

TOWN OF LOS ALTOS HILLS

MEMORANDUM

DATE: November 6, 2014

TO: Planning Commission

FROM: Suzanne Avila, Interim Planning Director SA

RE: Ordinances, Policies, Guidelines, Variances and Exceptions

At a previous Planning Commission meeting, clarification was requested on various planning terms and their application, including variances, exceptions, ordinances, policies and guidelines. The following was prepared to provide clarification on actions that may be required when the Commission considers applications or amendments to the Municipal Code or General Plan.

Ordinances versus Policies

Ordinances are adopted by the City Council to add provisions to or amend the Municipal Code. Ordinances are mandatory regulations and must be adhered to unless a variance is granted to allow a deviation from the regulation or the ordinance is amended (as was done to allow lighting for the FHCC tennis courts).

Policies are used to clarify a regulation, to formalize or affirm a practice or method that has been in place but is not in written form, or to establish a new process. Policies may provide a baseline for determining when an administrative process can be used to approve an application and when Planning Commission and/or City Council review is required. There is some discretion in the application of a policy. For example, the Grading Policy includes limitations for cut and fill depths. If an applicant can provide adequate justification for a deviation, an exception to the policy may be granted by the Planning Commission.

Variances versus Exceptions

Variances are required to deviate from a Municipal Code requirement and are typically related to a development proposal. For example, a reduced setback or an increase in MFA. A variance may not be granted for a use. There are State mandated findings that must be made to approve a variance. The key finding is that there must be something related to the lot size, shape, topography or existing development that prevents an applicant from complying with the strict interpretation of the Code.

There is an exception provision for fences included in the Zoning Ordinance (see Attachment 1). A fence higher than six feet within a setback or a fence that is closer to the centerline of a roadway than required requires approval of a variance. Other deviations from fence requirements may be made through an exception process.

Exceptions may be made to a policy or guidelines if adequate justification is provided. The determination on an exception is typically made by the Planning Commission. In some circumstances, the Planning Director may grant an exception (as specified in the Zoning Ordinance). The burden of proof is on the applicant to justify the requested exception. Findings for an exception differ from variance findings; an exception is not required to be justified based on the lot size, shape topography or existing development, although exceptions are commonly based on a site constraint.

Guidelines versus Town Code

Town Code requirements are mandated. These are criteria that are required to be met or complied with, such as minimum setbacks, maximum height, MFA and MDA. Deviation from a Code requires approval of a variance.

Guidelines are statements or criteria on how to achieve the goals and objectives of the Town with regards to new development. Guidelines commonly use the word “should” as opposed to “shall” or “must” and the deciding body has the discretion to allow an exception if adequate justification is provided. Illustrations are sometimes used to provide visual understanding of the intent of a guideline.

The Fast Track Guide includes guidelines for new residences. Since every property is unique, some guidelines are not applicable to every lot in Town. There is some discretion in how the guidelines are applied based on site characteristics and constraints, surrounding development, and how the visibility of the building site.

Guidelines are intended to complement the Zoning Ordinance and goals of the General Plan. In the event of a conflict, the Zoning Ordinance and/or General Plan take precedence over the Fast Track Guidelines.

Findings

Findings are statements in support of a decision. Typically, findings are made to support approval of an application, however, findings can also be made for denial of an application to document the reasons for the decision. If required findings cannot be made by the deciding body, the requested action (e.g. exception, variance, use permit or conditional development permit) cannot be approved.

Required findings are found in the LAH Municipal Code as follows:

- Conditional Use Permit – 10-1.1007(1)
- Variance – 10-1.1007(2)
- Conditional Development Permit – 10-1.1007(3)

- Landmark Designation and Preservation – 11-1.06
- Fence exception – 10-1.507(f)(12)(h)

Other findings:

- Grading Policy exception – no specified findings, staff prepares a written statement in support of an exception that is specific to the site and circumstances.
- Subdivision Map Act – Section 66474 (if any of the specified findings can be made, it is grounds for denial of a tentative map).

Attachments:

1. Conditional Use Permit findings
2. Variance findings
3. Conditional Development Permit findings
4. Fence Exception findings

ATTACHMENT 1

CONDITIONAL USE PERMIT FINDINGS

10-1.1007(1) Conditional use permits—Approval—Conditions.

Conditional use permits may be granted only when facts are established which support the findings required by the provisions of this section.

- (a) Findings. Conditional use permits shall be granted by the City Council only when it is found that:
- (1) The proposed use or facility is properly located in relation to the community as a whole, land uses, and transportation and service facilities in the vicinity;
 - (2) The site for the proposed use is adequate in size and shape to accommodate the proposed use and all yards, open spaces, walls and fences, parking, loading, landscaping, and such other features as may be required by this chapter or, will be needed to assure that the proposed use will be reasonably compatible with land uses normally permitted in the surrounding area;
 - (3) The site for the proposed use will be served by streets and highways of adequate width and pavement to carry the quantity and kind of traffic generated by the proposed use; and
 - (4) The proposed use will not adversely affect the abutting property or the permitted use thereof.
- (b) Conditions. Every conditional use permit granted may be subject to such conditions as are deemed necessary to protect the public health, safety and general welfare and secure the objectives of the General Plan and this chapter. (§ 1, Ord. 305, eff. October 3, 1986, § 4, Ord. 314, eff. November 6, 1987; § 2, Ord. 372, eff. August 19, 1994)

ATTACHMENT 2

VARIANCE FINDINGS

10-1.1007(2) Variances—Approval—Conditions. The Staff Committee comprised of the Zoning Administrator and City Manager or designee (herein called the “Staff Committee”) and Planning Commission are empowered to grant variances from the requirements of this title. The Staff Committee or Planning Commission shall act as the authority to grant variances as specified in subsections (d) and (e) below.

(a) Purpose. The purpose of the variance is to resolve practical difficulties or undue hardships, not of the applicant’s own making, which may result from the exceptional size, shape, topography, location, or other physical site conditions, or the use or development of property in the immediate vicinity. In this context, personal, family, or financial difficulties, loss of prospective profits and neighboring violations are not practical difficulties or hardships justifying a variance. In some cases, the location of existing structures may result in a practical difficulty or hardship.

(b) Findings. The Staff Committee or Planning Commission may grant the requested variance in whole or in part only if, from the application or the facts presented at the public hearing, it can affirmatively find that all of the following four (4) requirements have been met:

- (1) That, because of exceptional or extraordinary circumstances applicable to the subject property, including size, shape, topography, location or surroundings, the strict application of the provisions of this title is found to deprive such property of privileges enjoyed by other properties in the vicinity and under identical zoning classification;
- (2) That upon the granting of the variance, the intent and purpose of the applicable sections of this title will still be served and the recipient of the variance will not be granted special privileges not enjoyed by other surrounding property owners;
- (3) That the granting of such variance will not be materially detrimental to the public welfare or injurious to the property, improvements or uses within the immediate vicinity and within the same zoning district;
- (4) That the variance will not authorize a use or activity which is not otherwise expressly authorized by the zoning district regulations governing the parcel or property.

ATTACHMENT 3

CONDITIONAL DEVELOPMENT PERMIT FINDINGS

10-1.1007(3) Conditional development permits—Approval—Condition.

(a) On substandard lots, due to the difficulty of accommodating development which meets the objectives and standards of the Town, any lot which has a lot unit factor of .50 or less shall require a Conditional Development Permit from the Planning Commission. In addition, any lot significantly constrained by a human habitation setback for geologic hazard areas or a nonhuman habitation setback for noise shall require a Conditional Development Permit from the Planning Commission, unless the Zoning Administrator finds that the lot is not significantly constrained by such setback or zone. Prior to the granting of any permit, the Planning Commission must find that:

- (1) The site for the proposed development is adequate in size, shape and topography to accommodate the proposed intensity of development, including all structures, yards, open spaces, parking, landscaping, walls and fences, and such other features as may be required by this chapter.
- (2) The size and design of the proposed structures create a proper balance, unity and harmonious appearance in relation to the size, shape and topography of the site and in relation to the surrounding neighborhood;
- (3) The rural character of the site has been preserved as much as feasible by minimizing vegetation and tree removal, excessive and unsightly grading and alteration of natural land forms.
- (4) The proposed development is in compliance with all regulations and policies set forth in the Site Development ordinance.

(b) Every Conditional Development Permit granted may be subject to such conditions as are deemed necessary to protect the public health, safety and general welfare and to secure the objectives set forth in the findings above. Such conditions may include, but are not limited to, reduction in Maximum Development Area allowed, reduction in Maximum Floor Area allowed, installation of landscaping, and resisting of structures. (§ 1, Ord. 305, eff. October 3, 1986; § 6, Ord. 314, eff. November 6, 1987; § 1, Ord. 337, eff. September 14, 1990; Ord. 338, eff. September 19, 1990; § 1, Ord. 341, eff. January 4, 1991)

ATTACHMENT 4

FENCE EXCEPTION FINDINGS

10-1.507 Fences, walls, gates and columns.

(h) Exceptions. Exceptions may be granted subject to a noticed hearing and upon the Site Development Authority making all of the following findings.

- (1) The height and design of the proposed fence, wall, gate or column are compatible with other fences in the neighborhood;
- (2) The proposed removal of vegetation and trees and disturbance to natural terrain have been minimized; and
- (3) The proposed structure is otherwise in compliance with all regulations and policies set forth in the Municipal Code and the General Plan.

Any fence proposed to exceed a height of six (6) feet in a setback area or to be located closer to the centerline of the road than required shall require a variance in accordance with the provisions of Article 10 of the Zoning Ordinance. (§ 1, Ord. 434, eff. May 15, 2004; § 1, Ord. 442, eff. March 9, 2006; § 1, Ord. 517, eff. March 16, 2010)