

## APPLICATIONS



### APPEAL APPLICATION Instructions and Checklist

#### RELATED CODE SECTION

Refer to the Letter of Determination (LOD) for the subject case to identify the applicable Los Angeles Municipal Code (LAMC) Section for the entitlement and the appeal procedures.

#### PURPOSE

This application is for the appeal of Los Angeles Department of City Planning determinations, as authorized by the LAMC, as well as first-level Building and Safety Appeals and Housing Appeals.

#### APPELLATE BODY

**Check only one. If unsure of the Appellate Body, check with City Planning staff before submission.**

- |   |   |                                       |
|---|---|---------------------------------------|
| <input type="checkbox"/> Area Planning Commission (APC) | <input type="checkbox"/> City Planning Commission (CPC) | <input type="checkbox"/> City Council |
| <input type="checkbox"/> Zoning Administrator (ZA)      | <input type="checkbox"/> Director of Planning (DIR)     |                                       |

#### CASE INFORMATION

**Case Number:** \_\_\_\_\_

**APN:** \_\_\_\_\_

**Project Address:** \_\_\_\_\_

**Final Date to Appeal:** \_\_\_\_\_

#### APPELLANT

**For main entitlement cases, except for Building and Safety Appeals and Housing Appeals:  
Check all that apply.**

- |   |   |                                    |   |
|---|---|------------------------------------|---|
| <input type="checkbox"/> Person, other than the Applicant, Owner or Operator claiming to be aggrieved |   |                                    |   |
| <input type="checkbox"/> Representative   | <input type="checkbox"/> Property Owner | <input type="checkbox"/> Applicant | <input type="checkbox"/> Operator of the Use/Site |

**For Building and Safety Appeals only:**

**Check all that apply.**

- ☐ Person claiming to be aggrieved by the determination made by **Building and Safety**<sup>1</sup>  
☐ Representative      ☐ Property Owner      ☐ Applicant      ☐ Operator of the Use/Site

**For Housing Appeals only:**

**Check all that apply.**

- ☐ Person claiming to be aggrieved by the determination made by **Housing**  
☐ Representative      ☐ Property Owner      ☐ Applicant      ☐ Interested Party      ☐ Tenant

## APPELLANT INFORMATION

**Appellant Name:** \_\_\_\_\_

**Company/Organization:** \_\_\_\_\_

**Mailing Address:** \_\_\_\_\_

**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **Zip Code:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_ **E-mail:** \_\_\_\_\_

Is the appeal being filed on your behalf or on behalf of another party, organization, or company?

☐ Self      ☐ Other: \_\_\_\_\_

Is the appeal being filed to support the original applicant's position?      ☐ **YES**      ☐ **NO**

## REPRESENTATIVE / AGENT INFORMATION

**Representative/Agent Name (if applicable):** \_\_\_\_\_

**Company:** \_\_\_\_\_

**Mailing Address:** \_\_\_\_\_

**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **Zip Code:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_ **E-mail:** \_\_\_\_\_

<sup>1</sup> Pursuant to LAMC Section 13B.2.10.B.1. of Chapter 1A, Appellants of a Building and Safety Appeal are considered the Applicant and must provide the Noticing Requirements identified on page 4 of this form at the time of filing. Pursuant to LAMC Section 13B.10.3 of Chapter 1A, an appeal fee shall be required pursuant to LAMC Section 19.01 B.2 of Chapter 1.

## JUSTIFICATION / REASON FOR APPEAL

Is the decision being appealed in its entirety or in part?

☐ Entire

☐ Part

Are specific Conditions of Approval being appealed?

☐ YES

☐ NO

If Yes, list the Condition Number(s) here: \_\_\_\_\_

On a separate sheet provide the following:

☐ Reason(s) for the appeal

☐ Specific points at issue

☐ How you are aggrieved by the decision

## APPLICANT'S AFFIDAVIT

I certify that the statements contained in this application are complete and true.

Appellant Signature: \_\_\_\_\_

*Steven S. Carbone*

Date: \_\_\_\_\_

## GENERAL NOTES

*A Certified Neighborhood Council (CNC) or a person identified as a member of a CNC or as representing the CNC may not file an appeal on behalf of the Neighborhood Council; persons affiliated with a CNC may only file as an individual on behalf of self.*

*The appellate body must act on the appeal within a time period specified in the LAMC Section(s) pertaining to the type of appeal being filed. Los Angeles City Planning will make its best efforts to have appeals scheduled prior to the appellate body's last day to act in order to provide due process to the appellant. If the appellate body is unable to come to a consensus or is unable to hear and consider the appeal prior to the last day to act, the appeal is automatically deemed denied, and the original decision will stand. The last day to act as defined in the LAMC may only be extended if formally agreed upon by the applicant.*

### THIS SECTION FOR CITY PLANNING STAFF USE ONLY

Base Fee: \_\_\_\_\_

Reviewed & Accepted by (DSC Planner): \_\_\_\_\_

Receipt No.: \_\_\_\_\_ Date : \_\_\_\_\_

☐ Determination authority notified

☐ Original receipt and BTC receipt (if original applicant)

## GENERAL APPEAL FILING REQUIREMENTS

If dropping off an appeal at a Development Services Center (DSC), the following items are required. See also additional instructions for specific case types. To file online, visit our [Online Application System \(OAS\)](#).

### APPEAL DOCUMENTS

#### 1. Hard Copy

Provide three sets (one original, two duplicates) of the listed documents for each appeal filed.

- ☐ Appeal Application
- ☐ Justification/Reason for Appeal
- ☐ Copy of Letter of Determination (LOD) for the decision being appealed

#### 2. Electronic Copy

- ☐ Provide an electronic copy of the appeal documents on a USB flash drive. The following items must be saved as individual PDFs and labeled accordingly (e.g., “Appeal Form”, “Justification/Reason Statement”, or “Original Determination Letter”). No file should exceed 70 MB in size.

#### 3. Appeal Fee

- ☐ *Original Applicant.* The fee charged shall be in accordance with LAMC Section 19.01 B.1(a), or a fee equal to 85% of the original base application fee. Provide a copy of the original application receipt(s) to calculate the fee.
- ☐ *Aggrieved Party.* The fee charged shall be in accordance with the LAMC Section 19.01 B.1(b).

#### 4. Noticing Requirements (Applicant Appeals or Building and Safety Appeals Only)

- ☐ *Copy of Mailing Labels.* All appeals require noticing of the appeal hearing per the applicable LAMC Section(s). Original Applicants must provide noticing per the LAMC for all Applicant appeals. Appellants for BSAs are considered Original Applicants.
- ☐ *BTC Receipt.* Proof of payment by way of a BTC Receipt must be submitted to verify that mailing fees for the appeal hearing notice have been paid by the Applicant to City Planning’s mailing contractor (BTC).

See the Mailing Procedures Instructions ([CP13-2074](#)) for applicable requirements.

- ☐ Not applicable for Housing Appeals.

## SPECIFIC CASE TYPES

### ADDITIONAL APPEAL FILING REQUIREMENTS AND / OR LIMITATIONS

#### DENSITY BONUS (DB) / TRANSIT ORIENTED COMMUNITIES (TOC)

Appeal procedures for DB/TOC cases are pursuant to LAMC Section 12.22 A.25(g) of Chapter 1.

- Off-Menu Incentives or Waiver of Development Standards are not appealable.
- Appeals of On-Menu Density Bonus or Additional Incentives for TOC cases can only be filed by adjacent owners or tenants and is appealable to the City Planning Commission.
- ☐ Provide documentation confirming adjacent owner or tenant status is required (e.g., a lease agreement, rent receipt, utility bill, property tax bill, ZIMAS, driver's license, bill statement).

#### WAIVER OF DEDICATION AND / OR IMPROVEMENT

Procedures for appeals of Waiver of Dedication and/or Improvements (WDIs) are pursuant to LAMC Section 12.37 I of Chapter 1.

- WDIs for by-right projects can only be appealed by the Property Owner.
- If the WDI is part of a larger discretionary project, the applicant may appeal pursuant to the procedures which govern the main entitlement.

#### [VESTING] TENTATIVE TRACT MAP

Procedures for appeals of [Vesting] Tentative Tract Maps are pursuant LAMC Section 13B.7.3.G. of Chapter 1A.

- Appeals must be filed within 10 days of the date of the written determination of the decision-maker.

#### BUILDING AND SAFETY APPEALS AND HOUSING APPEALS

##### First Level Appeal

Procedures for an appeal of a determination by the Los Angeles Department of Building and Safety (LADBS) (i.e., Building and Safety Appeal, or BSA) and Housing (LAHD) are pursuant LAMC Section 13B.10.2. of Chapter 1A.

- The Appellant is considered the **Original Applicant** and must provide noticing and pay mailing fees.

## 1. Appeal Fee

- ☐ Appeal fee shall be in accordance with LAMC Section 19.01 B.2 of Chapter 1 (i.e., the fee specified in Table 4-A, Section 98.0403.2 of the City of Los Angeles Building Code, plus surcharges).

## 2. Noticing Requirement

- ☐ *Copy of Mailing Labels.* All appeals require noticing of the appeal hearing per the applicable LAMC Section(s). Original Applicants must provide noticing per LAMC Section 13B.10.2.C. of Chapter 1A. Appellants for BSAs are considered Original Applicants. (Not applicable for Housing appeals).
- ☐ *BTC Receipt.* Proof of payment by way of a BTC Receipt must be submitted to verify that mailing fees for the appeal hearing notice have been paid by the Applicant to City Planning's mailing contractor (BTC).
- ☐ Not applicable for Housing Appeals.

See the Mailing Procedures Instructions ([CP13-2074](#)) for applicable requirements.

## Second Level Appeal

Procedures for a appeal of the Director's Decision on a BSA Appeal and LAHD appeals are pursuant to LAMC Section 13B.10.2.G. of Chapter 1A. The original Appellant or any other aggrieved person may file an appeal to the APC or CPC, as noted in the LOD.

## 1. Appeal Fee

- ☐ *Original Applicant.* Fees shall be in accordance with the LAMC Section 19.01 B.1(a) of Chapter 1.

## 2. Noticing Requirement

- ☐ *Copy of Mailing Labels.* All appeals require noticing of the appeal hearing per the applicable LAMC Section(s). Original Applicants must provide noticing per LAMC Section 13B.10.2.C of Chapter 1A. Appellants for BSAs are considered Original Applicants.
- ☐ *BTC Receipt.* Proof of payment by way of a BTC Receipt must be submitted to verify that mailing fees for the appeal hearing notice have been paid by the Applicant to City Planning's mailing contractor (BTC).
- ☐ Not applicable for Housing Appeals.

See the Mailing Procedures Instructions ([CP13-2074](#)) for applicable requirements.

## NUISANCE ABATEMENT / REVOCATIONS

Appeal procedures for Nuisance Abatement/Revocations are pursuant to LAMC Section 13B.6.2.G. of Chapter 1A. Nuisance Abatement/Revocations cases are only appealable to the City Council.

### 1. Appeal Fee

- ☐ *Applicant (Owner/Operator)*. The fee charged shall be in accordance with the LAMC Section 19.01 B.1(a) of Chapter 1.

For appeals filed by the property owner and/or business owner/operator, or any individuals/agents/representatives/associates affiliated with the property and business, who files the appeal on behalf of the property owner and/or business owner/operator, appeal application fees listed under LAMC Section 19.01 B.1(a) of Chapter 1 shall be paid, at the time the appeal application is submitted, or the appeal application will not be accepted.

- ☐ *Aggrieved Party*. The fee charged shall be in accordance with the LAMC Section 19.01 B.1(b) of Chapter 1.

CPC-2023-5876-CU-DB-DRB-SPP-VHCA [HEARING DATE APRIL 11, 2024] & ENV-2023-5877-CE

10756 WEST WILKINS AVENUE (the Project)

APPEAL OF STEVEN S. CARBONE and MICHELLE MARAVICH CARBONE residents at 10788 ROCHESTER AVENUE and for all others similarly situated, known here as Appellant;

## **INTRODUCTION**

The Project consists of a 5-story, 56' foot tall, 11-unit multi-family apartment building, including 2 units designated for very low-income households and 6 parking spaces. The Project site is located at 10756 West Wilkins Avenue, near St. Paul the Apostle Church and the Mormon Temple.

The Project site is zoned RD1.5-1. Under such zoning, a maximum density of 7 residential units is permitted by right. In addition, the Project site is subject to the Westwood Community Mufti-Family Specific Plan (Specific Plan). Among other purposes, the Specific Plan "establish[es] coordinated and comprehensible standards for parking, height, design, building massing, open space and landscaping for new projects in the area;" "enhance[s] the aesthetic qualities of multiple-family residential development so that it is more harmonious with adjacent single-family neighborhoods," and "adequately buffer single-family residential uses from adjacent multiple-family residential development to the greatest extent feasible."<sup>1</sup>

Currently, a single family home building sits on the Project site, which is directly across the street from a prior litigation at 10757 West Wilkins Avenue. That 10757 project has provided a substantially different precedent not followed herein by the City.<sup>2</sup> The 10756 project would revive the “canyonization” of West Wilkins Avenue that mistakenly began decades ago and has been ended, to date.<sup>3</sup>

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<sup>1</sup> Please see the original text at: <https://planning.lacity.gov/odocument/46dd3857-bca5-445f-90c7-2691ced8b87e>

<sup>2</sup> Given similar issues, this appeal closely follows the opinion of a prior jurist. Please see the historical bibliography available at: [https://fixthecity.org/?page\\_id=854](https://fixthecity.org/?page_id=854) .

<sup>3</sup> The out of character condominium building eyesore at the other end of the block or the corner of West Wilkins and Malcolm Avenue has the address of 107XX West Wilkins Avenue. Historical oral legend states this five story condominium led to a massive growth of the local homeowners group and the strengthening of the building ordinance controls in the area, due to a prior ‘planning error.’



## **JURISDICTION**

THE PLANNING DEPARTMENT LACKS JURISDICTION TO RULE ON THESE MATTERS.

Jurisdiction is always ripe for any finder of fact or finder of law. The appellant states the property project violates the Specific Plan. Violation of the Specific Plan is not allowed by the Planning Department as no jurisdiction lies with Planning Department [also known herein as City or Department] to violate the Specific Plan. Thus, the jurisdiction objections are preserved initially.

The TOC Affordable Housing Incentive Guidelines (TOC Guidelines) is inapplicable here due to legislative drafting weakness. However, Appellant includes relevant discussion of same as would any rational discussion. Appellant's reference to the TOC Guidelines herein is intended to preserve the issue for appeal, in greater interest of all due process. That is, the parties need not restate in this proceeding its rationale for including the City's TOC Guidelines, which are clearly overruled and invalidated by the Specific Plan in this fact situation. Such objections and appeal are reserved.

## **APPEALS OF LETTER OF DETERMINATION**

1. Pursuant to Sections 12.22 A.31 and 12.22 A.25(g) of the Los Angeles Municipal Code ("LAMC"), this appeal of the entire determination by the Department of Planning in approving a Transit Oriented Communities Affordable Housing Incentive Program for a project totaling 11 dwelling units, reserving two units for Very Low Income Household occupancy for a statutory period of calendar years, with the following requested incentives, as set forth.

a. Height. A 23-foot increase in the building height, allowing 56 feet in lieu of the maximum 33 feet otherwise allowed by the [Q]RD1.5-1 Zone and Westwood Community MultiFamily Specific Plan;

b. Yard/Setback. A reduction in the required setbacks on Ohio and also on Wilkins as required; and

c. Open Space. A specified percent reduction in the open space requirement, allowing an alternate amount which seems otherwise required;

2. An appeal of the April 11, 2024, Director of Planning's Determination to approve a Project Permit Compliance and Design Review, pursuant to LAMC Section 11.5.7 and 16.50, for a new five-story, maximum 56 feet in height, 11 unit apartment building over one level of subterranean parking containing 6 automobile stalls in the Westwood Community Multi-Family Specific Plan.

3. An appeal of a determination that based on the whole of the administrative record, that the Project is exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines, Article 19, Section 15332 (Class 32), and there is no substantial evidence demonstrating that an exception to a categorical exemption pursuant to CEQA Guidelines, Section 15300.2 applies.

## **ANALYSIS**

### ***The Specific Plan and the TOC Program:***

Appellant argues the Project does not comply with the requirements of the Specific Plan. Appellant contends the TOC Guidelines cannot override the requirements of the Specific Plan. Petitioner explains "It]he Project received several incentives that allow development in excess of the limitations and requirements of the Specific Plan, even though the City law makes clear that the provisions of any specific plan prevail over conflicting requirements in City ordinances."

As noted by the City, there is no dispute the City applied the TOC Program to the Project and provided incentives as permitted by the TOC Guidelines. The City reports, based on various factors and the TOC Guidelines, the Project was eligible for TOC Guidelines' base incentives of increased density and reduced parking as well as three Tier 3 additional incentives for increased height and reductions in yard and open space.

Under the Specific Plan and the City's zoning code, the Project is limited to a height of 33 feet and required to provide a larger amount of square feet of open space. Despite such requirements, using the TOC Guidelines, the City approved the Project as a 56- foot high structure (a 23-foot increase with far less open space). Given the Project's deviation from the Specific Plan, Appellant contends the Project could not have been approved by the City without an adjustment or amendment to the Specific Plan under the Los Angeles Municipal Code (LAMC at section 11.5.7 pp. 3-4.) Petitioner argues the LAMC does not allow the incentives available through the TOC Guidelines to supersede or override the requirements of the Specific Plan.

The Specific Plan provides:

"Whenever this Specific Plan contains provisions which differ from provisions contained in Chapter I of the Los Angeles Municipal Code,<sup>4</sup> the Specific Plan shall prevail and supersede the application provisions of that Code."<sup>5</sup> (p. 10.)

The City contends the TOC Program applies to all housing developments regardless of the City's many various specific plans. That is, the TOC Program broadly applies to all housing developments without limitation and overrides any applicable specific plan provisions.

The TOC Program provides in part:

“Housing Development located within a TOC Affordable Housing Incentive Area shall be eligible for TOC Incentives if it provides minimum required percentages of On-Site Restricted Affordable Units, meets any applicable replacement requirements of California Government Code Section 65915(c)(3), and is not seeking and receiving a density or development bonus under the provisions of that the provisions of any specific plan prevail over conflicting requirements in City ordinances.”

As noted by the City, there is no dispute the City applied the TOC Program to the Project and provided incentives as permitted by the TOC Guidelines. The City reports, based on various factors and the TOC Guidelines, the Project was eligible for TOC Guidelines' base incentives of increased density and reduced parking as well as three Tier 3 additional incentives for increased height and reductions in yard and open space.

Under the Specific Plan and the City's zoning code, the Project is limited to a height of 33 feet and required to provide 3,500 square feet of open space. Despite such requirements, using the TOC Guidelines, the City approved the Project as a 56-foot high structure (a 23-foot increase with far less square feet of open space, a reduction). This is beyond law without substantial evidence.

Given the Project's deviation from the Specific Plan, Appellant contends the Project could not have been approved by the City without an adjustment or amendment to the Specific Plan under the Los Angeles Municipal Code (LAMC) at section 11.5.7. [Specific Plan](LAMC § 11.5.7) Appellant argues the LAMC does not allow the incentives available through the TOC Guidelines to supersede or override the requirements of the Specific Plan.

The Specific Plan provides:

"Whenever this Specific Plan contains provisions which differ from provisions contained in Chapter I of the Los Angeles Municipal Code,<sup>4</sup> the Specific Plan shall prevail and supersede the application provisions of that Code."<sup>5</sup> (p. 10.)

All other reasons, procedural, substantive, and equitable are requested to be reserved for the appeal or for the Fifth District member to veto.

## **CONCLUSION**

Based on the above, these appeals are hereby timely filed.

/s./**STEVEN S. CARBONE**

Signed this Fourth day of June, 2024 at Westwood, Los Angeles, CA.