

VARIANCE REQUEST

APPLICATION AND APPEAL TO THE BOARD OF ADJUSTMENT OF THE CITY OF CASTLE HILLS

FILING PROCEDURES AND REQUIRED SUBMITTALS

To process an appeal to the Board of Adjustment, the following submittals are necessary.

- 1 An original and 10 copies of a completed two page REQUEST form (attached) including the property affected and the reasons for the hardship. Be specific about what is being appealed and why.
- 2 Payment of a non-refundable fee in the amount of \$200.
- 3 If an agent is designated to represent the owner, an original and seven copies of a signed Affidavit (attached) from the owner of the property authorizing the applicant to pursue an appeal to the Board of Adjustment. Submit this form only if the applicant is not the owner.
- 4 An original and 10 copies at least 8 ½ "x11" but no larger than 11"x17" of a current survey and/or site plan which:
 - a. indicates property location by street address and legal description;
 - b. indicates property owner's name (and applicant's name if different);
 - c. is drawn to scale (with scale and north indicated) showing all existing and proposed improvements including buildings, fences, driveways, pools, patios, structures, and items that are not grass or vegetation. If items such as septic tanks, trees, and landscaping would have a bearing on the variance they must also be shown.
 - d. shows all boundaries of property with front, side and rear yard setbacks and all other critical dimensions. Indicate the area of the property or improvements for which the variance or special exception is being requested.
5. An original and 10 copies at least 8 ½ "x11" but no larger than 11"x17" of an elevation plan **IF** the appeal involves building heights, fence heights, addition or removal of ground or fill, or similar land or structure alterations (all points must have dimensions specified including maximum height).
6. An original and 10 copies of a complete parking analysis for any parking variance request.

In certain instances, the Board may require items such as a current survey, plat, or topographical plan prepared by a Registered Professional Surveyor or Registered Professional Engineer licensed in Texas as well as any other information the Board may deem necessary.

APPLICANT CERTIFICATION (please read & check each box)

I certify that I am the owner or designated agent, that all information submitted is true and correct and:

1. that I have read this three page Variance Request and the four page Rules and Procedures;
2. that I have attached all submittals and documentation referenced herein;
3. that if my application or submissions are late or incomplete, the application will be rejected and the Board will not hear the case on the requested meeting date;
4. that if the variance is granted and construction work is involved I am responsible for obtaining all required permits from the City, and completing the work in compliance with all City requirements within 180 days from the Board of Adjustment approval (unless the Board approves a longer period) or the variance shall terminate;
5. that if the variance is granted and does not involve construction, then a Certificate of Occupancy must be obtained within 180 days from the Board of Adjustment approval (unless the Board approves a longer period) or the variance shall terminate;
6. that if the variance is not granted, no application to the Board of Adjustment shall be allowed on the same piece of property prior to the expiration of six months from a ruling of the Board of Adjustment unless other property in the same block or within 500 feet thereof, within such six-month period, has been altered or changed by a ruling of the Board of Adjustment, in which case such change of circumstances shall permit my application to be made, but shall in no way compel the Board of Adjustment to grant such subsequent application or any application since all applications shall be considered on their own merits and no rulings of the Board shall be deemed to create a precedent.

Print / Type Name

Signature

Date

OFFICE CERTIFICATION:

Received subject to staff review by:

date:

time:

APPLICATION AND APPEAL TO THE BOARD OF ADJUSTMENT OF THE CITY OF CASTLE HILLS

REQUEST

The Board of Adjustment can allow variances to City ordinances that will not be contrary to the public interest, where, owing to special conditions, literal enforcement will result in unnecessary hardship, and so that the spirit of the law shall be observed and substantial justice done. The person or entity requesting a hearing by the Board of Adjustment will post a notice provided by the City on the property in question advising the public of the hearing date. It must be posted upon acceptance of the application and the setting of the date of the hearing and remain in place until the day of the hearing. The notice placement must be approved by the City so as to be visible and conspicuous from the street, no more than 10 feet from the edge of asphalt or curb with the bottom edge of the notice at least three feet above grade and not obscured by natural or manmade obstructions such as trees, vegetation, berms, signs, structures, or poles. The sign must be removed and returned to the City within 24 hours of the end of the hearing.

Date of Submission of Application to City: _____

Date Board Meeting Requested (third Wednesday of each month): _____

INFORMATION ON PROPERTY FOR WHICH A VARIANCE IS REQUESTED

Street Address: _____

Legal Description: _____ Zoning District: _____

Lot Dimensions and size in Acres: _____

Owner of Property: _____ Telephone: _____

Owner Street Address (if different from Subject Property): _____

Applicant/Agent (if not owner): _____ Telephone: _____

Mailing Address (if different from street address): _____

I request a variance from the City of Castle Hills Zoning Ordinance that requires:

APPLICATION AND APPEAL TO THE BOARD OF ADJUSTMENT OF THE CITY OF CASTLE HILLS

REQUEST

I am requesting a variance not to comply with City requirements for the reasons stated in items 1 through 7 below. (The Board will consider all of the following conditions before reaching a decision, so furnish detailed and specific information for each item. Use additional pages if necessary.)

1. The variance is necessary due to a special, unique condition inherent in the property itself.

2. The variance is necessary due to a condition not created by a property owner.

3. Complying with the ordinance will impose an unnecessary and unjust hardship above that suffered by the general public.

4. The hardship is not solely financial.

5. Without the variance, the owner would be denied a right to use the property.

6. The granting of the variance will be in the public interest.

7. The granting of the variance will be in keeping with the spirit of the ordinance and substantial justice will be served.

Print / Type Name

Signature

Date

Variance Request
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BOARD OF ADJUSTMENT

The following are excerpts from the Castle Hills Code of Ordinances as well as the Board-adopted ***RULES AND PROCEDURES***

Purpose:

1. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the administrative officer in the enforcement of Chapter 50 or the floodplain requirements.
2. To hear and decide special exceptions to the terms of the Zoning Section of the City Code, (Chapter 50).
3. To authorize upon appeal in specific cases such variance from the terms of the Chapter as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the Chapter will result in unnecessary hardship, and so that the spirit of the Chapter shall be observed and substantial justice done.

Chapter 50 - Zoning

Article V. - BOARD OF ADJUSTMENT

Sec. 50-539. - Established.

- (a) *Appointment of members; terms.* There is hereby created a board of adjustment consisting of five members who are citizens of this city and who are not members of the city council or the zoning commission. Each member shall be appointed by the mayor and confirmed by the city council for a term of two years beginning on June 1 of each odd-numbered year and ending on May 31 of the succeeding odd-numbered year.
- (b) *Removal of members.* Any member may be removed for cause by the city council upon written charges and after a public hearing. Vacancies shall be filled for the non-expired term of any member whose term becomes vacant for any cause in the same manner as the original appointment was made.
- (c) *Alternate members.* The mayor shall also appoint and the city council shall confirm four alternate members of the board of adjustment who shall serve in the absence of one or more of the regular members when requested to do so by the mayor or the mayor's designee, as cases heard by the board of adjustment will always be heard by a minimum of four members. These alternate members shall serve for the same period as the regular members, and any vacancy shall be filled in the same manner and shall be subject to removal as the regular members.

Sec. 50-540. - Meetings; minutes and other records.

- (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. The chairperson, or, in his absence, the acting chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the board of adjustment shall be open to the public.
- (b) The board of adjustment shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the city manager and shall be a public record.

Sec. 50-541. - Powers and duties.

The board of adjustment shall have the power and duty:

- (1) To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the city manager in the enforcement of this chapter.
- (2) To hear and decide special exceptions to the terms of this chapter upon which the board of adjustment is required to pass under the provisions of this chapter.
- (3) To authorize upon appeal in specific cases such variance from the terms of this chapter as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement will result in unnecessary hardship, and so the spirit of the chapter shall be observed and substantial justice done.
- (4) To exercise such other powers and duties as may be assigned from time to time by the city council or as are permitted by state law.

Sec. 50-561. - Appeals; remedies available.

Appeals to the board of adjustment may be made by any person aggrieved or by any officer, department or board of the city affected by any decision of the administrative officer. In exercising its powers, the board of adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such determination as should be made within these chapter regulations, including, without limitation, the granting of special exceptions and variances.

Sec. 50-562. - Stay of all proceedings.

An appeal stays all proceedings of the action appealed from, unless the city manager from whom the appeal is taken certifies to the board of adjustment that, by reason of facts stated in the certificate, a stay would, in his opinion, cause immediate peril to life or property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by the board of adjustment or by a court of record upon application, with notice to the city manager from whom the appeal is taken and on due cause shown.

Sec. 50-563. - Public hearing required; posting of sign on property.

The board of adjustment shall set a reasonable time for the hearing of the appeal and give public notice thereof as well as due notice to the interested parties in the manner required by this article. At the hearing, any party may appear in person or by agent or attorney. The applicant shall post a city-provided sign on the property in question advising the public of the application and of the hearing date on the application. A sign must be visible from each street that borders the property and shall be posted within seven days of filing of the application and be maintained until the day after the hearing. Sign location shall be subject to city approval.

Sec. 50-564. - Notice of public hearings.

- (a) The notice of public hearing before the board of adjustment shall be given by posting the time and place of such hearing on the City's website, which posting shall not be less than ten days prior to the date of such hearing.
- (b) In addition, the board of adjustment shall mail notices of hearing to the petitioner and to all owners of property lying within 250 feet or a minimum of the contiguous properties immediately adjacent to the applicant's property at any point of the lot on which a special exception or variance is desired, and to all other persons deemed by the board of adjustment to be affected thereby. These owners and persons shall be determined according to the last approved tax roll of the city. Such notice may be served by depositing the same, properly addressed and postage paid, in any post office.

Sec. 50-565. - Applications; filing with administrative officer; transmittal to board.

All applications for appeal and for special exceptions to and variances from the terms of this chapter shall be in writing and shall specify the facts involved, the relief desired and the grounds thereof. Each such application shall be filed, together with the applicable fee as provided in the city fee schedule, with the city manager, who, after investigation, shall transmit the application together with his report and all papers constituting the record of circumstances upon which the appeal is taken to the board of adjustment within ten days after receiving the application.

Sec. 50-566. - Granting of special exceptions.

The board of adjustment is hereby empowered to permit the following exceptions, provided its action does not injure the health, safety, morals or the general welfare of the occupants of nearby properties and is in harmony with the general purpose and intent of this chapter:

- (1) Permit such modifications of the height, yard area, spacing and parking regulations as may be necessary to secure development of a parcel of land of such unusual topography or restricted area or shape that it cannot be appropriately developed without such modification.
- (2) Permit such modification of the parking regulations as may be warranted by the unusual character of a proposed use.
- (3) Permit the reconstruction of a building occupied by a nonconforming use provided such reconstruction does not prevent the return of the property to a conforming use.
- (4) Determine in case of uncertainty the classification as to district of a use not specifically named in this chapter; provided however, such use shall be in keeping with uses specifically named in the district regulations.

Sec. 50-567. - Granting of variances.

The board of adjustment is hereby authorized upon appeal from the decision of the city manager to grant in specific cases such variance from the terms of this chapter as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions will result in unnecessary hardship and so that the spirit of this chapter shall be observed and substantial justice done. A financial or a self-inflicted hardship by an applicant or a predecessor in title is not sufficient to show unnecessary hardship.

Sec. 50-568. - Limitation on special exceptions and variances.

- (a) Any special exception or variance authorized by the board of adjustment shall constitute authority for the issuance of a building permit or a certificate of occupancy if applied for within 180 days from the date of favorable action, unless the board of adjustment authorizes a longer period. If the zoning permit or certificate of occupancy shall not have been applied for within this time frame, then the grant of the special exception or variance shall terminate. Such termination shall be without prejudice to subsequent application to the board in accordance with the regulations regarding applications.
- (b) No application to the board of adjustment for an identical or substantially similar variance or special exception shall be allowed on the same piece of property prior to the expiration of six months from the ruling of the board of adjustment, unless other property in the same block or within 500 feet thereof, within such six-month period, has been altered or changed by a ruling of this board. In this case, the change of circumstances shall permit the allowance of such application, but shall in no wise have any force to compel the board of adjustment, after a hearing, to grant such subsequent application. Such application shall be considered on its merits as in all other cases.

Sec. 50-569. - Vote necessary for decision of board of adjustment.

The concurring vote of four members of the board of adjustment shall be necessary to reverse any order, requirement, decision or determination of the city manager to decide in favor of the applicant; or to authorize a variance from the terms of this chapter.

Sec. 50-570. - Appeals from the board of adjustment.

Any person or persons jointly or severally, aggrieved by any decision of the board of adjustment, or any taxpayer, or any official, department, board or bureau of the city, may present to a court of record a petition for a writ of certiorari, as provided by V.T.C.A., Local Government Code § 211.011, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within ten days after the filing of the decision of the board of adjustment in the office of the city manager.

FEE

The fee for a formal hearing by the Board of Adjustment is set at \$400.00 per application

Partial and/or incomplete applications and site plans will not be accepted by the Board.

Approval by the Board is not a building permit to begin any proposed work.

OWNER AFFIDAVIT

I, _____

Owner of subject property at _____

authorize (applicant) _____

to pursue an appeal to the City of Castle Hills Board of Adjustment for the following variance:

Printed Name of Property Owner

Signature of Property Owner

Date

Before me the undersigned on this day personally appeared:

(Print Name of Property Owner)

Who on his/her oath certifies that the above statements are true and correct to his/her best knowledge.

Subscribed and sworn to before me this _____ day of _____.

**Notary Public in and for
Bexar County, Texas
Commission expires on: _____**

Notary Public Signature