

**CHAPTER 19.72
VARIANCES**

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19.72.010 PURPOSE

These provisions shall ensure the following:

1. Variances from the terms of this Development Code shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of this Development Code deprives such property of privileges enjoyed by other property in the vicinity and under identical zones; (MC 1393 12/2/13)
2. Any Variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privilege(s) inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated; and
3. The power to grant Variances does not extend to use regulations. Flexibility in use regulations is provided in the Conditional Use Permit provisions of this Development Code.
4. Modifications from the permissive requirements of the Design Guidelines are not subject to a variance.

19.72.020 APPLICATION

Application for a Variance shall be filed in a manner consistent with the requirements contained in Chapter 19.32 (Applications and Fees).

19.72.030 APPLICABILITY

The Commission may grant a Variance from the requirements of this Development Code governing only the following matters:

1. Permit the modification of the dimensional standards of the following:
 - A. Distance between structures
 - B. Lot area
 - C. Lot coverage
 - D. Lot dimensions
 - E. Setbacks
 - F. Structure heights
2. Permit the modification of sign regulations;
3. Permit the modification of the number and dimensions of parking area or loading space requirements; and
4. Permit the modification of subdivision access route standards pursuant to Section 19.30.200(6). (MC 902 4/18/94)

19.72.040 HEARINGS AND NOTICE

Upon receipt in proper form of a Variance application, a public hearing shall be set and notice of such hearing given in a manner consistent with Chapter 19.52 (Hearings and Appeals).

19.72.050 FINDINGS

Following a public hearing, the Commission shall record the decision in writing and shall recite therein the findings upon which such decision is based, pursuant to Section 65906 of the Government Code. The Commission may approve and/or modify an application in whole or in part, with or without conditions, only if all of the following findings are made: (MC 1393 12/2/13)

1. That there are special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of this Development Code deprives such property of privileges enjoyed by other property in the vicinity and under identical zone;
2. That granting the Variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same vicinity and zone and denied to the property for which the Variance is sought;
3. That granting the Variance will not be materially detrimental to the public health, safety, or welfare, or injurious to the property or improvements in such vicinity and zone in which the property is located;
4. That granting the Variance does not constitute a special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located;
5. That granting the Variance does not allow a use or activity which is not otherwise expressly authorized by the regulations governing the subject parcel; and
6. That granting the Variance will not be inconsistent with the General Plan.

19.72.060 PRECEDENTS

The granting of a prior Variance is not admissible evidence for the granting of a new Variance.

19.72.070 BURDEN OF PROOF

The burden of proof to establish the evidence in support of the findings, as required by Section 19.72.050, is the responsibility of the applicant.

19.72.080 VARIANCE EXPIRATION

A Variance shall be exercised within one year from the date of approval, or the Variance shall become null and void.

Any previously approved Variance that had not expired as of September 13, 1993, shall be extended by two years. This automatic extension of time is a one-time extension from September 13, 1993, and is in addition to the time granted under the initial approval of the Variance or any subsequent approval of an extension of time. (MC 895 1/24/94)

19.72.090 TIME EXTENSION

The Commission may, upon an application being filed 30 days prior to expiration and for good cause, grant a time extension not to exceed 12 months. Upon granting of an extension, the Commission shall ensure that the Variance complies with all current Development Code provisions.

19.72.100 USE OF PROPERTY BEFORE FINAL DECISION

No permit shall be issued for any use involved in an application for approval of a Variance until, and unless, the same shall have become final, pursuant to Section 19.52.080 (Effective Date).

19.72.110 REVOCATION

The Commission may hold a public hearing to revoke or modify a Variance granted pursuant to the provisions of this Chapter. Ten days prior to the public hearing, notice shall be delivered in writing to the applicant and/or owner of the property for which such Variance was granted. Notice shall be deemed delivered two days after being mailed, first class postage paid, to the owner as shown on the current tax rolls of the County of San Bernardino, and/or the project applicant.

A Variance may be revoked or modified by the Commission if any one of the following findings can be made:

1. That circumstances have changed so that one or more of the findings contained in Section 19.72.050 can no longer be made, and the grantee has not substantially exercised the rights granted by the Variance;
2. That the Variance was obtained by misrepresentation or fraud;

3. That the improvement authorized pursuant to the Variance had ceased or was suspended for six or more consecutive calendar months;
4. That one or more of the conditions of the Variance have not been met, and the grantee has not substantially exercised the rights granted by the Variance;
5. That the improvement authorized pursuant to the Variance is in violation of any statute, ordinance, law, or regulation; and
6. That the improvement permitted by the Variance is detrimental to the public health, safety, or welfare or constitutes a nuisance.