



Planning & Development Services Department

550 Landa Street
 New Braunfels, Texas 78130
 (830) 221-4050 www.newbraunfels.gov

**Variance Application
 (Zoning Board of Adjustment)**

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.

General:

1	Name of Applicant/Agent:						
2	Subject Property Address:						
3	Legal Description of Subject Property	Lot Number		Block Number		Subdivision	
4	Present Use of Property			Zoning			
5	Describe Variance Request(s)						

Required Attachments:

City	Applicant	Attachment
NAME DIGITAL DOCUMENT FILES AS THE ARE LISTED IN BOLD BELOW		
		Email a digital copy(.pdf) of all documents included in application to plats@newbraunfels.gov
		Application (completed and signed by applicant)
		Deed showing current ownership
		Homestead Verification (if applicable)
		Letter of Authorization (if an agent is acting on behalf of the property owner)
		Site Plan drawn to scale no larger than 11"x17" if submitted on paper, showing all existing and proposed improvements, setbacks from the property lines, and building elevations (if applicable)
		Photos Of Subject Property taken from each corner of the lot where it meets the street

Required Fees:

Application Fees		
		Application Fee (Homestead) (\$350 + \$10 Technology Fee (3%) = Total \$360)
		Application Fee (Non-Homestead) (\$700 + \$21 Technology Fee (3%) = Total \$721)
		Each Additional Variance (\$50 + \$1 Technology Fee (3%) = Total \$51)
Technology Fee		
		3% technology fee applied to total application fee
Public Hearing Notice Fees		
		Please Note: Public hearing mail notification fees are invoiced at a later date than when the application is submitted . You will be contacted with your fee total.
		Public Hearing Mailed Notices (\$2.15 per mailed notice)
		Public Hearing Signs (\$15 per sign)

ZBA Criteria for Approval of a Variance

In order for the Zoning Board of Adjustment to grant a variance, the applicant must prove that the 6 required criteria below have been met. You will be asked to describe your property's unique circumstances based on the below criteria in the questions. **Please answer the following questions to establish how the criteria to approve a variance is met.** The answers provided will be reported to the Zoning Board of Adjustment with staff comments. You may use additional pages if necessary.

<p>1. What are the special circumstances or conditions affecting the land that warrant the variance?</p> <p>A special circumstance must be a condition or issue of the land that is unique to the subject property and is not a circumstance that is shared by other properties. Variances are granted to property that has special circumstances that are so unique they are not reasonably considered within the development standards of the zoning ordinance; circumstances that are shared by multiple properties are considered in the zoning ordinance regulations to ensure orderly development.</p>

<p>2. Why is the variance necessary to preserve a substantial property right of the applicant?</p> <p>A substantial property right is the ability to use the land as its zoning intended. Property owners in residential zoning districts have a substantial property right to use and enjoy their property for dwelling. Please note that not all improvements intended for the enjoyment of a property are protected as substantial property rights. The reasonable use of the land can include, but is not limited to, adequate living space, open yard area, access to light and air, and so on.</p>

<p>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?</p> <p>A variance that is detrimental to public health, safety or welfare, or injurious to property within the area may not be granted. A variance may not be granted if it deprives another property owner of the use or enjoyment of their property. A variance may not be granted if it will create an unsafe condition, such as a variance to allow construction that limits visibility for drivers.</p>

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

A variance cannot be granted if it will prevent another property from complying with a regulation or ordinance.

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

An undue hardship is a hardship of the land itself. The hardship cannot be personal. Examples of what *is* an undue hardship: topography, lot configuration and size, the location of heritage trees on a lot, and so on. Examples of what *is not* an undue hardship: financial constraints, personal preferences, aesthetic choices. Hardships may not be self-created by the applicant. A self-created hardship can include performing construction work without city approval or permitting.

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

The purpose of the zoning ordinance is to ensure adopted development standards promote the health, safety, and the general welfare of the public. Development standards have been established with reasonable consideration for the character of the zoning districts and impacts created by various land uses. Variances may not conflict the intent of the zoning ordinance regulations or the goals of the Comprehensive Plan.

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Additional Items of consideration

If any of the following questions apply to the circumstances of your variance request(s), you may answer them. If a question does not apply to the reasoning for your request(s), you may skip it or answer N/A. These questions are supplementary to the Board's decision in addition to the required 6 criteria on the previous pages.

1. Is the financial cost of compliance with the zoning ordinance greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Section 26.01, Tax Code?

2. Would compliance with the zoning ordinance result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development may physically occur?

3. Would compliance with the zoning ordinance result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement?

4. Would compliance with the zoning ordinance result in the unreasonable encroachment on an adjacent property or easement?

5. Does the city consider the structure to be nonconforming? See Section 144-2.3(a) regarding nonconforming structures.

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Applicant Contact Information:

Applicant Name		Date	
E-Mail		Phone #	
Mailing Address (City, State, Zip)			

Please read and 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.

Please Note: Your signature indicates that the owner or an authorized agent has reviewed the requirements of this application and attached checklist, and all items on this checklist have been addressed and complied with. The owner/authorized agent understands that an incomplete application will not be accepted.

Applicant Signature		Date	
Applicant Name (Printed)			

INFORMATION SECTION
KEEP THIS SECTION FOR YOUR RECORDS

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 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.

INFORMATION SECTION
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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.



**2023
ZONING BOARD OF ADJUSTMENT MEETING
CALENDAR
Council Chambers
6:00 p.m.**

Meeting Date (Thursday unless otherwise noted)	Application Submittal Deadline	Last Date Variance Signs Must Be Placed on Property	Mail Notices to Property Owners & Applicant	Send Agendas to Board Members
January 26, 2023	December 30, 2022	January 11, 2023	January 13, 2023	January 20, 2023
February 23, 2023	January 27, 2023	February 8, 2023	February 10, 2023	February 17, 2023
March 23, 2023	February 24, 2023	March 8, 2023	March 10, 2023	March 17, 2023
April 27, 2023	March 31, 2023	April 12, 2023	April 14, 2023	April 21, 2023
May 25, 2023	April 28, 2023	May 10, 2023	May 12, 2023	May 19, 2023
June 22, 2023	May 26, 2023	June 7, 2023	June 9, 2023	June 16, 2023
July 27, 2023	June 30, 2023	July 12, 2023	July 14, 2023	July 21, 2023
August 24, 2023	July 28, 2023	August 9, 2023	August 11, 2023	August 18, 2023
September 21, 2023*	August 25, 2023	September 6, 2023	September 8, 2023	September 15, 2023
October 26, 2023	September 28, 2023**	October 11, 2023	October 13, 2023	October 20, 2023
November 16, 2023***	October 20, 2023	November 1, 2023	November 3, 2023	November 9, 2023****
December 21, 2023	November 22, 2023*****	December 6, 2023	December 8, 2023	December 15, 2023
January 25, 2024	December 29, 2023	January 10, 2024	January 12, 2024	January 19, 2024

* September meeting is one week earlier due to Comal County Fair
 ** October meeting application deadline is one day earlier due to Comal County Fair
 *** November meeting is one week earlier due to Thanksgiving
 **** November agenda mailed out one day earlier due to Veteran's Day



INSTRUCTIONS FOR SUBMITTING THIS APPLICATION

This application can be submitted online using the City of New Braunfels permit portal. For instructions on how to submit this permit application, please read below.

1. Access the online permit portal at <https://nbpermits.nbtexas.org/publicaccess>. Once you arrive at the Portal Login Page you will need to create a username and password.
 - a. The username will need to be a valid email address and you will be informed of the status of your application via email.
 - b. Password Requirements are: Minimum of 8 characters and must include at least one uppercase, one lowercase, and a number. Passwords cannot match your email address, first, or last name.
2. Select the Create Application button at the top center of the page and click on the Planning/Zoning folder.
3. Navigate to the desired application on the following pages. The application will be titled the same as it is on page 1 of this document.
4. Once you have found the correct application type, click on it once and select the Begin Application button.
5. Enter the application information:
 - a. Main: Subject property location (if applicable) and description of the request.
 - b. People: Your contact information. The email address provided will receive status updates on the application as it proceeds through the review process. You can add additional email addresses to receive status updates, but the provided email addresses must have a permit portal account.
 - c. App Form: Questions relating to the application.
 - d. Attachments: Upload a digital copy of this application and all required documents listed on page (1). Attachments must be .pdf format and named as they are listed on this application. **ALL REQUIRED DOCUMENTS LISTED ON THE APPLICATION MUST BE ATTACHED OR THE APPLICATION IS CONSIDERED INCOMPLETE.**
 - e. Payment: The required fee to submit. Please note: all credit/debit card transactions will incur a 2.75% processing fee. We encourage you to utilize one of our free options which include cash, check or e-Check.

You will receive a confirmation email once the application is submitted. If the application is incomplete or requires corrections, you will be emailed by a staff member requesting the information that is necessary to continue review. **AN INCOMPLETE APPLICATION WILL NOT CONTINUE TO BE REVIEWED AND CAN DELAY THE PROCESS.** Communication from the portal system will originate from cwmessenger@newbraunfels.gov.

If you have any questions, please contact Development Planning Division Staff at planning@newbraunfels.gov or (830) 221-4050.