

35.82.130 - Modifications

- A. Purpose and intent.** The purpose and intent of this Section is to allow for minor modifications of certain zone standards, where, because of integrity of design, practical difficulties, topography, tree or habitat protection, or other similar site conditions, minor adjustments to the regulations, requirements, or standards would result in better project design, land use planning, and resource protection.
- B. Applicability.**
- 1. Allowed for permitted uses only.** The provisions of this Section shall apply to specific development proposals that are allowed in the zone in which the project is located which are not otherwise subject to Conditional Use Permit ([Section 35.82.060](#)) or Development Plan ([Section 35.82.080](#)) requirements.
 - 2. Activities or uses not otherwise allowed.** In no case shall a Modification be granted to allow an activity which is not otherwise allowed in the zone in which the property is situated, nor shall a Modification be granted which alters the procedural or timing requirements of this Development Code.
 - 3. Allowed Modifications.** Modifications may only be granted in conjunction with a specific development proposal and are limited to the following:
 - a. Maximum setback reduction of 20 percent.** The area of each front, side, or rear setback area shall not be reduced by more than 20 percent of the minimum setback area required in compliance with the applicable zone regulations.
 - b. Setback reductions for structures, except unenclosed, attached entryways or porches.** No setback reduction for structures, except for unenclosed, attached entryways or porches [see Subsection 3.c (Front setback reductions for unenclosed, attached entryways or porches) below] shall result in:
 - (1) Front.** A front setback depth, as measured from the right-of-way or easement line of a street, of less than 16.5 feet.
 - (2) Side.** A side setback width from property lines of less than three feet.
 - (3) Rear.** A rear setback depth from property lines of less than 15 feet.
 - c. Front setback reductions for unenclosed, attached entryways or porches.** No front setback reduction for an unenclosed, attached entryway or porch shall result in a front setback depth, as measured from the right-of-way or easement line of a street or driveway, of less than 10 feet.
 - d. Increase in maximum zone height limitations.** Up to a 10 percent increase in the maximum zone height limitations, excluding lots located within the Montecito Coastal Area.
 - e. Increase in the maximum Floor Area Ratio.** Up to a 10 percent increase in the maximum Floor Area Ratio (FAR) requirements for structures originally constructed before the adoption of the FAR regulations (e.g., if the FAR is 0.50,

the maximum modification would allow a FAR of 0.55), excluding lots located within the Montecito Coastal Area.

f. Reduction of parking spaces. A reduction in the required number and/or a modification in the design or location of parking spaces and loading zones may be allowed provided that in no case shall:

- (1) The number of required parking spaces be reduced in the High Density Student Residential (SR-H), Medium Density Student Residential (SR-M) or Single Family Restricted overlay (SF) zones.
- (2) The required number of bicycle parking spaces be reduced,
- (3) The number of spaces required for a residential second unit be reduced or allowed to be located within the required front setback area.
- (4) Any parking or screening requirement for a vehicle with more than two axles, a recreational vehicle or bus, a trailer, or other non-passenger vehicle be modified.
- (5) A reduction in the required number of parking spaces for development within the Summerland Community Plan Area be allowed that results in an increase in on-street parking.

4. Prohibited Modifications. In no case shall a Modification be granted for a reduction in buffer, landscape, open space, or other requirements of this Development Code, except as identified above.

C. Contents of application. An application for a Modification shall be submitted in compliance with [Chapter 35.80 \(Permit Application Filing and Processing\)](#).

D. Processing.

1. After receipt of Modification application, the Department shall review the application in compliance with the requirements of the California Environmental Quality Act.
2. The project shall be subject to the provisions of [Section 35.82.070 \(Design Review\)](#), and shall be scheduled to be heard by the Board of Architectural Review for preliminary review and approval only, before the project is heard by the Zoning Administrator.
3. The Zoning Administrator shall hold at least one noticed public hearing on the requested Modification and approve, conditionally approve, or deny the request.
4. Notice of the hearing shall be given and the hearing shall be conducted in compliance with [Chapter 35.106 \(Noticing and Public Hearings\)](#).
5. The Zoning Administrator in approving the Modification may require conditions as deemed reasonable and necessary to promote the intent and purpose of this Development Code and the public health, safety, and welfare.

6. The action of the Zoning Administrator is final subject to appeal in compliance with [Chapter 35.102 \(Appeals\)](#).

E. Findings required for approval. An application for a Modification shall be approved or conditionally approved only if the Zoning Administrator first makes all of the following findings:

1. Findings for all Modifications.

- a. The project is consistent with the Comprehensive Plan, including any applicable community or area plan.
- b. The project complies with the intent and purpose of the applicable zone including overlays, and this Development Code.
- c. The Modification is minor in nature and will result in a better architectural or site design, as approved by the Board of Architectural Review, and/or will result in greater resource protection than the project without the Modification.
- d. The project will be compatible with the neighborhood, and will not create an adverse impact to aesthetics, community character, or public views.
- e. Any Modification of parking or loading zone requirements will not adversely affect the demand for on-street parking in the immediate area.
- f. The project will not be detrimental to existing ambient noise levels, physical access, light, solar exposure, or ventilation on or off the subject site.
- g. Any adverse environmental impacts will be mitigated to a level of insignificance.

2. Additional finding required for sites within the Summerland Community Plan area.

- a. The development will not adversely impact existing recreational facilities and uses.

F. Expiration.

1. **Expiration in 12 months.** A Modification shall expire 12 months from the effective date if a Coastal Development Permit or Land Use Permit has not been issued for the project for which the Modification was approved unless otherwise specified by conditions of project approval or unless a time extension has been approved in compliance with [Section 35.84.030 \(Time Extensions\)](#).
2. **Once granted a Coastal Development Permit or Land Use Permit.** Once the project for which the Modification was approved has been issued a Coastal Development Permit or Land Use Permit in compliance with [Section 35.82.050 \(Coastal Development Permits\)](#) or [Section 35.82.100 \(Land Use Permits\)](#), the Modification shall have the same expiration date as the issued Coastal Development Permit or Land Use Permit.

- G. Post approval procedures.** The procedures and requirements in [Chapter 35.84 \(Post Approval Procedures\)](#) and those related to appeals in [Article 35.10 \(Land Use and Development Code Administration\)](#), shall apply following the decision on an application for a Modification.

35.82.140 - Nonconforming Status and Extent of Damage Determinations

- A. Purpose and intent.** This Section provides procedures and findings to allow for determining the nonconforming status of and extent of damage to a structure that is damaged or destroyed by earthquake, fire, flood vandalism or other calamity beyond the control of the owner of the structure.
- 1. Toro Canyon Plan Area.** This Section also provides procedures and findings to allow the repair or reconstruction of one nonconforming private detached garage on a lot located within the Toro Canyon Plan Area in compliance with Subsection [35.101.030.B.6 \(Sites within Toro Canyon Plan Overlay\)](#) that is damaged or destroyed by earthquake, fire, flood vandalism or other calamity beyond the control of the owner of the structure.
- B. Applicability.** The provisions of this section shall apply to all nonconforming uses, structures or other development when required in compliance with [Chapter 35.101 \(Nonconforming Uses, Structures, and Lots\)](#).
- C. Contents of application.** An application for a Nonconforming Status and Extent of Damage Determination shall be filed and processed in compliance with [Chapter 35.80 \(Permit Application Filing and Processing\)](#).
- D. Processing.**
1. The Zoning Administrator shall hold at least one noticed public hearing on the requested Nonconforming Status and Extent of Damage Determination and approve, conditionally approve, or deny the request.
 2. Notice of the hearing shall be given and the hearing shall be conducted in compliance with [Chapter 35.106 \(Noticing and Public Hearings\)](#).
 3. The Zoning Administrator, in approving the Nonconforming Status and Extent of Damage Determination, may require conditions as deemed reasonable and necessary to ensure that the intent and purpose of this Development Code and the public health, peace, safety, and general welfare would be promoted.
 4. The action of the Zoning Administrator is final and not subject to appeal.
- E. Finding required for approval.** A Nonconforming Status and Extent of Damage Determination application shall be approved or conditionally approved only if the Zoning Administrator first finds that there is sufficient evidence to establish that the subject structure is nonconforming and that the extent of damage is such that the reconstruction or repair is allowed in compliance with [Chapter 35.101 \(Nonconforming Uses, Structures, and Lots\)](#).
- 1. Additional finding for Nonconforming Status and Extent of Damage Determinations in the Toro Canyon Plan Area.** If the Nonconforming Status and

Extent of Damage Determination application involves repair or reconstruction of a private detached garage, the Zoning Administrator shall also find that there is sufficient evidence to establish that the structure was used as a private garage prior to the damage or destruction by earthquake, fire, flood vandalism or other calamity beyond the control of the owner of the structure.

35.82.150 - Overall Sign Plans

- A. Purpose and intent.** This Section establishes procedures and findings for the approval of Overall Sign Plans that regulate signs located within a shopping center. The intent is to ensure that signs within a shopping center are visually attractive and are in a harmonious relationship to one another.
- B. Applicability.** The provisions of this Section shall apply to all proposed signs located within shopping centers.
- C. Allowed modifications.** The Zoning Administrator may allow the following sign modifications as part of the approval of an Overall Sign Plan:
- 1. Freestanding signs.** An increase in the height, number and size limitations on freestanding signs.
 - 2. Menu boards for drive-through restaurants.** An increase in the area limitation of menu boards.
 - 3. Under canopy sign.** An increase in the area limitation of under canopy signs.
 - 4. Wall sign.** An increase in the area limitation of wall signs.
- D. Contents of application.** An application for an Overall Sign Plan shall submitted in compliance with [Chapter 35.80 \(Permit Application Filing and Processing\)](#).
- E. Processing.**
1. The Overall Sign Plan shall be reviewed by the Board of Architectural Review in compliance with [Section 35.82.070 \(Design Review\)](#) except that the action of the Board of Architectural Review shall be limited to making a recommendation to the Zoning Administrator as described in Subsection 1.b below.
 - a. The Board of Architectural Review shall consider the effect of the proposed Overall Sign Plan on:
 - (1) The various parts of and commercial enterprises within the shopping center.
 - (2) The streets and properties surrounding the shopping center.
 - (3) The overall continuity of design and signs within the shopping center.

- b. The Board of Architectural Review shall recommend approval, conditional approval, or denial of the Overall Sign Plan to the Zoning Administrator, including recommendations as to the number, type, height, location, size, design, color, materials, and lighting of signs within the Overall Sign Plan.
 - c. If the area of menu boards for drive-through restaurants, under canopy signs, or wall signs, or the area, height, or number of freestanding signs is proposed to be in excess of that otherwise allowed in compliance with this Development Code, then the Board of Architectural Review shall make specific recommendations on any such modification.
2. The Zoning Administrator shall hold at least one noticed public hearing on the requested Overall Sign Plan and approve, conditionally approve, or deny the request. The Zoning Administrator shall consider the effect of the proposed Overall Sign Plan upon:
 - a. The various parts of and commercial enterprises within the shopping center.
 - b. The streets and properties surrounding the shopping center.
 - c. The overall continuity of design and signs within the shopping center.
 3. Notice of the hearing shall be given and the hearing shall be conducted in compliance with [Chapter 35.106 \(Noticing and Public Hearings\)](#) except that in addition to mailed notice required in compliance with [Chapter 35.106 \(Noticing and Public Hearings\)](#) notice shall also be mailed a minimum of 10 days prior to the public hearing to all tenants within the shopping center.
 4. The action of the Zoning Administrator is final subject to appeal in compliance with [Chapter 35.102 \(Appeals\)](#).
- F. Findings required for approval.** If an Overall Sign Plan includes any modifications in compliance with Subsection C. (Allowed modifications) above, then the Overall Sign Plan application shall be approved or conditionally approved only if the Zoning Administrator first makes the following findings, as applicable:
1. **Freestanding signs.** The proposed area, height, or number of freestanding signs is architecturally harmonious in relation to the size and location of the shopping center.
 2. **Menu boards for drive-through restaurants.**
 - a. The proposed area of the menu board is architecturally harmonious in relation to the size and location of the structure on which it will be placed.
 - b. The proposed area of the menu board is architecturally harmonious in relation to the size and location of the area on which the structure is constructed.
 3. **Under Canopy sign.** The proposed area of the under canopy sign is architecturally harmonious in relation to the size and location of the building area occupied by the enterprise proposing the sign.

- (2) The proposed use is essential to shopping needs of the area it serves.
 - (3) The proposed use is not more injurious to the health, safety or welfare of the neighborhood than those listed as permitted uses in the applicable zone because of noise, odor, dust, smoke, vibration, traffic congestion, depreciation of property or other similar causes.
6. **Public Utilities (PU) zone.** The proposed use is similar in character to those listed as permitted uses in the PU zone.
 7. **Recreation (REC) zone.**
 - a. **Coastal Zone.** The proposed use is similar in character to those listed as permitted uses in the coastal REC zone.
 - b. **Inland area.** The proposed use is similar in character to those listed as permitted uses in the inland area REC zone, not including fairgrounds, amusement parks or large indoor recreational complexes.
 8. **Transportation Corridor (TC) zone.** The proposed use is determined to be required for the purpose of operating a railroad or highway.
- F. **Applicable standards and permit requirements.** When the Commission determines that a proposed, but unlisted, use is similar to a listed permitted use, the proposed use will be treated in the same manner as the listed use in determining where it is allowed, what permits are required, and what other standards and requirements of this Development Code apply.

35.82.200 - Variances

- A. **Purpose and intent.** The purpose and intent of this Section is to allow variances from the strict application of the provisions of this Development Code where, because of exceptional conditions (e.g., the location, shape, size, surroundings, or topography, or other extraordinary situation or condition of the subject property), the literal enforcement of this Development Code would impose practical difficulties or would cause undue hardship unnecessary to carry out the intent and purpose of this Development Code.
- B. **Applicability.**
 1. The provisions of this Section shall apply to all zones.
 2. In no case shall a Variance be granted:
 - a. To allow a use or activity which is not otherwise allowed in the zone in which the property is located;
 - b. From the procedures identified in this Development Code; or
 - c. From the required number of parking spaces specified for Medium Density Student Residential (SR-M) zone, High Density Student Residential (SR-H) zone and Single Family Restricted (SF) overlay zone in compliance with [Section 35.36.050 \(Required Number of Spaces: Residential Uses\)](#).
- C. **Contents of application.** An application for a Variance shall be submitted in compliance with [Chapter 35.80 \(Permit Application Filing and Processing\)](#).
- D. **Processing.**
 1. In the Inland area, an application filed in compliance with this Section that is determined by the

Director to be inconsistent with the use and/or density requirements of this Development Code or the Comprehensive Plan shall be accompanied by an application to make the project consistent.

2. In the Inland area, the Department may refuse to accept for processing any application the Director finds to be inconsistent with the Comprehensive Plan.
3. The Zoning Administrator shall hold at least one noticed public hearing on the requested Variance and approve, conditionally approve, or deny the request.
4. Notice of the time and place of the hearing shall be given and the hearing shall be conducted in compliance with [Chapter 35.106 \(Noticing and Public Hearings\)](#).
5. The Zoning Administrator, in approving the Variance may require conditions as deemed reasonable and necessary to promote the purpose and intent of this Development Code and the public health, safety, and welfare.
6. The action of the Zoning Administrator is final subject to appeal in compliance with [Chapter 35.102 \(Appeals\)](#).
7. Prior to the issuance of any planning permit required to effectuate the approved Variance, the applicant shall agree, in writing, to comply with all conditions imposed by the review authority in the granting of the Variance.

E. Findings required for approval. A Variance application shall be approved or conditionally approved only if the Zoning Administrator first makes all of the following findings:

1. Findings required for all Variances:

- a. Due to special circumstances applicable to the subject property, including location, shape, size, surroundings, or topography, the strict application of this Development Code deprives the subject property of privileges enjoyed by other property in the vicinity and under identical zone classification.
- b. The granting of the Variance shall not constitute a grant of special privileges inconsistent with the limitations upon other property in the vicinity and zone in which the property is situated.
- c. The granting of the Variance will not be in conflict with the purpose and intent of this Development Code or the Comprehensive Plan.

2. Additional finding required for sites within the Summerland Community Plan area.

- a. The granting of a Variance to reduce the number of required parking spaces shall not result in an increase in on-street parking.

F. Post approval procedures. The procedures and requirements in [Chapter 35.84 \(Post Approval Procedures\)](#) and those related to appeals in [Article 35.10 \(Land Use and Development Code Administration\)](#), shall apply following the decision on an application for a Variance.

35.82.210 - Zoning Clearance

A. Purpose and intent. This Section provides procedures and findings to allow for the approval of, and effective time periods for, Zoning Clearances which may be required in compliance with Subsection B. (Applicability) below. The intent of this Section is to ensure that development conforms to the provisions of the Comprehensive Plan, including any applicable community or area plan, this Development Code, and any conditions or development standards established by the County.