4 **Right-of-Way Construction Standards.** All improvements within the public right-of-way, including curb, gutter, sidewalks, driveways, paving and utilities, shall be reconstructed in accordance with approved standards and/or plans and shall comply with the standard plans and specification of the Community Development Department and Chapter 14 of the City Code.

FIRE DEPARTMENT CONDITIONS

- FIRE-1 **Construction of 1,500 Square Feet or Greater.** 1500 sq. ft. or more or any addition, remodel, rehabilitation, etc. is 50% of the existing sq. ft.:
- a) This dwelling will be required install an Automatic Fire Extinguishing System throughout the entire dwelling. Ordinance No. 94-010, Albany Municipal Code, Chapter 11, Section 11-2.3a(3)(a).

- b) Plans, information sheets on all sprinkler components and hydraulic calculations are required.
- c) A 110-volt interconnected smoke alarm system with a 10-year lithium batter back-up is acceptable with a fire suppression system.

FIRE-2 Fire Rated Construction. Any portion of a building five (5) feet or less from the property line shall comply with fire-rating requirements of the CBC.

FIRE-3 Gallons-per-Minute Requirement. The water system for fire protection shall comply with City of Albany Fire Department standards. Fire flow test data and water system plans must be provided at time of building plan check. The plans must include all equipment, components and layout of the system. Private fire protection water systems shall be supplied through an approved backflow device per City Engineering Division standards.

FIRE-5 Distance From Fire Hydrant. Before building permit issuance the distance from existing fire hydrants to the building shall be verified and if necessary a new hydrant shall be shown on the plans and installed prior to combustible construction.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM CONDITIONS

STRUCTURAL CONTROL MEASURES

STRUC-1 Illegal Dumping to Storm Drain Inlets and Waterways.

On-site storm drain inlets shall be clearly marked with the words “No Dumping! Flows to Bay,” or equivalent, using methods approved by the City of Albany.

STRUC-2 Interior Floor Drains.

Interior floor drains shall be plumbed to the sanitary sewer system and shall not be connected to storm drains. The applicant shall contact the City Engineer for specific connection and discharge requirements.

STRUC-4 Pesticide/Fertilizer Application

Landscaping shall be designed to minimize irrigation and runoff, promote surface infiltration where appropriate, and minimize the use of fertilizers and pesticides that can contribute to stormwater pollution. If a landscaping plan is required as part of a development project application, the plan shall meet the following conditions related to reduction of pesticide use on the project site:

- a) Where feasible, landscaping shall be designed and operated to treat stormwater runoff by incorporating elements that collect, detain, and infiltrate runoff. In areas that provide detention of water, plants that are tolerant of saturated soil conditions and prolonged exposure to water shall be specified.
- b) Plant materials selected shall be appropriate to site specific characteristics such as soil type, topography, climate, amount and timing of sunlight, prevailing winds, rainfall, air

movement, patterns of land use, ecological consistency and plant interactions to ensure successful establishment.

- c) Existing native trees, shrubs, and ground cover shall be retained and incorporated into the landscape plan to the maximum extent practicable.
- d) Proper maintenance of landscaping, with minimal pesticide use, shall be the responsibility of the property owner.

POST-CONSTRUCTION REQUIREMENTS

POST-CONST-1

All projects shall incorporate appropriate site design measures to minimize impacts to water quality. These may include, but are not limited to, the following: minimizing land disturbance and impervious surfaces (especially parking lots); clustering of structures and pavement; directing runoff from roofs and other impervious surfaces to vegetated areas; use of micro-detention, including distributed landscape-based detention; preservation of open space; protection and/or restoration of riparian areas and wetlands as project amenities, and minimize changes to the natural topography; use "Bay Friendly" landscape design (See Bay-Friendly Landscape Guidelines - Sustainable Practices for the Landscape Professional, www.bayfriendly.org).

POST-CONST-2

All projects shall incorporate all appropriate source control measures listed in the Agency's adopted Local Source Control Measures List.

POST-CONST-3

Projects creating or replacing greater than or equal to 10,000 square feet of impervious surface must include hydraulically sized permanent stormwater treatment control measures in accordance with Municipal Regional Stormwater Permit requirements [and the City's hydraulic sizing requirements as determined by the City engineer.

POST-CONST-4

For projects that discharge directly to Clean Water Act section 303(d)-listed water bodies (the list is available at www.swrcb.ca.gov/water_issues/programs/tmdl/303d_lists2006_epa.shtml) the project proponent must demonstrate that post-development runoff does not exceed pre-development levels for such pollutants that are listed. A "direct discharge" is a discharge that is routed directly to waters of the US by means of a pipe, channel, ditch (including a municipal storm sewer system), or through surface runoff. Discharges from a construction site to a municipal storm sewer system where commingling with upstream and/or downstream discharges can occur are not considered "direct discharges."

POST-CONST-5

Stormwater treatment measures that function primarily as infiltration devices (such as infiltration trenches, French drains, dry wells, and injection wells) shall, where practical, protect groundwater from pollutants that may be present in urban runoff. The infiltration system must include a minimum of two feet of suitable soil to achieve a maximum five inches/hour infiltration rate. Adequate maintenance must be provided to maximize pollutant removal capabilities. The vertical distance from the base of any infiltration device to the seasonal high

groundwater mark shall be at least ten feet (10'), and in areas characterized by highly porous soils or high ground water tables, additional analysis may be required by the City. Infiltration devices shall not be recommended as treatment measures in the vicinity of known contamination sites, or for areas of industrial or light industrial activity, automotive repair shops, car washes, fleet storage areas, nurseries, and areas subject to high vehicular traffic (25,000 or greater average daily traffic [ADT] on main roadway or 15,000 or more ADT on any intersecting roadway). Infiltration devices shall be located a minimum of 100 feet horizontally from any water supply well, septic systems, and underground storage tanks with hazardous materials.

POST-CONST-6

For projects creating and/or replacing greater than or equal to one acre of impervious surface that increase the impervious surface area over pre-project conditions, the agency may complete a Hydromodification Management (HM) Applicability Worksheet to determine if the HM requirements apply. If it is determined that the HM requirements apply, the project must (a) incorporate appropriate site planning and source control measures to manage hydromodification impacts and identify those measures implemented for treatment purposes which also are intended to contribute to reduction of post-project flows, and (b) implement the enhanced HM requirements for flow duration control as described in Attachment B of the Municipal Regional Stormwater Permit. The Bay Area Hydrology Model has been developed to size flow duration controls. See www.bayareahydrologymodel.org.

POST-CONST-7

The design of any stormwater quality treatment measures or hydromodification management measures incorporated in the project must incorporate the treatment control design guidance for vector control included in the Alameda Countywide Clean Water Program's Vector Control Plan.

POST-CONST-8

If the project includes one or more permanent stormwater quality treatment control measure(s) and/or hydromodification management (HM) measures, a Stormwater Treatment Measures Maintenance Agreement (Agreement) shall be executed between the Project Owner and the City and recorded with the County Recorder's Office of the County of Alameda. The agency shall identify the appropriate step in the development approval process by which the Agreement must be executed (for example, prior to the approval of the Final Map, issuance of a grading permit or issuance of a building permit). The property owner shall prepare, to the City's satisfaction, and submit four required Exhibits to the Agreement: (1) a legible, recordable, reduced-scale (8.5"x11") copy of the Site Plan indicating the treatment measure(s) location(s) and site drainage patterns; (2) a maintenance plan, including specific long-term maintenance tasks and a schedule, and incorporating the treatment control operation and maintenance guidance for mosquito control from the Alameda Countywide Clean Water Program's Vector Control Plan; (3) checklists appropriate to the type of treatment measure(s) that will be used on the property (to be provided by the City unless otherwise directed by the City; and (4) a standard Treatment Measure Operation and Maintenance Inspection Report form (template to be provided by the City).

POST-CONST 9

New, additional post-construction stormwater control requirements may apply to projects that receive final planning approval on or after December 1, 2011, and are "Regulated Projects"

(projects that create and/or replace 10,000 square feet of impervious surface or projects that create and/or replace 5,000 square feet or more of impervious surface related to auto service facilities, retail gasoline outlets, restaurants, and/or surface parking).

CONSTRUCTION BEST MANAGEMENT PRACTICES

BPM-1

The project owner shall review and comply with the current Construction General Permit issued by the State Water Resources Control Board. Requirements for filing a Notice of Intent and Project Registration Documents (PRDs) will be in effect beginning July 1, 2010. Projects active on or after the July 1, 2010, effective date shall file electronically for coverage under the new permit (adopted in September 2009). Prior to the issuance of a grading or building permit for a project that will result in land disturbance of one acre or more, the applicant shall submit to the City: (a) a copy of the project's Storm Water Pollution Prevention Plan (SWPPP) and (b) evidence to the City or County that a Notice of Intent (NOI) has been submitted to the (California) State Water Resources Control Board. A copy of the project's NOI and SWPPP shall be kept on-site and made available upon request for review by municipal, county and state officials, inspectors or engineers.

BMP-2

Prior to the commencement of any clearing, grading and/or excavation [resulting in a land disturbance of 10,000 square feet or more and/or requiring a grading permit], the applicant shall submit to the City, a Stormwater Quality Protection Plan (SQPP) or Stormwater Pollution Prevention Plan (SWPPP) to demonstrate that the owner, developer, and/or contractor has evaluated BMPs for protection of stormwater quality during construction activities and has incorporated the site-specific, and seasonally- and phase-appropriate BMPs in the following six categories: erosion control, run-on and run-off control, sediment control, active treatment systems (as necessary), good site management, and non-stormwater management.

BMP-3

The applicant shall implement the SWPPP or SQPP, including erosion control measures to prevent soil, dirt and debris from entering the storm drain system, in accordance with the practices outlined in the ABAG Erosion and Sediment Control Handbook, California Stormwater Quality Association Handbooks, and Regional Water Quality Control Board's Erosion and Sediment Control Field Manual.

BMP-4

All projects involving any land disturbance must incorporate all of the following in project plans:

- Perform clearing and earth moving activities only during dry weather.
- Minimize removal of natural vegetation. Replant area as soon as possible after grading is completed. All cut and fill slopes shall be stabilized as soon as possible after grading is completed. NO site grading shall occur between October 1 and April 30 unless approved erosion and sedimentation controls are in place.
- Delineate with field markers clearing limits, trees, easements, property line, setbacks, sensitive or critical areas, buffer zones, and drainage courses.
- Divert onsite runoff around exposed areas and off-site runoff around the site (e.g. swales and dikes).

- Use methods to prevent erosion and trap sediment on-site, such as sediment basins or traps, earthen dikes or berms, silt fences, check dams, storm drain inlet protection, soil blankets or mats, covers for soil stock piles, and/or other measures.
- Include notes, specifications or attachments to describe: a) construction, operation and maintenance of erosion and sediment control measures, including inspection frequency; b) methods and schedule for grading, excavation, filling, clearing of vegetation, and storage and disposal of excavated or cleared material; c) vegetative cover and mulch specifications, including methods and schedules for planting and fertilization; and d) provisions for temporary and/or permanent irrigation.

BMP-5

The applicant is responsible for ensuring that all contractors and subcontractors are aware of and implement all stormwater quality control measures. Failure to comply with the approved construction BMPs shall result in the issuance of correction notices, citations and/or a project stop work order.

BMP-6

Construction access routes shall be limited to those approved by the City/County Engineer and shall be shown on the approved grading plan. Designated access points shall be stabilized.

BMP-7

Store, handle, and dispose of construction materials and wastes properly to prevent their contact with stormwater. Gather all construction debris on a regular basis, as deemed appropriate by the agency, and place it in a dumpster or other container, which is emptied or removed at least weekly. When appropriate, use tarps on the ground to collect fallen debris or splatters that could contribute to stormwater pollution.

BMP-8

Remove all dirt, gravel, rubbish, refuse and green waste from the sidewalk, street pavement, and storm drain system adjoining the project site.

BMP-9

Broom sweep the sidewalk and public street pavement adjoining the project site on a daily basis, or as required by the agency. Caked on mud or dirt shall be scraped from these areas before sweeping.

BMP-10

Avoid tracking dirt or other materials off-site. During wet weather, minimize driving vehicles off paved areas and other outdoor work.

BMP-11

Create a contained and covered area on the site for the storage of bags of cement, paints, flammables, oils, fertilizers, pesticides, or any other materials used on the project site that have the potential for being discharged to the storm drain system by wind or in the event of a material spill.

BMP-12

Use sediment controls or filtration to remove sediment when dewatering. Obtain all necessary permits.

BMP-13

Protect adjacent properties and undisturbed areas using vegetated buffer strips, sediment barriers or filters, dikes, mulching, or other measures as appropriate. Install filter materials (such as gravel bags, filter fabric, etc.) at the storm drain inlet nearest the downstream side of the project site:

- (a) prior to start of the rainy season (October 1);
- (b) prior to site dewatering activities;
- (c) prior to street washing activities; and
- (d) prior to saw cutting asphalt or concrete; or
- (e) as required by the agency.

Filter materials shall be maintained and/or replaced as necessary to ensure effectiveness and prevent street flooding. Dispose of filter particles in the trash.

BMP-14

Never clean machinery, tools, brushes, etc. or rinse containers into a street, gutter, storm drain, flood control channel or stream/creek. See the Building Maintenance/Remodeling flyer for more information.

BMP-15

Ensure that concrete/gunite supply trucks or concrete/plaster finishing operations do not discharge washwater into street gutters or drains. See the Concrete & Mortar Application flyer for more information.

BMP-16

Control and prevent discharge of all potential pollutants, including pavement cutting wastes, paints, concrete, petroleum products, chemicals, washwater or sediments, and non-stormwater discharges to storm drains and watercourses.

BMP-17

Avoid cleaning, fueling, or maintaining vehicles on-site, except in a designated area where washwater is contained and treated. See the Building Maintenance/Remodeling flyer for more information.

Appeals: The Albany Municipal Code provides that any action of the Planning and Zoning Commission may be appealed to the City Council, if such appeal is filed within 14 days of the date of the action. Appeals may be filed in the Community Development Department by completing the required form and paying the required fee. The City Clerk will then schedule the matter for the next available City Council meeting.

Planning Application #: 10-043

Date Received: 6/30/10
 Fee Paid: \$2,653.50
 Receipt #: 165073



City of Albany



PLANNING APPLICATION FORM FOR DESIGN REVIEW AND CONDITIONAL USE PERMITS FOR SINGLE-FAMILY RESIDENTIAL PROJECTS

For PLANNING & ZONING COMMISSION action:	
<input checked="" type="checkbox"/> Design Review** - residential additions or exterior modifications.	\$1784*/ Admin. \$639*
<input type="checkbox"/> Parking Exceptions/Reductions** - see separate handout	\$Actual Cost/Min \$1784*
<input checked="" type="checkbox"/> Conditional Use Permit** - Non-Conforming Wall(s)	\$1784*

* When obtaining more than one planning approval, the full amount for the highest fee will apply and 1/2 fee will be charged for any other ones.
 ** General Plan Update Fee \$45 included in the fees above. This fee only need to be paid once for each separately submitted application

The City of Albany Municipal Code has certain requirements for approving Design Review of additions to Single Family Residences. Please complete the following application to initiate the process. Please be aware that staff may have additional questions for you based on your responses. You should anticipate that planning staff and/or Planning and Zoning Commissioners will visit your site prior to your Planning and Zoning Commission meeting.

Job Site Address: <u>1083 PERALTA AVE., ALBANY 94706</u>		Zone: <u>R1</u> R2 R3 R4 Other overlays:
Property Owner(s) Name: <u>KENT SPARKING VANESSA LONE</u>	Phone: <u>510.527.4499</u> Fax:	Email: <u>ks@jicamasalad.net nesslowe@pacbell.net</u>
Mailing Address: <u>same</u>	City:	State/Zip:
Applicant(s) Name (contact person): <u>ARKIN HLT ARCHITECTS (CHRIS FANE)</u>	Phone: <u>510.528.9830 (#5)</u> Fax: <u>510.528.0206</u>	Email: <u>chms@arknhlt.com</u>
Mailing Address: <u>1101 8th St. #180</u>	City: <u>BERKELEY</u>	State/Zip: <u>CA / 94710</u>

GENERAL INFORMATION (Please fill out this Chart - existing & proposed;)

Item	Required	Existing	Proposed
How big is your lot? Express in square feet.	N/A	3150	3150
What is the floor area of: your existing residence (see additional handout on how to measure this)		1470	1552
any detached buildings—garage, sheds, etc.			
How many square feet is your addition?	N/A	N/A	143
What is the Floor Area Ratio (FAR) ¹ (see additional handout on how to measure this)	55% maximum allowed	.47	.49
What is your lot coverage? ²	N/A	1197	1350
What is the amount of impervious surface on the lot?	N/A	309	340
What is the maximum height of your residence?	28 ft. maximum	18'-4"	21'-7 1/2"
How many dwelling units are on your site?	1 (2 with special permit)	1	1
How many parking spaces do you have in a garage? ³	see note 3 below	1	1
What are the interior dimensions of your garage?	7'6" by 16'	10'8" x 14'2"	10'8" x 16'0"
What is the narrowest width of your driveway?	6.5' is the narrowest allowed	6'-10"	6'-10"

PROJECT ADDRESS: _____

Item	Required	Existing	Proposed
Setbacks: (Existing non-conforming)			
Front yard: What is the minimum distance between the front wall of your house and the front property line?	15 feet minimum	11'-0"	6'-0"
Side yards: What is the shortest distance between a side wall of your house and a side property line?	10% of lot width; min. 3 ft; max. 5 ft. Corner lot 7 ft. 6 in	2'-9 1/4"	2'-9 1/4"
Rear Yards: What is the minimum distance between the rear wall of your house and the rear property line?	20 feet minimum	15'-8 1/2"	10'-8 1/2"
Hillside District only: What is the slope of your lot?			

Notes:

- 1 Floor Area Ratio (FAR) applies to single family residential development in all zones. It is defined as the ratio between the gross floor area of a building(s) on a lot compared to gross square feet of lot (see FAR Handout).
- 2 Lot Coverage is defined as the land area covered by all structures except uncovered decks, porches, landings, balconies or stairways that are less than 6 feet above grade as well as eaves, trellises and similar structures that do not have solid roofs.
- 3 The Albany Municipal Code requires that every residential unit must have 2 off-street parking spaces. Some exceptions may apply in your situation. See the parking section of the Zoning Ordinance for a complete list of possible exceptions.

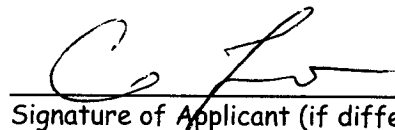
(Please use additional sheets to explain any of your responses to the following).

1. Will the construction of the addition require the removal of any mature trees? no
If yes, please describe: _____
2. Are the architecture, materials and colors of the proposed addition consistent with the existing dwelling?
yes. Preserving style of existing window grilles and retaining the
If yes, please describe how: rustic character of the home through board and batten siding (additions) and simple massing.
3. Is the proposed addition sensitive to the size or mass of the surrounding properties? yes, we are
If yes, please describe how: mostly expanding on existing features by enclosing an exterior deck off the master bedroom.
4. If you have no garage, where do you park vehicles? _____

Story Poles - For new residential construction and exterior alterations that increase the height, an applicant is required to erect at least two "story poles", a temporary construction for the purpose of visually displaying the outer limits, including the height, of the proposed structural alterations. These poles shall be erected at least ten (10) days prior to the design review meeting, and shall be maintained in place through the date of the meeting.

The signature of the property owner is required for all projects. By executing this form you are affirming that you are the property owner.


Signature of Property Owner 30 June 2018
Date


Signature of Applicant (if different) 06/30/10
Date

Community Development Department staff is available Monday, 8:30 AM to 7:00 PM, Tuesday through Thursday 8:30 AM to 5:00 PM, and Friday 8:30 AM to 12:30 PM at 979 San Pablo Avenue, 2nd Floor, Albany, CA 94706 (510) 528-5760.



City of Albany

Green Building Program Rating System for Remodeling Projects* Supplemental Application Form

*Please obtain other appropriate Green Point Checklist for projects other than Single Family Residential Remodeling Projects

Project Address: 1083 PERALTA AVE.

Checklist Prepared By: ARKIA TILT ARCHITECTS

Date Prepared: 6.30.10

	INPUT	Resources	Energy	IAQ/Health
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A. Site

1. Recycle Job Site Construction & Demolition Waste

65% = 1 point; 75% = 2 points; 80% = 4 points

up to 4 Resource pts

2. Salvage Reusable Building Materials

4 Resource pts y=yes

3. Remodel for Mixed Use, Adaptive Reuse, and Historic Preservation

4 Resource pts y=yes

4. Protect Native Soil

2 Resource pts y=yes

5. Minimize Disruption of Existing Plants & Trees

1 Resource pt y=yes

6. Implement Construction Site Stormwater Practices

2 Resource pts y=yes

7. Protect Water Quality with Landscape Design

2 Resource pts y=yes

8. Design Resource-Efficient Landscapes and Gardens

4 Resource pts y=yes

9. Reuse Materials/Use Recycled Content Materials for Landscape Areas

2 Resource pts y=yes

10. Install High-Efficiency Irrigation Systems

2 Resource pts y=yes

11. Provide for On-Site Water Catchment / Retention

2 Resource pts y=yes

		4		
		1		
		2		
		2		

B. Foundation

1. Incorporate Recycled Flyash in Concrete

25% Recycled Flyash = 2 points; Add 1 point for every 10% increase of flyash, up to 5 points

up to 5 Resource pts

2. Use Recycled Content Aggregate

2 Resource pts y=yes

3. Insulate Foundation/Slab before backfill

3 Energy pts y=yes

		3		
			3	

C. Structural Frame

1. Substitute Solid Sawn Lumber with Engineered Lumber

3 Resource pts y=yes

2. Use FSC Certified Wood for framing

(For every 10% of FSC lumber used = 2 points, up to 10)

up to 10 Resource pts.

3. Use Wood I-Joists for Floors and Ceilings

2 Resource pts y=yes

4. Use Web Floor Trusses

2 Resource pts y=yes

5. Design Energy Heels on Trusses 6" or more

2 Energy pts y=yes

6. Use Finger-Jointed Studs for Vertical Applications

2 Resource pts y=yes

7. Use Engineered Studs for Vertical Applications

2 Resource pts y=yes

8. Use Recycled Content Steel Studs for Interior Framing

2 Resource pts y=yes

9. Use Structural Insulated Panels (SIPs)

a. Floors

3 Energy pts y=yes

b. Wall

3 Energy pts y=yes

c. Roof

3 Energy pts y=yes

		3		
		2		

			INPUT	Resources	Energy	IAQ/Health
10. Apply Advanced Framing Techniques	4 Resource pts	y=yes				
11. Use Reclaimed Lumber for Non Structural Applications	3 Resource pts	y=yes		3		
12. Use OSB						
a. Subfloors	1 Resource pt	y=yes		1		
b. Sheathing	1 Resource pt	y=yes		1		

D. Exterior Finish

1. Use Sustainable Decking Materials						
a. Recycled content	3 Resource pts	y=yes		3		
b. FSC Certified Wood	3 Resource pts	y=yes				
2. Use Treated Wood That Does Not Contain Chromium/Arsenic	1 IAQ/Health pt	y=yes				
3. Install House Wrap under Siding	1 IAQ/Health pt	y=yes				1
4. Use Fiber-Cement Siding Materials	1 Resource pt	y=yes		1		

E. Plumbing

1. Install Water Heater Jacket	1 Energy pt	y=yes			1	
2. Insulate Hot and Cold Water Pipes	2 Energy pts	y=yes				
3. Retrofit all Faucets and Showerheads with Flow Reducers						
a. Faucets (1 point each, up to 2 points)	Up to 2 Resource pts.			1		
b. Showerheads (1 point each, up to 2 points)	Up to 2 Resource pts.			1		
4. Replace Toilets with Ultra-Low Flush Toilets (1 point each, up to 3 points)	Up to 3 Resource pts.			2		
5. Install Chlorine Filter on Showerhead	1 IAQ/Health pt	y=yes				
6. Convert Gas to Tankless Water Heater	4 Energy pts	y=yes				
7. Install Water Filtration Units at Faucets (2 points each, up to 4 points)	Up to 4 IAQ/Health pts.					
8. Install On-Demand Hot Water Circulation Pump	4 Resource pts	y=yes				

F. Electrical

1. Install Compact Fluorescent Light Bulbs (CFLs) (6 bulbs=2 points, 10 bulbs =3 points, 12 bulbs = 4 points)	Up to 4 Energy pts.				3	
2. Install IC-AT Recessed Fixtures with CFLs (1 point each, up to 5 points)	Up to 5 Energy pts.					
3. Install Lighting Controls (1 point per fixture, up to 4 points)	Up to 4 Energy pts.				2	
4. Install High Efficiency Ceiling Fans with CFLs (1 point each, up to 4 points)	Up to 4 Energy pts.					

G. Appliances

1. Install Energy Star Dishwasher	1 Energy pt	y=yes				
2. Install Washing Machine with Water and Energy Conservation Features	1 Energy pt	y=yes				
3. Install Energy Star Refrigerator	1 Energy pt	y=yes				
4. Install Built-In Recycling Center	3 Resource pts	y=yes				

H. Insulation

1. Upgrade Insulation to Exceed Title 24 Requirements						
a. Walls	2 Energy pts	y=yes			2	
b. Ceilings	2 Energy pts	y=yes			2	

			INPUT	Resources	Energy	IAQ/Health
2. Install Floor Insulation over Crawl Space	4 Energy pts	y=yes			4	
3. Install Recycled-Content, Fiberglass Insulation with No Added Formaldehyde	3 IAQ/Health pts	y=yes				
4. Use Advanced Infiltration Reduction Practices	2 Energy pts	y=yes				
5. Use Cellulose Insulation						
a. Walls	4 Resource pts	y=yes		4		
b. Ceilings	4 Resource pts	y=yes		4		
6. Alternative Insulation Products (Cotton, spray-foam)						
a. Walls	4 Resource pts	y=yes				
b. Ceilings	4 Resource pts	y=yes				
I. Windows						
1. Install Energy-Efficient Windows						
a. Double-Paned	1 Energy pt	y=yes			1	
b. Low-Emissivity (Low-E)	2 Energy pts	y=yes			2	
c. Low Conductivity Frames	2 Energy pts	y=yes			2	
2. Install Low Heat Transmission Glazing	1 Energy pt	y=yes				
J. Heating Ventilation and Air Conditioning						
1. Use Duct Mastic on All Duct Joints	2 Energy pts	y=yes			2	
2. Install Ductwork within Conditioned Space	3 Energy pts	y=yes			3	
3. Vent Range Hood to the Outside	1 IAQ/Health pt	y=yes				1
4. Clean all Ducts Before Occupancy	2 IAQ/Health pts	y=yes				
5. Install Solar Attic Fan	2 Energy pts	y=yes				
6. Install Attic Ventilation Systems	1 Energy pt	y=yes				
7. Install Whole House Fan	4 Energy pts	y=yes				
8. Install Sealed Combustion Units						
a. Furnaces	3 IAQ/Health pts	y=yes				
b. Water Heaters	3 IAQ/Health pts	y=yes				
9. Replace Wall-Mounted Electric and Gas Heaters with Through-the-Wall Heat Pumps	3 Energy pts	y=yes				
10. Install 13 SEER/11 EER or higher AC with a TXV	3 Energy pts	y=yes				
11. Install AC with Non-HCFC Refrigerants	2 Resource pts	y=yes				
12. Install 90% Annual Fuel Utilization Efficiency (AFUE) Furnace	2 Energy pts	y=yes				
13. Retrofit Wood Burning Fireplaces						
a. Install EPA certified wood stoves/inserts	1 IAQ/Health pt	y=yes				
b. Install/Replace Dampers	1 Energy pt	y=yes				
c. Install Airtight Doors	1 Energy pt	y=yes				
14. Install Zoned, Hydronic Radiant Heating	3 Energy pts	y=yes			3	
15. Install High Efficiency Filter	4 IAQ/Health pts	y=yes				
16. Install Heat Recovery Ventilation Unit (HRV)	5 IAQ/Health pts	y=yes				
17. Install Separate Garage Exhaust Fan	3 IAQ/Health pts	y=yes				
K. Renewable Energy and Roofing						
1. Pre-Plumb for Solar Water Heating	4 Energy pts	y=yes			4	
2. Install Solar Water Heating System	10 Energy pts	y=yes				
3. Pre-Wire for Future Photovoltaic (PV) Installation	4 Energy pts	y=yes			4	
4. Install Photovoltaic (PV) System (1.2 kw = 6 points, 2.4 kw = 12 points, 3.6 kw = 18 points)	Up to 18 Energy pts					

	INPUT	Resources	Energy	IAQ/Health
6. Select Safe and Durable Roofing Materials	1 Resource pt y=yes			
7. Install Radiant Barrier	3 Energy pts y=yes			

L. Natural Heating and Cooling

1. Incorporate Passive Solar Heating	5 Energy pts y=yes		5	
2. Install Overhangs or Awnings over South Facing Windows	3 Energy pts y=yes		3	
3. Plant Deciduous Trees on the West and South Sides	3 Energy pts y=yes			

M. Indoor Air Quality and Finishes

1. Use Low/No-VOC Paint	1 IAQ/Health pts y=yes			1
2. Use Low VOC, Water-Based Wood Finishes	2 IAQ/Health pts y=yes			2
3. Use Low/No VOC Adhesives	3 IAQ/Health pts y=yes			3
4. Use Salvaged Materials for Interior Finishes	3 Resource pts y=yes	3		
5. Use Engineered Sheet Goods with no added Urea Formaldehyde	6 IAQ/Health pts y=yes			6
6. Use Exterior Grade Plywood for Interior Uses	1 IAQ/Health pts y=yes			
7. Seal all Exposed Particleboard or MDF	4 IAQ/Health pts y=yes			
8. Use FSC Certified Materials for Interior Finish	4 Resource pts y=yes			
9. Use Finger-Jointed or Recycled-Content Trim	1 Resource pts y=yes			
10. Install Whole House Vacuum System	3 IAQ/Health pts y=yes			

N. Flooring

1. Select FSC Certified Wood Flooring	8 Resource pts y=yes			
2. Use Rapidly Renewable Flooring Materials	4 Resource pts y=yes			
3. Use Recycled Content Ceramic Tiles	4 Resource pts y=yes			
4. Install Natural Linoleum in Place of Vinyl	5 IAQ/Health pts y=yes			
5. Use Exposed Concrete as Finished Floor	4 Resource pts y=yes	4		
6. Install Recycled Content Carpet with Low VOCs	4 Resource pts y=yes			

O. City of Albany Incentives

1. Additions less than 50% increase in floor area	20 Resource pts y=yes	20		
2. Additions less than 200sq.ft. or resulting in less than 1,500sq.ft.	10 Resource pts y=yes	10		
3. Seismic upgrade of existing building	25 Resource pts y=yes			
4. For having a hybrid or zero emissions vehicle	2 IAQ/Health pts y=yes			
5. For having no automobile	5 Resource pts y=yes			
6. Plant more than one street tree when feasible	2 IAQ/Health pts y=yes			
7. Earthquake kit	2 IAQ/Health pts y=yes			

TOTAL POINTS ACCUMULATED:

(50 Points REQUIRED from all 3 columns)

50 points total Req'd

135



City of Albany

SUPPLEMENTAL QUESTIONNAIRE



CITY OF ALBANY

JUN 30 2010

COMMUNITY DEVELOPMENT
DEPARTMENT

VARIANCE

VARIANCE(S) REQUESTED:

9'-0" foot front yard variance to construct a basement/storage within
6'-0" feet of the front property line.*

9'-3" foot rear yard variance to construct a bedroom addition within
10'-9" feet of the rear property line.

2'-2" foot side yard variance to construct a bedroom addition within
2'-10" feet of the side property line.

Other (fence height, building height, parking number or size, etc.)

FINDINGS:

- List below *special circumstances applicable to the property*, including size, shape, topography, location, or surroundings, to show why the variance should be granted; and why the granting of the variance will not be a granting of special privileges inconsistent with the limitations upon other properties in the vicinity and zone (you may attach a statement).

Building within a very shallow (63'-0") and narrow (50'-0") lot, and responding largely to existing non-conforming site conditions.

- List below your reasons why the variance will not materially affect adversely the health or safety of persons residing or working in the neighborhood or be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood (you may attach a statement).

The proposed expansions respond to current site conditions, with the additions assuming the footprint of an existing balcony. Efforts were also made to preserve a Japanese redwood on site by not encroaching on the south yard of the property.

*Front property line is at the back of the City right-of-way line. This may be several feet from the back of the sidewalk. Contact the Community Development Department for assistance in how to estimate the property line location. Exact measurement may require a survey by the property owner.

Community Development Department staff is available Monday 8:30 AM to 7:00 PM , Tuesday through Thursday 8:30 AM to 5:00 PM, and Friday 8:30 AM to 12:30 PM at 1000 San Pablo Avenue, Albany, CA 94706 (510) 528-5760.

Governor Pete Wilson

The Planner's Training Series:
THE VARIANCE



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The Planner's Training Series

This publication is one in a series prepared by the Office of Planning and Research (OPR) on topics of general interest to planners. As with the rest of this series, its primary purpose is to provide both a reference for experienced planners and training materials for new planners, planning commissioners, and zoning board members. Citations are made to pertinent sections of the California statutes and to court decisions in order to provide the reader the opportunity to do additional research on their own. Unless otherwise noted, all statutory references are to the California Government Code.

This document and other OPR publications, along with additional information about local government planning and zoning, is available from the LUPIN (Land Use Planning Information Network) web site maintained by the California Resources Agency at <http://ceres.ca.gov/planning/>

The VARIANCE

WHAT IS A VARIANCE?

Simply put, a variance is a limited exception to the usual requirements of local zoning. As the following discussion will explain, when a city or county is confronted with development on an unusual piece of property, the variance procedure can lend some flexibility to the usual standards of the zoning ordinance. Approval of a variance allows the property owner "to use his property in a manner basically consistent with the established regulations with such minor variations as will place him in parity with other property owners in the same zone" (*Longtin's California Land Use*, 2nd edition).

ENABLING LEGISLATION

State law specifies the basic rules under which counties and general law cities may consider variance proposals. Charter cities are not subject to these procedures unless they have incorporated them into their municipal ordinance. The following discussion will take a detailed look at the state law relating to variances in counties and general law cities.

The authority to consider variances is as follows:

"Variances from the terms of the zoning ordinances 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 zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification."

"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."

"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. The provisions of this section shall not apply to conditional use permits." (Section 65906)

Later in this paper, we will take a brief look at three other variance statutes. Section 65906.5 authorizes the grant of a variance from the parking requirements of a zoning ordinance in order to allow parking to occur off-site or for in-lieu fees to be paid. Section 65911

authorizes the granting of variances in open space zones. Section 65852.1 provides that a variance may be approved allowing a second dwelling unit on property zoned for single-family residential use if the occupant is 62 years or older.

PROCEDURE

Approval of a variance is an administrative act. Unlike a rezoning or an amendment to a general plan, consideration of a variance does not involve the establishment of new codes, regulations, or policies, but rather applies the provisions of the zoning ordinance to a particular circumstance. State law provides that the city council or county board of supervisors may delegate responsibility for considering and deciding variance requests. Commonly, responsibility is delegated to a board of zoning adjustment or a zoning administrator.

Public Hearing

Section 65905 requires the city or county to hold a public hearing on proposed variances. Ten-days advance notice of the hearing must be published in a newspaper of general circulation in the community and mailed directly to the applicant and land owner, as well as to owners of properties located within 300 feet of the site boundaries (Section 65091 provides detailed requirements). Nearby property owners must be provided notice even if their property is located outside the jurisdiction's boundaries (*Scott v. Indian Wells* (1972) 6 Cal.3d 541). The hearing must comply with the open meeting requirements set out in the Ralph M. Brown Open Meeting Act (Section 54950, et seq.).

The notice of hearing must include a description of the proposal and the variance process, the location of the property involved, the identity of the hearing body or administrator, and the date, time, and place of the public hearing (Section 65094). The notice must also specify whether the proposal has been determined to be categorically exempt or if a negative declaration or environmental impact report has been prepared. As much as possible, the hearing notice should be written in plain language and avoid planning jargon.

The purpose of the hearing is for the zoning board or zoning administrator to hear and consider the opinions of the proponent and nearby property owners. At the conclusion of the hearing, the board or administrator will decide whether or not to approve the variance. If the variance is approved, the board or administrator will adopt findings to support their action. Their decision, whether for approval or denial, can be appealed to a higher body (the planning commission, for example) in accordance with the city or county zoning ordinance.

Section 65901 allows the city council or county board of supervisors to specifically authorize its board of zoning adjustment or zoning administrator to decide variance applications without a public hearing. The local zoning ordinance must set out the particular types of variances subject to this rule, as well as the maximum extent of variation from standards which may be allowed. Notwithstanding the cavalier approach of Section 65901, the Office of Planning and Research recommends providing the applicant and neighboring property owners at least the opportunity to request a public hearing on any variance proposal which may affect their property rights. For example, the city may mail notice indicating that no hearing will be held unless specifically requested. This recognizes the due process guarantee of the U.S. Constitution and complies with the holding of the California Supreme Court in *Horn v. County of Ventura* (1979) 24 C.3d 605.

California Environmental Quality Act

Variances are subject to the California Environmental Quality Act (CEQA, Public Resources Code Section 21000, et seq.). Prior to the public hearing on the proposed variance, the city or county must evaluate the proposal to determine whether or not it may have a significant adverse effect on the environment. In most cases, a variance is sufficiently innocuous to be categorically exempt from environmental review (see Section 15305 of the state *CEQA Guidelines*). Where the proposal is not exempt, the city or county must prepare either a negative declaration indicating that the

variance is not exempt, but nonetheless will have no significant effect, or an environmental impact report which describes the expected impacts of the proposal and the means to avoid or lessen those impacts.

Permit Streamlining Act

Variance proceedings are subject to the Permit Streamlining Act (Section 65920, et seq.). Accordingly, a variance proposal for which a negative declaration was adopted or a CEQA exemption used must be acted upon within three months of that action. If an Environmental Impact Report (EIR) was certified for the variance, the application must be acted upon within 6 months of that certification. Further, a variance cannot be disapproved solely to comply with these deadlines.

LIMITATIONS ON THE COMMON VARIANCES

Pursuant to Section 65906, a variance may be granted when:

- (1) there are specific physical circumstances that distinguish the project site from its surroundings; and
- (2) these unique circumstances would create an unnecessary hardship for the applicant if the usual zoning standards were imposed.

Variances are limited to those situations where the peculiar physical characteristics of a site make it difficult to develop under standard regulations. A variance is granted in order to bring the disadvantaged property up to the level of use enjoyed by nearby properties in the same zone. For instance, where the steep rear portion of a residential lot makes the site otherwise undevelopable, a variance might be approved to reduce the front yard setback and thereby create sufficient room for a home on the lot. Similarly, a parcel's shape might preclude construction of a garage unless side yard setback requirements are reduced by approval of a variance.

Review of a proposed variance must be limited solely to the physical circumstances of the property. "The standard of hardship with regard to applications for variances relates to the property, not to the person who owns it" (*California Zoning Practice*, Hagman, et al.). Financial hardship, community benefit, or the worthiness of the project are not considerations in determining whether to approve a variance (*Orinda Association v. Board of Supervisors* (1986) 182 Cal.App.3d 1145). As *California Zoning Practice* suc-

cinctly explains, “[t]he test of bringing property to parity is based on equality of the property rather than equality of the owners.” (emphasis added)

Furthermore, consideration of a variance must focus upon the zoning standard or standards from which an exception is being requested. “[A] variance applicant may not earn immunity from one code provision merely by overcompliance with others. Otherwise, the board charged with reviewing development proposals ‘would then be empowered to decide which code provisions to enforce in any given case; that power does not properly repose in any administrative tribunal’ (*Broadway, Laguna Assn. v. Board of Permit Appeals* (1967) 66 Cal.2d 767).” (*Orinda Association v. Board of Supervisors*, supra).

Variations are only for use in unusual, individual circumstances. There is no basis for granting a variance if the circumstances of the project site cannot be distinguished from those on surrounding lots. For example, all things being equal, in a subdivision where lots are uniformly 40 feet wide, there is no basis for allowing one lot to be developed with reduced side yard setbacks.

Conditions must be imposed on a variance when necessary to avoid granting the applicant a special privilege. As will be discussed later, these conditions must be reasonably related to the development being authorized.

A variance does not change the zoning of the project site, so it cannot permit uses other than those already allowed under existing zoning. Section 65906 prohibits the approval of “use variances.” Nor is a variance intended to be used in place of design review standards. The law does not intend that every or even one-quarter of the properties on a block be granted the same kind of variance. If development within a particular area is commonly leading to requests for consideration of variances, then the city or county should reassess the standards of the applicable zone and, if necessary, change them.

At the same time, the approval or denial of a variance does not create a precedent for subsequent variance requests. Because each variance is based upon special circumstances relating to the site for which it is proposed, the past grant or denial of variances for other properties in the area does not mandate similar action on the part of the hearing body (*Miller v. Board of Supervisors of Santa Barbara County* (1981) 122 Cal.App.3d 539).

The applicant for a variance bears the burden of proving that special circumstances exist to justify its granting (*PMI Mortgage Ins. Co. v. City of Pacific*

Grove (1982) 128 Cal.App.3d 724). The hearing body must not approve a variance unless it can make written findings, supported by substantial evidence in the record, that the variance meets the criteria of Section 65906.

A variance runs with the land. Subsequent owners of the land continue to enjoy the variance. The original land owner cannot transfer the variance to another site, nor can the local agency approve a variance on the condition that it remain owned by a particular person (*Cohn v. County Board of Supervisors* (1955) 135 Cal.App.2d 180).

OTHER TYPES OF VARIANCES

State law also allows variances to required parking regulations, to open space zoning, and for “granny” units. Each of the following statutes has its own findings requirements, some of which differ from those of Section 65906. In all cases, public notice and hearing must be provided pursuant to Section 65905.

Parking variance (Section 65906.5):

“Notwithstanding section 65906, a variance may be granted from the parking requirements of a zoning ordinance in order that some or all of the required parking spaces be located offsite, including locations in other local jurisdictions, or that in-lieu fees or facilities be provided instead of the required parking spaces, if both the following conditions are met:

- (a) The variance will be an incentive to, and a benefit for, the nonresidential development.
- (b) The variance will facilitate access to the non-residential development by patrons of public transit facilities, particularly guideway facilities.”

Section 65906.5 authorizes variances to the non-residential (i.e., commercial, industrial, recreational, etc.), on-site parking requirements contained in a local zoning ordinance. Such a variance may authorize locating required parking spaces off site. It may also authorize the landowner to provide in-lieu fees or facilities instead of required parking spaces. It does not authorize reducing the number of required spaces unless in-lieu fees or facilities are provided.

The local agency must adopt findings describing the incentive and benefit being provided to the non-residential use. These findings must also describe how the variance will facilitate access to the development by riders of public transit.

Open-Space variance (Section 65911):

“Variances from the terms of open-space zoning ordinance 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 zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification.

“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 the property is situated. This section shall be literally and strictly interpreted and enforced so as to protect the interest of the public in the orderly growth and development of cities and counties and in the preservation and conservation of open-space lands.”

This statute is nearly identical to Section 65906 and is subject to basically the same findings requirements. Its purpose is to clarify that variances may be granted to the terms of open-space zoning provided that the provisions of that zoning are not compromised.

“Granny” unit variance (Section 65852.1):

“Notwithstanding section 65906, any city, including a charter city, county, or city and county may issue a zoning variance, special use permit, or conditional use permit for a dwelling unit to be constructed, or which is attached to or detached from, a primary residence on a parcel zoned for a single-family residence, if the dwelling unit is intended for the sole occupancy of one adult or two adult persons who are 62 years of age or over, and the area of floor space of the attached dwelling unit does not exceed 30 percent of the existing living area or the area of the floor space of the detached dwelling unit does not exceed 1200 square feet.”

Section 65852.1 allows a variance to be used like a conditional use permit in order to allow construction of an accessory dwelling for elderly residents. Prior to approval of a variance under Section 65852.1 the city or county must find that the resident or residents meet the age criteria, and that the floor area of the proposed unit does not exceed that allowed by the statute. The findings required for a common variance under Section 65906 do not apply.

In contrast to Section 65906, the granny unit statute applies both to charter and general law cities and specifically authorizes the granting of a “use” variance.

VARIANCE FINDINGS

When approving a variance, the hearing body must make “findings of fact” to support its action (*Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 C.3d 506). The agency must also make the findings required by the California Environmental Quality Act (CEQA) and by local ordinance, if any.

Findings are important. They explain the hearing body’s reasons for approving the proposal before it. The purpose for making findings is to “bridge the analytical gap between the raw evidence and ultimate decision” (Topanga, supra). In the event that the decision is challenged, a court will examine the evidence embodied in the findings to determine whether the hearing body abused its discretion when acting on the variance. An abuse of discretion will be found when the agency did not proceed in a manner prescribed by law, when the decision is not supported by findings, and when the findings are not supported by evidence in the administrative record.

Variance findings must describe the special circumstances that physically differentiate the project site from its neighbors. Further, the findings must specify the “unnecessary hardship” that would result from these circumstances in the event that a variance was not approved.

Defensible findings are based on the pertinent evidence that was available to the decisionmakers. Findings should be more than a mere recitation of statutory requirements; they must provide the factual basis that leads to the conclusion drawn by the approving agency.

In the absence of findings, approval of the variance “would [amount] to the kind of ‘special privilege’ explicitly prohibited by Government Code section 65906.” (*Orinda Association v. Board of Supervisors*, supra) For a detailed discussion of findings requirements, see OPR’s publication entitled Bridging the Gap.

CONDITIONS OF APPROVAL

Section 65906 requires that the variance be subjected to those conditions of approval necessary to ensure that it will not be a grant of special privilege. The conditions are meant to maintain parity between the variance site and surrounding properties. For example, if an increase in fence height is requested due to a steeply sloping rear yard, the approved height might be required to be low enough so that neighbors' views would not be obstructed and the increased height would not be noticeable.

The conditions which may be placed on a variance are limited by Section 65909. It requires that dedications of land must be "reasonably related" to the use of the property for which the variance is granted. In addition, a performance bond cannot be required for the installation of public improvements that are not reasonably related to the property use. Limitations on impact fees are described in the Mitigation Fee Act (Section 66000, et seq.).

Generally, the conditions applied to the variance must have an "essential nexus" to some legitimate public need or burden created as a result of the variance approval (*Nollan v. California Coastal Commission* (1987) 97 L.Ed2nd 677). Furthermore, there must be a "rough proportionality" between the extent of the condition and the particular demand or impact of the project. (*Dolan v. City of Tigard* (1994) 129 L.Ed2nd 304). For instance, if a variance is granted allowing a back yard fence to be built two feet higher than usual, there are probably no grounds to impose a condition requiring the landowner to contribute to a road improvement fund. However, it would be proper to regulate the design of the fence. The burden of proof to justify proposed exactions rests with the city or county (*Dolan, supra*)

EXAMPLES

The following court cases illustrate when it may be proper to grant a variance and when it may not be. These cases are illustrations only and should not be used as the sole basis for granting or denying a variance.

Cases Upholding Variance Approvals

Special Circumstances

- Special circumstances supported approval of a variance from off-street parking requirements for

an apartment building when the building was to be located near three public parking garages and many of the tenants would not own cars (*Siller v. Board of Supervisors* (1962) 58 C.2d 479).

- A variance reducing the amount of required off-street parking was justified when the landowner would otherwise have had to partially demolish a building and fill a portion of the bay below high tide line in order to meet the parking standard (*Zakessian v. City of Sausalito* (1972) 28 Cal.App.3d 794).

Distinction of the Site From its Surroundings

- A court upheld issuance of a variance allowing expansion of a hotel without satisfying a requirement that 80% of its accommodations consist of detached cottages (*Miller v. Board of Supervisors of Santa Barbara County* (1981) 122 Cal.App.3d 539). The court held that the hotel in question could be distinguished from the other hotels in its zone because of landscaping and design features that dated from before zoning was enacted.

Cases Overturning Variance Approvals

Special Circumstances

- Subsoil conditions that would increase the cost of building a high-rise and reduce its anticipated income, but which were common to similar high-rise structures, were not "special circumstances" sufficient to support the grant of a variance (*Broadway, Laguna, Etc. Assn. v. Board of Permit Appeals* (1967) 66 C.2d 767). The court reversed the city's approval.
- Where a showing could not be made that special circumstances existed sufficient to distinguish the subject property from its neighbors, the city was not required to issue a variance (*PMI Mortgage Ins. Co. v. City of Pacific Grove* (1981) 128 Cal.App.3d 724).
- Desirable project design, community benefit, and the alleged superiority of the proposed design to development under existing zoning regulations were irrelevant for purposes of judging whether or not to grant a variance (*Orinda Assn. v. Board of Supervisors* (1986) 182 Cal.App.3d 1145). The court held that a building height variance could not be granted, regardless of the alleged benefits of the project, absent a finding detailing the special circumstances that justified its issuance.

Distinction of the Site From its Surroundings

- A variance allowing a 96-space mobilehome park on 28 acres in a mountainous area that was zoned for single residences on 1-acre minimum lots was overturned because the county's findings only described the subject property and not the conditions which distinguished it from surrounding properties (Topanga Assn. for a Scenic Community v. County of Los Angeles 91974) 11 C.3d 506).

Unnecessary Hardship

- Self-induced hardship is not grounds for variance approval. Voluntary sale of an adjoining parcel of land leaving a remainder parcel that was too small for the intended purpose was not an "unnecessary hardship" for purposes of granting a variance (Town of Atherton v. Templeton (1961) 198 Cal.App.2d 146).

Procedure/Public Notice

- A property owner's failure to receive notification of a zone change was not sufficient basis for later granting a variance from the new zone's floor area ratio standards (Cow Hollow Improvement Club v. Board of Permit Appeals (1966) 245 Cal.App.2d 160). The variance approval was overturned by the court.
- A hearing notice which notified neighbors of a variance for a proposed garage "to provide shelter and security for vehicles now parked on [the] driveway" was insufficient to apprise them of the potential impacts on their property rights of the actual consideration of a two-story dwelling and garage unit (Drum v. Fresno County Department of Public Works (1983) 144 Cal.App.3d 777). The inaccurate project description failed to meet statutory and Constitutional due process notice requirements.

APPENDIX

Variance Checklist

If a variance is to be approved, all of the following questions must be answered affirmatively.

1. Are there special circumstances applicable to the proposal site which distinguish it from nearby properties with the same zoning?

YES NO

If yes, check at least one of the following to identify the circumstances:

size shape topography location surroundings.

2. Do the above circumstances create an "unnecessary hardship" unique to the involved property which would deprive it of privileges enjoyed by nearby properties with the same zoning?

YES NO

If yes, explain.

3. Is the use for which the variance is proposed already allowed in that zone?

YES NO

If yes, cite the applicable code.

4. Are the proposed conditions of approval related to and proportional to the impacts caused by the use proposed by the variance?

YES NO

If yes, explain.

5. Do the proposed conditions of approval ensure that the variance will not be a grant of special privilege?

YES NO

If yes, explain.

6. Have findings been drafted which specify the facts supporting approval of the variance on the basis of each of the above items?

YES NO

BIBLIOGRAPHY

For more information about variances, we recommend the following references.

Bridging the Gap: Using Findings in Local Land Use Decisions, by Robert Cervantes, second edition (Governor's Office of Planning and Research), 1989. This booklet outlines the principles of findings in detail.

California Land Use and Planning Law, by Daniel J. Curtin Jr., 1996 edition (Solano Press, Point Arena, CA), revised annually. A look at the planning, zoning, subdivision, and environmental quality laws, including variances, as interpreted by numerous court cases.

California Zoning Practice, by Donald Hagman, et al., April 1996 Supplement by John K. Chapin (Continuing Education of the Bar, Berkeley, CA), 1969. This text reviews state zoning law in detail.

Longtin's California Land Use, 2nd edition, by James Longtin, 1996 Supplement (Local Government Publications, Malibu, CA), 1988. This reference text on planning and land use law contains an excellent discussion of the variance, legal considerations, and limits on exactions.

"Variances and the Zoning Board," by Frederick H. Bair, Jr., *Planning*, July 1984, pp. 20

- (a) prior to start of the rainy season (October 1);
- (b) prior to site dewatering activities;
- (c) prior to street washing activities; and
- (d) prior to saw cutting asphalt or concrete; or
- (e) as required by the agency.

Filter materials shall be maintained and/or replaced as necessary to ensure effectiveness and prevent street flooding. Dispose of filter particles in the trash.

BMP-14

Never clean machinery, tools, brushes, etc. or rinse containers into a street, gutter, storm drain, flood control channel or stream/creek. See the Building Maintenance/Remodeling flyer for more information.

BMP-15

Ensure that concrete/gunite supply trucks or concrete/plaster finishing operations do not discharge washwater into street gutters or drains. See the Concrete & Mortar Application flyer for more information.

BMP-16

Control and prevent discharge of all potential pollutants, including pavement cutting wastes, paints, concrete, petroleum products, chemicals, washwater or sediments, and non-stormwater discharges to storm drains and watercourses.

BMP-17

Avoid cleaning, fueling, or maintaining vehicles on-site, except in a designated area where washwater is contained and treated. See the Building Maintenance/Remodeling flyer for more information.

Special Conditions

n/a

