



Planning & Development Services Department
 550 Landa Street
 New Braunfels, Texas 78130
 (830) 221-4050 www.newbraunfels.gov

Variance Application (Zoning Board of Adjustment)

Any application that is missing information will be considered incomplete and will not be processed.

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 ZBA.

General:

1	Name of Applicant/Agent:	The Bettersworth Law Firm, PC				
2	Subject Property Address:	120 West Faust Street, New Braunfels, Texas 78130				
3	Legal Description of Subject Property	Lot Number	Pt of 4, 5	Block Number	1061	Subdivision
4	Present Use of Property	Vacant Lot		Zoning	C-3	
5	Describe Variance Request(s)	A variance from section 3.3-9(b)(1)(v) - Residential Setback requirements				
	The lot in question is 61.42 feet in width at the front and 73.09 feet in the back. It sets between					
	an office building at 110 West Faust and a residential building. Applicant is seeking a variance					
	from setback requirement so that an office building can be erected on the lot per the provided plat.					

Required Attachments:

City	Applicant	Attachment
NAME DIGITAL DOCUMENT FILES AS THEY ARE LISTED IN BOLD BELOW		
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Email a digital copy(.pdf) of all documents included in application to plats@newbraunfels.gov
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Application (completed and signed by applicant)
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Deed showing current ownership
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Homestead Verification (if applicable)
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Letter of Authorization (if an agent is acting on behalf of the property owner)
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Site Plan drawn to scale no larger than 11"x17" if submitted on paper, showing all existing and proposed improvements, setbacks from the property lines, and building elevations (if applicable)
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Photos Of Subject Property taken from each corner of the lot where it meets the street

Required Fees:

Application Fees		
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Application Fee (Homestead) (\$350 + \$10 Technology Fee (3%) = Total \$360)
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Application Fee (Non-Homestead) (\$700 + \$21 Technology Fee (3%) = Total \$721)
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Each Additional Variance (\$50 + \$1 Technology Fee (3%) = Total \$51)
Technology Fee		
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	3% technology fee applied to total application fee
Public Hearing Notice Fees		
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Please Note: Public hearing mail notification fees are invoiced at a later date than when the application is submitted. You will be contacted with your fee total.
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Public Hearing Mailed Notices (\$2.15 per mailed notice)
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Public Hearing Signs (\$15 per sign)

ZBA Criteria for Approval of a Variance

In order for the Zoning Board of Adjustment to grant a variance, the applicant must prove that the 6 required criteria below have been met. You will be asked to describe your property's unique circumstances based on the below criteria in the questions. **Please answer the following questions to establish how the criteria to approve a variance is met.** The answers provided will be reported to the Zoning Board of Adjustment with staff comments. You may use additional pages if necessary.

1. What are the special circumstances or conditions affecting the land that warrant the variance? A special circumstance must be a condition or issue of the land that is unique to the subject property and is not a circumstance that is shared by other properties. Variances are granted to property that has special circumstances that are so unique they are not reasonably considered within the development standards of the zoning ordinance; circumstances that are shared by multiple properties are considered in the zoning ordinance regulations to ensure orderly development.
Applicant is proposing to build a structure that will serve as a law office on the subject lot. The subject lot is 61.42 feet in the front and 73.09 feet in the back making the lot size a special circumstance that is unique when taking into consideration the impact that 3.3-9(b)(1)(v) has on the highest and best use of the lot.
The proposed structure is 28 feet tall. Per 3.309(b)(1)(v) the proposed structure would have to be 28 feet from the residential lot to the left. In order to comply with the fire code, the proposed building must be 10 feet of the right property line leaving only 23.42 feet to place a structure which is not possible.

2. Why is the variance necessary to preserve a substantial property right of the applicant? A substantial property right is the ability to use the land as its zoning intended. Property owners in residential zoning districts have a substantial property right to use and enjoy their property for dwelling. Please note that not all improvements intended for the enjoyment of a property are protected as substantial property rights. The reasonable use of the land can include, but is not limited to, adequate living space, open yard area, access to light and air, and so on.
The highest and best use of this lot is as a small office building. The proposed plans are for an approximate 2000 square foot office building designed to fit with the character of the neighborhood. This property is zoned c-3 which means the property owner has a right to use the property for commercial use. The setback requirements in 3.309(b)(1)(v) are preventing the owner from doing this. Applicant is requesting a variance in order to allow the building to be placed on the lot as shown on the attached site plan.

3. Will the granting of the variance be detrimental to the public health, safety or welfare, or injurious to other properties within the surrounding area? A variance that is detrimental to public health, safety or welfare, or injurious to property within the area may not be granted. A variance may not be granted if it deprives another property owner of the use or enjoyment of their property. A variance may not be granted if it will create an unsafe condition, such as a variance to allow construction that limits visibility for drivers.
The granting of the requested variance will not be detrimental to the public health, safety or welfare or injurious to the other properties within the surrounding area. The proposed structure is designed to fit into the neighborhood aesthetics. We have intentionally not placed windows on the taller part of the structure that faces the residential neighbor so as to not in anyway interfere with their privacy. This is a professional office building and the noise level will be no more than would be caused by an actual residence. The addition of the building will actually have a positive impact on the neighboring properties. The property directly across the street is a parking lot for Adobe Cafe.

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<p>4. Would granting the variance prevent the orderly use of other properties within the area? A variance cannot be granted if it will prevent another property from complying with a regulation or ordinance.</p>
<p>As indicated above, the proposed structure is an office building designed to fit into the neighborhood aesthetically. The neighboring residential property already faces all commercial properties, including Adobe Cafe, an auto parts store and time warner. The vast majority of the properties in this area are being used for commercial purposes. The granting of the requested variance will in not way prevent the orderly use of other properties within the area and will not prevent another property from complying with a regulation or ordinance.</p>

<p>5. Does an undue hardship to the land exist that is not self-created, personal or financial? An undue hardship is a hardship of the <u>land</u> itself. The hardship cannot be personal. Examples of what <i>is</i> an undue hardship: topography, lot configuration and size, the location of heritage trees on a lot, and so on. Examples of what <i>is not</i> an undue hardship: financial constraints, personal preferences, aesthetic choices. Hardships may not be self-created by the applicant. A self-created hardship can include performing construction work without city approval or permitting.</p>
<p>As stated herein, because of the lots dimensions, the ordinance at issue creates and undue hardship to the land. This hardship was not self-created and is not personal or financial. The application of the ordinance to the land prevents the owner from using the land for most anticipated purposes. In order to build a commercial building on this lot, there are other codes that must be complied with which this ordinance makes impossible.</p>

<p>6. Will granting the variance be in harmony with the spirit and purpose of the City's regulations? The purpose of the zoning ordinance is to ensure adopted development standards promote the health, safety, and the general welfare of the public. Development standards have been established with reasonable consideration for the character of the zoning districts and impacts created by various land uses. Variances may not conflict the intent of the zoning ordinance regulations or the goals of the Comprehensive Plan.</p>
<p>The granting of the variance will be in harmony with the spirit and purpose of the City's regulations. Section 3.3-9(b)(1)(v) was put in place to protect a residential property's owners right to privacy and the peaceful enjoyment of his property without the interference from a commercial operation. The proposed structure will in no way interfere with the neighboring property owners rights in this regard. The structure is being designed in such as way as to not interfere with the neighboring properties. Again, the property at issue is zoned C-3 and it was not the City's intent to prevent it from being used in that manner by application of the ordinance.</p>

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Additional Items of consideration

If any of the following questions apply to the circumstances of your variance request(s), you may answer them. If a question does not apply to the reasoning for your request(s), you may skip it or answer N/A. These questions are supplementary to the Board's decision in addition to the required 6 criteria on the previous pages.

1. Is the financial cost of compliance with the zoning ordinance 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 municipality under Section 26.01, Tax Code?
There is no way to comply with the ordinance given the size of the lot. In order to comply with the lot and all other applicable codes (ADA requirements, fire, parking, etc.), any proposed structure must be placed
in an area that encroaches into the setback. If we redesign the building to make it long and narrow, all of the parking spaces would have to be located along the side of the property closest to the neighbor if it would even be possible.
Additionally, the building would have to be 3 stories tall causing the cost, not far exceed 50% of the appraised value, not to mention making the building completely out of place.

2. Would compliance with the zoning ordinance 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?
Compliance with the zoning ordinance would result in at least 25 percent of the area on which development may physically occur.
The lot is 8,102.16 square feet. Compliance with the ordinance would take up 3,114.44 feet approximately which is 38% of the lot.

3. Would compliance with the zoning ordinance result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement?
As previously stated, compliance with the ordinance basically makes the lot unusable for commercial purposes.
There is no way to erect a structure that complies with 3.3-9(b)(1)(v) and also be able to comply with parking,
ADA, fire, etc.

4. Would compliance with the zoning ordinance result in the unreasonable encroachment on an adjacent property or easement?
No

5. Does the city consider the structure to be nonconforming? See Section 144-2.3(a) regarding nonconforming structures.
No

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Applicant Contact Information:

Applicant Name	The Bettersworth Law Firm	Date	
E-Mail	james@bettersworthlaw.com	Phone #	210-602-9547
Mailing Address (City, State, Zip)	110 West Faust Street, New Braunfels, Texas 78130		

Please read and initial the following important reminders:

jb

Appearance at Meetings.


It is strongly advised that the applicant be represented at the hearing. The Board may deny requests for which the applicant or an agent do not appear.

jb

Notification Signs.

The applicant shall post the public hearing notification sign(s) at least 15 days prior to the hearing date and maintain said sign(s) in good condition. One sign shall be required for the first 100 feet of frontage of the tract, and one additional sign for every 200 feet of frontage thereafter, or fraction thereof, except that no more than three (3) signs shall be required on each roadway frontage. If the tract has less than 200 feet of frontage per roadway, then only one sign is required per road.

Please Note: *Your signature indicates that the owner or an authorized agent has reviewed the requirements of this application and attached checklist, and all items on this checklist have been addressed and complied with. The owner/authorized agent understands that an incomplete application will not be accepted.*

Applicant Signature		Date	9/1/2023
Applicant Name (Printed)	The Bettersworth Law Firm, PC		