

SEC. 12.27. VARIANCES.

(Amended by Ord. No. 173,268, Eff. 7/1/00, Oper. 7/1/00.)

Procedure for Variances.

A. Application for Variance. (Amended by Ord. No. 173,492, Eff. 10/10/00.) To apply for a variance, an applicant shall file an application with the Department of City Planning, on a form provided by the Department, and include all information required by the instructions on the application and the guidelines adopted by the Chief Zoning Administrator. The Chief Zoning Administrator shall adopt guidelines for determining when an application is complete and that date shall be deemed the submission date. All owners and lessees of the property involved shall verify that the information in the application is true.

B. Initial Decision. Except as otherwise provided in Charter Section 564 and Section 12.36 of this Code, the initial decision on a variance application shall be made by the Zoning Administrator. For purposes of this Code section, the initial decision shall mean approval in whole or in part with or without conditions, or denial, of the application.

C. Public Hearing and Notice. An application for a variance shall be set for public hearing unless the Chief Zoning Administrator or, in his or her absence, an Associate Zoning Administrator performing his or her functions, makes written findings, a copy of which shall be attached to the file, that the requested variance:

- (i) will not have a significant effect on adjoining properties or on the immediate neighborhood; or
- (ii) is not likely to evoke public controversy.

An application requesting relief from density or height requirements shall follow the procedures for public hearing and notice as set forth in Section 12.28 C.2. All other applications shall follow the procedures set forth below. **(First Para. Amended by Ord. No. 173,492, Eff. 10/10/00.)**

The Zoning Administrator may set the variance for hearing even though a public hearing is not otherwise required, if the Zoning Administrator determines that it would be in the public interest. In that event, notwithstanding the notice requirements below, notice of the public hearing shall be mailed to the owners of all properties abutting, across the street or alley from or having a common corner with the subject property.

When a public hearing is required by this Code for an application for a variance, evidence shall be taken at that hearing and notice of the time, place, and purpose of the hearing shall be given:

1. by mailing a written notice at least 24 days prior to the date of the hearing to the owner or owners of the property involved, and to the owners of all property within and outside of the City that is within 500 feet of the exterior boundaries of the property involved, using for the purpose of notification, the last known name and address of owners as are shown on the records of the City Engineer or the records of the County Assessor; and **(Amended by Ord. No. 181,595, Eff. 4/10/11.)**
2. by mailing a written notice no less than 24 days prior to the date of the hearing to residential, commercial and industrial occupants of all property within 500 feet of the exterior boundaries of the property involved. This requirement can be met by mailing the notice to "**occupant**". If this notice provision will not result in notice being given to at least 20 different owners of at least 20 different lots other than the subject property, then the 500-foot radius for notification shall be increased in increments of 50 feet until the required number of persons and lots are encompassed within the expanded area. Notification shall then be given to all property owners and occupants within that area; and
3. by the applicant posting notice of the public hearing in a conspicuous place on the property involved at least ten days prior to the date of the public hearing.

D. Findings for Approval. The decision of the Zoning Administrator shall be supported by written findings of fact based upon evidence taken, written or oral statements and documents presented, which may include photographs, maps and plans,

together with the results of any staff investigations.

Consistent with Charter Section 562, no variance may be granted unless the Zoning Administrator finds all of the following:

1. that the strict application of the provisions of the zoning ordinance would result in practical difficulties or unnecessary hardships inconsistent with the general purposes and intent of the zoning regulations;
2. that there are special circumstances applicable to the subject property such as size, shape, topography, location or surroundings that do not apply generally to other property in the same zone and vicinity;
3. that the variance is necessary for the preservation and enjoyment of a substantial property right or use generally possessed by other property in the same zone and vicinity but which, because of the special circumstances and practical difficulties or unnecessary hardships, is denied to the property in question;
4. that the granting of the variance will not be materially detrimental to the public welfare, or injurious to the property or improvements in the same zone or vicinity in which the property is located; and
5. that the granting of the variance will not adversely affect any element of the General Plan.

A variance shall not be used to grant a special privilege or to permit a use substantially inconsistent with the limitations upon other properties in the same zone and vicinity. The Zoning Administrator may deny a variance if the conditions creating the need for the variance were self-imposed.

Upon making a decision, the Zoning Administrator shall transmit a copy of the written findings and decisions to the applicant, the Director of Planning, the Department of Building and Safety, owners of all properties abutting, across the street or alley from, or having a common corner with the subject property and to all persons who have filed written requests for this notice with the Office of Zoning Administrator. The Zoning Administrator shall also place a copy of the findings and decision in the file.

E. Conditions of Approval. In approving a variance, the Zoning Administrator may impose those conditions it deems necessary to remedy a disparity of privileges and that the Zoning Administrator finds are necessary to protect the public health, safety or welfare and assure compliance with the objectives of the General Plan and the purpose and intent of the zoning.

F. Time to Act. The initial decision shall be made within 75 days of the submission of a complete application, or within an extended period as mutually agreed upon in writing by the applicant and the Zoning Administrator. An initial decision shall include the written findings made in accordance with Subsection D.

G. Failure to Act -Transfer of Jurisdiction.

1. If the Zoning Administrator fails to act on an application for a variance within the time provided in Subsection F, the applicant may file a request for a transfer of jurisdiction to the Area Planning Commission for decision. The Director of Planning shall prescribe the form and manner of filing requests for transfers of jurisdiction. When an applicant requests that a matter be transferred, the Zoning Administrator may file with the Area Planning Commission a statement of facts pertaining to the matter, and shall transmit to the Area Planning Commission the files in the case.

2. When the Area Planning Commission receives the applicant's request for a transfer of jurisdiction, the Zoning Administrator shall lose jurisdiction; provided, however, that the Area Planning Commission may remand the matter to the Zoning Administrator, or may accept the applicant's request for withdrawal of the transfer of jurisdiction, in which case the Zoning Administrator shall regain jurisdiction for the time and purposes specified by the Area Planning Commission.

3. If no remand or request for withdrawal of the transfer occurs, the Area Planning Commission shall consider the application following the same procedures and subject to the same limitations as are applicable to the Zoning Administrator, except that the Area Planning Commission shall act within 45 days of the transfer of jurisdiction. The Department of City Planning, including the Office of Zoning Administration, shall make investigations and furnish any reports the Area Planning Commission may request.

H. Filing of an Appeal. (Amended by Ord. No. 173,492, Eff. 10/10/00.) Any person aggrieved by an initial decision of the Zoning Administrator concerning a variance, may appeal the decision to the Area Planning Commission by filing an appeal with the Planning Department within 15 days of the date of mailing of the Zoning Administrator's decision. The appeal shall be filed in the Department of City Planning on a form provided by the Department, and shall set forth specifically the points at issue, the reasons for the appeal, and the basis upon which the appellant claims there was an error or abuse of discretion by the Zoning Administrator. The Area Planning Commission shall not consider any appeal not filed within the 15-day period. The filing of an appeal stays proceedings in the matter until the Area Planning Commission has made a decision. Once an appeal is filed, the Office of Zoning Administration shall transmit the appeal and the Zoning Administrator file to the Area Planning Commission. At any time prior to the action of the Area Planning Commission on the appeal, the Zoning Administrator shall submit any supplementary pertinent information he or she deems necessary or as the Area Planning Commission may request.

I. Appellate Decision - Public Hearing and Notice. Before acting on the appeal, the Area Planning Commission shall set the matter for hearing, giving notice by mail of the time, place and purpose of the hearing to the appellant, to the applicant, to the owner or owners of the property involved, to the Zoning Administrator, and to any interested party who has requested in writing to be so notified. The notice shall be mailed at least 24 days prior to the hearing. If the appeal is from the grant or denial of a use variance, the Area Planning Commission shall give the same notice of the hearing as required for the original hearing on the matter. Upon the date set for the hearing, the Area Planning Commission shall either hear the appeal or if there is cause to do so, continue the matter to another date. No notice of continuance need be given if the continuance is announced at the time for which the hearing was set.

J. Time for Appellate Decision. The Area Planning Commission shall make its decision within 75 days after the expiration of the appeal period. The 75 day time limit to act on an appeal may be extended by mutual written consent of the applicant and the Area Planning Commission. If the Area Planning Commission fails to act within this time limit, the action of the Zoning Administrator on the matter shall be final, except as provided in Subsection N. below. **(Amended by Ord. No. 177,103, Eff. 12/18/05.)**

K. Record on Appeal. The Area Planning Commission shall base its decision only upon:

1. evidence introduced at the hearing or hearings, if any, before the Zoning Administrator, on the issue; and
2. the record, findings, and decision of the Zoning Administrator; and
3. the consideration of arguments, if any, presented to the Area Planning Commission orally or in writing.

If any applicant or aggrieved person wishes to present any new evidence in connection with the matter, he or she shall file with the Area Planning Commission a written summary of that evidence, together with a statement as to why that evidence could not reasonably have been presented to the Zoning Administrator. If the Area Planning Commission determines that the evidence could not reasonably have been presented to the Zoning Administrator and the evidence is of such a nature as might reasonably have led to a different decision by the Zoning Administrator, the Area Planning Commission shall remand the matter to the Zoning Administrator. The Zoning Administrator shall reopen the matter only for receipt of the evidence summarized to the Area Planning Commission, and evidence from other parties relevant to the newly presented evidence, and within 55 days (or within an extension of that time agreed upon by the applicant and the Area Planning Commission) make a new order, requirement, interpretation or other decision in the matter.

L. Appellate Decision. The Area Planning Commission may reverse or modify the ruling or decision appealed from only upon making written findings setting forth specifically the manner in which the action of the Zoning Administrator was in error or constituted an abuse of discretion. Upon making a decision, a copy of the findings and decision shall forthwith be placed on file in the City Planning Department, and copies of the decision shall be sent to the applicant, the appellant, the Department of Building and Safety, the Director of Planning and the Office of Zoning Administration.

In considering appeals, the Area Planning Commission shall be subject to the same limitations regarding findings and conditions as are applicable to a Zoning Administrator under Subsections D and E.

M. Date of Final Decision. Because no further appeals are permitted, a denial of a variance by an Area Planning Commission on appeal shall become final upon the date it was mailed to the applicant. However, a decision by the Area

Planning Commission granting or confirming the grant of a variance shall become final after 15 days from the date it was mailed to the applicant, unless an appeal is filed with the Council within that period. The filing of an appeal stays proceedings in the matter until the Council makes a decision on the matter. The Council shall not consider any appeal not filed within the fifteen day period.

N. Failure to Act - Transfer of Jurisdiction.

1. If the Area Planning Commission fails to act on an appeal of a grant of a variance within the time provided in Subsection J, the appellant may file a request for a transfer of jurisdiction to the Council for decision. The Director of Planning shall prescribe the form and manner of filing requests for transfers of jurisdiction. When a matter is requested to be transferred, the Zoning Administrator and the Area Planning Commission may file with the Council a statement of facts pertaining to the matter, and shall transmit to the Council the files in the case.

2. When the Council receives the appellant's request for a transfer of jurisdiction, the Area Planning Commission shall lose jurisdiction; provided, however, that the Council may remand the matter to the Area Planning Commission, or may accept the appellant's request for withdrawal of the transfer of jurisdiction, in which case the Area Planning Commission shall regain jurisdiction for the time and purposes specified by the Council.

3. If no remand or request for withdrawal of the transfer occurs, the Council shall consider the application following the same procedures and subject to the same limitations as are applicable to the Area Planning Commission, except that the Council shall act within 45 days of the transfer of jurisdiction. The Department of City Planning, including the Office of Zoning Administration, shall make investigations and furnish any reports as the Council may request.

O. Appeal to City Council. (Amended by Ord. No. 173,754, Eff. 3/5/01.) An appeal from a decision of the Area Planning Commission granting or affirming the grant of a variance may be filed by the applicant or any person aggrieved by the decision. The appeal shall set forth in writing specifically the manner in which the appellant believes there was error or abuse of discretion on the part of the Area Planning Commission. The appeal shall be filed in the Department of City Planning upon forms provided by the Department. Upon the filing of the appeal, the Area Planning Commission Secretary shall transmit the Area Planning Commission file and the Zoning Administrator file on the matter to the City Council together with any reports prepared on this matter by the Zoning Administrator or Commission.

P. Action by Council and Mayor. (Amended by Ord. No. 173,754, Eff. 3/5/01.)

1. When considering an appeal from an Area Planning Commission decision granting or affirming the grant of a variance, the Council shall be subject to the same limitations regarding findings and conditions as are placed on the Area Planning Commission by this section. The Council, by resolution, may affirm, reverse or modify, in whole or in part, the decision of the Area Planning Commission by a majority vote. Failure of the Council to act within 90 days from the expiration of the appeal period, or within any additional period as may be agreed upon by the applicant and the Council shall be deemed to be a denial of the appeal.

2. When a variance decision is appealed to the City Council and the Council either approves the variance or denies an appeal from an earlier approval, the matter together with the files and reports shall forthwith be transmitted to the Mayor. The Mayor may approve or disapprove the variance within ten days of its presentation to him or her. This action shall be based solely upon the administrative record and whether the Mayor believes the variance conforms with the requirements for approval set forth in this section. If the Mayor disapproves the variance, he or she shall return the matter to the City Clerk for presentation to the Council, together with the objections in writing. The Council within 60 days after the matter has been returned to it may override the disapproval by a two-thirds vote.

3. If the Council fails to override the Mayor's disapproval within the 60 days, the Mayor's disapproval shall constitute a denial of the variance. If the Mayor fails to return the matter to the City Clerk within ten days of its presentation to him or her, the approval of the variance shall become final.

Q. (Deleted by Ord. No. 182,106, Eff. 5/20/12.)

R. Continuance of Variance or Exception. Except as provided in Subsection T of this subsection with respect to variances or exceptions which have never been or are not being utilized, no provision of this article shall be interpreted or

construed as limiting or interfering with the rights established by any variance or exception granted prior to the effective date of this article by:

- (a) ordinance pursuant to the provisions of Ordinances Nos. 42,666 (N.S.), 66,750, 74,140 or Chapter I of the Los Angeles Municipal Code;
- (b) decision of the Administrator or the former Board of Zoning Appeals pursuant to the provisions of Chapter I of this Code; or
- (c) former decision of the Board of City Planning Commissioners pursuant to the provisions of Ordinance No. 74,145 or Chapter I of this Code.

Notwithstanding any of the provisions of the ordinance granting a variance or exception, the Administrator shall have jurisdiction to perform all administrative acts with which the Board of City Planning Commissioners, City Council or its Planning Committee were formerly charged with under the ordinance, such as approving plans, signs, types of use, and the like. The use of any building, structure or land existing at the time this article became effective, by virtue of any exception from the provisions of former Ordinance No. 33,761 (N.S.), may be continued provided no new building or structure is erected, no existing building or structure is enlarged, and no existing use of land is extended.

S. Discontinuance of Variance or Exception - Revocation. (Amended by Ord. No. 173,492, Eff. 10/10/00.) If the use authorized by any variance granted by ordinance, or by decision of the Zoning Administrator, the Area Planning Commission, City Planning Commission or the City Council is or has been abandoned or discontinued for a period of six months, or the conditions of the variance have not been complied with, the Director, upon knowledge of this fact, may give notice to the record owner or lessee of the real property affected to appear at a time and place fixed by the Director and show cause why the ordinance or decision granting the variance should not be repealed or rescinded, as the case may be. **(First Sentence Amended by Ord. No. 177,103, Eff. 12/18/05.)** After the hearing, the Director may revoke the variance, or if an ordinance is involved, recommend to the City Council that the ordinance be repealed. The decision of the Director shall become final after 15 days from the date of mailing of the decision to the owner or lessees of the real property affected, unless an appeal to the Council is filed within that 15-day period. An appeal may be taken to Council in the same manner as described in Subsections O and P of this section. After revocation or repeal, the property affected shall be subject to all the regulations of the zone in which the property is located, as provided in this article.

T. Failure to Utilize Variance or Exception - Repeal. The procedure for repeal of variances that have been abandoned or discontinued as set forth in Subsection S shall not apply to those exceptions or conditional variances granted by ordinance and which were once utilized, but the authorized use or development had been discontinued or removed from the site for at least one year and the ordinance has been repealed. If the rights established by any ordinance previously adopted authorizing an exception or conditional variance from the provisions of Chapter I of the Los Angeles Municipal Code, or Ordinances No. 42,666 (N.S.) 66,750 and 74,140, have never been executed or utilized, or, if once utilized, the use or development authorized has been discontinued or removed from the site for a period of least one year, that exception or conditional variance shall no longer be of any force or effect and the respective ordinance granting the exception or conditional variance is hereby repealed.

U. Plan Approvals.

1. Development of Site. On any lot or portion of a lot on which a use is permitted pursuant to a variance, new buildings or structures may be erected, enlargements may be made to existing buildings, and existing uses may be extended if plans for those changes are submitted to and approved by a Zoning Administrator. A Zoning Administrator shall not approve any use, single deviation or combination or series of deviations from the zoning regulations which was not approved as part of the original variance, or which would result in an increase in size or bulk of buildings exceeding 20 percent.

Any person submitting development plans, or any other person aggrieved by a decision of a Zoning Administrator made relative to the approval or disapproval of a development plan may appeal that decision to the Area Planning Commission. The appeal shall be in writing upon forms provided by the Department of City Planning. The appeal shall set forth specifically the basis of the appeal and the reasons why the decision should be reversed or modified. The appeal shall be filed within 15 calendar days from the date of mailing of the Zoning Administrator's decision and shall include a filing fee pursuant to Section 19.01B of this Code. No fee shall be required for the filing of appeals by

other aggrieved persons.

2. **Reduction of Site.** So long as the use approved by variance is continued, the entire approved site shall be retained for the approved use, and no portion of the site shall be severed or utilized for other purposes unless the plans for the reduced site are first submitted to and approved by a Zoning Administrator. The decision of a Zoning Administrator on a proposed reduction of the area of an approved site shall be subject to the same appeal as is provided for an application to establish the use.

3. **Conditions of Approval.** In connection with the approval of such plans, a Zoning Administrator may impose conditions on the same basis as provided for in this section in connection with the original variance.

4. **Change of Use.** No use approved by variance may be changed in a different use for which a variance is otherwise required unless the new use is authorized in accordance with the procedure prescribed in this section for the establishment of a use by variance.