

VARIANCE APPLICATION

GENERAL INFORMATION

This packet outlines the procedures and submittal requirements necessary to apply for variance within the zoning chapter of the City of Elmendorf jurisdiction. The regulatory requirements and procedures for approval are defined in Chapter 38-46 of the Code of the City of Elmendorf. The zoning ordinance was adopted by the City Council on December 12, 2013 in order to protect the health, safety and welfare of the Elmendorf community.

Additional information about the zoning process and code requirements can be obtained prior to submitting a variance application by contacting Elmendorf City Hall, 8304 FM 327 Road Elmendorf, Texas 78112, phone 210-635-8210, or by visiting the City of Elmendorf's website at www.elmendorf-tx.com.

WHAT IS A VARIANCE?

Variations are deviations from the applicable standards for the zoning district where an existing or proposed development is located that would not be contrary to the public interest and, due to special conditions of the site or its surroundings, a literal enforcement of the provisions of this chapter would result in unnecessary hardship. Variations ensure that the spirit of this chapter is observed and substantial justice done. A variance shall not be granted to allow a use that is not allowed in the specific district in question by the use regulations in article III of this chapter.

SUBMISSION OF APPLICATION

A complete application for a variance shall be submitted to the city administrator on a form prescribed by the city administrator, along with the appropriate application fee.

HEARING & ACTION BY ZONING BOARD OF ADJUSTMENT

After due notice, the zoning board of adjustment shall hold a public hearing on an application for a variance. At the public hearing, the zoning board of adjustment shall consider the application, the relevant support materials and the public testimony given at the public hearing in light of the criteria in subsection (f) of this section. After the close of the public hearing, the zoning board of adjustment shall vote to approve, approve with conditions or deny the application for a variance, pursuant to the criteria in subsection (f) of this section.

ALLOWED VARIANCES

In exercising its authority to grant a variance, the zoning board of adjustment shall affirmatively find that one or more of the following circumstances applies. In each instance, the zoning board of adjustment shall further state in its minute record the specific nature of those circumstances which justify the variance.

(1) *Special circumstances resulting in unnecessary hardship.* A variance may be granted where special circumstances exist on the property related to the size, shape, area, topography, surrounding conditions or location that do not generally apply to other property in the same zoning district, and where the circumstances are such that strict application of this chapter would create an unnecessary hardship or deprive the applicant of reasonable use of the land or building.

(2) *Overriding public interest.* A variance may be granted if it will further an overriding public interest or concern, including, but not limited to:

- a. Preserving the natural environment;
- b. Promoting maintenance or reuse of older urban or historic buildings;

c. Helping to eliminate a nonconforming use at another location;

d. Compliance with state or federal mandates.

(3) *Equity.* A variance may be granted to permit modifications of height or setback regulations as may be needed to secure equity in the development of a parcel of land where it has been demonstrated that, due to the existence of legally nonconforming structures, a substantial proportion of the other properties in the same area and zoning district are legally enjoying the conditions that the applicant is requesting.

(4) *Literal enforcement.* A variance may be granted if it is found that the literal enforcement and strict application of this chapter will result in extraordinary circumstances inconsistent with the general provisions and intent of this chapter, and that, in granting the variance, the spirit of the chapter will be preserved and substantial justice done.

VARIANCES NOT ALLOWED

In exercising its authority, the zoning board of adjustment shall not grant a variance that would create any of the following effects:

(1) The effect of the variance on the specific property would adversely affect the land use pattern as outlined by any city land use plan or policy.

(2) The variance would be a material detriment to the public welfare or create injury to the use, enjoyment or value of property in the vicinity.

(3) The variance is not the minimum variance that will relieve the proven hardship.

(4) The variance would allow a use not allowed in the use table for the district in which the parcel is located.

(5) The variance will relieve the applicant of conditions or circumstances that are caused by the illegal subdivision of land, which subdivision of land caused the property to be unusable for any reasonable development under the existing regulations.

(6) The variance will relieve the applicant of conditions or circumstances that are self-imposed.

(7) The variance is grounded solely upon the opportunity to make the property more profitable or to reduce expense to the owner.

(8) The variance will modify any condition imposed by the planning and zoning commission or city council as part of a conditional use, special use, planned development district or planned industrial park.

(9) The variance would not only affect a specific parcel, but would be of such general nature as to constitute, in effect, a change in zoning of the parcel or a larger area, or would merit an amendment to this chapter.

VARIANCE CRITERIA

To approve an application for a variance, the zoning board of adjustment shall make an affirmative finding that each and every one of the following criteria is met:

- (1) Special circumstances exist that are peculiar to the land or structure that are not applicable to other land or structures in the same zoning district and are not merely financial.
- (2) These special circumstances are not the result of the actions of the applicant.
- (3) Literal interpretation and enforcement of the terms and provisions of this chapter would deprive the applicant of rights commonly enjoyed by other land in the same zoning district, and would cause an unnecessary and undue hardship.
- (4) Granting the variance is the minimum action that will make possible the use of the land or structure which is not contrary to the public interest, and would carry out the spirit of this chapter and substantial justice.
- (5) Granting the variance will not adversely affect adjacent land in a material way.
- (6) Granting the variance will be generally consistent with the purposes and intent of this chapter.
- (7) In the case of community homes, granting a variance as to the number of persons who may live in a community home constitutes a reasonable accommodation as required by the Americans with Disabilities Act.

CONDITIONS

The zoning board of adjustment may impose such conditions on a variance as are necessary to accomplish the purposes of this chapter, to prevent or minimize adverse impacts upon the public and neighborhoods, and to ensure compatibility of the site with its surroundings. These conditions may include, but are not limited to, limitations on size, bulk and location; standards for landscaping, buffering and screening, lighting and adequate ingress and egress; cash deposits, bonds and other guarantees of performance; other on-site improvements; and limitations on the duration or hours of operation of an allowed use.

EFFECT OF VARIANCE

- (1) Issuance of a variance shall authorize only the particular variation which is approved in the variance. A variance shall run with the land.
- (2) Unless otherwise specified in the variance, an application to commence construction of the improvements that were the subject of the variance request must be applied for and approved within 12 months of the date of the approval of the variance; otherwise, the variance shall automatically become null and void. Permitted time frames do not change with successive owners. Upon written request, only one extension of the 12-month period may be granted by the city administrator if it is determined that conditions of the site and immediately surrounding area are substantially unchanged.

TIMEFRAME FOR PROCESSING A ZONING AMENDMENT APPLICATION

Applications may be submitted on any working day at the Elmendorf City Hall 8304 FM 327 Road, and may be found at www.elmendorf-tx.com. Please call 210-635-8210 to schedule an appointment. Variance applications are typically heard by the assigned Planning & Zoning Commission on the third Thursday of the month following the date of submission (approximately 6 to 7 weeks), and by the City Council on the same day of the Commission's recommendation.

CASE MANAGER

Each application is assigned to the City Secretary. The City Secretary will serve as liaison between you and the City of Elmhurst and function as your main point of contact. Once your application has been submitted, any questions, problems, conflicts, etc. should be directed to the City Secretary. If you need to see the City Secretary, it is suggested an appointment be made to ensure the City Secretary is available.

NOTICE

Zoning is usually the first step in the development process. Prior to the construction or occupation of a new or expanded land use/business on a site, other steps including subdivision, site plan, or building permit and inspection, may be required after this process. Contact the Elmhurst City Hall for additional information.

SUBMITTAL INFORMATION AND REQUIREMENTS

When filing a variance application, the applicant or the applicant's agent shall submit the following information in person to the Elmendorf City Hall 8304 FM 327 Road or mail to City of Elmendorf P.O. Box 247 Elmendorf, TX 78112.

A. APPLICATION FORM - Type or print all information. One copy of the completed application form shall be submitted in which the following items shall be addressed:

1. **Owner** - Please indicate the name of the current owner. The current owner or authorized agent must apply for the zoning change.
2. **Project Name** - Fill in, if applicable.
3. **Location** - Indicate the address or property identification number assigned by the Bexar County Appraisal District.
4. **Type of Ownership** - If the ownership is other than sole or community property, attach a list of the partners/beneficiaries/principals and their positions.
5. **Proposed Variance** - Indicate the proposed variance. If there are questions as to what variance is needed, contact the City Secretary.
6. **Agent Information** - If designated, this will be the primary contact. If the agent changes, the City Secretary should be notified.
7. **Owner's Signature** - The owner must sign the application or attach a written authorization for the agent. If there is more than one owner, attach additional owner information to application. Be sure that all signatures are legible and address information is correct.

B. APPLICATION FEE – A fee of \$150.00 must accompany an application or request for a variance to a city ordinance. Said application must also contain any other documents or items as required by the applicable ordinance. All fees are nonrefundable.

8304 FM 327 • P.O. BOX 247
ELMENDORF, TX 78112
Phone 210-635-8210
Fax 210-635-8221
www.elmendorf-tx.com



VARIANCE APPLICATION

Owner Name: _____

Project Name: _____

Property Address or ID#: _____

Owner Phone Number: _____

Owner Email: _____

Type of Ownership:

Sole

Community

Partnership

Corporation

Trust

Proposed Variance:
(Specify) _____

Authorized Agent Name

Authorized Agent Phone Number

Authorized Agent Email Address

SUBMITTAL VERIFICATION

My signature attests to the fact that the attached application package is complete and accurate to the best of my knowledge. I understand that City staff review of this application is dependent upon the accuracy of the information provided and that any inaccurate or inadequate information provided by me/my firm/etc., may delay the review of this application. As owner or authorized agent, my signature authorizes staff to visit and inspect the property for which this application is being submitted.

Signature of Owner: _____ Date: _____

Name (Type or Printed): _____

Firm: _____