

Zoning Administrator & Modification Permit Q & A

Q: What does the Zoning Administrator do?

Answer: The Zoning Administrator conducts public hearings and renders decisions on minor discretionary applications. A “discretionary application” is one that requires the exercise of judgment on the part of the decision-maker, as opposite to a “ministerial application” where the decision-maker determines whether there has been conformity with fixed standards or objective measurements (e.g., building permits).

Q: Who is the Zoning Administrator?

Answer: The Zoning Administrator is a Planning Division staff member assigned by the Planning Director.

Q: What types of projects or applications does the Zoning Administrator decide?

Answer: Applications within the jurisdiction of the Zoning Administrator are: Modification Permits, Lot Line Adjustments, Parcel Maps, Condominium Conversions, and Comprehensive Sign Programs. Typical projects are single family or multi-family residences, although non-residential buildings and structures are occasionally considered.

Q: What is a Modification Permit?

Answer: A Modification Permit is a request for administrative relief from development standards of the Zoning Code such as to allow a building to encroach within a required setback. Other examples include: heights of walls, hedges or fences; distances between buildings; area, number and height of signs; roof signs and off-site signs; structural appurtenances or projections from buildings that encroach into front, side or rear yards; location of accessory buildings within setbacks; the construction or installation of chimneys, vents, rooftop architectural features in excess of permitted height limits; size or location of parking spaces or access to parking spaces; swimming pool and swimming pool equipment encroachments within setbacks; rooftop parking of automobiles in nonresidential districts; and minor alterations and improvements to nonconforming buildings. Deviations from provisions that regulate uses cannot be considered with a Modification Permit.

Q: Is a Modification Permit like a Variance?

Answer: There are similarities in that both applications allow for deviations from development standards (never uses), but some standards of the Zoning Code are not eligible for a Modification Permit (e.g. building height). The findings for approval of a Variance are more stringent than a Modification Permit and Variances require Planning Commission consideration.

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Q: Why do people request Modification Permits?

Answer: Usually there is something unusual about the property (i.e., its size, shape, orientation, topography) or the location of existing improvements on the lot that creates a practical difficulty that impedes a project. Other times, a property owner simply wants a unique design.

Q: Is there a fee for a Modification Permit?

Answer: Yes, the fee is set by City Council resolution and is designed to off-set the administrative cost of reviewing a request. The current fee is \$2,283.

Q: What are the standards for approval of a Modification Permit?

Answer: The Zoning Code requires the following findings to be made:

- A. The granting of the Modification Permit is necessary due to practical difficulties associated with the property and that the strict application of the Zoning Code results in physical hardships that are inconsistent with the purpose and intent of the Zoning Code.
- B. The requested modification will be compatible with existing development in the neighborhood.
- C. The granting of the Modification Permit will not adversely affect the health or safety of persons residing or working in the neighborhood of the property and it will not be detrimental to the general welfare or injurious to property or improvements in the neighborhood.

If facts do not support one or more of the required findings, the application cannot be approved and will be denied. Even with facts to support each of these findings, a Modification Permit is discretionary and approval is not mandatory.

Q: How does someone apply for a Modification Permit?

Answer: The best course of action is to design a project consistent with the standards of the Zoning Code to avoid the process altogether, but when legitimate circumstances exist that might suggest a problem, start by talking to a planner. The Planning Division Staff is trained to assist a designer or property owner in identifying viable alternatives before focusing on the required findings. If no alternatives are readily identified, and facts appear to support the required findings, Staff will advise a prospective applicant and discuss the application process and necessary application materials. Facts that appear to support denial of an application will also be identified, provided they are known at the time. You will be advised to discuss your application with your neighbors as a courtesy. Prior to the hearing, neighbors within 300 feet will receive a notice from the City.

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Q: Can I ask the Zoning Administrator if my application will be approved before I apply?

Answer: You can ask, but the Zoning Administrator will direct your question to Planning Staff without providing an answer. Planning Staff can offer their opinion based upon what they understand the facts to be at that time, but the Zoning Administrator cannot offer similar advice as he is the decision maker. Offering a potential outcome without the benefit of full information derived from a complete analysis and a public hearing would be premature. This practice avoids unfortunate situations when facts are later uncovered that differs from early advice or a desired outcome.

Q: After filing an application, what happens?

Answer: The application is assigned to a planner for evaluation. They consult with the Public Works, Building and Fire Departments depending upon the nature of the request. Other departments or agencies may also be consulted. The planner conducts a site visit and reviews the overall application for conformity with applicable development standards. They prepare a recommendation for action in the form of a draft action letter (approval as submitted, approval of an alternative, or denial). The recommendation is then forwarded to the Zoning Administrator for consideration and action at a noticed public hearing.

Q: When are hearings scheduled?

Answer: Hearings are currently scheduled on Thursdays the week of City Council meetings. Recent caseload has reduced the hearing schedule to only once per month. They are typically conducted in the City Council Chambers at 3:30 PM. The hearings are informal and everyone is given a chance to speak.

Q: Do decisions of the Zoning Administrator establish precedent?

Answer: Precedent is only established when the facts and circumstances are identical to that prior case, which rarely ever occurs. Decisions are based upon the particular facts and circumstances of a project and its surroundings, as well as the mandatory findings for approval. Some older decisions (decades ago) are frankly questionable and are not good examples to follow. Additionally, the findings for a Modification Permit were tightened several years ago by the City Council making them more difficult to obtain today.

Q: Can decisions be appealed?

Answer: Yes, decisions of the Zoning Administrator can be appealed to the Planning Commission and decisions of the Planning Commission can be appealed to the City Council. Appeals must be filed within 14 days of final action and fees do apply.

For further information, please contact the Planning Division at 949-644-3204