



FAQ ON VARIANCES AND APPEALS

What is a variance?

A variance is a procedure whereby certain provisions of the Zoning Regulations can be relaxed when conditions peculiar to a specific property (and not the result of actions by the applicant) would cause an unnecessary and undue hardship with literal enforcement of the Zoning Regulations. A hardship occurs only when the literal application of the regulations would deprive the owner of all beneficial use of the property or render it virtually without value. Variances can be granted for standards such as setbacks, lot widths, lot depths, or building heights.

What does not qualify as a hardship?

The following are examples of conditions which are not hardships under the law:

- Inconvenience
- Economic disadvantage
- Disappointment in learning that the property is not available for the intended use
- Construction done without benefit of a permit
- Conditions self-created by an owner or prior owner
- Special condition affecting the landowner and not the land
- Claiming ignorance of the zoning requirements when the land was purchased
- Physical disability to earn a living
- The desire for unusual architectural features
- The expenditure of money in anticipation of being granted a variance

What is an “Administrative Appeal”?

Appeals can be made of a decision made by a City Official when denying a building permit. An appeal can challenge the interpretation of the ordinance by the Building Official or the grounds by which the official made his/her decision, but an appeal cannot be made challenging the ordinance itself.

Who can grant a variance or administrative appeal?

The Zoning Board of Adjustment may grant variances or consider administrative appeals regarding issues related to the Zoning Regulations. The Appeals Commission hears appeals relating to the building codes and floodplain regulations. However, the Commission cannot waive requirements of the building codes. Both boards are made up of five citizens appointed by the City Council. Any appeal of a decision by the Zoning Board of Adjustment or Appeals Commission must be filed within 10 days in State District Court. Actions by the boards cannot be appealed to City Council.

How do I apply for a variance or appeal?

If a landowner believes that a variance or administrative appeal is justified, then an application must be filed with the Planning Department at least 21 days prior to the next scheduled Board or Commission Meeting. The application consists of a letter (describing the variance or appeal requested, why it should be granted, and what hardship is incurred if not granted), a site plan scaled drawing showing the proposed request, and the appropriate nonrefundable filing fee. It is up to the applicant to prove to the Board or Commission that strict application of the ordinance will result in an unnecessary and undue hardship.

What is the procedure for granting a variance or administrative appeal?

Once a completed application is received, City Staff will publish a notice of the request in the newspaper, mail written notice to all property owners within 200 feet of the applicant's property, and prepare a report to the members of the Zoning Board of Adjustment or Appeal Commission. The Board or Commission also hears evidence from the City Staff and from the public regarding the need or affect of granting the request. Failure of the applicant to appear may result in an immediate denial since insufficient evidence will have been presented for approval.

After hearing the evidence, the Board or Commission will make its decision based on the following criteria:

- **Whether there are special circumstances or conditions affecting the land such that strict application of the ordinance would result in an unnecessary or undue hardship, and**
- **That the hardship is solely due to the peculiar circumstances and is unrelated to the conduct or self-originated expectations of the property owners or buyers, and**
- **That the variance or appeal is necessary for the preservation and enjoyment of a substantial property right, and**
- **That granting the variance will not be detrimental to the health, safety, and welfare of the community or contrary to the Comprehensive Plan.**

A decision to grant a variance or appeal must receive four (4) affirmative votes from the five-member Board or Commission to be approved.

Should I contact the board prior to the meeting to explain my case?

The Board and Commission are quasi-judicial boards and members should not be contacted prior to the public hearing. Any contact must be reported by the Board or Commission member and may result in his/her withdrawal from the case.

If my request is denied, can I reapply or get my money back?

The Zoning Board of Adjustment and Appeals Commission may not consider the same appeal on the same piece of property for one year after the last Board or Commission decision. The application filing fee is nonrefundable.

Where can I get more information?

For more information, contact the Planning Department at City Hall, 911 Winscott Road, Benbrook, Texas, call 817-249-3000, or email us at info@cityofbenbrook.com.