

APPENDIX G

Applicant Information & Summary of Variance Requirements¹

The Board of Adjustment (“BOA”) is a quasi-judicial board. As a “sovereign” body, its decisions are final and are only subject to review in District Court. The BOA is composed of 11 regular members that serve, unless removed for “good cause,” for the duration of a council term. Alternates may be appointed as well, to fill-in when one or more regular members are unable to participate.

The BOA operates under Rules of Procedure and Bylaws, which are available here:

Rules of Procedure (rules for hearings and action on cases)

Bylaws (overall structure and operation)

Applicants should review both the Rules and Bylaws before presenting a case to the Board.

Since the BOA is a quasi-judicial body, individual boardmembers may not be contacted directly regarding a case. All submittals should be provided to the staff liaison, who will distribute to the board and interested parties as appropriate.

A variance request is dealt with in a hearing style format. Each side is allowed a TOTAL OF 5 MINUTES for their presentation. That means each side must allocate its five minute total among all of its speakers. Prior to the hearing, it’s a good idea to practice your presentation and decide how best to allocate time between the lead speaker and additional speakers.

Often, the most effective way to present a case is for a lead speaker to handle the entire presentation and then ask those in support to stand and be recognized. Five minutes can go by very fast—

¹ This overview is an edited version of a document prepared by former Boardmember Bryan King, who served from 2007-2015. It is included here as a supplemental reference.

organization of key points is essential. After each side makes its presentation, the applicant—and only the applicant—is entitled to a two-minute rebuttal.

The board will then deliberate and may ask questions of either side for clarification or to gain additional information or insight into the case. After deliberating, the board will make a motion to grant, deny, or postpone. For a motion to APPROVE a variance, 9 out of 11 YES votes are required. In other words, two or more NO votes will cause the variance to be denied. The corollary to this is the motion to DENY: If a motion to DENY is made, only 2 YES votes are needed to deny the variance. A motion to DENY requires no findings, but a motion to GRANT does require "findings."

What are "findings"? Findings are basic criteria which must be met in order for the Board to grant a variance. In a nutshell, before the Board may grant a variance, it must find that a regulation doesn't allow "reasonable use" of property due to a "hardship" that is unique to that property. Additionally, the Board must find that granting the variance won't impair "area character" of the surrounding neighborhood or the basic purpose of the regulations. The application form includes a section where the applicant must explain how his or her request meets the required findings.

The finding that receives the most attention, and is the hardest to pin down, is HARDSHIP. Neither state law nor the city code define hardship, so it is something of a fluid concept that has to be determined on a case-by-case basis. Like the other required findings, "hardship" is a determination left to the sole judgment of the BOA or, in the event of an appeal, the district court.

A typical hardship results from the impact of city regulations on development of property with unusual characteristics, such as lot configuration, lot size, topography, or slopes. Preserving natural features, including trees, may also constitute a hardship in some cases. Texas courts have articulated some general principles for determining hardship. For example:

- ***A hardship cannot be self-imposed.*** An example of a self-imposed hardship is subdividing property into weirdly shaped

lots that make it difficult to build a normal size house on one or more of those lots.

- ***A hardship cannot be merely an economic hardship.*** The sole basis for a variance request should not be "if you grant me this variance, I can make more money (or save money) or I can build a bigger structure".
- ***Hardships are conditions that are unique to the applicant's property — not conditions that are unique to the applicants themselves.*** Health issues, age, mobility, the desire to improve property by building it a certain way, illegal construction without a permit—these are circumstances that do not qualify as hardships for purposes of a zoning variance.

In addition to finding a “hardship” based on physical features of the property, the Board must also find that strict application of a regulation deprives the landowner of “reasonable use.” And “reasonable use,” for purposes of the BOA’s findings, means more than desired use or “highest and best” use. For example, the desire to have an extra room, a deck, a carport, etc. are all very reasonable, but may not be sufficient to meet the required finding if it is possible to build within existing city codes without the need of a variance.

If a person can solve his development problem with a zoning change, then generally speaking, he should seek that zoning change instead of a variance. The BOA does not grant variances which amount to a zoning change. Likewise, in many cases changes to design can eliminate or lessen the need for a variance. So an applicant should always explore those options before requesting a variance.

Effective presentations should include legible site plans, drawings, surveys, photographs, and topo maps. Evidence should be provided to support your claim of hardship. Just saying you have a slope on your lot, an easement issue, or an existing structure that pre-dates current code is insufficient. Provide supporting proof of your claim to the board, ideally in the initial application.

Notice to residents of the surrounding area is an important part of the variance process. The City’s public notification requirements for

variances require posting signs on the property for which a variance is requested. Applicants are responsible for maintaining these city-provided notice yard signs. Notification is also mailed to nearby property owners and neighborhood organizations that are registered with the Community Registry.

While the City-required notice (mailed and posted) serves an important purpose, applicants should also pro-actively DISCUSS your variance request with your NEIGHBORS early in the process. Applicants should also CONTACT the Neighborhood Association for your area. You may search the city's Community Registry by zip code or association name to obtain association contact information here:

[Community Registry](#) (database of neighborhood associations)

Variances generally expire in one year, unless an applicant obtains a building permit or site plan approval within that time frame. Therefore, after the BOA grants a variance, the applicant typically should obtain the required construction approvals soon. Receiving a variance is the beginning of a process, not the end. Project completion should take place before the variance expires. In some cases, a variance may be granted for an additional year for a showing of good cause. If a variance is DENTED, the BOA may not hear a request for substantially the same variance for a one-year period.

Either side—i.e., an applicant or “interested party”—may request RECONSIDERATION of the BOA's decision to either grant or deny a variance. To do so, one must apply for reconsideration in writing (email will suffice) to the BOA Staff Liaison within 10 days of the board's decision. A request to reconsider must state clearly **how the Board erred in its determination, why the action should be reconsidered, and be supported by new or clarified evidence that was not available at the initial hearing.** All of this information should be submitted within the 10-day period, as Board members will review the request prior to any public hearing or live presentation.