

PRESENTED AT

26th Annual Land Use Conference

April 21-22, 2022

Austin, TX

Board of Adjustment

Cathy Cunningham

Author Contact Information:

Cathy Cunningham

Thomson Reuters

New York, NY

cathy.cunningham@tr.com

Board of Adjustment

Background

Cities in every state have a board of adjustment or a functional equivalent. That does not mean that every city in every state has such a board, but that these boards exist in some form in every state.

Because the past informs the present, it is useful to understand how these boards started. Early adoption of planning and zoning state statutes were based on model acts, both A Standard Zoning Enabling Act and A Standard City Planning Enabling Act. A Standard Zoning Enabling Act (sometimes referred to as "SEZA") was issued and sold in the 1920s. SEZA contains language that creates a Board of Adjustment and defines its powers. Compare the language of SEZA with the following states:

SEZA

"To authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done."

Texas

"(a) The board of adjustment may:

...

(3) authorize in specific cases a variance from the terms of a zoning 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 the ordinance is observed and substantial justice is done"

Tex. Local Gov't Code § 211.009

Oklahoma

"A variance from the terms, standards and criteria that pertain to an allowed use category within a zoning district as authorized by the zoning ordinance may be granted, in whole, in part, or upon reasonable conditions as provided in this article, only upon a finding by the board of adjustment that:

1. The application of the ordinance to the particular piece of property would create an unnecessary hardship;
2. Such conditions are peculiar to the particular piece of property involved;
3. Relief, if granted, would not cause substantial detriment to the public good, or impair the purposes and intent of the ordinance or the comprehensive plan; and
4. The variance, if granted, would be the minimum necessary to alleviate the unnecessary hardship."

11 Okla. St. Ann. § 44-107

Louisiana

"where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance, to vary or modify the application of . . . the ordinance . . . so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done."

La. R.S. 33:4727

Arkansas

"(b)(2)(B)(i)(a) Hear requests for variances from the literal provisions of the zoning ordinance in instances where strict enforcement of the ordinance would cause undue hardship due to circumstances unique to the individual property under consideration, and grant such variances only when it is demonstrated that such action will be in keeping with the spirit and intent of the provisions of the ordinance."

Ark. Code Ann. § 14-56-416

California

"Variances from the terms of the zoning ordinances shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification."

Cal. Gov't Code § 65906

Pennsylvania

Multiple statutory sections.

"(a) The board shall hear requests for variances where it is alleged that the provisions of the zoning ordinance inflict unnecessary hardship upon the applicant. The board may by rule prescribe the form of application and may require preliminary application to the zoning officer. The board may grant a variance, provided that all of the following findings are made where relevant in a given case:

(1) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of the zoning ordinance in the neighborhood or district in which the property is located.

(2) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.

(3) That such unnecessary hardship has not been created by the appellant.

(4) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Board of Adjustment

Also available as part of the eCourse

[2022 Land Use Fundamentals eConference](#)

First appeared as part of the conference materials for the
2022 Land Use Fundamentals session

"Board of Adjustment"