



Board of Zoning Adjustment Application

Summary of Application Requirements:

1. Meet with Development Services Staff to review the application requirements for your specific request and read the attached outline describing the functions of the Board of Zoning Adjustment. Please contact Development Services Staff at 972-932-2216.
2. Submit completed application with the signatures of owners and/or applicant, along with the filing fee of \$250.
 - a. Must include the property address, lot block and subdivision name or a metes and bounds description
 - b. Include a detailed diagram of site/plot plan, drawn to scale, indicating the location of the requested variances, and other renderings or pictures needed to present the case for the request.
 - i. Single Family or simple request submit 1 site/plot plan either on an 8.5" x 11", 8.5" x 14", or on an 11" x 17" size paper
 - ii. Commercial, industrial or multi-family request submit 1 site /plot plan on an 11" x 17" size paper or on a larger size paper as recommended by Staff.
3. **The application must be complete and meet all Kaufman ordinance requirements before a variance request can be scheduled for a public hearing.**
4. If you have any questions, call 972-932-2216. Submit the application and filing fee to:

City of Kaufman
Development Services Department
3001 South Washington
PO Box 1168
Kaufman, TX 75142



Board of Zoning Adjustment Application

1. Applicant:

Name: _____

Address: _____ City/State/ZIP _____

Work #: _____ Cell #: _____ Home # _____

Email Address: _____

2. Property Owner(s)

Name: _____

Address: _____ City/State/ZIP _____

Work #: _____ Cell #: _____ Home # _____

Email Address: _____

3. Variance Location – Include street address and lot, block, and subdivision name of the subject property. Attach a survey or plot plan of the subject property.

a. Street Address: _____

b. Lot, Block and Subdivision: _____

4. List the pertinent section (s) of the Kaufman Zoning Ordinance and note the specific variance amount(s) being requested. (If necessary use a separate sheet.)

5. State the ground for the request and detail any special conditions which cause hardships that in your opinion justify the variance(s) or a special exception(s) you are requesting. Examples of special conditions are: hills, valley, creeks, power poles, land elevations irregular lot or tract shapes, etc. The Zoning Board of Adjustment must determine a special condition(s) exist(s) before making a motion to approve a request. If it is determined that no special condition exists, the motion must be to deny the request. A hardship cannot be self-impaired or of a financial nature.

6. If applicable, explain any unique circumstance, not considered by the Kaufman Zoning Ordinance. Examples: (1) If the Kaufman City Council approved a plat prior to the present Zoning Ordinance requirements; or (2) the ordinance was amended or a policy change was adopted after the initiation of the plans check process for a building permit or other phase of the development process.

7. Attach a detailed diagram of the site drawn to scale and any other drawings or pictures necessary to help explain the case to the Board. Show on the diagram all easements, building lines, encroachment and the variance(s) requested. The requested variance(s) should be quantified by an appropriate measurement (distance, percentage, etc.)

Applicant Name (Print or Type): _____

Applicant Signature: _____

Owner Name (Print or Type): _____

Owner Signature: _____

BOARD OF ZONING ADJUSTMENT APPLICATION PROCEDURAL TIME TABLE

Application Deadline	Zoning Board of Adjustment review submittal (See application form for requirements).
Days 1-7	Planning staff reviews the request
Day 8	Staff may request additional information from applicant for any changes or additions to the application submittal.
Day 15	Applicant to submit revised or additional application submittal.
Day 16	Notice to the newspaper and adjacent property owners.
Day 20	Packet distributed to Zoning Board of Adjustment Members, and agenda is posted at the front of the building.
Day 30	Zoning Board of Adjustment public hearing.

DENIAL

Requires a majority vote, 1 year waiting period necessary to reapply. Begins 10 day period in which an appeal to the District Court can be made.

APPROVAL

Requires a $\frac{3}{4}$ vote for approval

TABLE

Further research and/or information is needed.

KAUFMAN ZONING ORDINANCE O-02-07

SECTION 9 ZONING BOARD OF ADJUSTMENTS (ZBA)

9.0 ZONING BOARD OF ADJUSTMENTS (ZBA)

9.1 CREATION:

- A. There is hereby created a Zoning Board of Adjustments (ZBA), 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 Kaufman.

9.2 MEMBERS; TERMS OF OFFICE:

- A. The Zoning Board of Adjustment shall consist of five (5) regular members, who shall be appointed by a simple majority vote of the City Council, in accordance with Sections 211.008 through 211.011 of the Texas Local Government Code, as amended. In addition, there may be up to four (4) alternate members appointed for two (2) year terms, said terms to be staggered in like manner to regular members.
- B. 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, in any two (2) year period, the terms of two (2) members shall expire during one (1) of those years, and the terms of three (3) members shall expire during the second year. In like manner, the terms of alternate members shall be two (2) and two (2) in separate years).
- C. Any vacancy(s) on the Board shall be filled for the unexpired term(s) via appointment by a simple majority vote of the City Council for the remainder of the term(s).
- D. Members of the Board may be removed from office for cause, 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.
- E. The members of the Board shall regularly attend meetings and public hearings of the Board, and shall serve without compensation.

9.3 MEETINGS:

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

9.4 AUTHORITY OF BOARD:

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:

- A. 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; and
- B. 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, 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.
- C. In exercising its authority under Subsection A above, 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 make the correct order, requirement, decision or determination, and for that purpose the Board has the same authority as the administrative official.
- D. The concurring vote of at least seventy-five (75%) percent, or four (4), members of the Board 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 the terms of this Zoning Ordinance; or
 - 4. Discontinue or terminate a nonconforming use of property.

9.5 LIMITATIONS ON AUTHORITY OF BOARD:

- A. The Board 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 9.7.
- B. The Board shall have no power to grant or modify Specific Use Permits authorized under Section 30 or to grant or modify the conditions of a Planned Development authorized under Section 29 of these regulations.
- C. The Board 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.
- D. The Board 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 remedies available to the applicant shall have been exhausted prior to hearing by the Zoning Board of Adjustments.

9.6 VARIANCES:

- A. The Zoning Board of Adjustment may authorize a variance from these regulations when, in its opinion, undue hardship will result from requiring strict compliance. 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.C or D of this Ordinance and unless the ZBA finds:
1. That there are special circumstances or conditions (such as, but not limited to, restricted area, shape, topography or physical features) that are unique to the property affecting the development of the land involved such that the strict application of the provisions of this Ordinance would deprive the applicant of the reasonable use of his 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, and shall not adversely impact other properties in the vicinity or give the owner of a business an undue advantage over other businesses. Vicinity is defined as all properties with the same zoning classification sharing a common district boundary as the applicant and those properties within 300 feet of the subject property with a different zoning classification; and
 4. That the granting of the variance will not have the effect of preventing the orderly use of other land within the area and does not conflict with the spirit of this Ordinance, which is one of providing public safety, open space and air, preservation and enhancement of the appearance of the City and protection of property values.

Such findings of the ZBA, together with the specific facts upon which such findings are based, shall be incorporated into the official minutes of the ZBA 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 substantial justice be done.

- C. **Findings of Undue Hardship** - In order to grant a variance, the Board 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 or practical difficulty in the development of the affected property; and
 2. That the situation causing the hardship or difficulty is neither 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 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. The applicant bears the burden of proof in establishing the facts justifying a variance.

9.7 APPEALS TO THE ZONING BOARD OF ADJUSTMENTS:

- A. **Authority** - In addition to the authorization of variances from the terms of this Ordinance, the ZBA 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 ZBA 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 ZBA has the same authority as the administrative official. The ZBA may also hear and decide other matters authorized by the Subdivision Ordinance and other ordinances regarding land use regulations.
- B. **Who May Appeal** - Any of the following persons may appeal to the ZBA 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 municipality affected by the decision.
- C. **Procedure for Appeal** - The appellant must file with the ZBA and the official from whom the appeal is taken a written notice of appeal specifying the grounds for the appeal. The appeal must be filed within sixty (60) days after the decision has been rendered. Upon receiving the notice, the official from whom the appeal is taken shall immediately transmit to the ZBA 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 ZBA 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 ZBA 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 four (4) weeks after the written request (i.e., notice of appeal) was received, after which time the request shall be deemed automatically approved if no formal action is taken. 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 make the correct order, requirement, decision or determination.

9.8 PROCEDURES:

- A. **Application and Fee** - An application for a variance by the Zoning Board of Adjustments shall be made in writing using forms prescribed by the ZBA, and shall be accompanied by an application fee (as set forth in the Fee Schedule as adopted, a site plan and/or 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/or other similar documents.
- B. **Review and Report by the City** - The City Manager, or his designee, shall visit the site

where the proposed variance will apply and the surrounding area, and shall report his findings to the ZBA.

- C. **Notice and Public Hearing** - The Zoning Board of Adjustments shall hold a public hearing for consideration of the variance request no later than forty-five (45) days after the date the application for action, or an appeal, is filed. Notice of the public hearing shall be provided to all property owners within two hundred feet (200') of the affected property at least ten (10) days prior to the public hearing, and also published in the official local newspaper at least ten (10) days prior to the public hearing.
- D. **Action by the ZBA** - The ZBA shall not grant a variance unless it finds, based upon compelling evidence, that each of the conditions in Section 9.6 has been established. The ZBA may impose such conditions, limitations and safeguards, as it deems appropriate upon the granting of any variance. Violation of any such condition, limitation or safeguard shall constitute a violation of this Ordinance.

9.9 DISCONTINUANCE OR TERMINATION OF CERTAIN NONCONFORMING USES BY THE ZONING BOARD OF ADJUSTMENT:

- A. At the direction of the City Council, the Zoning Board of Adjustment shall institute proceedings regarding the discontinuance or termination of a nonconforming use in the City of Kaufman, and after public hearing and investigation into the conditions created by the use, fire or health hazards created by the use, and any other danger or nuisance to the public due to or created by any condition or use existing on the property, require the discontinuance or termination of such use. The owner of the use under the investigation by the Zoning Board of Adjustment shall have not less than ten (10) days written notice prior to the day of the public hearing. The Zoning Board of Adjustment, after having heard from affected parties and the public, shall prescribe a reasonable time period for compliance, discontinuance and termination of the nonconforming use that allows for amortization of the owner's actual investment in the use that occurred before the time that the use became nonconforming. In prescribing said time period, the Zoning Board of Adjustment shall consider the following factors:
 - 1. The owner's capital investment in structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly transferred to another site) on the property at the time the use became nonconforming;
 - 2. Any costs that are directly attributable to the establishment of compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages;
 - 3. Any return on investment since inception of the use, including net income and depreciation; and
 - 4. The anticipated annual recovery of investment, including net income and depreciation.
- B. If the Zoning Board of Adjustment establishes an amortization (or compliance) date for a nonconforming use, the use must cease operation on that date and it may not operate thereafter unless it becomes a conforming use.
- C. For purposes of this Section, "owner" means the owner of the nonconforming use at the time of the Zoning Board of Adjustment's determination of an amortization (or compliance) date for the nonconforming use.
- D. The Zoning Board of Adjustment shall have the power to subpoena witnesses, documents and things; administer oaths; punish for contempt; and may require the

production of documents and other things, under such regulations as it may establish or deem appropriate.

- E. Notwithstanding any provision contained in Section 34 of this Zoning Ordinance, any single-family residential use of property which is nonconforming due to its location within a non-single-family zoning district is not subject to the discontinuance or termination provisions contained in this section and may be improved, expanded or enlarged by an amount no more than fifty (50%) percent of the original enclosed, habitable area of the structure, or no more than five hundred (500) square feet, whichever is greater, provided that the improvement, expansion or enlargement does not violate the setback or other area requirements contained in this Zoning Ordinance.

9.10 FINALITY OF DECISIONS; JUDICIAL REVIEW:

All decisions of the Zoning Board of Adjustment are final and binding. Any person aggrieved by a decision of the Zoning Board of Adjustment may seek judicial review within ten (10) days after the date the decision is filed in the Board's office, pursuant to Section 211.011 of the Texas Local Government Code, as amended. For purposes of this Section, (i) the City Secretary's Office is the Board's office and (ii) any decision of the Zoning Board of Adjustment shall be deemed filed in the Board's office on the first business day following the action taken by the Zoning Board of Adjustment. Nothing in this Section shall limit the authority of the Zoning Board of Adjustment to enter a written decision or order, and in the event a written decision or order is entered by the Zoning Board of Adjustment, the written decision or order shall be deemed filed in the Board's office on the first business day following the date reflected on such decision or order."