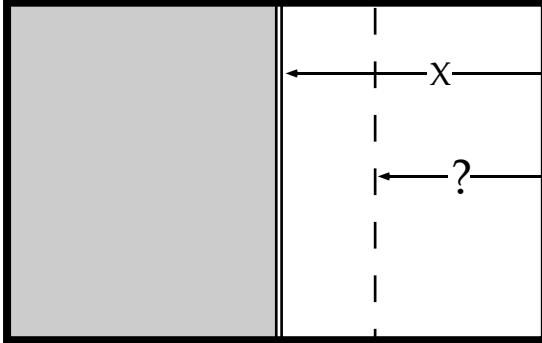


CHAPTER 55

Variations, Minor Deviations and Reasonable Accommodations



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25-55.1 Purpose

The purpose of this chapter is to establish procedures for processing applications for variances, minor deviations and reasonable accommodations requests. Variances are addressed in Sections 25-55.1 through 25-55.12; Minor Deviations are addressed in Sections 25-55.13 through 25-55.18, and Reasonable Accommodations are addressed in Sections 25-55.19 through 25-55.24.

25-55.2 Variances - Applicability

The Planning Commission may grant a variance from district regulations, including setbacks, lot dimensions, height of structures, lot coverage, parking and loading standards, and sign regulations, but shall not apply to types of uses.

25-55.3 Variances - Application and Fee

An application for a variance shall be made to the Planning Department on a form prescribed by the Department. The application shall be accompanied by a fee set by resolution of the City Council.

25-55.4 Variances - Hearings and Notice

Upon receipt of a variance application, the Planning Department shall prepare a notice for a public hearing consistent with the requirements contained in Chapter 25-5 (Public Hearings).

25-55.5 Variances - Report and Findings

The Planning Department shall prepare a report on the variance application. The Department shall provide a recommendation based on the following findings, which are pursuant to California Government Code Section 65906.

- a. That there are special circumstances applicable to the property, including size, shape, topography, location or surroundings, and that the strict application of this Ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical classifications;
- b. That granting a variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same vicinity and district and denied to the property for which the variance is sought;
- c. 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 district in which the property is located;

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- d. That granting the variance does not constitute a special privilege inconsistent with the limitations upon other properties in the vicinity and district in which such property is located;
- e. 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
- f. That granting the variance will not be inconsistent with the General Plan.

25-55.6 Variances - Action of the Planning Commission

Following the public hearing, the Planning Commission shall take action on the variance. The Commission can approve, approve with conditions or deny the variance based on the finding listed above. To approve a variance, the Commission shall find that all of the above findings are true. The Commission's decision shall be final unless appealed to the City Council consistent with the requirements contained in Chapter 25-6 (Appeals).

Within 10 days of adopting a resolution on the variance, the Commission shall transmit a copy of its resolution to the person that filed the variance application.

25-55.7 Variances - Conditions

The Planning Commission can approve a variance subject to conditions. Such conditions will assure that the approved variance shall not constitute a grant of a special privilege inconsistent with the limitations upon other properties in the vicinity and district in which the subject property is located.

25-55.8 Variances - Appeal to City Council

Upon an appeal of the Planning Commission's action, the City Council shall hold a public hearing and take action by resolution on the variance. The Council shall consider the Commission's decision, the claims contained in the appeal, and the findings contained in Section 25-55.5 of this chapter. The Council can approve, approve with modifications or deny the decision of the Planning Commission. The decision of the Council shall be final. The variance shall become effective three days following the date of Council approval. Within 10 days of adopting a resolution on the variance, the Council shall transmit a copy of its resolution to the person who filed the variance application.

25-55.9 Variances - Lapse of Variance

A variance shall lapse and become void one year from the date it became effective, unless conditions of the variance allow a greater time, or unless a building permit is issued by the Chief Building Official and construction has commenced on the use that is the subject of the variance.

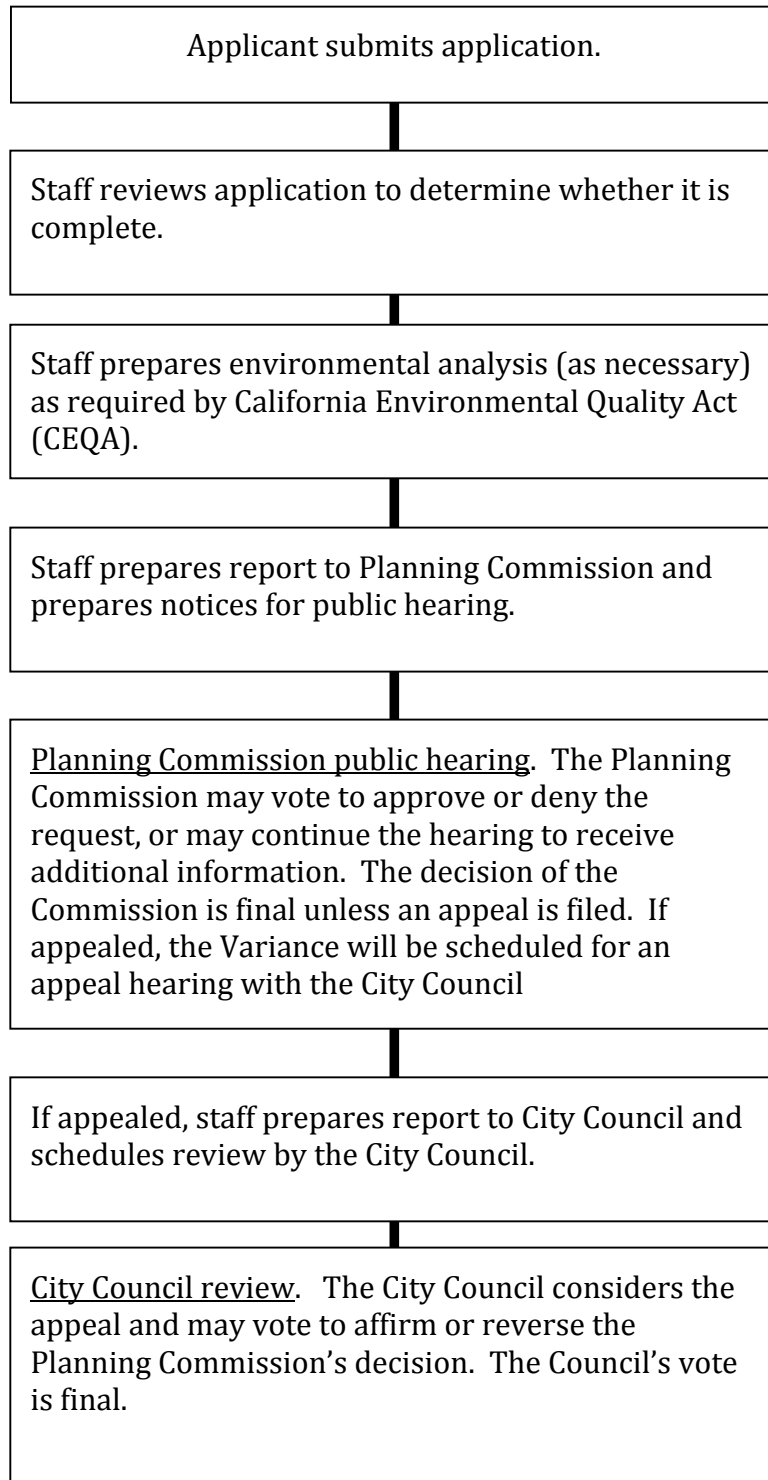
25-55.10 Variances - New Application

Following the denial or revocation of a variance, no application for the same or substantially the same variance shall be filed within one year of the date of denial or revocation.

25-55.11 Variances - Variance to Run With the Land

A variance shall run with the land and shall continue to be valid upon change of ownership of the property or structure which was the subject of the variance application.

Exhibit 55-1: Variance Process



25-55.12 Minor Deviations - Purpose

The purpose of this chapter is to provide a mechanism whereby minor deviations from district regulations can be granted by the Planning Director. A minor deviation may be granted FOR up to 20 percent for setback distances. Any minor deviation that exceeds the deviation percentage explained above shall be processed as a variance consistent with the regulations detailed in the requirements for Variances in this chapter.

Minor deviations shall only be granted when practical difficulties, unnecessary hardships and conditions inconsistent with the purpose and objectives of this Ordinance may result from the strict application of certain provisions of this Ordinance. The granting of a minor deviation and its associated conditions shall not constitute a special privilege inconsistent with the limitations on other properties in vicinity and in other like districts in Firebaugh.

25-55.13 Minor Deviations - Applicability

The Planning Director may grant a minor deviation from district regulations for the following:

- a. Reduction of lot area, lot dimensions, space between buildings, yard space, set back requirements, or population density requirements by not more than twenty (20) percent.
- b. Increase of lot coverage or height limitations by not more than twenty (20) percent.
- c. Permission to repair or remodel a nonconforming structure if the work will bring the structure and the subsequent use into greater conformity with the property development standards of the zoning district in which the structure is located.

25-55.14 Minor Deviations - Application and Fee

An application for a minor deviation shall be made to the Planning Department on a form prescribed by the Department. The application shall be accompanied by a fee set by resolution of the City Council.

25-55.15 Minor Deviations - Report and Findings

The Planning Director shall prepare a report on the minor deviation application and shall review the following findings with regard to a minor deviation.

- a. There are special circumstances applicable to the property, including size, shape, topography, location or surroundings or unclear property lines, where the strict application of this Ordinance deprives such property rights possessed by other

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- properties in the same vicinity or other properties that have the same district classification;
- b. That granting a minor deviation is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same vicinity or other properties that have the same district classification;
 - c. That granting the minor deviation will not be materially detrimental to the public health, safety or welfare, or injurious to the property or improvements in the vicinity and district in which the property is located; and
 - d. That granting the minor deviation does not constitute a special privilege inconsistent with the limitations upon other properties in the vicinity and district in which the property is located.

25-55.16 Minor Deviations - Action of the Planning Director

Minor deviations may be processed as an administrative matter by the Planning Director. Following a review of a minor deviation application and the findings listed above, the Planning Director may take action on the minor deviation. The Planning Director can approve, approve with conditions or deny the minor deviation based on the findings listed above. Following a decision by the Planning Director, an administrative resolution shall be prepared that outlines the findings and conditions of the decision.

The Director's decision shall be final unless appealed to the Planning Commission consistent with the requirements contained in Chapter 25-6 (Appeals). Within 10 days of approving the minor deviation, the Director shall transmit a copy of the administrative resolution to the person that filed the minor deviation application.

25-55.17 Minor Deviations - Conditions

The Director can approve a minor deviation subject to conditions. Conditions will assure that the approved minor deviations shall not constitute a grant of a special privilege inconsistent with the limitations upon other properties in the vicinity and district in which such property is situated.

25-55.18 Reasonable Accommodations - Purpose

It is the policy of the City of Firebaugh, pursuant to the federal Fair Housing Amendments Act of 1988 and the California Fair Employment and Housing Act (hereafter called "fair housing laws"), to provide individuals with disabilities reasonable accommodation in rules, policies, practices and procedures to ensure equal access to housing and facilitate the development of housing for individuals with disabilities. This ordinance establishes a procedure for making requests for reasonable accommodation in

land use, zoning and building regulations, policies, practices and procedures of the jurisdiction to comply fully with the intent and purpose of fair housing laws.

25-55.19 Reasonable Accommodations - Applicability

Reasonable accommodation in the land use and zoning context means providing individuals with disabilities or developers of housing for people with disabilities, flexibility in the application of land use and zoning and building regulations, policies, practices and procedures, or even waiving certain requirements, when it is necessary to eliminate barriers to housing opportunities.

An individual with a disability is someone who has a physical or mental impairment that limits one or more major life activities; anyone who is regarded as having such impairment; or anyone with a record of such impairment.

A request for reasonable accommodation may be made by an individual with a disability, his or her representative, or a developer or provider of housing for individuals with disabilities, when the application of a land use, zoning, or building regulation, policy, practice or procedure acts as a barrier to fair housing opportunities.

25-55.20 Reasonable Accommodations - Application and Fee

Any eligible person as defined in Section 25-55.19 may request a reasonable accommodation in land use, zoning and building regulations, policies, practices and procedures. An application for reasonable accommodation shall be made to the Planning Department on a form prescribed by the Department. The application shall be accompanied by a fee set by resolution of the City Council.

Any information identified by an applicant as confidential shall be retained in a manner so as to respect the privacy rights of the applicant and shall not be made available for public inspection.

25-55.21 Reasonable Accommodations - Action of Planning Director

The Planning Director shall prepare a report on the reasonable accommodation application. Reasonable accommodation applications shall be processed as an administrative matter. The Planning Director can approve, approve with conditions or deny the application based on the findings listed below. Following a decision by the Planning Director, an administrative resolution shall be prepared that outlines the findings and conditions of the decision. The decision shall be made within 30 days of receiving the application. The written decision of the Planning Director shall be final unless appealed to the Planning Commission consistent with the requirements contained in Section 25-6 (Appeals). The Planning Director shall render a decision based on the following findings.

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- a. Whether the housing, which is the subject of the request for reasonable accommodation, will be used by an individual with disabilities protected under fair housing laws;
- b. Whether the requested accommodation is necessary to make housing available to an individual with disabilities protected under the fair housing laws;
- c. Whether the requested accommodation would impose an undue financial or administrative burden on the City and;
- d. Whether the requested accommodation would require a fundamental alteration in the nature of the City's land use and zoning or building program.
- e. In granting a request for reasonable accommodation, the reviewing authority may impose any conditions of approval deemed reasonable and necessary to ensure that the reasonable accommodation will comply with these findings including the following:
 1. Inspection of the property periodically, as specified, to verify compliance with this section and any conditions of approval;
 2. Removal of the improvements, where removal could not constitute an unreasonable financial burden, when the need for which the accommodation was granted no longer exists;
 3. Time limits and/or expiration of the approval if the need for which the accommodation was granted no longer exists;
 4. Recordation of a deed restriction requiring removal of the accommodating feature once the need for it no longer exists;
 5. Measures to reduce the impact on surrounding uses;
 6. Measures in consideration of the physical attributes of the property and structures;
 7. Other reasonable accommodations that may provide an equivalent level of benefit and that will not result in an encroachment into required setbacks, exceed the maximum height, lot coverage, or floor area ratio requirement specified for the zone district; and
 8. Other conditions necessary to protect the public health, safety, and welfare.

25-55.22 Reasonable Accommodations - Appeal to the Planning Commission

Upon an appeal of the Planning Director's decision, the Planning Commission shall take action by resolution on the reasonable accommodation application. The Commission shall consider the Planning Director's decision, the claims contained in the appeal, and the findings contained in Section 25-55.21 of this chapter. The Commission can approve, approve with modifications or deny the recommendation of the Planning Director. The decision of the Commission shall be final. The decision shall become effective three days following the date of the Commission's approval at which time the applicant may secure a building permit for the accommodation under consideration.