



Variance Guidance

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Variance and Non-Compliance Guidance

The B3 Guidelines differ from other rating systems in that it primarily consists of a set of required measures for all projects rather than a menu of optional sustainability strategies.¹ Due to the variability of B3 projects, some may require adaptations to the performance thresholds and/or documentation schedule. The B3 Guidelines allow the use of variances to provide this accommodation under certain circumstances.

Variances should be used sparingly. For best results, project teams should review the full list of applicable guidelines during early design to identify requirements that may be difficult to achieve. This should be followed by conversations about strategies to pursue compliance and identification of any guidelines that may require a variance.

Variances

Two types of variances may be requested:

- **Provisional Variance:**
A provisional variance can be considered as a ‘free pass’ to the next phase in the Tracking Tool for guidelines that do not yet have enough information to determine compliance. Provisional variances only apply to the submitted phase; the guideline will need to be re-addressed in later phases by submitting compliant documentation, submitting another variance request, or designating the guideline as non-compliant. If the project’s ability to meet the guideline is unknown, provisional variances should be used as long as possible before requesting a full variance or non-compliance designation, with the goal of achieving compliance in a later phase. However, a provisional variance may not be requested during the last phase in which a guideline is required; at that point, all non-compliant or undocumented guidelines must either request a full variance or be designated as non-compliant.
- **Full Variance:**
Full variances are intended for cases where guidelines conflict with the program (intended use) of the project, either by direct conflict or due to the limits of available approaches. If the building program cannot accommodate a specific guideline, a variance for that guideline may be requested. For example, a prison may not be able to meet a guideline related to light levels at the site boundary because of higher lighting levels demanded by their security requirements. The other acceptable justification for a full variance is due to technological limitations, where available technologies or methodologies do not permit the project to meet the B3 Guidelines performance threshold. For example, a project in Greater Minnesota may not have sufficient construction and demolition waste recycling facilities in the region to fully meet the guideline requirements. When requesting a full variance, the design team is expected to pursue creative solutions to meet the intent of the guidelines to the extent feasible.

The following conditions are not considered as grounds for a full variance:

- Variances will not be considered if alternative design strategies have not been evaluated, including consideration of creative solutions that maintain the intent of the guidelines.
- Variances will not be considered based on budgetary or project schedule constraints.
- Variances will not be considered for requirements missed by the project team that cannot be addressed at later phases (e.g. neglecting to document construction waste diversion rates or neglecting to specify appropriate low-VOC finishes).

¹ In addition to the required measures, the B3 Guidelines also offers recommended measures for projects that seek an elevated level of performance.

- Meeting the B3 Guidelines may require adjustments to the standard design and construction processes used by the project team. This is not an accepted justification for a variance.
- Small or irregular sites are not an automatic reason for a variance.
- Variances should not be used for guidelines that are unrelated to the project scope. Instead, these should be communicated to the B3 Guidelines Administrators upon project set-up so they can be hidden for the project. For example, an interior renovation project with no sitework may request the site-related guidelines be removed.
- Variances are not required for 'recommended' guidelines.
- SB 2030 requirements are not eligible for variances. There are several pathways built into that program to accommodate unique project types and considerations related to cost-effectiveness.

Non-Compliance

A guideline is designated as 'Not Compliant' if the project team cannot document compliance and there is not adequate justification for a variance. This designation is reserved for the last phase a guideline is required to maximize the project team's opportunity to find a compliant solution. Not Compliant designations are displayed publicly as part of the B3 Case Studies Database.

		
Design Submission Status	✓	Complete – the B3 Guidelines design and construction documentation for this project is complete
Design Compliance	✗	Not Compliant – this project does not comply with the following B3 design and construction guidelines: <ul style="list-style-type: none"> • M3B - Divert 75% construction and demolition waste from landfill • M3C - Reduce and recycle waste generated during building operation
Operations Submission Status	✗	Overdue – the B3 Guidelines operations documentation for this project is more than 90 days overdue
Operations Compliance	?	Undetermined – this project has not yet completed a full year of B3 Guidelines operations documentation

Requesting a Variance or Not Compliant Designation

Variance requests are made within the Tracking Tool by the project team and are included in the Phase Summary Reports. Upon phase completion each variance request is first seen by the project's Guideline Leader when they approve the Phase Summary Report and is then reviewed by the B3 Guidelines Administrators to ensure it meets the program's minimum variance requirements. The final determination of approval or rejection is made by the Agency Contact, who may further specify a compromise, equivalency, or conditions for the variance. If the agency contact is not able to make a determination on a variance request, it will be referred to B3 Guidelines Administrators.

Follow these steps to request a variance:

1. Variances may be requested when incomplete or non-compliant information is entered in the fields of the Tracking Tool, and after 'Checking for Compliance'.

The screenshot shows a web form titled "I.5 Lighting and Daylighting" with a sub-section "I5C. Daylighting Levels". A yellow warning box states: "Warning. This guideline is later than the current phase. Click the checkbox to enable editing." Below this, a red banner indicates "Not compliant. Make sure all required fields are specified. Hover mouse over help icons for additional information. Read the guideline for additional instructions." The form contains several fields: "I5C11. Upload daylight map or table of regularly occupied spaces showing compliance with one of the listed daylighting metric requirements, updated as the project progresses." (Browse... No file selected.); "I5C21. Upload list of spaces and associated daylight levels for selected metrics using the B3 Guidelines IEQ Template, updated at each phase." (Browse... No file selected.); "I5C31. Do all regularly occupied spaces achieve compliance with one of the listed daylighting metric requirements?" (No); "I5C41. Do all regularly occupied spaces include daylight control devices per guideline language?" (Yes). At the bottom, a red banner says "Not Compliant" and a green button says "Save & Close". A link "Apply For a Variance/Not Compliant >>" is also visible.

2. Select the type of variance being requested, identify the reason for the variance, and describe how it meets one of the permitted justifications. Additional documentation can be provided as needed via email to the B3 Guidelines Administrators and Agency Contact. For full variances, describe how the project team evaluated creative solutions to maintain the intent of the guidelines and identify a modified performance level and/or compliance method that will be pursued by the project team. For Not Compliant designations, describe why this designation is necessary.

The screenshot shows a form titled "Apply For Variance/Not Compliant". It contains the following text: "Variances are a method to comply with the B3 Guidelines in cases where a particular guideline is not applicable to a project based on the nature or the scope of the project. They are not intended to allow substitutions of other requirements for B3, particularly in cases where the alternative regulations are less stringent than the B3 Guidelines. See the Guidance for Variances document for more details." Below this, it asks "Specify what you wish to apply for:" and lists three options: "Variance" (Full variances are intended for cases where guidelines are not applicable based on the nature and / or scope of the project. For instance, a prison may not be able to meet guideline S.5A: Light Trespass, because of higher lighting levels demanded by security guidelines.), "Provisional Variance" (A provisions variance is requested when there is not enough information available at the current phase to determine if the guideline can be met successfully. A provisional variance is not available during the last required phase of a guideline.), and "Not Compliant (Enabled on last phase)" (Not Compliant is indicated when the reason for a variances is not adequate and the design team and owner cannot determine a way to meet the requirements of the guideline. Not Compliant designations will be displayed as part of the B3 Guidelines Case Studies.). Below the options, it asks "Please specify the reason for the variance request below, or provide an assessment of why not compliant is necessary:" and provides a large yellow text area for input. At the bottom, there are "Submit" and "Cancel" buttons.

- Example of acceptable justification for a provisional variance:
 - *The project team has not been able to document full compliance with the daylighting requirements during schematic design. Our daylight model currently shows achievement of spatial daylight autonomy in 40% of regularly occupied space, which does not meet the minimum requirement of 50%. We will continue to work through this during design development by evaluating window size and placement and the potential for toplighting through daylight monitors and/or solar tubes.*
- Example of acceptable justification for a full variance:
 - *The project team is requesting a full variance for the 75% construction waste diversion requirement due to technological limitations of the local market. The project is located in rural Minnesota, and conversations with local waste management services revealed that there are no facilities accepting gypsum board, carpet, wood products, or concrete within 60 miles. Upon evaluating alternatives, we found a farm operator that would accept gypsum board directly to use as a soil amendment. Our revised approach was to maximize recycling rates for the material categories where it is available (including cardboard/paper, metals, and plastics). While this was able to achieve diversion rates above 90% in these categories, the project's overall diversion rate was only 56%.*
- Examples of unacceptable justifications:
 - *We couldn't meet the 75% waste diversion threshold because we are located in rural Minnesota.*
 - *The contractor did not track waste diversion for this project.*
 - *The project schedule could not accommodate the time required for daylight modeling.*
 - *The project budget could not accommodate the acoustic wall paneling required to meet the reverberation time requirement.*

3. Once submitted, the variance is reviewed as part of the phase submission. If a full variance or Not Compliant designation is approved, no additional action is needed. If a provisional variance is approved, the guideline will need to be revisited at the next applicable phase. Resolving rejected variance requests could involve revising and resubmitting the request with more complete documentation, having the B3 Guidelines Administrators deactivate the guideline as not applicable, submitting compliant design information, resubmitting as a provisional variance instead of a full variance, or resubmitting as Not Compliant. All open variance requests must be resolved before moving on to the next phase.

Any questions on variance requests can be directed to the B3 Guideline Administrators at guidelines@b3mn.org.