

Regulation No. 17

Procedures for Variance Application

Adopted: July 19, 2004

Amended: October 16, 2006; January 28, 2008; June 15, 2015

A. General Provisions

The following procedures will apply to all Applicants whose project plans or requirements to receive water service have been so modified or conditioned by District staff as to make the project unacceptable to the Applicant, and who, after a full review of the applicable Regulations, determines that the Applicant may be entitled to a variance from the staff decision.

The District Board of Directors has delegated to its Facilities and Operations Committee (“Committee”) the authority to review and make recommendations regarding certain decisions on service issues that concern or arise from Board-adopted policies. The General Manager shall have the discretion to route variance applications to the Facilities and Operations Committee for review when the subject matter is within the Committee’s jurisdiction. All other variance applications will be scheduled for hearing in front of the full Board of Directors. An Applicant for a variance who objects to a decision rendered by the Committee may appeal the Committee’s decision to the District Board of Directors.

On a form provided by the District, the Applicant will set forth:

1. Application to Install New Facilities

When the Applicant proposes to install Extension Facilities that vary from the requirements of Regulation 7 and/or 9 and such plan of service has been rejected by District staff, the Applicant’s application and plan shall be reviewed as to its compliance with the District Master Plan and the District’s ability or provide water service for future needs. The Applicant must state on the application appropriate reasons for why a variance should be granted and must submit relevant materials supporting its application. Information concerning the variance request shall include but not be limited to the Applicant’s financial, project design and technical requirements for the Extension Facilities.

2. Application to Use Existing Facilities

In those cases where the Applicant seeks permission to receive water service from an already existing main abutting the land to be served, but which service is not

permitted by applicable provisions of the District's Regulations, the Applicant's application and proposed service plan shall be reviewed as to its compliance with the Master Plan and how it relates to the District's future needs. The Applicant should provide the reasons why the Applicant should be allowed to use the District's existing facilities in lieu of providing Extension Facilities to serve its proposed development. The reasons should not be limited to financial or technical requirements of the project. The Applicant shall attach any relevant materials supporting the application.

3. Compliance with Other Regulations

In cases where an Applicant objects to any other requirement or fee imposed on the Applicant by a District ordinance, regulation or policy, the Applicant shall state the reasons why the Applicant should be excused from complying with the disputed requirement or fee and attach any relevant materials supporting the application.

B. Application Form and Filing Date Requirements

An application for a variance must be completed, signed and dated, and filed with the District at least 45 days before the next scheduled District Board meeting. The Applicant must pay a service fee to the District at the time of filing in accordance to Regulation 3, Section M.

District staff will respond to the issues raised in the application for variance in a written staff report, a copy of which will be provided to the Applicant at least 10 working days before the next regularly scheduled Board meeting. The Applicant may file a written reply rebutting statements made by the staff and attach any supporting evidence to the reply. The Applicant must file the reply with the Secretary of the Board no later than 4 working days before the next regularly scheduled Board meeting. Any rebuttal filed by the Applicant will be limited to the issues raised in the original application for variance and the staff report. If the General Manager assigns the application to the Committee for hearing, the above filing deadlines will be counted from the date of the Committee meeting at which the application will be heard.

At the designated meeting of the Board or Committee, the Applicant may present such oral statements, documents, and testimony of witnesses as the Applicant may choose. Staff may respond by the production of such additional relevant evidence as staff deems appropriate.

An Applicant may only raise those issues in a hearing that were presented in the original application for variance and responding staff report, unless the Applicant can present good cause reasons and supporting evidence to show why the Board or Committee should entertain the presentation of any new issues. Any new issues will not be acted on at a hearing and will not be made part of the record unless such presentation is first approved by the Board or the Committee.

C. Amendment of Application

If circumstances warrant or if the Applicant later desires to raise issues not made a part of the original application (and either did not request or did not obtain leave of the Board or Committee to present such issues at an earlier hearing), the Applicant may raise such issues by amending its pending application, paying an additional service fee of one-half of the original fee and recommencing the time sequence specified above.

D. Board or Committee Decisions

The Board or Committee, at the scheduled meeting at which the application for variance will be heard, will hear and consider all arguments and evidence presented by the Applicant and Staff. At the conclusion of the hearing, the Board or Committee may choose to enter into the record of the meeting the facts and its findings with respect to each issue presented by the Applicant and render its decision concerning the application, or the Board or Committee may choose to take the matter under consideration and issue a written decision setting forth the facts and its findings. If the Board or Committee determines to issue a written decision, it shall do so within 15 days after the hearing date. All decisions of the Board (or Committee, if no appeal to the Board is taken) are final.

E. Special Board Meeting

If an Applicant desires a hearing at a special Board meeting, the fee for scheduling the requested special meeting shall be payable at the time of the filing of the application in accordance to Regulation 3, Section M. 3. The time sequence specified in Section B will apply based on the date set for the special Board meeting.