

1 **BILL NO. 2004-64**

2 **ORDINANCE NO. 5729**

3 AN ORDINANCE TO MODIFY THE STANDARDS FOR GRANTING A VARIANCE  
4 APPLICATION, MODIFY CERTAIN PROVISIONS REGARDING VARIANCE HEARINGS AND  
5 APPEALS SO AS TO CONFORM TO STATE LAW, AND PROVIDE FOR OTHER RELATED  
6 MATTERS.

6 Proposed by: Robert S. Genzer,  
7 Director of Planning and Development

Summary: Modifies the standards for granting  
a variance application, and modifies certain  
provisions regarding variance hearings and  
8 appeals so as to conform to State law.

9 THE CITY COUNCIL OF THE CITY OF LAS VEGAS DOES HEREBY ORDAIN  
10 AS FOLLOWS:

11 SECTION 1: Title 19, Chapter 18, Section 70, Subsection (B), of the Municipal Code  
12 of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

13 (B) Scope and Limitations. Pursuant to NRS Chapter 278 and this Section, the Planning  
14 Commission and the City Council have the authority to act upon Variance applications as set forth in  
15 this Section and as they deem appropriate. Variance applications shall initially be heard by the  
16 Planning Commission. Where a Variance application is proposed in connection with another  
17 application to be heard by the Planning Commission, including an application for Special Use Permit,  
18 an application for Rezoning, or an Application for Site Development Plan Review, the Variance  
19 application shall be considered by the Planning Commission, as a separate application, in conjunction  
20 with the associated application. A Variance: [shall not be granted in order to:

- 21 (1) Permit a use in a zoning district in which the use is not allowed;  
22 (2) Vary any minimum spacing requirement between uses; and  
23 (3) Relieve a hardship which is solely personal, self-created or financial in nature.]

24 (1) Is not available to permit a use in a zoning district in which the use is not allowed, or  
25 to vary any minimum spacing requirement between uses; and

26 (2) Shall not be granted in order to relieve a hardship which is solely personal, self-created  
27 or financial in nature.

28 SECTION 2: Title 19, Chapter 18, Section 70, Subsection (E), of the Municipal Code



1 of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

2 (E) Request for Abeyance. An applicant who wishes to have an application held in abeyance  
3 following the notice and posting of a hearing before the Planning Commission or the City Council  
4 shall state good cause for the request. Good cause shall be more than mere inconvenience to the  
5 applicant or lack of preparation. The Planning Commission may not grant to an applicant, and the  
6 City Council may not grant to an aggrieved person, more than two continuances on the same matter,  
7 unless the Commission or Council determines, upon good cause shown, that the granting of additional  
8 continuances is warranted.

9 SECTION 3: Title 19, Chapter 18, Section 70, Subsection (G), of the Municipal Code  
10 of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

11 (G) Public Hearing and Action.

12 (1) Hearing. The Planning Commission shall hold a public hearing upon each application  
13 for a Variance within sixty-five days after the application is properly filed.

14 (2) Notice.

15 (a) Notice Provided. Notice of the time, place and purpose of the hearing must be  
16 given [a] at least ten days before the hearing by:

17 (i) Publishing the notice in a newspaper of general circulation within the  
18 City; and

19 (ii) Mailing a copy of the notice to:

20 A. The applicant;

21 B. Each owner of real property located within a minimum of five  
22 hundred feet of the property described in the application;

23 C. Each tenant of any mobile home park that is located within five  
24 hundred feet of the property described in the application;

25 D. The owner of each of the separately-owned parcels nearest to  
26 the property described in the application to the extent this notice does not duplicate the notice  
27 otherwise required by this Section;

28 E. Any advisory board which has been established for the affected

1 area by the City Council; and

2 F. The president or head of any registered local neighborhood  
3 organization whose organization boundaries are located within a minimum of one mile of the property  
4 described in the application.

5 (b) Names Provided. The Department of Planning and Development shall provide,  
6 at the request of the applicant, the name, address and phone number of any person notified pursuant  
7 to [Subsection] Paragraph (2) above.

8 (c) Additional Notice. The Department may give additional notice of the hearing  
9 by expanding the area of notification or using other means of notification or both. The Department  
10 shall endeavor to provide any additional notice at least ten days before the date of the hearing.

11 (3) Hearing. The Planning Commission shall conduct a public hearing on the application.  
12 As a matter of discretion and for good cause, the Planning Commission may hold the application in  
13 abeyance for further study. Following the hearing or hearings, the Planning Commission shall make  
14 a decision to approve, approve with conditions, or deny the Variance application. The decision shall  
15 be based upon evidence that makes the grant or denial of the Variance appropriate. The decision shall  
16 either be a final decision or a recommendation, as determined in accordance with Section  
17 19.18.070(J).

18 (4) Conditions of Approval Recommendation. In approving or recommending the  
19 approval of a Variance, the Planning Commission may impose any conditions, restrictions or  
20 limitations as deemed necessary to meet the general purpose and intent of this Title and to ensure that  
21 the public health, safety and general welfare are being maintained.

22 (5) Notice of Decision. The Planning Commission shall provide written notice of each  
23 decision on a Variance application, which shall include the reasons for the decision and, if the decision  
24 is to recommend approval of the Variance, any modifications, conditions or limitations that the  
25 Planning Commission may impose or recommend to be imposed in connection with the approval. The  
26 notice shall be provided to the owner, developer or agent.

27 SECTION 4: Title 19, Chapter 18, Section 70, Subsection (J), of the Municipal Code  
28 of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

1 (J) Appeals.

2 (1) Denials Generally. Except as otherwise provided in [Subsection] Paragraph (3), a  
3 decision by the Planning Commission to deny a Variance application becomes final and effective at  
4 the expiration of ten days after the date of the decision unless, within that period, the applicant appeals  
5 the decision by written request filed with the City Clerk. The City Council may establish a fee for the  
6 filing of an appeal, and the amount of any fee so established shall be as set forth in the fee schedule.

7 (2) Approvals Generally. Except as otherwise provided in [Subsection] Paragraph (3), a  
8 decision by the Planning Commission to approve a Variance application becomes final and effective  
9 at the expiration of ten days after the date of the decision unless, within that period, a member of the  
10 City Council requests that the item be [forwarded to] reviewed by the Council, or an aggrieved person  
11 appeals the decision by written request filed with the City Clerk. The City Council may establish a  
12 fee for the filing of an appeal, and the amount of any fee so established shall be as set forth in the fee  
13 schedule.

14 (3) Automatic Review by City Council. In each of the following cases, the decision by the  
15 Planning Commission on a Variance application constitutes a recommendation to the City Council,  
16 and the City Council shall make the final decision concerning the application:

17 (a) A Variance application that has been approved by the Planning Commission  
18 regarding a reduction in required parking or regarding an existing structure; or

19 (b) A Variance application, whether approved or denied by the Planning  
20 Commission, that is related to and [has been] was filed in connection with an application for a General  
21 Plan Amendment, an application for rezoning, [an application for a Special Use Permit,] or an  
22 application for Site Development Plan Review [which required] that requires final action by the City  
23 Council.

24 SECTION 5: Title 19, Chapter 18, Section 70, Subsection (K), of the Municipal Code  
25 of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

26 (K) City Council Public Hearing and Action.

27 (1) Notice. The City Council shall conduct a public hearing on any Variance application  
28 which is appealed or forwarded to the Council for final action. The City Clerk is authorized to

1 consolidate all appeals or requests for review that have been filed regarding a particular application,  
2 or to schedule them in sequence or otherwise, in which case the City Council may hear the items  
3 separately or consolidate them for purposes of hearing, as the Council deems appropriate. At least ten  
4 days' written notice of the hearing shall be sent to property owners who were sent notice of the public  
5 hearing conducted by the Planning Commission.

6 (2) Penalty. If a structure which is the subject of a Variance application has been or is  
7 being constructed without a building permit and is in violation of any of the provisions of this Title,  
8 the City Council, in granting the Variance, may impose a penalty in an amount that does not exceed  
9 ten percent of the value of the structure as determined in accordance with the City's Administrative  
10 Code.

11 (3) City Council Decision. The City Council may review the Variance application de  
12 novo, and has the authority to reverse, modify, or confirm any action of the Planning Commission.  
13 In making a decision [to approve the proposed Variance,] regarding a Variance application, the City  
14 Council shall consider the decision of the Planning Commission and the evidence presented at the  
15 public hearing[.] and shall be guided by the statement of purpose underlying the regulation of the  
16 improvement of land expressed in NRS 278.020. Action by the City Council is final[.] for purposes  
17 of judicial review. Except as otherwise agreed to by the person filing the appeal, the City Council  
18 must render its decision on an appeal within forty-five days.

19 (4) Notice of City Council Decision. The City Council shall provide written notice of its  
20 decision, which shall include the reasons for the decision and, if the decision is to approve the  
21 Variance, any modifications, conditions or limitations that the Council may impose. The notice shall  
22 be provided to the owner, developer or agent. A copy of the notice shall also be filed with the City  
23 Clerk, and the date of the notice shall be deemed to be the date notice of the decision is filed with the  
24 City Clerk.

25 SECTION 6: Title 19, Chapter 18, Section 70, Subsection (N), of the Municipal Code  
26 of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

27 (N) Revocation.

28 (1) Notice. [The City Council may hold a hearing to revoke or modify a Variance. At least

1 ten days prior to any hearing, written notice of the hearing shall be delivered to the owner, developer,  
2 or both.] A Variance may be revoked or modified by the Planning Commission or the City Council,  
3 whichever body took final action to approve the Variance. Such action must be preceded by a hearing,  
4 written notice of which must be delivered to the owner, developer, or both, at least ten days before the  
5 hearing. Notice may be delivered in person or by certified mail, return receipt requested, mailed to  
6 the address shown in the records of the Clark County Assessor.

7 (2) Grounds. A Variance may be revoked or modified for cause, including a finding of one  
8 or more of the following:

9 (a) That the Variance was obtained by misrepresentation or fraud;

10 (b) That the development or structure is not in compliance with one or more of the  
11 conditions of approval; or

12 (c) That the development or structure permitted by the Variance is in violation of  
13 any statute, ordinance, law or regulation.

14 (3) Notice of Decision. Written notice of [the] a decision regarding the revocation or  
15 modification of a Variance shall be provided to the owner, developer or agent. A copy of the notice  
16 shall also be filed with the City Clerk and the date of the notice shall be deemed to be the date notice  
17 of the decision is filed with the City Clerk.

18 (4) Appeal. In the case of a decision by the Planning Commission to revoke or modify a  
19 Variance that was approved as final action by the Commission, the appeal provisions of Subsections  
20 (J) and (K) of this Section shall apply.

21 SECTION 7: Title 19, Chapter 18, Section 70, Subsection (O), of the Municipal Code  
22 of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

23 (O) Termination.

24 (1) A Variance which will require the construction of a new building and which is not  
25 exercised within two years after approval shall be void, unless the [City Council grants] the applicant  
26 obtains an extension of time upon a showing of good cause. Application for an extension shall be  
27 made to the Planning Commission or City Council, whichever body took final action to approve the  
28 Variance.

1 (2) A Variance which will not require the construction of a new building and which is not  
2 exercised within one year after approval shall be void, unless the [City Council grants] the applicant  
3 obtains an extension of time upon a showing of good cause. Application for an extension shall be  
4 made to the Planning Commission or City Council, whichever body took final action to approve the  
5 Variance.

6 (3) For any Variance approved before January 1, 2000, which expires before an extension  
7 is granted, the Planning Commission or City Council, as the case may be, may reinstate the approval  
8 within the six-month period following the expiration date and grant an extension of time if the  
9 Commission or Council is satisfied that there has not been a material change of circumstances such  
10 that the Variance is no longer warranted.

11 (4) A Variance to allow a use is not permitted in a particular zone shall be void without  
12 further action if the use approved by the Variance ceases for a period of twelve months or more.

13 (5) For purposes of this Section (O), a Variance is exercised upon approval of a business  
14 license to conduct the activity, if one is required, or, otherwise, upon the issuance of a certificate of  
15 occupancy or approval of a final inspection.

16 SECTION 8: If any section, subsection, subdivision, paragraph, sentence, clause or  
17 phrase in this ordinance or any part thereof is for any reason held to be unconstitutional or invalid or  
18 ineffective by any court of competent jurisdiction, such decision shall not affect the validity or  
19 effectiveness of the remaining portions of this ordinance or any part thereof. The City Council of the  
20 City of Las Vegas hereby declares that it would have passed each section, subsection, subdivision,  
21 paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections,  
22 subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional,  
23 invalid or ineffective.

24 SECTION 9: All ordinances or parts of ordinances or sections, subsections, phrases,  
25 ...  
26 ...  
27 ...  
28 ...

1 sentences, clauses or paragraphs contained in the Municipal Code of the City of Las Vegas, Nevada,  
2 1983 Edition, in conflict herewith are hereby repealed.

3 PASSED, ADOPTED and APPROVED this 6 day of October, 2004.

4 APPROVED:

5 By   
6 OSCAR B. GOODMAN, Mayor

7 ATTEST:

8   
9 BARBARA JO RONEMUS, City Clerk

10 APPROVED AS TO FORM:

11 Val Steed 8-18-04  
12 Date

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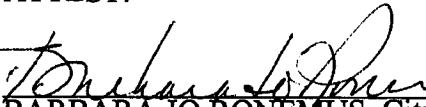
The above and foregoing ordinance was first proposed and read by title to the City Council on the 1<sup>st</sup> day of September, 2004, and referred to a committee for recommendation; thereafter the committee reported favorably on said ordinance on the 6<sup>th</sup> day of October, 2004, which was a regular meeting of said Council; that at said regular meeting, the proposed ordinance was read by title to the City Council as first read and adopted by the following vote:

VOTING "AYE": Mayor Goodman, Councilmembers Reese, Brown, Weekly, Mack, Moncrief and Wolfson  
VOTING "NAY": None  
EXCUSED: None  
ABSTAINED: None

APPROVED:

  
\_\_\_\_\_  
OSCAR B. GOODMAN, Mayor

ATTEST:

  
\_\_\_\_\_  
BARBARA JO RONEMUS, City Clerk

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2004 OCT -4 A 11: 18

AFFP DISTRICT COURT  
Clark County, Nevada

AFFIDAVIT OF PUBLICATION

STATE OF NEVADA)  
COUNTY OF CLARK) SS:

Donna Stark, being 1st duly sworn, deposes and says:

That she is the Legal Clerk for the Las Vegas Review-Journal and the Las Vegas Sun, daily newspapers regularly issued, published and circulated in the City of Las Vegas, County of Clark, State of Nevada, and that the advertisement, a true copy attached for,

LV CITY CLERK  
3602670

2296311LV

was continuously published in said Las Vegas Review Journal and/or Las Vegas Sun in 1 edition(s) of said newspaper issued from 09/25/2004 to 09/25/2004, on the following days: SEPT. 25, 2004

Signed: Donna Stark

SUBSCRIBED AND SWORN BEFORE ME THIS THE 29

day of September 2004

Mary B. Sheffield

Notary Public

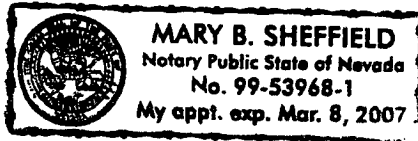
**BILL NO. 2004-64**

AN ORDINANCE TO MODIFY THE STANDARDS FOR GRANTING A VARIANCE APPLICATION, MODIFY CERTAIN PROVISIONS REGARDING VARIANCE HEARINGS AND APPEALS SO AS TO CONFORM TO STATE LAW, AND PROVIDE FOR OTHER RELATED MATTERS.

Proposed by: Robert S. Genzer, Director of Planning and Development  
Summary: Modifies the standards for granting a variance application, and modifies certain provisions regarding variance hearings and appeals so as to conform to State law.

At the City Council meeting of SEPTEMBER 1, 2004 BILL NO. 2004-64 WAS READ BY TITLE AND REFERRED TO A RECOMMENDING COMMITTEE

COPIES OF THE COMPLETE ORDINANCE ARE AVAILABLE FOR PUBLIC INFORMATION IN THE OFFICE OF THE CITY CLERK, 1ST FLOOR, 400 STEWART AVENUE, LAS VEGAS, NEVADA.  
PUB: September 25, 2004  
LV Review-Journal



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2004 OCT 21 A 10:22

AFFP DISTRICT COURT  
Clark County, Nevada

AFFIDAVIT OF PUBLICATION

STATE OF NEVADA)  
COUNTY OF CLARK) SS:

Donna Stark, being 1st duly sworn, deposes and says:  
That she is the Legal Clerk for the Las Vegas Review-Journal and the Las Vegas Sun, daily newspapers regularly issued, published and circulated in the City of Las Vegas, County of Clark, State of Nevada, and that the advertisement, a true copy attached for,

LV CITY CLERK  
3633027

2296311LV

was continuously published in said Las Vegas Review Journal and/or Las Vegas Sun in 1 edition(s) of said newspaper issued from 10/09/2004 to 10/09/2004, on the following days: OCT. 9, 2004

BILL NO. 2004-64  
ORDINANCE  
NO. 5729

AN ORDINANCE TO MODIFY THE STANDARDS FOR GRANTING A VARIANCE APPLICATION, MODIFY CERTAIN PROVISIONS REGARDING VARIANCE HEARINGS AND APPEALS SO AS TO CONFIRM TO STATE LAW, AND PROVIDE FOR OTHER RELATED MATTERS.

Proposed by: Robert S. Genzer, Director of Planning and Development.  
Summary: Modifies the standards for granting a variance application, and modifies certain provisions regarding variance hearings and appeals so as to conform to State law.

The above and foregoing ordinance was first proposed and read by title to the City Council on the 1st day of September 2004 and referred to a committee for recommendation; thereafter the committee reported favorably on said ordinance on the 6th day of October 2004, which was a regular meeting of said City Council; and that at said regular meeting the proposed ordinance was read by title to the City Council as first introduced and adopted by the following vote:

VOTING "AYE": Mayor Goodman and Councilmembers Reese, Brown, Weekly, Mack, Moncrief, and Wolfson  
VOTING "NAY": NONE  
EXCUSED: NONE

COPIES OF THE COMPLETE ORDINANCE ARE AVAILABLE FOR PUBLIC INFORMATION IN THE OFFICE OF THE CITY CLERK, 1ST FLOOR, 400 STEWART AVENUE, LAS VEGAS, NEVADA.  
PUB: October 9, 2004  
LV Review-Journal

Signed: Donna Stark

SUBSCRIBED AND SWORN BEFORE ME THIS THE 13

day of October 2004

Mary B. Sheffield  
Notary Public

