



## 9. VARIANCES AND SPECIAL EXCEPTIONS

### a. Introduction

A Variance is defined as permission for a property owner to depart from the literal requirements of a zoning regulation in cases in which strict enforcement of the zoning regulation would cause undue hardship in the use and development of the property due to special circumstances unique to the property itself.

A Special Exception is a City-authorized modification of zoning standards which is consistent with the overall intent of the zoning regulations and for which express standards are prescribed, but that requires additional review to determine whether the modification is compatible with adjoining land uses and the character of the surrounding neighborhood.

The Zoning Board of Adjustment (ZBA or Board) is a quasi-judicial body that has the authority to decide the following types of applications:

1. Variances
2. Special Exceptions
3. Changes in Nonconforming Status

The Board also has authority to decide appeals on the following matters:

- a. The City's interpretation of any zoning regulation found in Chapters 2 and 4 of the UDC, unless otherwise prescribed.
- b. The City's decision on sign permits or interpretation of the sign regulations.

The Board consists of five members, and four alternate members. Meetings of the Board are conducted on the first Thursday of every month, at 6:00pm, as necessary, in order to consider requests for variances and special exceptions. All cases to be heard by the Board shall be heard by a minimum of four (4) members, and a concurring vote of four members is necessary in order to grant a variance or special exception.

Property must be platted before filing a variance application unless determined otherwise by the Planning Director.

### b. Approval Process

1. Meet with City Staff

The applicant should meet with Staff to determine the requirements for development of the property. If the applicant cannot meet the requirements set forth in the Unified Development Code, the applicant may apply for a variance or a special exception. However, variances are to be granted only in cases of undue hardship not of the applicant's creation; mere inconvenience or financial hardship in developing a property does not qualify.



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2. Submittal of the Application for a Planned Development

The applicant or property owner should submit all items as listed on checklist, along with the Universal Application.

3. Review of Application by City Staff

Planning Staff will process the application. Staff may contact the applicant or owner for additional information during the review period.

4. Posting of Signs on Property for Notification

The applicant is required to install a notification sign on the property for which the variance/special exception has been requested at least 10 days prior to the public hearing. The number of signs to be posted depends on the size of the property in question. The signs must remain in place until the request is approved or denied. The sign should be removed within seven days after the request is decided by the Board.

5. Public Hearing

All variance/special exception requests are public hearings. Staff will notify the applicant of the date of the public hearing. A notice of public hearing is mailed to all property owners within 200 feet of the subject property at least 10 days prior to the date of the public hearing. A legal notice of the hearing is also published in the local newspaper at least 15 days prior to the hearing.

During the public hearing, Staff presents a summary of the proposed variance/special exception to the Board. The applicant or property owner must be in attendance at the meeting to explain the request to the Board, and to answer any questions the Board may have regarding the request. Members of the public then have the opportunity to speak in favor or in opposition to the request. After all public comments are taken, the Board will vote on the request.

The Board may approve, deny, or table the variance/special exception to a future meeting. Four (4) affirmative votes are needed in order to approve the request (a simple majority of 3-2 does not approve a request). If the request is denied, the applicant must comply with the section of the ordinance that the variance/special exception was requested from. The Board may table the request if they require additional information in order to make a decision, or if a question comes up that cannot be answered at the meeting.

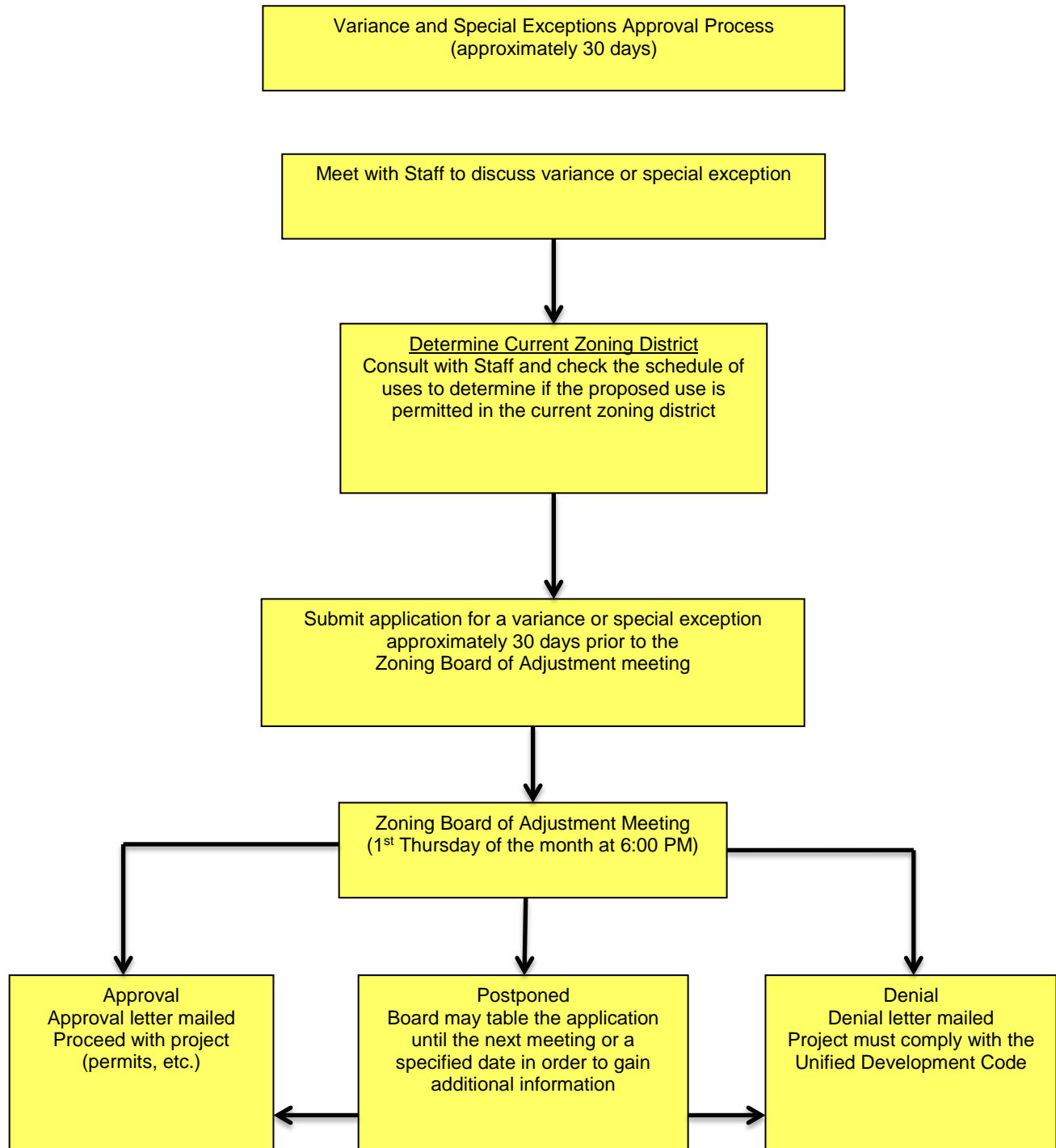
The entire process requires approximately 30 days from the submittal deadline to the Board of Adjustment meeting.

### **Appeals**

Decisions made by the Board of Adjustment cannot be overturned by any City official or any other body within the City. By State law, even the City Council does not have the authority to overturn a decision rendered by the Board. Any appeal of the Board's decision must be heard by a District Court of the State of Texas. Appeals must be filed within 10 days of the Board's decision.



**c. Flow Chart**





## d. Criteria for Approval

### Variances

1. There are special circumstances or conditions arising from the physical surroundings, shape, topography or other feature affecting the land such that the strict application of the provisions of this Code to the proposed use would create an undue hardship or inequity upon or for the applicant, as distinguished from a mere inconvenience, in developing the land or deprive the applicant of the reasonable and beneficial use of the land;
2. The circumstances causing the hardship do not similarly affect all or most properties in the vicinity of the petitioner's land;
3. The variance is necessary for the preservation and enjoyment of a substantial property right of the petitioner;
4. Granting the variance application will not be detrimental to the public health, safety or welfare, or injurious to other property within the area;
5. Granting the variance application will not have the effect of preventing the orderly use and enjoyment of other land within the area in accordance with the provisions of this Code, or adversely affect the rights of owners or residents surrounding property;
6. The hardship or inequity suffered by petitioner is not caused wholly or in substantial part by the petitioner;
7. The request for a variance is not based exclusively on the applicant's desire for increased financial gain from the property, or to reduce an existing financial hardship; and
8. The degree of variance requested is the minimum amount necessary to meet the needs of applicant and to satisfy the standards.

No nonconforming use of neighboring lands, structures, or buildings in the same district and no permitted use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.

### Special Exceptions

1. In deciding whether to approve, conditionally approve or deny the application for a special exception, the Board shall apply the standards in Article 7 of this Chapter 1 governing the special exception. In addition, the Board shall consider whether the special exception will substantially and adversely affect the use of adjacent or neighboring property.
2. The Board may impose such conditions on the application for special exception as are necessary to prevent harm to adjacent or neighboring property.



## e. Conditions for Approval

The Board may approve, deny, or conditionally approve variances and special exceptions. The extent of conditions depends on how the variance or special exception will affect adjacent or neighboring properties.

## f. Expiration

### Variances

1. A variance to a standard applicable to a particular use shall expire within 90 days of the date the variance petition is granted, unless the property owner or applicant files a complete application for a building permit with the City within such period. The Board may extend the time for filing the building permit application for good cause shown, but in any event, the expiration date for the variance shall not be extended beyond one (1) year from the date the variance was granted.
2. If the building permit expires, the variance shall also expire. If the building permit is extended, the variance also shall be extended.

### Special Exceptions

1. The special exception shall expire one (1) year after the Board approves or conditionally approves the application unless the applicant obtains all necessary construction permits or otherwise performs the tasks authorized by the approved special exception within such time period.

## g. Checklist

**The following items are to be submitted with the application:**

- Application and Checklist filled out completely and signed by the owner of the property.
- If the applicant is the designated agent, the application shall include a written statement from the property owner authorizing the agent to file the application on his behalf. **Section 1.2.1.1 of the Unified Development Code (UDC).**
- Metes and bounds description (survey or plat of the property that provides or contains the metes and bounds description).
- Parcel map, printed from the City of Pearland website, clearly indicating the location and boundaries of the subject property.
- Letter of Intent explaining the variance or special exception in detail.
- For variances, address the following items in the letter, explaining the hardship and demonstrating the following:
  - The special conditions and circumstances exist which are unique to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district.



- The literal interpretation of the provisions of the Land Use Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of the ordinance.
  - The special conditions do not result from actions of the applicant.
  - That granting the variance requested would no confer on the applicant any special privilege that is denied by the ordinance to other lands, structures, or buildings in the same district.
  - No nonconforming use of neighboring lands, structures, or buildings in the same district and no permitted use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.
  - Financial hardship shall not be considered grounds for the issuance of a variance.
- Site plan showing the proposed layout of the subject property, which clearly indicates the requested variance or special exception.
  - Any other relevant information.
  - Acknowledgement of the sign to be posted on the property ten (10) days prior to the public hearing.
  - Application fee of \$500.00 for residential, \$500.00 for commercial, or \$400.00 for a Planning and Zoning Variance by cash, check made payable to the City of Pearland, or credit card (Visa and MasterCard only).

#### **h. Posting of Notification Signs on Property Under Consideration for a Variance or Special Exception**

Any person, firm or corporation requesting a zoning change, a conditional use permit (CUP), or a variance shall be required to erect and maintain a sign(s), to be inspected by the City, upon the property for which a variance or zoning change has been requested.

Such sign(s) shall be located as follows:

1. One (1) sign per street frontage shall be located within thirty (30) feet of the abutting street, or as determined by the City.
2. So as to be clearly visible and readable from the public right-of-way and not obstructed in any manner.
3. So as not to create a hazard to traffic on the public rights-of-way abutting the property.
4. On the subject property at least ten (10) days prior to the hearing of such zoning change request by the Planning and Zoning Commission, and to remain continuously on said property until final action by the City Council or withdrawal of the case by the applicant. Removal of the sign by the applicant prior to a



recommendation by the Planning and Zoning Commission and/or a final decision by the City Council shall constitute a withdrawal of the request.

5. The signs shall be as follows:

- A minimum sign size of two (2) feet by three (3) feet, but no larger than four (4) feet by four (4) feet
- At least two (2) feet above the ground
- Blue or black lettering that is a minimum of 3 inches by ½ inch, on a white background
- Message content as follows:

PROPOSED VARIANCE OR  
SPECIAL EXCEPTION  
Contact City of Pearland  
281.652.1765

Signs must be professionally made; handwritten signs are not allowed.

Signs must be freestanding and cannot be attached to a tree, fence, or building.

### **i. Additional Information**

1. Variances may be granted from dimensional requirements such as setbacks. However, variances may not be granted in order to allow a parcel of property to be used for a use that is not permitted under the zoning ordinance. For example, if a property is zoned as residential (R-1, R-2, etc.) and the applicant wants to construct a commercial business, the Board cannot grant a variance to allow the commercial business in the residential zone.
2. An application for a variance may not be heard or granted unless and until the subject property has been platted in accordance with the City's platting requirements found in Chapter 3 of the Unified Development Code, unless determined otherwise by the Director of Planning.
3. Upon making an application for a variance or special exception, the applicant shall place sign(s) as required by this section. The City shall inspect such sign(s) to ensure compliance as required by this section.
4. After the variance request is approved by the Board, denied by the Board, or withdrawn by the applicant, the applicant shall remove the sign from the area of the request within ten (10) days of such event.
5. It shall be unlawful for anyone to remove, destroy, deface or obstruct the view of a sign which gives notice that a variance has been requested.



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6. In the event the applicant fails to erect and/or maintain signs in accordance with this section, then the public hearing before the Board of Adjustment shall be postponed to a date in the future which would allow time for compliance.
  7. The erection of any sign required by this section shall not require a permit under Section 4.1.2.6 of this UDC.
  8. The owner or applicant shall promptly notify the Planning Department of any sign required by this section which becomes lost, stolen or vandalized. The Zoning Board of Adjustment shall have the power to decide whether or not there has been substantial compliance with the posting requirements in the case of lost, stolen or vandalized signs.