

POWERS AND DUTIES OF THE BOARD

The Board of Adjustment (BOA) is composed of seven appointed citizens (and four alternates) and has the power to hear and decide cases, which interpret provisions of the zoning ordinance. This board sits as a judicial body – a citizen court in zoning matters. Unlike the Planning & Zoning Commission, this board is not a recommending body. Its decisions are final, subject only to review by the courts. Members are considered to be officers of the City of Murphy. The Board of Adjustment meets only when necessary and when a submittal request is received.

The Board of Adjustment decides on applications for special exceptions of land use and authorizes variances of land use or development authorized under the zoning ordinance.

The board has three powers as specified in Section 211.009, Texas Local Government Code:

1. To render an interpretation of the city zoning ordinance when someone alleges that there is error in any order, requirement, decision or determination made by a city official who enforces the ordinance;
2. To decide whether to approve or deny applications for a special exception to normal zoning rules when such use or development is specifically authorized in the zoning ordinance; and
3. To authorize requests for variance from the zoning ordinance when it is not contrary to the public interest.

In actions before the Board of Adjustment, the burden of proof falls on the applicant.

- **Variance:** If a variance is requested, factual evidence must be presented to satisfy the Board that a hardship exists, which is not generally true of other properties in the area and which is not a self-created hardship.
- **Appeal of an Administrative Decision:** If the decision of an administrative official is appealed, evidence must be presented to satisfy the Board that an error exists in the official's decision.
- **Special Exception:** If a special exception is requested, evidence must be presented to satisfy the Board that a special exception to terms of the ordinance is warranted due to the peculiar circumstances of the situation.

APPLICATION PROCESS

1. Applicant is to meet with the Director of Community Development and/or Building Official for a pre-application conference.
2. Application must be complete and submitted to the Community Development Department no later than 29 days prior to scheduling a meeting.
3. Fees must be submitted with the application in the form of Check or Cashier's check. The fee is non-refundable regardless of the board's decision or applicant's decision to withdraw request.
4. Public notice, providing the name and address of applicant and variance request information, is to be posted in the local newspaper not less than 15 days prior to the public hearing.
5. Public comment response form is to be mailed to all real property owners within a 500-foot radius of the subject property not less than 10 days prior to the public hearing.
6. The applicant is to appear at the public hearing before the board to state the case at hand once a meeting date has been established.

SUBMISSION REQUIREMENTS

1. A complete application form.
2. A legible drawing or site plan prepared according to the following requirements must be submitted with every application, or the application will not be accepted.
3. If you have a property survey it may be used as the basis for your site plan. (*Note: Most title companies require a survey to be conducted on property being bought or sold prior to closing on the sale. Drawing the proposal on a copy of this survey is an excellent way to illustrate the request.*)
4. Site plans do not have to be professionally prepared. They must, however, be clearly drawn and legible. Straight lines must be drawn using a straight edge. Labels and dimensions must be neat and easy to read. Line width/darkness must be adequate for photocopying. Dimensions must be accurate and proportional. It is your responsibility to ensure that the information provided is accurate.

The following information must be provided on the site plan:

- Property address
 - Property boundaries and lot dimensions
 - Location and size of ALL structures (including fences) on the property, including those that are not the subject of the application
 - Dimensions of structures for which a variance is being requested
 - Distance from applicable property lines of all structures for which a setback variance is requested (distance for carports is measured from the post) and extent of roof overhang, if any
 - Primary building, roofing and foundation materials utilized for accessory structures and additions (including carports)
5. **It is your responsibility to determine where your property lines are.** Please be advised that the property line is not always the same as the fence line, nor is it the same as the edge of the sidewalk, street or alley pavement. If you do not have a property survey you can generally locate front, rear and side property lines that are adjacent to a street or alley by taking one-half the width of the adjacent street or alley right-of-way and measuring that distance from the center of the street or alley toward your house. The subdivision plat (available at the Community Development Department) will provide you with the width of the street right-of-way (the width of the right-of-way is usually **not** the same as the width of the pavement). The front property line is usually (but not always) one foot in from the edge of the sidewalk closest to your house.
 6. You must provide photographs of the structure to be presented to the Board during the public hearing. The photographs must clearly show the structure, its location and the violation for which the variance is being sought. One (or more) photographs must provide a close-up view of the structure, and another must provide a view of the structure within the surrounding yard.
 7. Provide a written summary with explanation of the variance sought and how your request meets the review criteria outlined in the following section. Please note, that the stated hardship may not be self-imposed.

SUBMISSION REVIEW CRITERIA

In order to make a finding of hardship and to grant a variance, the Board of Adjustment must determine that all of the following conditions are met:

1. There are special circumstances or conditions affecting the land involved such that the strict application of the provision of the zoning ordinance (Chapter 30, Murphy Code of Ordinances) would deprive the applicant of the reasonable use of their land;
2. The circumstances or conditions are not economic hardships created by the property owner;
3. The variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;
4. The granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the area; and
5. The granting of the variance will not have an adverse effect on surrounding properties, preventing the use and enjoyment of other land within the area in accordance with the provisions of the zoning ordinance.

For a variance related to a structure, the Board of Adjustment may consider the following as grounds to determine whether compliance with the ordinance as applied to the structure that is subject of the appeal would result in unnecessary hardship:

1. The financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the city under Section 26.01, Tax Code;
2. compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development may physically occur;
3. compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
4. compliance would result in the unreasonable encroachment on an adjacent property or easement; or
5. the municipality considers the structure to be a nonconforming structure.

BOARD OF ADJUSTMENT JUSTIFICATION

*This justification document shall be completed in addition to the consolidated Zoning and Development Application requesting a **Variance** from the **Board of Adjustment** for the City of Murphy, Texas.*

Location of Application: (address/legal description)

Owner:	Applicant (if different than owner):
Address:	Address:
Telephone:	Telephone:
Email:	Email:
Section of Code or Ordinance relief is sought:	

For your request to be granted, the concurring vote of four (4) members of the Board of Adjustment voting in favor of the request shall be necessary.

First, provide a detailed description of the Board of Adjustment request, and a history of how this request came to be. Ensure that you are as detailed as possible when describing the request so that the Board may fully understand the case.

In order for the Board members to vote in support of your application, you must prove several things by your application. Please explain how your request meets each of the following criteria:

(1) That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this chapter would deprive the applicant of the reasonable use of their land;

Your application must clearly show that your property has UNIQUE CONDITIONS and CIRCUMSTANCES which separate it from other typical properties with the same zoning; and explain how these unique conditions and circumstances make it UNREASONABLE or UNFAIR to apply the STANDARD ordinance requirements to YOUR property, unlike the way they are applied to all other properties. Describe the CONDITIONS and CIRCUMSTANCES which are UNIQUE to your property and situation:

(2) The circumstances or conditions are not economic hardships created by the property owner.

Can you explain how the unique conditions and circumstances affecting your property came to be, AND SHOW that they ARE NOT the result of YOUR OWN ACTIONS:

(3) That a variance is necessary for the preservation and enjoyment of a substantial property right of the applicant.

How are your rights of development being hindered by a standardized ordinance that your neighbors are generally abiding by:

(4) That the granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the area; and

(5) That the granting of the variance will not have an adverse effect on surrounding properties, preventing the use and enjoyment of other land within the area in accordance with the provisions of this chapter.

Explain how this request will not affect surrounding property owners and community. Also, the Board must be convinced that granting such a variance would not constitute an UNFAIR GRANT OF SPECIAL PRIVILEGE to you, granting privileges that are otherwise denied by the ordinance.

In other words, why would granting this variance be ONLY FAIR, and NOT MORE THAN FAIR, to you, since others are prevented from doing what you are requesting:

EXPIRATION OF GRANTED REQUEST.

Timeliness of application for building permit or certificate of occupancy.

Upon a favorable board of adjustment action on a variance or special exception request, the applicant shall apply for a building permit or a certificate of occupancy, as applicable to his particular situation, within three months following the date of board action, unless the board specifies a longer time period in the minutes of its action. If the applicant fails to apply for a building permit or certificate of occupancy, as applicable, within the three-month time frame, then the special exception shall be deemed to have been waived, and all rights thereunder shall be terminated. Such termination and waiver shall be without prejudice to a subsequent appeal, and such subsequent appeal shall be subject to the same regulations and requirements for hearing as herein specified for the original variance or special exception request.

Signature of Owner or Authorized Agent: _____ Date: