



Board of Adjustment Application

Anticipated Meeting Date: _____

- Type of Request:
- Variance
 - Special Exception
 - Appeal

Applicant Name: _____ Phone #: _____
 Mailing Address: _____
 City: _____ State: _____ Zip: _____
 Email: _____
 Fax #: _____

Property Information

Physical Location of Property: _____
 (General Location – approximate distance to nearest existing street corner)
 Current Legal Description of Property: _____
 Acres: _____ Lots: _____ Units: _____

Property Owner: _____ Phone #: _____
 Mailing Address: _____
 City: _____ State: _____ Zip: _____
 Email: _____
 Fax #: _____
 Reason for Request: _____

SUBMITTAL DEADLINE: 30 DAYS PRIOR TO P&Z MEETING DATE. All zoning applications must be advertised in the newspaper, and notices must be mailed to all property owners within 200 feet of the subject property. Please contact City staff for all submittal deadlines.

All applications must be COMPLETE before they will be scheduled for P&Z agenda. It is the applicant's responsibility to be familiar with, and to comply with, all City submittal requirements (in the Zoning & Subdivision Ordinances, and any separate submittal policies, requirements and/or checklists that may be obtained from City staff), including the number of plans to be submitted, application fees, etc. Please contact City staff in advance for submittal requirements.

All application materials must be delivered to the Community Development Department. Failure to submit all materials to the Community Development Department may result in delays scheduling the zoning application for a P&Z agenda. The City will invoice the applicant for all consulting fees (by City's Engineer, Attorney, etc.) above and beyond the initial fee schedule incurred for City review of this project.

Notice of Public Records: These records may become subject to public view under the Texas Public Information Act unless they are subject to an exception established in writing by the applicant at the time of filing.

I hereby certify that I am the Owner, or the duly authorized agent of the Owner (proof of authorization attached), for the purposes of this application, and that all information submitted herein is complete, true and correct to the best of my knowledge. I understand that submitting this application does not constitute approval, and incomplete applications will result in delays and possible denial.

Signed: _____ Title: _____ Date: _____

SUBSCRIBED AND SWORN TO before me, this the _____ day of _____, _____.
 [Month] [Year]

Notary Public in and for the State of Texas: _____

[seal]

My Commission Expires On: _____

Community Development Department
 Physical: 101 East Aimee Street Mailing: PO Box 826
 Phone: 972-564-7386 Fax: 972-552-1538



Schedule of BOA Application Deadlines - 2013
Community Development Department

Filing Deadline	BOA Meeting Date
December 3, 2012	January 7, 2013
January 2, 2013	February 4, 2013
February 6, 2013	March 4, 2013
March 6, 2013	April 1, 2013
April 3, 2013	May 6, 2013
May 1, 2013	June 3, 2013
June 5, 2013	July 1, 2013
July 3, 2013	August 5, 2013
August 7, 2013	September 2, 2013
September 4, 2013	October 7, 2013
October 2, 2013	November 4, 2013
November 6, 2013	December 2, 2013
December 4, 2013	January 6, 2014

- All development applications are heard by both the Planning and Zoning (P&Z) Commission and City Council.
- Application submittal deadlines are **3 pm** on the date listed.
- Submission of plans by a particular submittal date **does not** guarantee automatic scheduling for a specific P&Z Commission meeting date.
- The P&Z Commission meets on the 1st Thursday each month at 6:30 pm in the Council Chambers, City Hall, 101 East Main Street, Forney, Texas.
- P&Z and City Council meetings are subject to cancellation at the discretion of the P&Z Commission and City Council.
- For questions contact Rashad Jackson, Planner at 972-564-7386 or e-mail at rjackson@cityofforney.org.



Board of Adjustment Application Information

Community Development Department

General

In actions before the Board of Adjustment, the burden of proof falls on the applicant, i.e.: (1) 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. (The economic cost of compliance is not legally considered a hardship). (2) 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. (3) 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.

Special Information to be Provided:

I. Request:

- A. Variance:** Briefly state the requirement as it now exists and what it will become if the variance is granted and reference the requirement in the Zoning Ordinance.
- B. Appeal of an Administrative Decision:** State the decision of official that is being appealed and what decision you believe should have been made. Reference the regulations on which the decision is based.
- C. Special Exception:** State the circumstances that warrant Board action.

II. Property Hardship: State the nature of the hardship that you feel justifies action by the Board of Adjustment.

III. Drawing: The applicant must provide a legible and reasonable drawing, to scale, illustrating that which is requested. For example, if a setback variance for an accessory building is being sought, then the drawing should indicate the proposed location of the accessory building, the distance from the accessory building to the main building, and property lines, etc.

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.

*** Applications must be notarized at the time of signature of the applicant and/or owner.**

SUBMISSION REQUIREMENTS

1. A site plan prepared according to the following requirements must be submitted with every application, or the application will not be accepted.
2. If you have a property survey it should be used as the basis for your site plan.
3. 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



Board of Adjustment Application Information

Community Development Department

dimensions must be neat and easy to read. Line width/darkness must be adequate for photocopying. Dimensions must be accurate and proportional.

4. 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)

It is your responsibility to ensure that the information provided on your site plan is accurate.

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 Planning Department) will provide you with the width of the street or alley 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.

All site plans and drawings must be submitted electronically either in PDF or DWF format.

Photographs

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.

If you have questions regarding please contact the Community Development Department at 972-564-7386.

SECTION 9 BOARD OF ADJUSTMENT (BOA)

9.1 CREATION:

- A. There is hereby created a Board of Adjustment (BOA), hereafter referred to as the "Board", for the purpose, in appropriate cases and subject to appropriate conditions and safeguards, to make special exceptions to the terms of this Ordinance that are consistent with the general purpose and intent of this Ordinance. The Board shall be composed of members who are resident citizens, taxpayers and qualified voters of the City of Forney.

9.2 MEMBERS; TERMS OF OFFICE:

- A. The Board of Adjustments shall consist of five (5) regular members, who shall be appointed by a simple majority vote of the full City Council, and shall operate in accordance with Sections 211.008 through 211.011 of the Texas Local Government Code, as amended.
- B. The City Council shall provide for the appointment of up to four (4) alternate members to serve in the absence of one or more of the regular Board members on an alternating basis such that all alternate members have equal opportunities to serve on the Board.
- C. Regular Board members and alternate members shall serve for a term of two (2) years, and expiration of terms shall be staggered so that an overlapping of terms occurs (for example, the terms of three regular members and at least one alternate member shall expire in the odd-numbered years, and the terms of two regular members and at least one alternate member shall expire in the even-numbered years).
- D. Any vacancy(s) on the Board (both regular and alternate members) shall be filled for the unexpired term(s) via appointment by a simple majority vote of the full City Council for the remainder of the term(s).
- E. Members of the Board may be removed from office for cause on written charge, and after a public hearing, by a simple majority vote of the full City Council. Failure to attend three (3) consecutive scheduled meetings shall be deemed as neglect and cause for removal from office, unless such absences were due to unusual circumstances beyond the member's control such as sickness of the member or someone within the member's immediate family.
- F. The members of the Board (and alternate members, as needed) shall regularly attend meetings and public hearings of the Board, shall serve without compensation, and shall not hold any other office or position with the City while serving on the Board.
- G. The Board of Adjustment shall elect a Chairperson and a Vice-Chairperson from among its membership, and each officer shall hold office for two (2) years or until replaced by a simple majority vote of the full Board. The City Manager's designee shall serve as Secretary to the Board of Adjustment, and shall keep minutes of all meetings held by the Board. The Secretary shall also set up and maintain a

separate file for each application for hearing by the Board, and shall record therein the names and addresses of all persons/entities to whom notices are mailed, including the date of mailing and the person by whom such notices were delivered to the Post Office. All records and files herein provided for shall be permanent and official records of the City of Forney. The Secretary shall also immediately notify in writing the City Council, Planning and Zoning Commission, and the City Building Official of each decision rendered by the Board in the conduct of its duties.

- H. The Board of Adjustment shall have the power to make the rules, regulations and bylaws for its own government, which shall conform as nearly as possible with those governing the City Council, and the Board's rules, regulations and bylaws shall be subject to approval by City Council.

9.3 MEETINGS:

- A. Meetings of the Board of Adjustment shall be held at the call of the Chairperson and at such other times as the Board may determine. All meetings of the Board shall be open to the public, and minutes shall be kept of all proceedings at Board meetings. Four (4) members of the Board shall constitute a quorum for the conduct of business. All cases to be heard by the Board of Adjustments shall always be heard by at least seventy-five percent (75%) of the members, which constitutes four (4) members.

9.4 AUTHORITY OF BOARD OF ADJUSTMENT:

- A. The Board of Adjustment shall have the authority, subject to the standards established in Sections 211.008 through 211.011 of the Texas Local Government Code and those established herein, to exercise powers and to perform duties including the following:
 - 1. Hear and decide an appeal that alleges error in an order, requirement, decision or determination made by an administrative official in the enforcement of this Ordinance;
 - 2. Authorize, in specific cases, a variance (see Section 9.6) from the terms of this Ordinance if the variance is not contrary to the public interest and if, due to special conditions, a literal enforcement of the Ordinance would result in unnecessary hardship, and so that the spirit of this Ordinance is observed and substantial justice is done; and
 - 3. Make interpretations on zoning district boundaries shown on the Zoning Map where uncertainty exists because physical features on the ground differ from those on the Zoning Map or where the rules in Section 5 of this Ordinance (Zoning District Boundaries) do not apply or are ambiguous.
- B. In exercising its authority under Subsection A.1 above, the Board of Adjustment may reverse or affirm, in whole or in part, or modify the administrative official's order, requirement, decision or determination from which an appeal is taken and make the correct order, requirement, decision or determination, and for that purpose the Board has the same authority as the administrative official.

- C. The concurring vote of at least seventy-five percent (75%), which shall be defined as four (4) members, of the full Board of Adjustment is necessary to:
 - 1. Reverse an order, requirement, decision or determination of an administrative official;
 - 2. Decide in favor of an applicant on a matter on which the Board is required to review under this Zoning Ordinance;
 - 3. Authorize a variance from a provision of this Zoning Ordinance; or
 - 4. Hear and decide special exceptions to a provision of this Zoning Ordinance (see Section 9.6E.).

9.5 LIMITATIONS ON AUTHORITY OF BOARD OF ADJUSTMENT:

- A. The Board of Adjustment may not grant a variance authorizing a use other than those permitted in the district for which the variance is sought, except as provided in Section 9.6.
- B. The Board of Adjustment shall have no power to grant or modify Conditional Use Provisions authorized under Section 34b of these regulations.
- C. The Board of Adjustment shall have no power to grant a zoning amendment. In the event that a request for a zoning amendment is pending before the Planning and Zoning Commission or the City Council, the Board shall neither hear nor grant any variances with respect to the subject property until final disposition of the zoning amendment by the Commission and the City Council.
- D. The Board of Adjustment shall not grant a variance for any parcel of property or portion thereof upon which a site plan, preliminary plat or final plat, where required, is pending on the agenda of the Planning and Zoning Commission and, where applicable, by the City Council. All administrative and procedural remedies available to the applicant shall have been exhausted prior to hearing by the Board of Adjustment.

9.6 VARIANCES AND SPECIAL EXCEPTIONS:

- A. The Board of Adjustment may authorize a variance from these regulations when, in its opinion, undue hardship will result from requiring strict compliance. For example, if the subject property substantially differs from other similarly zoned land parcels by being of such restricted area, shape or slope that it cannot reasonably be developed in the same manner as other similarly zoned land parcels, then a variance of the building setback, lot width or depth, parking requirement, or other development standard may be warranted. In granting a variance, the Board shall prescribe only conditions that it deems necessary for, or desirable to, the public interest. In making the findings herein below required, the Board shall take into account the nature of the proposed use of the land involved, existing uses of land in the vicinity, the number of persons who will reside or work within the proposed use, and the probable effect such variance will have upon traffic conditions and upon the public health, safety, convenience and welfare of the community.

B. **Conditions Required for Variance** - No variance shall be granted without first having given public notice and having held a public hearing on the variance request in accordance with Section 9.8 of this Ordinance and unless the Board of Adjustment finds:

1. That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this Ordinance would deprive the applicant of the reasonable use of his/her land; and
2. That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant; and
3. 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
4. That the granting of the variance will not have the effect of preventing the orderly use of other land within the area in accordance with the provisions of this Ordinance; and
5. That a finding of undue hardship exists (see Section 9.6C below).

Such findings of the Board of Adjustment, together with the specific facts upon which such findings are based, shall be incorporated into the official minutes of the Board of Adjustment meeting at which such variance is granted. Variances may be granted only when in harmony with the general purpose and intent of this Ordinance so that the public health, safety and welfare may be secured and that substantial justice may be done.

C. **Findings of Undue Hardship** - In order to grant a variance, the Board of Adjustment must make written findings that an undue hardship exists, using the following criteria:

1. That literal enforcement of the controls will create an unnecessary hardship in the development of the affected property; and
2. That the situation causing the hardship or difficulty is neither financial in nature, self-imposed nor generally affecting all or most properties in the same zoning district; and
3. That the relief sought will not injure the permitted use of adjacent conforming property; and
4. That the granting of a variance will be in harmony with the spirit and purpose of these regulations.

D. A variance shall not be granted to relieve a self-created or personal hardship, nor shall it be based solely upon economic gain or loss, nor shall it permit any person the privilege in developing a parcel of land not permitted by this Ordinance to other parcels of land in the particular zoning district. No variance may be granted which results in undue hardship upon another parcel of land.

- E. **Special Exceptions for Nonconforming Uses and Structures** - Upon written request of the property owner, the Board may grant special exceptions to the provisions of Section 7 of this Ordinance, limited to the following, and in accordance with the following standards:
1. Expansion of the land area of a nonconforming use, up to a maximum of ten (10) percent; or
 2. Expansion of the gross floor area of a nonconforming structure, up to a maximum of ten (10) percent, provided that such expansion does not decrease any existing setback and does not encroach onto adjacent property; or
 3. Change from one nonconforming use to another, re-construction of a nonconforming structure that has been totally destroyed, or resumption of a nonconforming use previously abandoned, only upon finding that the failure to grant the special exception deprives the property owner of substantially all use or economic value of the land.
 4. In granting special exceptions under this Subsection, the Board may impose such conditions as are necessary to protect adjacent property owners and to ensure the public health, safety and general welfare, including but not limited to conditions specifying the period during which the nonconforming use may continue to operate or exist before being brought into conformance with the standards of the Zoning Ordinance.
 5. For existing single-family and duplex structures that were constructed prior to the effective date of this Ordinance, the Board of Adjustment may authorize a special exception for any structure that was constructed over a setback line established by this Ordinance.
 6. The Board of Adjustment may authorize a special exception for the reconstruction and occupancy of a nonconforming structure, or a structure containing a nonconforming use and/or the restoration of a building site that is nonconforming as to development standards (including, but not limited to, parking arrangement, landscaping, etc.), when a structure has been damaged by fire or other cause to the extent of more than sixty percent (60%), but less than the total, of the appraised value of the structure, as determined from the records of the Kaufman County Appraisal District, as of the date of the damage. Such action by the Board of Adjustment shall have due regard for the property rights of the person or persons affected, and shall be considered in regard to the public welfare, character of the area surrounding such structure, and the conservation, preservation and protection of property.
 7. The Board of Adjustment may authorize a special exception for the enlargement, expansion or repair of a nonconforming structure if such enlargement, expansion or repair will improve the condition of the structure, if it will bring the structure closer into compliance with this Ordinance, or if it will otherwise improve or enhance public health, safety or welfare.
 8. **Special Exceptions in the Downtown Area** - Upon written request of the property owner, the Board of Adjustment may authorize a special exception to

any provision in this Ordinance for any existing nonconforming property or structure within the City's historic downtown area.

- F. **Alternative Landscaping Plan** - The Board of Adjustment may approve an alternative landscape plan that modifies the minimum requirements of Section 39.6 if it finds that the alternative landscaping proposed is sufficient to meet the spirit and intent of Section 39.6; the alternative landscaping proposed better serves a legitimate "public good" purpose (such as better screening or buffering between uses, increased opportunity to preserve valuable existing trees, etc.) or it grants relief for a property owner in unusual circumstances (such as reconstruction of a building that has been destroyed); and there will be no adverse effect on neighboring properties or inequity created for similarly zoned properties within the City.

9.7 **APPEALS TO THE BOARD OF ADJUSTMENT:**

- A. **Authority** - In addition to the authorization of variances and special exceptions from the terms of this Ordinance, the Board of Adjustment shall have the authority to hear and decide an appeal that alleges error in an order, requirement, decision or determination made by an administrative official in the enforcement of this Ordinance. The Board of Adjustment may reverse or affirm, in whole or in part, or may modify the administrative official's order, requirement, decision or determination from which an appeal is taken and make the correct order, requirement, decision or determination, and for that purpose, the Board of Adjustment has the same authority as the administrative official. The Board of Adjustment may also hear and decide other matters authorized by the Subdivision Ordinance and other City ordinances regarding land use and development regulations.
- B. **Who May Appeal** - Any of the following persons may appeal to the Board of Adjustment a decision made by an administrative official:
 - 1. A person directly aggrieved by the decision; or
 - 2. Any officer, department, board or office of the City affected by the decision.
- C. **Procedure for Appeal** - The appellant must file with the Board of Adjustment and the official from whom the appeal is taken a written Notice of Appeal specifying the grounds for the appeal. The Notice of Appeal shall be filed within fifteen (15) calendar days after the decision has been rendered. Upon receiving the Notice, the official from whom the appeal is taken shall immediately transmit to the Board of Adjustment all papers constituting the record of action that is appealed. An appeal stays all proceedings in furtherance of the action that is appealed unless the official from whom the appeal is taken certifies in writing to the Board of Adjustment facts supporting the official's opinion that a stay would cause imminent peril to life or property. In that case, the proceedings may be stayed only by a restraining order granted by the Board of Adjustment or a court of record on application, after notice to the official, if due cause is shown. The appellant party may appear at the appeal hearing in person or by agent or attorney. The Board shall decide the appeal within forty-five (45) calendar days after the written request (i.e., Notice of Appeal) was received. The Board may reverse or affirm, in whole or in part, or modify the administrative official's order, requirement, decision or determination from which an

appeal is taken, and may make the correct order, requirement, decision or determination.

D. A member of the City Council may not bring an appeal to the Board.

9.8 PROCEDURES:

- A. **Application and Fee** - An application for a variance or a special exception to be heard by the Board of Adjustment, or for an appeal to the Board, shall be made in writing using forms prescribed by the City, and shall be accompanied by an application fee (as set forth in Ordinance No. 972), a site plan, and any other additional information as may be requested in order to properly review the application. Such information may include, but is not limited to, plat plans, site building plans, photographs, topographic contour maps, and other similar documents. All drawings must be to scale.
- B. **Review and Report by the City** - The City Manager, or his/her designee, shall visit the site where the proposed variance or special exception will apply and the surrounding area, and shall report his/her findings to the Board of Adjustment.
- C. **Notice and Public Hearing** - The Board of Adjustment shall hold a public hearing for consideration of the variance or special exception request no later than forty-five (45) calendar days after the date the application for action, or an appeal, is filed. Written notice of the public hearing for a variance or special exception shall be provided to all property owners, via U.S. mail, within two hundred feet (200') of the affected property at least ten (10) calendar days prior to the public hearing. Notice shall also be published in the official local newspaper before the fifteenth (15th) calendar day prior to the public hearing.
- D. **Action by the Board of Adjustment** - The Board of Adjustment shall not grant a variance unless it finds, based upon compelling evidence provided by the applicant, that each of the conditions in Section 9.6 has been satisfied. The Board of Adjustment may impose such conditions, limitations and safeguards as it deems appropriate upon the granting of any variance or special exception as are necessary to protect the public health, safety, convenience and welfare. Violation of any such condition, limitation or safeguard shall constitute a violation of this Ordinance.
- E. **Burden of Proof** - The applicant bears the burden of proof in establishing the facts that may justify a variance, a special exception, an appeal, or any other action in his/her favor by the Board.
- F. **Waiting Period** – No appeal to the Board for the same or a related variance or special exception on the same piece of property shall be allowed for a waiting period of six (6) months (i.e., 180 calendar days) following an unfavorable ruling by the Board unless other property in the immediate vicinity has, within the six-month waiting period, been changed or acted upon by the Board or the City Council so as to alter the facts and conditions upon which the previous unfavorable Board action was based. Such changes of circumstances shall permit the re-hearing of a variance or special exception request by the Board, but such circumstances shall in no way have any force in law to compel the Board, after a hearing on the matter, to grant a subsequent variance or special exception request. Any subsequent variance

or special exception request shall be considered entirely on its own merits and on the specific circumstances related to the subject property.

- G. **Timeliness of Application for Building Permit or Certificate of Occupancy** – Upon a favorable Board 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/her particular situation, within three (3) months (i.e., 90 calendar days) 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 variance or special exception shall be deemed to have been waived, and all rights there under 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.

9.9 **FINALITY OF DECISIONS; JUDICIAL REVIEW:**

- A. All decisions of the Board of Adjustment are final and binding. However, any person aggrieved by a decision of the Board of Adjustment may present a verified petition to a court of record which states that the decision of the Board is illegal, in whole or in part, and specifying the grounds of the illegality. Such petition must be presented within ten (10) calendar days after the date the Board's decision is filed in the City Secretary's office. Subject to the provisions of Chapter 211.011 of the Texas Local Government Code, only a court of record may reverse, affirm or modify a decision of the Board of Adjustment.