



## Legislation Text

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Int. No. 1392-A

By Council Members Kallos, Koslowitz, Mendez, Richards, Vallone, Rose, Van Bramer and Barron

A Local Law to amend the New York city charter, in relation to applications for variances and special permits before the board of standards and appeals

Be it enacted by the Council as follows:

Section 1. Section 668 of the New York city charter, as amended by local law number 102 for the year 1977, paragraph 2 of subdivision a as amended by a vote of the electors at the general election on November 7, 1989, paragraph 5 of subdivision a as added by local law number 19 for the year 1987, paragraphs 6 and 7 of subdivision a as added by vote of the electors at the general election on November 7, 1989, subdivisions c, d and e as amended by vote of the electors at the general election on November 7, 1989, as amended by a local law of the city of New York for the year 2017, in relation to written responses by the board of standards and appeals, as proposed in introduction number 418-A, as amended by a local law of the city of New York for the year 2017, in relation to proof of service of certain required mailings for applications to the board of standards and appeals, as proposed in introduction number 1200-A, as amended by a local law of the city of New York for the year 2017, in relation to a board of standards and appeals coordinator within the department of city planning, as proposed in introduction number 1390-A, as amended by a local law of the city of New York for the year 2017, in relation to adding zoning variance and special permit information on a map on a city website, as proposed in introduction number 1394-A, is amended to read as follows:

§ 668. Variances and special permits. a. The applicant, the property owner, and the preparer of any document accompanying an application to vary the zoning resolution or an application for a special permit shall

certify, executed under penalty of perjury, that the statements made in the application and accompanying documents are correct. Such certifications shall be notarized.

b. The board shall establish by rule the minimum required materials, including but not limited to financial analysis, to be submitted with an application for a variance from the zoning resolution, provided that this requirement shall not limit the board's ability to require additional materials from an applicant, and further provided that such application shall include the following:

1. In addition to any materials submitted in support of a claim of uniqueness of physical conditions, a neighborhood character study defined by a radius appropriate to the scale of the neighborhood, as determined by the board, shall be provided. Such study shall include data relevant to the waivers being sought, photographs and relevant land use approvals, for the entire study area.

2. A financial analysis conducted by a qualified real estate professional, other than the owner or applicant, shall be submitted. Such financial analysis shall illustrate that an as-of-right project would not result in a reasonable return on investment whereas the waivers sought for the project would result in a reasonable return on investment and that the waivers sought are the minimum necessary to yield a reasonable return. The financial analysis shall include total development costs comprised of but not limited to: (i) market-based acquisition costs, (ii) any appraisals of the property provided by the applicant as part of an application to a local, state or federal agency within the 5 years prior, and, (iii) as applicable, hard and soft costs. If the applicant asserts that the project cannot obtain construction or rehabilitation financing because of the existing zoning requirements, the applicant shall provide proof of all attempts to obtain such financing. All construction cost estimates shall be prepared by a registered architect, professional engineer, builder or contractor, other than the owner or applicant. Such estimates must be signed and, where applicable, contain such preparer's seal. All rental or sellout estimates must be substantiated by market appraisals with appropriate narrative adjustments.

c. Community boards and borough boards shall review applications to vary the zoning resolution and

applications for special permits within the jurisdiction of the board of standards and appeals under the zoning resolution pursuant to the following procedure:

1. Each proposal or application shall be filed with the board of standards and appeals, which shall forward a copy within five days to the community board for each community district in which the land involved, or any part thereof, is located, and to the borough board if the proposal or application involves land located in two or more districts in a borough.

2. Each such community board shall, not later than sixty days after the receipt of the proposal or application, either notify the public of the proposal or application, in the manner specified by the city planning commission pursuant to subdivision i of section one hundred ninety-seven-c, conduct a public hearing thereon and prepare and submit a written recommendation thereon directly to the board of standards and appeals, or waive the conduct of such public hearing and the preparation of such written recommendation. If a public hearing is held, the applicant shall submit to the board of standards and appeals a copy of any presentation materials utilized at the hearing, as well as a notarized statement executed under penalty of perjury that such materials are true and correct and are as presented to the community board, and such community board may submit to the board of standards and appeals a copy of any testimony presented or materials received from the applicant for such application.

3. A copy of a recommendation or waiver by a community board pursuant to paragraph two of this subdivision that involves land located within two or more community districts in a borough shall also be filed with the borough board within the same time period specified in that paragraph. Not later than thirty days after the filing of such a recommendation or waiver with the borough board by every community board in which the land involved is located or after the expiration of the time allowed for such community boards to act, the borough board may hold a public hearing on the proposal or application and any such recommendation and may submit a written recommendation or a waiver thereof to the board of standards and appeals. If a public

hearing is held, the applicant shall submit to the board of standards and appeals a copy of any presentation materials utilized at the hearing, as well as a notarized statement executed under penalty of perjury that such materials are true and correct and are as presented to the borough board, and such borough board may submit to the board of standards and appeals a copy of any testimony presented or materials received from the applicant for such application.

4. The receipt of such a recommendation or waiver from every community or borough board involved, or the expiration of the time allowed for such boards to act, shall constitute an authorization to the board of standards and appeals to review the application and to make a decision.

5. If after the receipt of such a recommendation or waiver from every community or borough board involved, or the expiration of the time allowed for such boards to act, the applicant for a special permit or variance submits to the board of standards and appeals any additional documents or plans, he or she shall at the same time forward copies of such documents or plans to the city planning commission, the council member involved and to the community or borough board involved.

6. Copies of any written information submitted by an applicant for purposes of determining whether an environmental impact statement will be required by law in connection with an application under this section, and any documents or records intended to define or substantially redefine the overall scope of issues to be addressed in any such draft environmental impact statement shall be delivered to all affected community boards and borough boards.

7. If a meeting involving a city agency and an applicant is convened to define or substantially redefine the overall scope of issues to be addressed in any draft environmental impact statement required by law for an application subject to review under this section, each community board involved and each borough president involved shall receive advance notice of such meeting, and each shall have the right to send one representative to the meeting.

[b] d. The recommendation of a community board or borough board pursuant to subdivision [a] c of this section shall be filed with the board of standards and appeals and a copy sent to the city planning commission. The board of standards and appeals shall conduct a public hearing and act on the proposed application. All testimony delivered at a public hearing by the applicant on the proposed application shall be sworn or affirmed under oath. A decision of the board shall indicate whether each of the specific requirements of the zoning resolution for the granting of variances has been met and shall include findings of fact with regard to each such requirement. When the board of standards and appeals grants or denies an application for a variance or special permit, the board shall respond, as applicable, to any relevant recommendation filed with such board by a community board or borough board regarding such application. Inadvertent failure to comply with the preceding sentence shall not result in the invalidation of any board decision.

[c] e. Copies of a decision of the board of standards and appeals and copies of any recommendation of the affected community board or borough board shall be filed with the city planning commission. Copies of the decision shall also be filed with the affected community or borough boards.

[d] f. Any decision of the board of standards and appeals pursuant to this section may be reviewed as provided by law.

[e] g. The board shall report to the department of investigation any and all information concerning conduct which it knows or should reasonably know to involve the offering or presentation of a written instrument that contains a false statement or false information to such board with the knowledge or belief that such instrument will become part of the records of such board.

h. The city planning commission shall be a party to any proceeding to determine and vary the application of the zoning resolution. The commission may appear and be heard on any application pursuant to this section before the board of standards and appeals if, in the judgment of the city planning commission, the granting of relief requested in such application would violate the requirements of the zoning resolution relating

to the granting of variances. The commission shall have standing to challenge the granting or denial of a variance in a proceeding brought pursuant to article seventy-eight of the civil practice law and rules, or in any similar proceeding.

[f] i. Any copy of an application or application material that is required by this chapter, or by rule of the board, to be mailed by the applicant to a council member, borough president, community board or city agency shall be sent to such parties by certified mail, or any similar method approved by the board that provides for proof of service. Proof of service of the delivery of the initial filing of an application to the council member, borough president and community board, as required by this chapter, shall be submitted to the board, and the board shall note on its website that such proof of service of delivery has been received and verified.

[g] j. The board shall provide access on its website to any testimony posted by the department of city planning pursuant to paragraph 10 of subdivision a of section 191.

[h] k. The board of standards and appeals shall compile data on the location of all variances and special permit applications filed with the board after January 1, 1998 and acted upon by the board, into a publicly available data set. Such data set shall also be provided to the department of information technology and telecommunications for inclusion on an interactive map of the city maintained on a city website. Such map shall allow a user to filter the view of such data by variance, type of special permit, year of filing of variances and special permits and year of decision by the board on variances and special permits.

1. The board of standards and appeals may promulgate such rules and prescribe such forms as are necessary to carry out the provisions of this section.

§ 2. Chapter 27 of the New York city charter is amended by adding a new section 670 to read as follows:

§ 670 False statements. a. It shall be a violation of this section for any person to knowingly make or allow to be made a material false statement in any certificate, professional certification, form, signed statement,

application or report that is either submitted directly to the board of standards and appeals or that is generated with the intent that the board rely on its assertions.

b. The office of the corporation counsel or an agency designated by the mayor shall have the authority to enforce the provisions of this section. Pursuant to section 1048, the office of administrative trials and hearings shall have jurisdiction over any such violation. Any determination reached by such office shall constitute a final determination.

c. A person who has been found to have knowingly made or allowed to be made a material false statement in violation of subdivision a of this section shall be subject to a civil penalty of up to \$15,000 for each such false statement. The board of standards and appeals may dismiss any application in connection with a final determination of such violation.

d. Any person who commits a violation of subdivision a of this section and who notifies the board of such violation prior to receiving notice of the potential violation shall not be subject to a civil penalty for such violation, except that the board may dismiss any application in connection with such violation.

§ 3. This local law takes effect 12 months after it becomes law.

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