

**APPEAL TO CONTRA COSTA COUNTY BOARD OF SUPERVISORS
FROM DECISION OF PLANNING COMMISSION
COUNTY FILE NO. CDVR23-01026**

TO: Contra Costa County Board of Supervisors
FROM: Carl Adams, Property Owner and Applicant
RE: Appeal from Planning Commission Decision Denying Variance and Tree Permit
PROPERTY: 2754 Limerick Road, San Pablo, CA (APN: 403-152-020)
DATE: June 4, 2025

I. NOTICE OF APPEAL

I, Carl Adams ("Appellant"), owner of the above-referenced property, hereby appeal the decision of the Contra Costa County Planning Commission dated May 28, 2025, which granted the appeal of Ronald Collins and reversed the Zoning Administrator's approval of County File No. CDVR23-01026. This appeal is filed within ten (10) days of the Planning Commission's decision pursuant to applicable County procedures.

II. PROJECT DESCRIPTION

The approved project consists of a new 5,104 square-foot single-family residence with a junior accessory dwelling unit on a vacant half-acre lot, requiring:

1. **Variance for 0-foot front setback** (where 20 feet is required) for driveway platform structure
2. **Variance for 15-foot front setback** (where 20 feet is required) for carport structure
3. **Tree permit** for removal of four code-protected trees (out of 34 total on the property)

III. PROCEDURAL HISTORY

- **April 24, 2023:** Application filed and deemed complete
- **May 6, 2024:** Zoning Administrator approved project after public hearing, making all required findings based on substantial evidence
- **May 15, 2024:** Ronald Collins appealed to the Planning Commission
- **May 28, 2025:** Planning Commission reversed the Zoning Administrator's decision based on legal errors

IV. STATEMENT OF FACTS

Undisputed Physical Conditions:

- The property slopes steeply with a 40-foot elevation change from the Dolan Way frontage
- Trapezoid-shaped half-acre lot has been vacant since 1958
- Standard driveway construction at grade is physically unsuitable due to topography
- The property contains 34 mature trees; the project removes 4 trees per arborist recommendation
- All other zoning requirements met (height, side/rear setbacks, lot coverage)

Staff Analysis:

County staff conducted a thorough analysis and found all three required variance criteria satisfied, recommending approval based on topographic hardship and minimal environmental impact.

V. APPLICABLE LEGAL PRECEDENT SUPPORTS APPROVAL

California courts have consistently held that topographic constraints constitute valid grounds for variance approval:

- **Eskeland v. City of Del Mar** (2014) 224 Cal.App.4th 936: "A variance may be granted for an unnecessary hardship based on the shape or topography of a parcel."
- **Stolman v. City of Los Angeles** (2003) 114 Cal.App.4th 916: Financial hardship due to property constraints may justify variance
- **Committee to Save Hollywood Specific Plan v. City of Los Angeles** (2007): Variances appropriate for properties with physical limitations

California variance law specifically authorizes relief when "special circumstances applicable to the property because of its size, shape, topography, location, or surroundings" create unnecessary hardship. (Gov. Code § 65906; County Code § 26-2.2006)

VI. GROUNDS FOR APPEAL - LEGAL ERRORS REQUIRING REVERSAL

A. THE COMMISSION APPLIED INCORRECT LEGAL STANDARD FOR "SPECIAL PRIVILEGE"

Fatal Legal Error: A Commissioner stated that "all variances constitute a special privilege" and should rarely be granted, demonstrating predetermined bias against variance applications generally.

Correct Legal Standard: The "special privilege" test examines whether the specific variance would grant advantages unavailable to similarly situated properties, not whether variances should be avoided as a policy matter.

Application: The steep topography prevents standard driveway construction available to other properties. The variance enables the same basic residential access rights enjoyed throughout the County, not special privileges beyond normal development.

Precedential Impact: The Commissioner's blanket opposition to variances violates due process and exceeds the Commission's authority to make individualized determinations based on statutory criteria.

B. THE COMMISSION MISAPPLIED "SPECIAL CIRCUMSTANCES" REQUIREMENTS

Procedural Error: A Commissioner demanded geotechnical, biological, and stormwater reports as prerequisites for variance approval—studies required at the building permit stage, not the planning stage.

Legal Standard: Special circumstances relate to existing physical characteristics of property (topography, shape, location), not future engineering analysis. Courts have held that variance decisions must be based on demonstrated property conditions, not speculative requirements.

Documented Facts: The 40-foot slope creating hardship is surveyed, mapped, and acknowledged by all parties. Staff found this constraint makes the standard driveway "unsuitable," and variance provides "least intrusive design."

Prejudicial Impact: This improper requirement effectively created new, unwritten standards for variance applications, violating established procedures and denying due process.

C. THE COMMISSION IGNORED SUBSTANTIAL EVIDENCE SUPPORTING ALL REQUIRED FINDINGS

The Zoning Administrator properly found all three statutory criteria satisfied:

Finding 1: No Special Privilege ✓

- Provides basic driveway access common to all residential properties
- Addresses unique topographic constraints not shared by the neighborhood
- **Staff:** "Having basic driveway access to property from a public right-of-way is common on most, if not all, properties throughout the county."

Finding 2: Special Circumstances Due to Topography ✓

- Documented 40-foot elevation change prevents standard construction

- Alternative would require extensive grading, retaining walls, and environmental damage
- **Staff:** "This steep slope makes it difficult to construct a standard driveway at natural grade."
- **Staff:** Variance provides "the least intrusive design to access the property."

Finding 3: Meets Intent and Purpose of R-6 Zone ✓

- Single-family residence with ADU directly implements R-6 district goals
- Complies with all other zoning requirements (height, coverage, side/rear setbacks)
- **Staff:** "No element of the project will inhibit future residential uses or development."

Commission's Failure: No substantial evidence contradicted these findings. The Commission substituted personal policy preferences for required legal analysis.

VII. SERIOUS PROCEDURAL VIOLATIONS REQUIRE REVERSAL

A. Ex Parte Policy Making

The Commission effectively created new variance requirements not found in the County Code, exceeding its authority and violating the separation of powers.

B. Lack of Ascertainable Standards

The Commission provided no guidance on what studies would be sufficient, creating impossible and arbitrary requirements for future applicants.

C. Improper Burden Shifting

The Commission required proof of negative impacts rather than applying statutory variance criteria, fundamentally altering the legal framework.

D. Predetermined Decision Making

Commissioner's stated opposition to variances generally demonstrates bias incompatible with quasi-judicial role requiring individualized determinations.

VIII. DENIAL CONFLICTS WITH STATE HOUSING POLICY

This project provides needed housing units (main residence plus ADU) identified in the County's Housing Element sites inventory. The property has remained vacant since 1958—further delay serves no legitimate planning purpose.

State Policy: California Government Code Section 65589.5 requires local agencies to facilitate housing development and prohibits arbitrary barriers to residential construction.

County Obligations: Denial based on incorrect legal standards conflicts with the County's Regional Housing Needs Allocation (RHNA) commitments and Housing Element implementation.

Public Interest: Allowing reasonable development of vacant land for housing serves compelling public interests in addressing the regional housing shortage.

IX. NEIGHBOR CONCERNS DO NOT OVERRIDE VARIANCE CRITERIA

While neighbor input is valuable, California law requires variance decisions to be based solely on the three statutory criteria. The concerns raised by Mr. Collins, though understandable, do not relate to legal standards for variance approval:

A. Privacy/Views

Not grounds for variance denial under California law. Project maintains or exceeds required side yard setbacks (17'5" vs. 5' required) and rear setbacks (85' vs. 15' required).

B. Tree Removal

Removal of 4 trees out of 34 total, based on professional arborist recommendation. This minimal impact does not constitute grounds for variance denial when statutory criteria are satisfied.

C. Drainage/Runoff

Technical engineering issues are properly addressed through the building permit process with appropriate departmental review. These concerns do not affect the topographic hardship that justifies the variance.

D. Construction Impacts

Temporary construction effects are regulated through conditions of approval and building permits, not grounds for variance denial.

Legal Principle: Courts have consistently held that general neighborhood opposition cannot override statutory variance criteria when those criteria are clearly satisfied. (*Broadway, Laguna, etc. Assn. v. Board of Permit Appeals* (1967) 66 Cal.2d 767)

X. THE ZONING ADMINISTRATOR'S DECISION REFLECTS PROPER APPLICATION OF LAW

Comprehensive Analysis

Staff conducted a thorough review, including:

- Detailed topographic analysis confirming hardship

- Arborist report evaluating tree impacts
- Agency coordination for utilities and services
- CEQA environmental review
- Public noticing and hearing process

Professional Findings

The Zoning Administrator, with planning expertise and a full administrative record, correctly applied established legal standards to undisputed facts.

Reasonable Reliance

Mr. Adams reasonably relied on professional staff analysis and Zoning Administrator approval. Reversal based on legally incorrect standards constitutes unfair treatment and abuse of the administrative process.

XI. REQUEST FOR RELIEF

WHEREFORE, Appellant respectfully requests that the Board of Supervisors:

1. **REVERSE** the Planning Commission's decision of May 28, 2025;
2. **REINSTATE** the Zoning Administrator's approval of County File No. CDVR23-01026;
3. **ADOPT** the findings and conditions of approval prepared by staff and approved by the Zoning Administrator;
4. **FIND** that the project is categorically exempt from CEQA under Section 15303(a);
5. **DIRECT** staff to file a Notice of Exemption;

ALTERNATIVELY, if the Board finds any ambiguity in the record, **REMAND** to the Planning Commission with specific direction to:

- Apply correct legal standards for variance approval
 - Prohibit consideration of factors outside the three statutory criteria
 - Base decision solely on substantial evidence in the administrative record
6. **GRANT** such other relief as the Board deems just and proper.

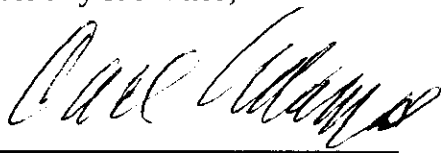
XII. CONCLUSION

The Planning Commission's decision represents a fundamental departure from established variance law and threatens the integrity of the County's land use process. When topographic constraints prevent standard development available to other properties, variance relief is not a "special privilege"—it is the legal mechanism that ensures fair and equal treatment.

The evidence overwhelmingly supports the Zoning Administrator's findings. The steep slope is undisputed. The hardship is documented. The solution is minimal and appropriate. The Commission's rejection based on incorrect legal standards and improper procedural requirements cannot stand.

Mr. Adams should not be denied reasonable use of his property due to legal errors and procedural violations. The Board should restore the careful, professional analysis that led to the original approval and allow this long-vacant property to finally serve its intended residential purpose.

Respectfully submitted,



Carl Adams
Property Owner and Applicant

(341) 215-6331

cdadams1946@comcast.net

ATTACHMENTS:

1. Copy of Planning Commission Decision dated May 28, 2025
2. Copy of Zoning Administrator's Approval dated May 6, 2024
3. Staff Report and Findings dated May 6, 2024
4. Project Plans and Topographic Survey
5. Arborist Report
6. Agency Comment Letters
7. Housing Element Sites Inventory Documentation

Cc:

Zachary A. Knox (zaknox@knoxrosslaw.com)
Knox & Ross Law Group
3661 Grand Avenue, Suite 205
Oakland, CA 94610