

Board of Adjustment

Applicant Information

The Board of Adjustment (BOA) is a quasi-judicial board. In the City of Austin process, it is a sovereign board and the decision of the BOA is final. Its decisions can only be appealed in District Court. The board is composed of seven regular members that serve at the pleasure of city council (appointed alternates also serve in the absence of regular members on an as-needed basis). A quorum consists of six members.

The BOA operates under a set of **Bylaws** and a set of **Rules and Procedures**.

Both should be reviewed prior to your case:

They are on the city website: <http://www.ci.austin.tx.us/neighborhood/process.htm>

The city Land Development Code is also online: http://www.amlegal.com/austin_tx/

Since the BOA is a quasi-judicial body, **individual board members cannot be contacted directly or lobbied regarding a case**. All information must be submitted directly to the staff liaison, and they will pass it on to all board members.

A variance request is dealt with in a hearing style format. Each side is allowed a **TOTAL of 5 MINUTES** for their presentation. **Each side must SHARE their 5 minutes between ALL SPEAKERS**. Prior to the hearing, it is a good idea to practice your presentation by allocating this time between your lead speaker and any additional speaker(s). Often, a lead speaker will make the entire presentation and can then ask all those in support to stand and be recognized. Five minutes can go by very fast – organization of key points is essential. After each side makes their 5-minute presentation, only the applicant receives an additional two-minute rebuttal period.

The board may then ask questions of either side for clarification or to gain additional information or insight into the case. Next, the board will make a motion to grant, deny, or postpone.

For a motion to **APPROVE** an appeal (variance), 6 out of 7 YES votes are required in order for it to be granted. 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 any motion to **GRANT** does require “findings”.

What are “findings”? This is the section of the application where the applicant explains the hardship unique to that property and explains how it will not affect the area character of its surroundings.

The key ingredient of findings is **HARDSHIP**. This is often the hardest to understand. The BOA statute and the City Code do not define “unnecessary hardship.” It is somewhat of a fluid concept. Hardships have been dealt with in state case law through the years. Whether there is a hardship is a determination for the BOA members to make on a case-by-case basis.

Hardships are something related to the particular property that prohibit the owner from having a reasonable “conforming use,” if he/she is required to comply with the city's development regulations. The application of the city's regulations to the particular property, when taking into account its configuration, topography, the surrounding property, etc., create the typical hardship. Examples are pie-shaped lots, lot size, lots with slope problems, lots where every other house on the street is already benefiting from the condition being sought in this variance request, all of which **MAY** justify area, setback or height variances. Trying to save trees has also been accepted as a hardship by at least one Texas appellate court. The preceding list not intended to list every example of a situation that could

create a hardship. Please note, a hardship should not be self-imposed. i.e., if you subdivide your own property into weirdly shaped lots and thereby make it difficult to build a normal size house on one of those lots, you may have a self-imposed hardship and may not be granted the variance.

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 the property by building it a certain way, built without a permit, etc. these do not qualify as BOA hardships. The desire to have an extra room, a deck, a carport, etc. are all very reasonable but it is also reasonable 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.

The BOA generally looks at hardships as condition that relate to issues like topography, safety, trees, drainage easements, flooding, pre-existing conditions that might be "grandfathered": construction prior to current code or annexation, etc. It is impossible for this document to give anything other than general guidance, as each property is unique and is in its own unique surroundings.

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 your structure was built prior to current code is insufficient. Provide supporting proof of your claim to the board, ideally in the initial application.

Applicants are responsible for maintaining the city-provided notice yard sign(s) posted on their property. Notification is also sent to nearby property owners and neighborhood organizations that are registered with the city's Community Registry. **It is wise to DISCUSS your variance request with your NEIGHBORS early in the process.** You 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: www.ci.austin.tx.us/neighbor/search.htm

Variances are granted for a one-year period. Following receipt of a variance, the applicant typically must proceed with a Building Permit. 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 DENIED, the BOA may not hear a request for substantially the same variance for a one-year period.

Either side 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 shall 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.

The only recourse for an aggrieved party (Applicant or Interested Party) that is unsatisfied with the BOA reconsideration decision is only an appeal to District Court. BOA appeals do not go to City Council.