

VARIANCE

INSTRUCTIONS

A Board of Zoning Appeals Process

Information

The following information outlines the process for filing a variance application.

Your Responsibility

Your decision to initiate application for a variance needs to be based on a determination that your request can satisfactorily address each of the above review criteria. To demonstrate satisfactory compliance, you are requested to provide a written response to each of the review criteria. The written response will be included as part of your application for a variance.

Procedure Type

A variance is a Type-II review process [[Section 26-8B-2](#)].

Matters Not Subject to a Variance

Variance requests not within the jurisdiction of the Board of Zoning Appeals:

1. Building or fire code variances.
2. Variances from the terms of one or more conditions of approval imposed by an administrative body described in Sec. 26-8A-1, Administrative Bodies. Modifications to conditions of approval must be sought from the body that granted the approval.
3. Variance that would have the effect of make existing illegal nonconforming or illegal construction (building and structures), site improvements, parking, signage, lighting, or landscaping conforming. Nonconforming situations are subject to the requirements of Article 26-10, Nonconformities.
4. Variances that would allow a prohibited use or sign.
5. Variances that would constitute a change in district boundaries.
6. Variances to modify any requirements set out in Division 26-2E, Limited and Conditional Use Standards.
7. Variances used to vary state or federal laws or regulations unless such authority is expressly granted to the City.

Instructions

Complete the following steps.

Step 1: Schedule a Pre-Application Conference

A pre-application conference is intended to familiarize the applicant with the development review and approval process, provide for an exchange of information, advise the applicant as to the key planning, zoning, engineering, and other considerations, and to determine the information required to accompany an application.

A pre-application conference is required to be held at least **15 days** before an application is submitted.

In accordance with Paragraph 26-8B-3C-3, the applicant must submit information concerning the conditional use permit request as required by the Zoning Administrator at least **5 working days** prior to the conference.

A meeting report will be prepared by staff and provided to the applicant summarizing meeting outcomes and expectations. The pre-application conference and meeting report will determine whether special studies or reports may be required along with any other specific items.

A pre-application conference is valid for a period of **6 months**. If an application is not filed in this time, a new pre-application conference will be required. [[Section 26-8B-3C-5](#)]

Step 2: Review the Variance Criteria

Authority

Pursuant to Sec. 26-9E-5-D of the Manhattan Development Code, the Board of Zoning Appeals may not grant a Variance unless it finds, in each case, based upon the particular evidence presented to it, that all of the following criteria have been satisfied.

Review Criteria

1. The variance requested arises from such condition(s) unique to the property that is/are not ordinarily found in the same zoning district and is/are not created by an action or actions of the property owner or the applicant.
2. The strict application of this Chapter will otherwise constitute unnecessary hardship upon the property owner
3. Granting the Variance will not adversely affect the rights of adjacent property owner or residents.
4. The Variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare
5. Granting the Variance will not violate the general spirit and intent of this Chapter.

STEP 3: Prepare additional materials to accompany your application

Submission of information less than necessary to adequately review and process your application may result in a delay of the review process. Community Development staff will determine the completeness, accuracy, and sufficiency of the application within **15 business days** of receipt of the application. [[Sec. 26-8C-3](#)]

Variance Application Attachments

1. Filing fee: A payment of \$120 made payable to the City of Manhattan.
2. A site plan in pdf format. A checklist of what should be provided on the site plan can be found [here](#) to help with its creation.

Step 4: Submit your application

Upon completion of the previous steps, fill-out and submit the application to the Community Development Department.