



## CALAVERAS COUNTY PLANNING DEPARTMENT

### VARIANCE FACT SHEET

#### ***What is a variance?***

A variance is a permit issued to a property owner to allow for deviations from regulations that when applied to some EXTRAORDINARY physical characteristic of the property denies the property owner the rights enjoyed by other property owners in the vicinity.

#### ***What standards are used for granting a variance in accordance with State Law?***

Under the state Zoning Law, a variance may be granted only when special circumstances applicable to the property exist, including size, shape, topography, location, or surroundings. Government Code Section 65906 emphasizes the DISPARITIES between properties. An applicant's need for a variance must be due to peculiar circumstances and conditions, and be special or unique in contrast with that of other property owners in the same district.

#### ***How do you determine when these special circumstances exist?***

The most important determining factor is whether the property differs from the other properties in the vicinity. For example, the grant of a variance for a mobile home park in a mountainous area, was reversed by the court where the findings only described the subject property, not the differences between it and other properties in the area; specifically, the fact that the property had rugged terrain and three stream beds running through it was not relevant in the absence of evidence that other property in the zone was not similar.

#### ***What standards are used to define "hardship?"***

The hardships must be unique and must be related to the application of zoning restrictions to a specific property. For example, when peculiarities of size, shape or grade of the parcel are unique and if hardship relates to these, the requirement of unique circumstances is met. Generally, hardship solely of a financial or economic nature making it more expensive to develop a proposed structure is improper to satisfy the "hardship" requirement. The grant of a variance is intended to bring the property to parity with others in the vicinity and must not grant special privileges over and above those enjoyed by such other properties in the vicinity and zone.

#### ***Can an argument be made that the variance should be granted because similar variances have been granted?***

This argument is generally not valid. For example, in one case, the plaintiff sought a variance from a lot split ordinance which prohibited development of a substandard parcel. The plaintiff claimed discrimination because of the availability of prior variances to other owners of substandard parcels. In rejecting this contention, the Supreme Court held that there was no merit to plaintiff's claim of discrimination in that each situation was unique and could be distinguished.

***What other options are available?***

There are a number of options available to the landowner to solve a problem without getting a variance. Landowners may seek a lot line adjustment with an adjacent parcel. Another option is to reduce the size of the proposed development. Often, the proposed encroachment into the setback is only a few feet and a slight reduction in the size of the development would result in meeting the setbacks. The other option is to find another suitable location on the site. If other locations on the site are available the findings required to grant the variance will be extremely difficult to make.