



Filing Procedures and Required Submittals for a Variance

Board of Adjustment and Appeals City of Balcones Heights

§ 2.1.3. BOARD OF ADJUSTMENT.

(1) Creation of Board of Adjustment.

(a) There is hereby created a Board of Adjustment of six members who are members of the governing body of the City of Balcones Heights.

(b) Each of six members of the Board shall be entitled to one vote in all deliberations of the Board.

(2) Terms. Each member of the Board shall serve a two-year term, to run concurrently with his or her term of office as members of the governing body of the city.

(3) Organization.

(a) The Board shall elect a Chairperson and Vice Chairperson from the Board's membership. The Board Secretary shall be the City Secretary.

(b) The chairperson shall serve a term of two years concurrent with the term as Mayor of the city.

(c) Notice of each application considered by the Board shall be made by the applicant in the manner approved by the Board.

(4) Meetings.

(a) Meetings of the Board shall be held at the call of the chairperson and at such other times as the Board may determine.

(b) All meetings of the Board shall be open to the public and shall be subject to the Texas Open Meeting Act. The Board shall conduct meetings in accordance with Robert's Rules of Order.

(5) Rules and regulations.

(a) All orders and other enactments adopted by the Board shall be in accordance with this appendix and its rules and regulations.

(b) The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, of if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions.

(c) Each case shall be heard by at least five Board members. When five members hear a case, the concurring vote of four members of the Board shall be necessary to: (1) reverse any order, requirement, decision or determination of an administrative official, or (2) to decide in favor of the applicant on any matter upon which the Board is authorized to act. When six members hear a case, the concurring vote of five members of the Board shall be necessary to: (1) reverse any order, requirement, decision or determination of an administrative official, or (2) to decide in favor of the applicant on any matter upon which the Board is authorized to act.

(d) A motion may be made by any member other than the presiding officer.

(6) Appeals to the Board of Adjustment.

(a) The Board shall have the following duties:

(i) Shall hear and decide appeals when error is alleged in any order, requirement, decision or determination made by an administrative official in enforcement of the act or zoning ordinance;

(ii) Shall make special exceptions as allowed or required by the zoning ordinances, in appropriate cases and subject to appropriate conditions and safeguards, in harmony with the general purpose and intent, and in accordance with general or specific rules contained in the various city ordinances; and

(iii) Shall authorize, on appeal, variances from the terms of the ordinances that will not be contrary to the public interest, when, because of special conditions a literal enforcement of the ordinance will result in unnecessary hardship, so the spirit of the ordinance will be observed and

substantial justice done. ***Prior to granting a variance, the Board shall find that at least one of the following shall be found:***

- a. There are extraordinary and exceptional conditions pertaining to the particular property in question because of its size, shape, or topography;
- b. The application of this appendix to the particular property would create an unnecessary hardship;
- c. Such conditions are peculiar to the particular piece of property involved;
- d. Relief, if granted, would not cause substantial detriment to the public good or impair the purpose and intent of this appendix; provided however, that no variance may be granted for a use of land or building or structure that is prohibited by this appendix;
- e. Uses not provided for in Article 3: Whenever, in any district established under this appendix, a use is neither specifically permitted nor denied, and an application is made by a property for such use, the application shall be referred to the Board of Adjustment, which shall have the authority to permit the use or deny the use. The use may be permitted if it is similar to and compatible with permitted uses in the district and in no way is in conflict with the general purpose and intent of this appendix;

(iv) Before the tenth day before the hearing date, written notice of each public hearing before the Board of Adjustments on a request for variance shall be sent to each owner, as indicated by the most recently approved municipal tax roll, of real property within 200 feet of the property on which the request for variance is made. The notice may be served by its deposit in the municipality, properly addressed with postage paid, in the United States mail. Responses to such notices shall be duly noted and entered into the minutes of the Board of Adjustment hearing.

(7) *Conditions required for variance.* No variance application shall be granted unless the following conditions are fulfilled:

- (a) The applicant established by competent evidence that:
 - (i) The strict or literal enforcement of the terms of this appendix, because of specific conditions, will result in unnecessary hardship to the applicant.
 - (ii) There is no reasonable alternative to the requisite variance that will alleviate the difficulty or hardship complained of.

(8) *Procedure for appeals to the Board.*

- (a) *Appeal to Board.*
 - (i) The appellant must file with the City Secretary and the official from whom the appeal is taken a notice of appeal specifying the grounds for the appeal and pay a filing fee as may be prescribed by the City Council. An appeal by a person aggrieved by an action of an administrative or building official in the enforcement of this appendix shall be filed with the City Secretary within 30 days after the action complained of was committed. On receiving the notice, the City Secretary and administrative or building official shall transmit to the Board all the papers constituting the record of the action that is appealed.
 - (ii) An appeal stays all proceedings in furtherance of the action that is appealed unless the official from whom the appeal is taken certifies in writing to the Board, facts supporting the official's opinion that a stay would cause imminent peril to life or property. In that case, the proceedings may be stayed only by a restraining order granted by a court of record.
 - (iii) The Board shall set a reasonable time for the appeal; hearing and shall give public notice of the hearing and due notice to the parties in interest. A party may appear at the appeal hearing in person or by agent or attorney. The Board shall decide the appeal within a 60-day period from the filing of the appeal.

(b) The Board's final decision shall be immediately filed with the City Secretary. The time and date that the Board's final decision is filed with the Board's office shall be stamped on the face of the decision.

(9) *Variance may lapse after one year.* Any rights authorized by a variance which are not exercised within one year from the date of granting such variance shall lapse and may be reestablished only after notice and a new hearing pursuant to this section. The Board may waive the requirement for the payment of fees for such variance renewal application if there has been no material change of conditions pertaining to the property since the granting of the first variance.

(10) Limitations.

(a) No appeal under this article may be filed by the same applicant within 365 days of the date upon which the Board denied such appeal, request or application, unless other property in the immediate vicinity has, within the 365-day period, been changed or acted on by the Board so as to alter the facts and conditions upon which the previous Board action was based. Such change of circumstances shall permit the rehearing of an appeal, request or application by the Board prior to the expiration of the 365-day period, but such conditions shall in no way have any force in law to compel the Board to reconsider the appeal, request or application. Such subsequent rehearing shall be considered entirely on its merits and the peculiar and specific conditions related to the property with reference to which such proceeding is brought.

(b) Any appeal, request or application approved by the Board, either under the provision of this appendix or under the authority granted to the Board under the statutes of the State of Texas, shall authorize the issuance of a Building permit or a certificate of occupancy, as the case may be, for a period of ninety days from the date of the favorable action on the party of the Board unless the Board in its minutes shall, at the same time, approve a longer period. If an application for such building permit or certificate of occupancy is not filed within the 90-day period or such extended period as the Board may specifically approve, then the approval of the appeal or variance shall be deemed waived and all rights there under terminated. Such termination and waiver shall be without prejudice to a subsequent appeal, request or application to the Board in accordance with the rules and regulations herein contained.

(11) Appeals from the Board of Adjustment. Any person or persons, jointly or severally, aggrieved by any decision of the Board or any taxpayer, or any officer, department, or board of the city may present any such matter to a court of competent jurisdiction for review after the final action of the Board thereon and in the manner and upon the terms provided by the laws of the state.



APPLICATION REQUEST FOR APPEAL / SPECIAL EXCEPTION / VARIANCE

OFFICE USE ONLY

MEETING DATE: _____ CASE NUMBER: _____

PRINT OR TYPE

NAME OF APPLICANT: _____

ADDRESS: _____

PHONE NO: HOME _____ WORK _____ FAX _____

EMAIL ADDRESS: _____

STATUS: OWNER () AGENT () – If agent, attach notarized Letter of Authorization

PROPERTY DESCRIPTION

ADDRESS: _____

LEGAL DESCRIPTION _____

EXISTING PROPERTY USE or STATE NONE: _____

PROPOSED USE & DESCRIPTION: _____

ACREAGE AND/OR SQUARE FOOTAGE: _____

DOES OWNER OWN ADJACENT PROPERTY: YES () NO () _____

REQUESTED BOARD ACTION: _____

Appeal () Special Exception () Variance () _____

A variance begins with a building permit being denied in writing due to non-compliance with Zoning or Building codes. Variance requests are heard and approved or denied by the Board of Adjustment. The following items are required for scheduling a Board of Adjustment hearing and are due to City Hall with the application.

1. A formal written permit denial letter. This letter is issued to the property owner or duly appointed representative by the Director of Community Development. In order to obtain this written denial, the property owner or representative must have submitted the necessary documents to apply for a Building Permit from the Community Development Department. The necessary documents included, but are not limited to, a current certified survey and height statement reflecting the height as measured according to the guidelines set forth by City Ordinance, or full architectural plans if said plans include the two aforementioned items. Once the Director of Community Development denies the request for a building permit, the Community Development Department will provide the property owner or representative with the written denial necessary for the variance application. **This application will for a Board of Adjustment hearing will NOT be accepted without this denial statement.**
2. A pre-filing interview may be held if requested by the applicant or if deemed necessary by the City.

3. The application must be signed by the property owner. If the applicant is not the owner, a signed document showing authority to request the variance must accompany the application.
4. The following must also accompany the application packet:
 - a. \$500.00 application fee plus \$50.00 for each additional variance request on the same property.
 - b. A site plan which:
 - a. Indicates property location by street address and legal description;
 - b. Property owner's name (and applicant's name if different);
 - c. Is drawn to scale (with scale and north indicated) show all existing a proposed improvements including buildings, fences, driveways, pools, patios, structures, and items that are not grass or vegetation. If items such as septic tanks, trees, and landscaping would have a bearing on the variance or special exception is being requested.
 - d. Shows all boundaries of property with front, side and rear yard setbacks and all other critical dimensions. Indicate the area of the property or improvements for which the variance or special exception is being requested.
 - e. Elevation plan **IF** the appeal involves building heights, fence heights, addition or removal of ground or fill, or similar land or structure alterations (all points must have dimensions specified including maximum height);
 - f. Complete parking analysis for any parking variance request.
 - g. If a variance from building setback requirements is requested, the site plan must be stamped by a licensed surveyor.
5. Application and one hard copy of the necessary documents, etc. in completed form must be submitted to the Community Development Department. Additionally to a PDF file document is required. **Partial and/or incomplete applications and site plans will not be accepted by the Board.**
6. After the above items have been completed, the variance request will begin the follow process:
 - a. The applicant and all property owners within 200 feet of the variance request as such ownership appears on the last approved county tax roll, will be notified of a public hearing to be held by the Board of Adjustment by notice deposited in the U.S. mail. Said notices are to be mailed at least 10 days prior to the public hearing.
 - b. The applicant or representative should be present at the Board of Adjustment public hearing. Failure to attend the public hearing may cause the Board to deny the item without prejudice to refile. The letter, referenced in 6a above, will be your notification of any hearing.
 - c. Persons who are in favor or who oppose the request are allowed to appear before the Board in order to present their views.

According to state law, no variance can be granted without the concurring vote of at least seventy-five (75) percent of the members of the Board.

APPEALS TO A DECISION RENDERED BY THE BOARD OF ADJUSTMENT

The only appeal to the decision rendered by the Board of Adjustment is to State District Court. The appeal must be filed with the district court within ten (10) days of the Board's decision. State law prohibits the City Council from hearing any appeal.

NOTE: Due to scheduling and legal notice requirements, there may be a waiting period of 45-60 days.

APPEAL TO THE BALCONES HEIGHTS BOARD OF ADJUSTMENT

Please be specific and include additional pages if necessary.

I am requesting a variance that requires: _____

I am requesting a variance not to comply with the Balcones Heights Zoning Code for the reasons stated below. The Board will consider the following conditions.

a. There are extraordinary and exceptional conditions pertaining to the particular property in question because of its size, shape, or topography: _____

b. The application of this appendix to the particular property would create an unnecessary hardship: _____

c. Such conditions are peculiar to the particular piece of property involved: _____

d. Relief, if granted, would not cause substantial detriment to the public good or impair the purpose and intent of this appendix: _____

e. The strict or literal enforcement of the terms of this appendix, because of specific conditions, will result in unnecessary hardship: _____

f. There is no reasonable alternative to the requisite variance that will alleviate the difficulty or hardship complained of: _____

Date

Signature of Property Owner/Representative