

SEE ATTACHMENT

BOARD OF ADJUSTMENT  
APPLICATION FOR A VARIANCE

\*\*\*\*\*

ADDRESS OF REQUESTED VARIANCE: \_\_\_\_\_

LEGAL DESCRIPTION (or attach separate sheet): \_\_\_\_\_

DESCRIBE SPECIFICS OF THE REQUEST: (Include attachments showing uses, distances, dimensions, plot plans, photos, and other pertinent information. An application is not complete until all information is attached).

( ) RECORD OWNER: \_\_\_\_\_ Does Owner consent to this BOA application ? \_\_\_\_\_

( ) APPLICANT: \_\_\_\_\_ PHONE: (w) \_\_\_\_\_ (c) \_\_\_\_\_ (h) \_\_\_\_\_

ADDRESS: \_\_\_\_\_ CITY \_\_\_\_\_ ZIP: \_\_\_\_\_

SIGNED: \_\_\_\_\_ Send Bill to: ( ) Owner ( ) Applicant ( ) Other: \_\_\_\_\_

THE BOARD OF ADJUSTMENT WILL ONLY APPROVE VARIANCES AFTER DETERMINING FROM THE EVIDENCE AND ARGUMENTS PRESENTED THAT THE CONDITIONS LISTED BELOW EXIST IN ACCORDANCE WITH STATE LAW (11 O.S. Section 44-107 and the Sand Springs Zoning Code Section 17.08).

IT IS A REQUIREMENT OF OKLAHOMA STATE LAW THAT THE MINUTES OF A MEETING AT WHICH A VARIANCE IS GRANTED SHALL SHOW THAT EACH ELEMENT LISTED BELOW WAS ESTABLISHED AT THE PUBLIC HEARING. PLEASE STATE HOW THE FOLLOWING STATEMENTS APPLY TO YOUR REQUEST AND SATISFIES EACH OF THESE CONDITIONS. (See attached, "What is a Variance?".)

1. By reason of extraordinary or exceptional conditions or circumstances which are peculiar to the land, structure, or building involved, how would the literal enforcement of the Zoning Code requirements on this property create an unnecessary hardship?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Are there extraordinary or exceptional conditions or circumstances that apply to you which do not apply to other property in the same zoning district?

\_\_\_\_\_  
\_\_\_\_\_

3. If the Variance is granted, could it cause substantial detriment to the public good, or impair the purpose, spirit and intent of the Zoning Code or Comprehensive Plan?

\_\_\_\_\_

4. Would the Variance, if granted, be the minimum necessary to alleviate the unnecessary hardship?

\_\_\_\_\_

\*\*\*\*\* APPLICANT: DO NOT WRITE BELOW THIS LINE \*\*\*\*\*

Application received \_\_\_\_\_ by: \_\_\_\_\_ BOA Hearing Date: \_\_\_\_\_

Action: \_\_\_\_\_ CONDITIONS: \_\_\_\_\_



## BOARD OF ADJUSTMENT

### WHAT IS A VARIANCE AND WHEN SHOULD ONE BE GRANTED BY THE BOARD OF ADJUSTMENT (BOA)? (Per 11O.S. Section 44-107 and Sand Springs Zoning Code Section 17.08)

- A. Variances permitted under the powers granted to the Board are not adjustments of a particular provision of the ordinance. They are, rather, the relaxation of a specific requirement of the ordinance when circumstances warrant it. For example, an applicant for a building permit in a residential district may find that the 30-foot front yard requirement of the ordinance cannot be applied to his particular lot if he is to use it for residential purposes. To avoid a stream running through the lot, it may be necessary to locate the house less than 30 feet from the street. In this case, the BOA may review the facts relating to the particular lot and permit the front-yard requirement to be reduced from 30 to 20 feet, without destroying the intent of the ordinance.
- B. In granting a variance, the board may not make any decision which is contrary to the purpose and intent of the zoning ordinance. For example, it has no power to permit business establishments to invade residential districts in which such business uses are prohibited nor may it permit residential districts in which such business uses are prohibited nor may it permit residential uses to invade a business or industrial district. To do so is not an adjustment to the zoning ordinance but would constitute an amendment to it. Amendments can be made only by the governing body.
- C. A situation which applies generally throughout an area may not be rectified by granting a variance. Such matters should be handled by the governing body. There is no basis for granting an adjustment in the provisions of a zoning ordinance unless the zoning for a particular parcel of land presents peculiar, special, or unique conditions that would prohibit or unreasonably restrict use of the property.
- D. The Board may not grant a variance unless strict application of the terms of the zoning ordinance prevents a reasonable use of the property. A reasonable use is not necessarily the most profitable use of the property. Each application for a variance must meet several conditions or tests before an application may be approved by the Board.

- E. Undue hardship must be proven. A variance issued for a lesser reason or simply because the board feels it is doing "justice" constitutes an invalid application of Board authority. There is no hard and fast definition of "undue hardship." It is essential to hear all the facts and measure each case on its own merits. Below are some guidelines, based on legal precedent and Oklahoma Case Law, for applying the concept of undue hardship.
- (1) The premises cannot be used in a manner permitted by the zoning ordinance unless the variance is granted.
  - (2) A strict application of the terms of the zoning ordinance will preclude its use for any purpose to which the land is reasonably adapted (e.g., a pre-existing 18,000 sq. ft. lot in a residential district requiring a minimum 20,000 sq. ft. lot).
  - (3) Inability to put the property to its most profitable use does not constitute "undue hardship."
  - (4) Mere inconvenience to the applicant is not sufficient grounds for "undue hardship."
  - (5) Loss or gain of monetary value is not a proper criterion in determining "undue hardship."
  - (6) The burden of proof of "undue hardship" rests upon the applicant and, without such proof, a variance must be denied. Furthermore, the hardship must be peculiar to the lot in question and must not be common to other properties in the district. If the condition of hardship is common to other properties, the governing body should consider a change in the zoning ordinance. The granting of a variance in such cases is improper. The Board should notify the governing body of the need for a change or amendment to the zoning ordinance.
  - (7) Sometimes, the BOA uses the existence of nonconforming uses of, nearby lands or buildings as the basis for granting a variance. Such a procedure violates sound zoning principles and raises serious legal questions. The Board may not grant a variance to permit a use not generally permitted in a district nor shall it grant a variance for any use prohibited by the terms of the existing ordinance.

- (8) The hardship must be created by a strict application of the ordinance. If the hardship is self-imposed, caused by an action of the owner, the applicant, or some other agent, relief by means of a variance may not be granted (e.g., the placement of an accessory structure on a lot so as to violate the yard requirements of an ordinance).

**To summarize, in granting a variance:**

- A. ***The public interest must be served.*** A major consideration in deciding on an appeal for a variance is whether granting the adjustment will serve the public good. The Board may not grant an adjustment when the action would injure and endanger other property or persons. In considering the public interest, it is important to review the purpose of zoning stated in Oklahoma law (Oklahoma Statutes Title II, Article 43-102 and 103).
- B. ***The spirit of the ordinance must be upheld.*** It is incumbent upon the BOA to insure that the granting of a variance will not be contrary to the general land use plan which the ordinance carries out. The Board may not take actions that alter the provisions of the ordinance. In granting a variance, the Board must be convinced that its action is in harmony with the ordinance.
- C. ***Substantial justice must be done.*** In its decision on an appeal for a variance, it is the duty of the board to see that substantial justice is done to all parties concerned -- the applicant, the people directly affected, and the general public.

**WHAT ARE THE CONSEQUENCES OF ACTIONS OF THE BOARD OF ADJUSTMENT?**

An applicant or any aggrieved party who disagrees with a decision, or any part of a decision, by the BOA may appeal to District Court. In such cases, the burden of proof is on the appellant. The Board's decision or actions will be ruled against if the court finds them:

- A. to be contrary to the provisions of the zoning ordinance;
- B. to exceed the powers granted to the Board by the State; or,
- C. to be arbitrary and unreasonable.

In making its decision, the Board should be able to demonstrate that it applied generally established standards in a fair and equitable manner.

***Note: Variances and the powers of the Sand Springs BOA are governed by Title 11 Oklahoma Statutes, Sections 44-107 and the Sand Springs Zoning Code, Section 17.08.***