

INTERPRETATION/OPINION REQUEST

NEW DETACHED STRUCTURE SETBACK MODIFICATIONS IN A HISTORIC DISTRICT

Code Sections:

- 21.64.270
- 21.72

Date: April 18, 2006

Requested by: Jennifer Savage

Subject: New Detached Structure Setback Modifications in a Historic District

What is the Question?

In a Historic District, does a modification to setbacks for a *new* detached structure require a Variance?

Short Answer:

Yes, a setback modification for a new detached structure in a Historic District would require a Variance.

Discussion:

Section 21.64.270, Historic Resources, states that exceptions to the zoning district regulations may be granted when the exception is necessary for “the preservation or restoration of, or improvements to, a structure designated as historically significant.” A *new* detached structure would not be historically significant. Additionally, the purpose of Section 21.64.270 is for “the renovation and rehabilitation of historic resources and structures within historic districts.” A *new* detached structure would not be considered a historic resource or structure. Therefore, Section 21.64.270 does not apply to new detached structures.

Chapter 21.72, Variances, is applicable to “modifications to the setback, coverage, height, building site area, and development standard regulations of this Title.” A new detached structure would be subject to Title 21. Therefore, a modification to the setbacks for a new detached structure in a Historic District would require a Variance.

Facts of the situation:

The existing structures on the property contribute to the period of significance in the town of Spreckels. A new detached two car garage is proposed to be built on the property line. The required rear setback for the garage is one foot. However, the majority of garages in the area are on the property line.

Applicable Code Sections:

21.64.270 – HISTORIC RESOURCES

21.64.270. REGULATIONS FOR HISTORIC RESOURCES.

A. Purpose: To provide reasonable flexibility of zoning standards to encourage and accommodate the renovation and rehabilitation of historic resources and structures within historic districts.

B. Following the provision of notice pursuant to [Chapter 21.70](#) of this Code, the Director of Planning and Building Inspection may grant an exception to the zoning district regulations when such exception is necessary to permit the preservation or restoration of, or improvements to, a structure designated as historically significant pursuant to the provisions of Chapter 18.85 of this Code. Such exceptions may include, but are not limited to, parking, yards, height, and coverage regulations. Such exceptions shall not include approval of uses not otherwise allowed by the zoning district regulations.

21.72 – VARIANCES

21.72.010 PURPOSE.

The purpose of this Chapter is to provide a mechanism for applicants to make an application for Variances and to provide specific findings to approve or deny Variances.

21.72.020 APPLICABILITY.

Modifications to the setback, coverage, height, building site area, and development standard regulations of this Title may be considered by a Variance.

21.72.030 APPROPRIATE AUTHORITY.

The Zoning Administrator is the Appropriate Authority to hear and decide all applications for Variances, unless said Variance is combined with another permit pursuant to [Chapter 21.76](#) (Combined Development Permits) of this Title.

21.72.040 APPLICATION.

An application for Variance shall be made in writing on a form prescribed by the Director of Planning and Building Inspection and be accompanied by statements, plans, and other evidence supporting the Variance request. Variances from the terms of this Title shall only be granted based upon the following findings.

A. That because of special circumstances applicable to subject property, including size, shape, topography, location or surroundings, the strict application of this Title is found to deprive subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification; and

B. That the variance not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated;

C. A Variance shall not be granted for a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property.

21.72.050 ACTION BY APPROPRIATE AUTHORITY.

A. All Variances require a public hearing pursuant to [Chapter 21.78](#).

B. After conclusion of the public hearing, the Appropriate Authority shall make its decision in writing. The decision shall include findings of fact supported by substantial evidence:

1. The qualifications of Section 21.72.040(A) and (B) apply to the land, structure, or use of which the Variance is sought, and

2. The subject property is in compliance with all rules regulations pertaining to zoning uses, subdivisions, or any other applicable provisions of Title 21 and any zoning violation abatement costs have been paid.

C. The Appropriate Authority shall include such conditions in connection with the Variance as deemed reasonable and necessary under the circumstances to preserve the integrity and character of the zoning district and to secure the general purposes of this Title. Such conditions may include monitoring, at reasonable times and intervals, to assure compliance with the conditions set forth in the Variance. Such conditions may include, but are not limited to, architectural and site approval, time limitations, health and safety requirements, street dedication, and street and drainage improvements. The appropriate authority may also require such bond and guarantees as he deems appropriate to assure the compliance of the conditions.

D. An appeal may be taken from the action of the Appropriate Authority pursuant to Chapter 21.80.

21.72.060 REVOCATION.

A. Where one or more of the conditions of a Variance have not been, or are not being complied with, or when a Variance was granted on the basis of false material information, written or oral, given willfully or negligently by the applicant, the Appropriate Authority may revoke or modify the Variance following public hearing pursuant to Chapter 21.78 of this Title.

B. An appeal may be taken from such revocation or modification pursuant to Chapter 21.80.

21.72.070 EXPIRATION.

A. Any Variance issued under the terms of this Chapter shall be valid until the date of expiration stated on the permit. If no date of expiration is stated, or unless otherwise specified by the decision making body, any permit which allows a use, excluding a use which

contemplates the construction of structures or other structures, shall expire two years from the date of granting the permit unless use of the property has begun within this period.

B. If no date of expiration is stated, or unless otherwise specified by the Appropriate Authority, any permit granted under this Chapter which allows for the construction of buildings or other structures shall remain valid as long as actual construction has begun within two years from the date of the granting of the permit.

C. In case of an appeal, the term of the permit shall not begin until the date of the resolution of the appeal.

21.72.080 EFFECT.

Building permits shall not be issued, nor any use conducted, otherwise than in accordance with the conditions and terms of the Variance granted nor until ten days after the mailing of notice of granting of such Variance by the Appropriate Authority, or, after granting of such Variance by the Board of Supervisors in the event of appeal.

21.72.090 REAPPLICATION.

When an application or portion of a application for a Variance is denied by the Appropriate Authority or the Board of Supervisors on appeal, no new application for a Variance substantially the same as the one denied shall be considered for a period of one year following such denial.

21.72.100 FILING FEE.

The application fee for a Variance shall be established from time to time by the Board of Supervisors, and no part of such fee shall be refundable, unless said refund is requested in writing concurrent with the withdrawal of the Variance and provided that the applicant has not yet been sent written notice of the applications completeness or incompleteness. In such cases, 50% of the filing fee shall be refunded.

21.72.110 EXTENSION OF VARIANCES.

A. The Appropriate Authority may extend Variances upon receipt of a written request from the permittee, provided such request is made at least thirty days prior to the expiration of the Variance. The written request shall be filed with the Appropriate Authority and set forth reasons supporting the request.

B. The extension request shall be subject to the provisions of Chapter 21.78.040A of this Title.

Interpretation Prepared By: Jennifer Savage

Interpretation/Opinion Confirmed by Managers 4/26/06.