
G. Flexibility and Relief Procedures

1. Design Exception

A Design Exception may be approved by the Planning and Zoning Commission to allow deviations from specific standards in this Code arising out of a Site Plan review.

a. Applicability

- I. A Design Exception may be requested only for those standards that are specifically identified in this Code.
- II. Each Design Exception request shall be reviewed on its own merits. Approval or disapproval of a Design Exception in one instance shall not be interpreted to set a precedent for future requests of the same or similar Design Exception.
- III. Approval of a Design Exception shall apply only to the property associated with the Design Exception request and shall not be transferable to any other property.
- IV. When changes to an approved Site Plan or land use are proposed, the Director of Planning may determine that a previously approved Design Exception(s) associated with that Site Plan or land use may no longer be appropriate.
- V. If a property zoned PD – Planned Development District or with a Specific Use Permit (SUP) includes a specific standard that differs from the requirements of the Zoning Regulations, a Design Exception shall not be permitted to alter from that specific standard.

b. Submittal Requirements

Design Exceptions may be considered as part of a Site Plan and shall be submitted, accepted, and revised, and may be withdrawn in accordance with §203A, *Standard Procedures*, and §203E.1, *Site Plan*.

c. Public Notice Required

Design Exceptions shall be scheduled for a public hearing for the Planning and Zoning Commission to take action and noticed in accordance with §203A.4, Public Notice. The following notice type(s) are required for Design Exceptions:

- I. Mailed Notice.

d. Approval Procedure

The Planning and Zoning Commission shall take action on a Design Exception pursuant to the approval criteria below.

e. Approval Criteria

The Planning and Zoning Commission may approve a request for a Design Exception if they find that:

- I. There is a compelling reason why the existing standard cannot be satisfied;
- II. The Design Exception will not have an adverse impact on adjacent existing or future developments;
- III. The Design Exception will not have an adverse impact on the public health, safety, and general welfare;
- IV. The Design Exception is not proposed to reduce financial costs or serve as a convenience to the applicant; and
- V. The Design Exception complies with all additional standards outlined in the specific section from which the Design Exception originates.

f. Appeals

- I. The Planning and Zoning Commission's action on a Design Exception may be appealed to the City Council by the applicant or Director of Planning if:
 - a. The applicant provides a written request to the Director of Planning within 7 calendar days of the Planning and Zoning Commission's action; or
 - b. The Director of Planning provides written notification of the appeal to the applicant within 7 calendar days of the Planning and Zoning Commission's action.

- II. If no appeal is requested within 7 calendar days of the Planning and Zoning Commission's action, the Commission's action shall be deemed final and no appeal may be requested.
- III. If appealed, the City Council shall hold a public hearing on the Design Exception pursuant to §203F.2, *Appeals to City Council*.
- IV. The City Council may reverse or affirm, in whole or part, or modify the Planning and Zoning Commission's action to render the determination the City Council believes correct. The City Council has final approval authority regarding the Site Plans and its decision regarding an appeal of the Planning and Zoning Commission's action regarding a Design Exception shall in all things be final.

2. Special Exception

Through the Special Exception procedure, the Board of Adjustment may evaluate certain adjustments and modifications to the standards in this Code based on necessity or unusual circumstances.

a. Applicability

Special Exceptions may be used to:

- I. Permit a public utility or public service building or structure in any district, or a public utility or public service building of a ground area and of a height otherwise in conflict with the standards provided for in the district in which such public utility or public service building is permitted to be located, when found reasonably necessary for the public health, convenience, safety, or general welfare;
- II. Permit the extension of a use, height, and/or area regulation into an adjoining zoning district, where the boundary line of the zoning district divides a lot in a single ownership on the effective date of the ordinance from which this section is derived;
- III. Permit the reconstruction of a legal nonconforming building that has been damaged by explosion, fire, the elements, the public enemy, or any other cause, to the extent of more than 50 percent of its fair market value, where the Board finds some compelling necessity requiring a continuance of the nonconforming use and the primary purpose of continuing the nonconforming use is not to continue a monopoly;
- IV. Permit the erection and use of a building or the use of premises for railroads if such uses are in general conformance with the Comprehensive Plan and present no conflict or nuisance to adjacent properties; and
- V. A Special Exception may also be granted for certain fences or portions of a fence that meet all of the requirements set out in Article 7: Fences. A hardship for fences may be found regardless of when the unusual condition was created.

b. Exceptions

The Special Exception procedure may not be used to award special privilege or convenience to an applicant.

c. Submittal Requirements

Applications shall be submitted, accepted, and revised, and may be withdrawn in accordance with §203A, *Standard Procedures*, and shall include the following:

- I. Board of Adjustment application, including the written authorization from the owner of the property on which the Special Exception is sought;
- II. Existing plot/Site Plan or survey drawn to scale of the subject property;
- III. Proposed plot/Site Plan or survey drawn to scale of proposed project for which Special Exception is sought;
- IV. Elevation renderings of proposed Special Exception request; and
- V. Aerial map of properties adjacent to the subject property.

d. Public Hearing and Notice Required

The Special Exception application shall be scheduled for a public hearing before the Board of Adjustment to take action and notice shall be provided in accordance with §203A.4, Public Notice. The following notice type(s) are required for Special Exceptions:

- I. Mailed Notice; and
- II. Published Notice.

e. Approval Procedure

- I. Board of Adjustment Action
 - a. The Board of Adjustment shall review and approve or disapprove the Special Exception in accordance with the approval criteria in subsection f. of this section.
 - b. A concurring vote of seventy-five percent (75%) or more members of the Board of Adjustment shall be required to approve a Special Exception request. Any request for a Special Exception that is not approved by affirmative vote of seventy-five percent (75%) or more members of the Board of Adjustment shall be considered denied.
 - c. The Board of Adjustment shall decide the request no later than the 60th day after the public hearing at which the Board heard the request.
 - d. The Building Official shall provide a written notification of the Board of Adjustment's decision to the applicant.

f. Approval Criteria

The Board of Adjustment may approve a Special Exception if they find the request:

- I. Is not contrary to the public interest or otherwise injurious to adjacent property owners;
- II. Is the minimum modification necessary to gain the relief requested; and
- III. Is not solely for the purpose of mitigating a financial hardship.

g. Appeals

The decision of the Board of Adjustment shall be final. Any further appeals shall be made to the state courts of Collin County, Texas in accordance with state law.

h. Expiration

If the property owner has not shown progress toward completion associated with the required permits to carry out the approved Special Exception within two years of approval, the Special Exception shall automatically expire.

3. Variance

A Variance may be approved by the Board of Adjustment to provide relief from the strict application of the zoning provisions of this Code where literal enforcement of the requirements of this Code will result in unnecessary hardship and where the Variance is necessary to develop a parcel of land that cannot otherwise be developed due to unique conditions on the property.

a. Applicability

The Variance procedure may be used to:

- I. Permit a Variance to requirements of any district where there are unusual and practical difficulties or unnecessary hardships due to an irregular shape of the lot or topographical or other conditions; and
- II. Authorize Variances from the strict application of this Code that are in harmony with its general purpose and intent, provided such Variance will not merely serve as a convenience to the applicant, but will alleviate some demonstrable and unusual hardship or difficulty, while at the same time, the surrounding properties will be properly protected.

b. Submittal Requirements

Applications shall be submitted, accepted, and revised, and may be withdrawn in accordance with §203A, *Standard Procedures*, and shall include the following:

- I. Board of Adjustment application, including the written authorization from the owner of the property on which the Variance is sought;
- II. Existing plot/Site Plan or survey drawn to scale of the subject property;

- III. Proposed plot/Site Plan or survey drawn to scale of proposed project for which Special Exception is sought;
- IV. Aerial map of properties adjacent to the subject property; and
- V. Any other supporting documentation.

c. Public Hearing and Notice Required

The Variance application shall be scheduled for a public hearing before the Board of Adjustment to take action and notice shall be provided in accordance with §203A.4, Public Notice. The following notice type(s) are required for Variance requests:

- I. Mailed Notice; and
- II. Published Notice.

d. Approval Procedure

This procedure is established to comply with TLGC, §§211.008 and 211.009.

- I. The Board of Adjustment shall review and approve or disapprove the Variance in accordance with the approval criteria in subsection d. of this section.
- II. A concurring vote of seventy-five percent (75%) or more members of the Board of Adjustment shall be required to approve a Variance request. Any request for a Variance that is not approved by affirmative vote of seventy-five percent (75%) or more members of the Board of Adjustment shall be considered denied.
- III. The Board of Adjustment shall decide the request no later than the 60th day after the public hearing at which the Board heard the request.
- IV. The Building Official shall provide a written notification of the Board of Adjustment's decision to the applicant.

e. Approval Criteria

The Board of Adjustment may approve a Variance from the requirements of the Zoning regulations of this Code where such request:

- I. Is not contrary to the public interest;
- II. Is the minimum Variance necessary to gain the relief requested;
- III. Is not solely for the purpose of mitigating a financial hardship;
- IV. Is not the direct result from actions by the property owner; and
- V. Due to special conditions, a literal enforcement of the Code would result in unnecessary hardship, and so that the spirit of the Code is observed and substantial justice is done.
- VI. When the Variance requested involves an existing structure the Board of Adjustment may also consider the following criteria as grounds to determine where compliance with the Zoning Regulations of this Code would result in unnecessary hardship:
 - a. The financial cost of compliance is greater than fifty percent of the appraised value of the structure as shown on the most recent tax roll accepted by the City;
 - b. Compliance would result in a loss to the lot on which the structure is located of at least twenty-five percent of the area on which development may physically occur;
 - c. Compliance would result in the structure not being in compliance with a requirement of the McKinney Code;
 - d. Compliance would result in the unreasonable encroachment on an adjacent property or easement; or
 - e. The City will consider the structure to be nonconforming.

f. Approval Non-Transferable

An approved Variance shall only apply to the property or structure associated with the Variance and shall not be transferable to any other property or structure.

g. Appeals

The decision of the Board of Adjustment shall be final. Any further appeals shall be made to the courts of Collin County, Texas in accordance with state law.

h. Expiration

If the property owner has not shown progress toward completion associated with the required permits to carry out the approved Variance within two years of the Variance approval, the Variance shall automatically expire.