

APPLICATION FOR A VARIANCE

To be submitted to the City of Hillsboro Board of Adjustment

(If all of the information below is not provided, the application may be rejected for lack of information. Therefore answer all questions. Applicant must also submit a drawing of the proposed plan drawn to scale with all dimensions of the buildings shown on the diagram.)

Location of Property:

Lot ____ Block ____ of _____

Zoning District: _____

Type of Structure: _____

Owner of Property:

Home Address: _____

Mailing Address: _____

Date this property was acquired: _____

Improvements made to the property since it was acquired: _____

Has application been made for a building permit? _____

If yes, When? _____

Provision under which application for variance has been made? _____

Have you read and do you understand this law? _____

Dimension of lot a presently laid out:

Width _____ Depth _____ Area _____

Setback of structure in feet: Front _____ Side line _____ Rear _____

Reason for requesting a variance: _____

Have any previous variances been approved or denied for this property? _____

If "yes", explain: _____

Have you attached the required diagram which shows the dimensions of all buildings and the distances between all of the property lines and the buildings? Yes ____ No _____

Signature of Applicant/ Owner

Date

Variance Fee - \$200.00

DATE FILED:

Dear Board of Adjustment:

Please consider the attached Application for a Variance in the City of Hillsboro, Texas on the following described property:

Lot: _____; Block: _____; _____ Addition

Property Owner

Do not write below Reserved for Action of the Board of Adjustment

Date of hearing:

Ayes: _____ Nays: _____ Absent: _____

Circle decision of the Board: **APPROVED** or **NOT APPROVED**

Chairman - Board of Adjustment

City Officials Cannot Waive Zoning Ordinances

The Request for a Variance – the Zoning Board of Adjustment

Section 211.009, of the Texas Local Government Code specifically defines and limits the authority of a city's board of adjustment. The legislatively prescribed authority of a board with regard to variances is limited to:

“. . . authorize in specific cases a variance from the terms of the zoning ordinance if the variance is not contrary to the public interest and due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship, and so that the spirit of the ordinance is observed and substantial justice is done. . . .” TEX. LOCAL GOV'T. CODE ANN. 211.009(a)(3) (Vernon's 2004). [emphasis added].

“Unnecessary Hardship”

To find an “unnecessary hardship,” the board of adjustment must determine whether a literal application of the zoning ordinance in question to the particular property would be unreasonable in light of the general statutory purpose to secure reasonable zoning. *Currey v. Kimple*, 577 S.W.2d 508 (Tex. Civ. App. – Texarkana 1979, writ ref'd n.r.e.). The test for determining the existence of an unnecessary hardship, as required by Section 211.009 has been stated by one court as: “Is the environment such that the lot is not reasonably adapted to a conforming use?” *Board of Adjustment v. Stovall*, 218 S.W.2d 286, 288 (Tex. Civ. App. – Fort Worth 1949, no writ). Other Texas courts have agreed, holding “a property owner challenging the action of a Board of Adjustment must show that enforcement of the ordinance would destroy any reasonable use of his property.” *Reiter v. City of Keene*, 601 S.W.2d 547 (Tex. Civ. App. – Waco 1980, writ dism'd). [emphasis added]. Moreover, the hardship must be something more than financial:

“The Code expressly provides that the unique circumstances existing on the property so as to justify granting a variance must be something other than a financial hardship. A variance is not authorized merely to accommodate the highest and best use of the property, but where the zoning ordinance does not permit any reasonable use of such lot.” *Board of Adjustment of the City of San Antonio v. Willie*, 511 S.W.2d 591, 594 (Tex. Civ. App. – San Antonio 1974, writ ref'd n.r.e.)

The Dallas Court of Appeals has added that a financial hardship is not a “special condition” as described in the statute. *Bat'tles v. Board of Adjustment and Appeals of the City of Irving*, 711 S.W.2d 297 (Tex. App. – Dallas 1986, no writ).

6.48 BOARD OF ADJUSTMENT

6.48.1 CREATION AND MEMBERSHIP

A Zoning Board of Adjustment is hereby established in accordance with the provisions of Texas Local Government Code, 211.008, as amended, regarding the zoning of cities and with the powers and duties as provided in said Code.

There is hereby created a Board of Adjustment as follows:

- A. Board shall consist of seven members appointed by the City Council at the first regular City Council meeting in January;
- A. Four (4) member appointments shall be made to the Board in even-numbered years and three (3) member appointments in odd-numbered years.
- B. Appointments are limited to a maximum of three consecutive full terms and are contingent upon completing training covering ethics, the Public Information Act and Open Meetings Act prior to appointees taking the Oath of Office.
- C. Members are required to attend a minimum of seventy five (75) percent of all meetings.
- D. Each member of the Board of Adjustment shall serve for a term of two (2) years or until a successor is appointed and may be removed by an affirmative majority vote of the entire City Council.

- E. The Board shall meet as the Board shall deem necessary, and at a time and location determined by the Board.
- F. Vacancies shall be filled for the unexpired term of any member whose position becomes vacant for any cause. Vacancies shall be filled in the same manner as the original appointment was made;
- G. The members of the Board of Adjustment heretofore existing shall continue to serve as members of the Board until the terms for which they were originally appointed expire; and
- H. Members of the Board shall serve without compensation.

6.50.2 OFFICERS

Officers shall be elected by the Board at their first meeting after appointments have been made by the City Council in January. Officers shall include a Chair, Vice-chair, and Secretary. The duties of the officers shall be as follows:

- A. Duties of the Chair include calling and presiding over meetings of the Board, and ensuring that all resolutions of the Board are implemented.
- B. Duties of the Vice-chair shall be to serve as Chair in the absence or disability of the Chair.
- C. Duties of the Secretary include maintaining correct and complete records of the committee and forwarding originals of all records to the City Secretary in a timely, reasonable, and prudent manner.

6.50.3 PROCEEDINGS

The Board of Adjustment shall adopt rules to govern its proceedings that are consistent with this Ordinance and statutes of the State of Texas. Meetings of the Board shall be held at the call of the Chairman, or in his absence, the Acting Chairman, who may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. The Board

shall keep minutes of its proceedings that indicate the vote of each member on each question or the fact that a member is absent or fails to vote. The board shall keep records of its examinations and other official actions. The minutes and records shall be filed immediately in the City Secretary's Office and are public records.

6.50.4 APPEAL PROCESS

Appeals to the Board can be filed by any person aggrieved or by an officer, department, or board or bureau of the municipality affected by any decision of the administrative officer, by filing with the officer from whom the appeal is taken and with the Board, a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed was taken. In the event the application is withdrawn prior to the mailing of the required written notification or publication in the official newspaper, the fee shall be refunded.

6.50.5 STAY OF PROCEEDING

An appeal shall stay 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, votes 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 the board or a court of record on application, after notice to the official, if due cause is shown.

6.50.6 GENERAL POWERS

The Board shall have the following powers:

- A. To hear and decide appeals when it is alleged there is an error in any order, requirement, decision, or determination made by an Community Development Director in the enforcement of this Section. The Board may reverse or affirm, in whole or in part, or modify the Community Development Director's order requirement, decision or determination which an appeal is taken and make the correct order, requirement, decision, or determination, and for that purpose the board has the same authority as the Community Development Director;
- B. To hear and decide special exceptions to the terms of the City's Zoning Ordinance; and
- C. To authorize in specific cases such variance from the terms of the Zoning Ordinance if the variance is not contrary to the public interest, and, due to special conditions, a literal enforcement of the provisions of ordinance would result in unnecessary hardship, and so that the spirit of the Ordinance shall be observed and substantial justice done.

6.50.7 USE VARIANCE PROHIBITED

A variance shall not be granted to permit a use in a zoning district in which that use is prohibited.

6.50.8 ADDITIONAL CONDITIONS

The Board is empowered to impose upon any variance or special exception any condition reasonable necessary to protect the public interest and community welfare.

6.50.9 NOTIFICATION AND HEARING PROCESS

Any request for an appeal, variance or special exception shall require a public hearing before the Board. Notice of said hearing shall be published at least one (1) time in a newspaper of the City of Hillsboro, at least ten (10) days prior to the day of the hearing. A written notice of the hearing shall be sent to owners of property situated within two (200) hundred feet of the exterior boundary of the property with respect to which such appeal, variance or exception is requested. It shall be sufficient that such written notice is addressed to the owner appearing on the most current tax roll of the City and addressed to such owner is stated on the tax roll, or no address appears thereon, the written notice to such property owner shall not be required.

6.50.10 ACTION OF THE BOARD

The concurring vote of four (4) members of the Board shall be necessary to reverse any order, requirement, decision or determination of any such Community Development Director, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance, or to effect any variation in such ordinance.

6.50.11 APPEAL FROM DECISION OF BOARD

Any person aggrieved by any decision of the Board of Adjustment, or any officer, department or other board or commission of the City or the City Council, may appeal the decision or action of the Board of Adjustment by filing a petition for same in a court of competent jurisdiction, setting forth that such decision is illegal in whole or in part; and specifying the grounds for the alleged illegality. Such petition shall be filed with the court within ten (10) days from the day the Board renders its decision, and not thereafter, the time period set forth herein shall be deemed jurisdictional.

6.50.12 REAPPLICATION

No application for a variance, special exception, or appeal which has been denied shall be again filed earlier than one (1) year from the date of original denial.

6.50.13 H. AUTHORIZED SPECIAL EXCEPTIONS

The Board shall have the power to hear and decide special exceptions in the districts indicated below, subject to full and complete compliance with any and all conditions listed, together with such other conditions as the Board may impose for protection of the public health or safety:

Special Exception	District Where Permitted
Special Exception is required for a Wireless Communications Facilities according to Section 5.47, D.1	All Districts