



# City of Santa Barbara

## VARIANCES AND MODIFICATIONS\*

### (EXCERPT)

#### **28.92.090 Variances.**

When practical difficulties, unnecessary hardships or results inconsistent with the general purposes of this Title occur by reason of a strict interpretation of any of the provisions of this Title, either the Planning Commission or City Council may upon its own motion, or the Planning Commission upon the verified application of any property owner or authorized agent, may, in specific cases, initiate proceedings for the granting of a variance from the provisions of this Title under such conditions as may be deemed necessary to assure that the spirit and purposes of this chapter will be observed, public safety and welfare secured, and substantial justice done. All acts of the Planning Commission and City Council under the provisions of this section shall be construed as administrative acts performed for the purpose of assuring that the intent and purpose of this Title shall apply in special cases, as provided in this section, and shall not be construed as amendments to the provisions of this Title or map. Individual economic circumstances are not a proper consideration for the granting of a variance. (Ord. 5380, 2005.)

#### **28.92.100 Required Findings for Approval of Variances.**

Before a variance may be granted, all of the following findings shall be made:

1. That there are exceptional or extraordinary circumstances or conditions applicable to the property involved, or to the intended use of the property, that do not apply generally to the property or class of use in the same zone or vicinity.
2. That the granting of such variance will not be materially detrimental to the public welfare, or injurious to the property or improvements in such zone or vicinity in which the property is located.
3. That such variance is necessary for the preservation and enjoyment of a substantial property right of the applicant possessed by other property in the same zone and vicinity.
4. That the granting of such variance will not adversely affect the Comprehensive General Plan. (Ord. 5380, 2005.)

#### **28.92.110 Modifications.**

Modifications may be granted by the Planning Commission or Staff Hearing Officer as follows:

- A. BY THE PLANNING COMMISSION.** The Planning Commission may permit the following:
1. **Parking.** A modification or waiver of the parking or loading requirements where, in the particular instance, the modification will not be inconsistent with the purposes and intent of this Title and will not cause an increase in the demand for parking space or loading space in the immediate area.
  2. **Setbacks, Lot Area, Floor Area, Street Frontage, Open Yard, Outdoor Living Space, and Distance Between Buildings.** A modification of setback, lot area, floor area, street frontage, open yard, outdoor living space, or distance between buildings regulations where the modification is consistent with the purposes and intent of this Title, and is necessary to (i) secure an appropriate improvement on a lot, (ii) prevent unreasonable hardship, (iii) promote uniformity of improvement, or (iv) the modification is necessary to construct a housing development which is affordable to very low-, low-, moderate- or middle-income households.

3. Fences, Screens, Walls, and Hedges. A modification of fence, screen, wall and hedge regulations where the modification is necessary to secure an appropriate improvement on a lot and is consistent with the purposes and intent of this Title.
4. Solar Access. A modification of height limitations imposed by Section 28.11.020 to protect and enhance solar access where the modification is necessary to prevent an unreasonable restriction. The Rules and Regulations approved pursuant to Section 28.11.040 shall contain criteria for use in making a finding of unreasonable restriction.
5. Building Height. A modification of building height limitations for existing buildings or structures that exceed the current building height limit, to allow the exterior of the portion of the building or structure that exceeds the building height limit to be improved or upgraded, provided that the improvements increase neither the height nor the floor area of any portion of the building or structure that exceeds the building height limit, except as otherwise allowed in the Code.
6. Net Floor Area (Floor to Lot Area Ratio). A modification of the net floor area standard imposed by Section 28.15.083 to allow a development that would otherwise be precluded by operation of Subsection 28.15.083.D where the Planning Commission makes all of the following findings:
  - a. Not less than five (5) members of the Single Family Design Board or six (6) members of the Historic Landmarks Commission (on projects referred to the Commission pursuant to Section 22.69.030) have voted in support of the modification following a concept review of the project;
  - b. The subject lot has a physical condition (such as the location, surroundings, topography, or the size of the lot relative to other lots in the neighborhood) that does not generally exist on other lots in the neighborhood; and
  - c. The physical condition of the lot allows the project to be compatible with existing development within the neighborhood that complies with the net floor area standard.
7. Accommodation of Disabilities. A modification of any zoning regulation where the modification is necessary to allow improvements to an existing building in order to provide reasonable accommodations to individuals with disabilities. This modification is not available in the case of new buildings, demolitions and rebuilds, or additions where the proposed construction precludes a reasonable accommodation that would not require a modification.

**B. BY THE STAFF HEARING OFFICER.** The Staff Hearing Officer may permit modifications in accordance with subsections 1., 2., 3., 4., 5., and 7. above, if the Staff Hearing Officer finds that:

1. The requested modification is not part of the approval of a tentative subdivision map, conditional use permit, development plan, site plan, plot plan, or any other matter which requires approval of the Planning Commission; and
2. If granted, the modification would not significantly affect persons or property owners other than those entitled to notice. (Ord. 5459, 2008; Ord. 5416, 2007; Ord. 5380, 2005.)

***\*Note: This is an excerpt of Chapter 28.92. Please refer to the Zoning Ordinance for a complete copy of this Chapter.***