



**Planning & Community Development Department
Planning Division**

550 Landa St. New Braunfels, TX 78130
(830) 221-4050 www.nbtexas.org

CC/Cash/Check No.: _____	Case No.: _____
Amount Recd. \$ _____	
Receipt No.: _____	
<i>Submittal date – office use only</i>	

**VARIANCE APPLICATION
(ZONING BOARD OF ADJUSTMENT)**

APPLICATION FEES:

Homestead: \$350 plus \$50 for each additional variance sought

Non-Homestead: \$700 plus \$50 for each additional variance sought

****Please note that a 3% technology fee is applied to the total application fee****

Any application that is missing information will be considered incomplete and will not be processed.

The applicant bears the burden of proof in establishing the facts that may justify a variance, a special exception, an appeal, or any other action in his/her favor by the ZBA.

Name of Applicant/Agent*: _____

Property Address: _____

Mailing Address: _____

Contact information:

Phone: _____

E-Mail: _____

Legal Description: Lot #: _____ Block: _____ Subdivision: _____

(NOTE: If property is not platted, attach a copy of the metes and bounds description and survey/drawing.)

Present Use of Property: _____ **Zoning:** _____

Describe Variance Request: _____

SUBMITTAL CHECKLIST:

STAFF:
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

APPLICANT:

- Completed application
- Copy of deed showing current ownership
- Homestead Verification (if applicable)
- Application Fee
- Letter of authorization if applicant is not property owner
- Site plan, drawn to scale and no larger than 11"x17", showing all existing and proposed improvements, setbacks from the property lines, and building elevations (if applicable.)

Explain the following in detail:

Please note: The information provided in response to the following questions is imperative to the variance request process. You may use additional pages if necessary.

(1) What are the special circumstances or conditions affecting the land that warrant the variance?

(2) Why is the variance necessary to preserve a substantial property right of the applicant?

(3) Will the granting of the variance be detrimental to the public health, safety or welfare, or injurious to other properties within the surrounding area?

(4) Would granting the variance prevent the orderly use of other properties within the area?

(5) Does an undue hardship to the land exist that is not self-created, personal or financial?

If yes, please explain in detail. If no, a variance cannot be granted.

(6) Will granting the variance be in harmony with the spirit and purpose of the City's regulations?

Please initial the following important reminders:

APPEARANCE AT MEETINGS

It is strongly advised that the applicant be represented at the hearing. The Board may deny requests for which the applicant or an agent do not appear.

NOTIFICATION SIGNS

The applicant shall post the public hearing notification sign(s) at least **15 days prior to the hearing date and maintain said sign(s) in good condition**. One sign shall be required for the first 100 feet of frontage of the tract, and one additional sign for every 200 feet of frontage thereafter, or fraction thereof, except that no more than three (3) signs shall be required on each roadway frontage. If the tract has less than 200 feet of frontage per roadway, then only one sign is required per road.

The applicant is responsible for:

1. Paying for the required mail notification (**\$2.15 per mailed notice**)
2. Purchasing (**\$15 per sign**) and placing the signs at least **15 days prior to the hearing date**
3. Posting signs so they are clearly visible to the public from the adjacent public streets.
4. Ensuring that the signs remain on the property throughout the variance process.
5. In the event that a sign(s) is removed from the property or damaged, the applicant shall be responsible for purchasing a replacement sign(s) and installing it immediately.
6. Removing the signs after the final action by the Zoning Board of Adjustment.

I hereby certify that the information provided is true and correct to the best of my knowledge.

Date: _____

Signed: _____ Print Name: _____
Applicant/Agent*

* If signed by an agent, a letter of authorization must be furnished by the property owner.

Intentionally Blank

Sec. 144-2.2. - Zoning Board of Adjustment (ZBA)

2.2-1. *Power and duty.* The zoning board of adjustment (ZBA) may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions and variances to the terms of this chapter, and decide appeals from decisions of administrative officials, in harmony with its general purpose and intent and in accordance with general or specific rules herein contained.

2.2-2. *ZBA procedures.* The ZBA shall operate in accordance with V.T.C.A., Local Government Code §§ 211.008—211.011 and shall adopt rules in accordance with the provisions of this chapter. Meetings of the ZBA shall be held at the call of the chairman and at such times as the ZBA may determine. Such chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the ZBA shall be open to the public. The ZBA shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the ZBA and shall be a public record. The concurring vote of four members (or 75 percent) of the ZBA shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under this chapter, or to effect any variation in this chapter.

2.2-3. *Variances.*

(a) *Authority.* The ZBA may authorize a variance from these regulations only upon finding:

- (1) That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this chapter would deprive the applicant of the reasonable use of land;
- (2) That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;
- (3) That the granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the area;
- (4) That the granting of the variance will not have the effect of preventing the orderly use of other land within the area in accordance with the provisions of this chapter;
- (5) That an undue hardship exists; and
- (6) That the granting of a variance will be in harmony with the spirit and purpose of these regulations.

A variance shall not be granted to relieve a self-created or personal hardship, nor shall it be based solely upon economic gain or loss, nor shall it permit any person the privilege in developing a parcel of land not permitted by this chapter to other parcels of land in the particular zoning district. No variance may be granted which results in undue hardship upon another parcel of land.

(b) *Procedures for variance.*

- (1) Application for variance shall be made by the owner of real property (or authorized agent) to the planning department on forms provided by the planning department.
- (2) Fee and sign. The fee for variance requests and related signs shall be per appendix D of this Code (see also subsection 144-2.2-5).
- (3) No variance shall be granted without first having given public notice and having held a public hearing on the variance request in accordance with section 144-2.2-5. The deliberations and determinations of the ZBA, together with the specific facts upon which such determinations are based, shall be incorporated into the official minutes of the ZBA meeting at which the variance application is decided.

2.2-5. *Variance and special exception notice.*

(a) *Notice and public hearing.* The ZBA shall hold a public hearing for consideration of the variance or special exception request no later than 45 calendar days after the date the application for action is filed. Written notice of the public hearing for a variance or special exception shall be provided to all property owners, via U.S. mail, within 200 feet of the affected property at least ten calendar days prior to the public hearing. The applicant may appear at the hearing in person or by agent or attorney.

(b) *Sign.* In addition to the mailed notification, a variance or special exception sign shall be placed adjacent to each public street or right-of-way, abutting the subject property, or if the property does not front a public street or right-of-way, to the closest public street or right-of-way, located in the middle of the frontage, and within three feet of the curb or the pavement, or as prescribed by the planning and community development department at the time of application. One sign shall be required for the first 100 feet of frontage of the tract, and, thereafter, one additional sign for every 200 feet of frontage, or fraction thereof, except that no more than three signs shall be required on each roadway frontage. If the tract has less than 200 feet of frontage per roadway, then only one sign is required per road. All signs shall be clearly visible to the public from the adjacent public streets. The applicant shall post the sign(s) at least 15 days prior to the ZBA meeting and maintain said sign(s) in good condition and in place until final action. If the sign(s) is not posted 15 days prior to the ZBA meeting, the applicant's case shall be withdrawn and rescheduled. In the event that a sign(s) is removed from the property or

damaged, the applicant shall be responsible for purchasing a replacement sign(s) and installing it immediately. The sign(s) shall be furnished by the city and a fee shall be charged the applicant per appendix D of this Code.

2.2-6. *Appeals.* Appeals to the ZBA may be taken by any person aggrieved, or by any officer, department, board or bureau of the city affected by any decision of the building official or other administrative officer concerning the interpretation or implementation of this chapter.

- (a) *Stays of proceedings.* An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the ZBA, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board or by a court of record on application on notice to the officer from whom the appeal is taken and due cause shown.
- (b) *Procedure for appeal.* The appellant must file with the planning and community development department a written notice of appeal specifying the grounds for the appeal and pay a fee per appendix D of this Code. The notice of appeal shall be filed within 45 calendar days after the decision has been rendered. Upon receiving the notice, the official from whom the appeal is taken shall immediately transmit to the ZBA all papers constituting the record of action that is appealed. The chair of the ZBA or any two members may call a special meeting to consider appeals.
- (c) *Action by the ZBA.* The ZBA shall decide the appeal within 30 calendar days after the written request (i.e., notice of appeal) was received. The ZBA may reverse or affirm, in whole or in part, or modify the administrative official's order, requirement, decision or determination from which an appeal is taken, and may make the correct order, requirement, decision or determination, and for that purpose the ZBA has the same authority as the administrative official.

2.2-7. *Burden of proof.* The applicant bears the burden of proof in establishing the facts that may justify a variance, a special exception, an appeal, or any other action in his/her favor by the ZBA.

2.2-8. *Waiting period.* No application to the ZBA for the same or a related variance, or special exception, or appeal on the same piece of property shall be allowed for a waiting period of 180 calendar days following denial of an application by the ZBA unless other property in the immediate vicinity has, within the 180-day waiting period, been changed or acted upon by the ZBA or the city council so as to alter the facts and conditions upon which the previous denial was based. Such changes of circumstances shall permit the re-hearing of a variance, or special exception, or appeal request by the ZBA, but such circumstances shall in no way have any force in law to compel the ZBA, after a hearing on the matter, to grant a subsequent variance, or special exception or appeal request. Any subsequent variance, or special exception or appeal request shall be considered entirely on its own merits and on the specific circumstances related to the subject property.

2.2-9. *Petition to a court of record.* Any person or persons jointly or severally aggrieved by any decision of the ZBA, or any taxpayer, or any officer, department, board, or bureau of the municipality, may present to a court of record a petition, duly verified, setting forth that such decision is unlawful, in whole or in part, specifying the unlawful grounds. Such petition shall be presented to the court within ten days after the filing of the decision in the office of the ZBA.

- (a) *Writ of certiorari.* Upon the presentation of such petition the court may allow a writ of certiorari directed to the ZBA to review such decision of the ZBA and shall prescribe therein the time within which a return thereto must be made and served upon the petitioner's attorney, which shall not be less than ten days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.
- (b) *Certified or sworn copies.* The ZBA shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.
- (c) *Testimony.* If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify, the decision brought up for review.
- (d) *Costs.* Costs shall not be allowed against the ZBA unless it shall appear to the court that it acted with gross negligence, or in bad faith, or with malice in making the decision appealed from.
- (e) *Preference.* All issues in any proceedings under this section shall have preference over all other civil actions and proceedings.



PLANNING

**2020
ZONING BOARD OF ADJUSTMENT
AND
ACCESS MANAGEMENT BOARD OF ADJUSTMENT
MEETING CALENDAR
Council Chambers - 6:00 p.m.**

Meeting Date (Thursday)	Application Deadline by 4:00 p.m.	Last Date Variance Signs Must Be Placed on Property	Mail Notices to Property Owners & Applicant	Send Agendas to Board Members
January 23	December 27	January 8	January 10	January 17
February 27	January 31	February 12	February 14	February 21
March 26	February 28	March 11	March 14	March 20
April 23	March 27	April 8	April 11	April 17
May 28	May 1	May 13	May 9	May 22
June 25	May 29	June 10	June 13	June 19
July 23	June 26	July 8	July 11	July 17
August 26*	July 30	August 11	August 13	August 21
September 17**	August 21	September 2	September 4	September 11
October 22	September 25	October 7	October 9	October 16
November 19***	October 23	November 4	November 16	November 13
December 17****	November 20	December 2	December 14	December 11
January 28, 2021	December 31, 2020	January 13, 2021	January 15, 2021	January 22, 2021

- * August meeting is one day earlier due to Budget Meeting
- ** September meeting is one week earlier due to Comal County Fair
- *** November meeting is one week earlier due to Thanksgiving
- **** December meeting is one week earlier due to Christmas and New Years