

## Chapter 17.50

## Board Of Adjustment

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**17.50.101 Establishment and Membership:** A Zoning Board of Adjustment is hereby established and shall consist of five (5) members to be appointed by the City Council. Each appointment shall be for a period of five (5) years except for the first year in which one member shall be appointed for a term of five years, one for a term of four years, one for a term of three years, one for a term of two years, and one for a term of one year, provided that no more than two members of the Board shall be members of the Commission.

**17.50.102 Meetings:** All meetings of the Zoning Board of Adjustment shall be held at the call of the Chair and at such times as the Board may determine. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall also keep records of its hearings and other official actions.

Findings of fact shall be included in the minutes of each case of requested variation including exceptions, variances, special use permits, conditional use permits and floodplain variances. Every rule or regulation, amendment or appeal thereof, and every order, requirement, decision or determination of the Board shall be filed immediately in the office of the Board and shall be public record.

The Board shall adopt its own rules of procedure not in conflict with this code or with State statutes in such case made and provided, and may select or appoint such officers as it deems necessary. The Board may require the appellant or applicant to provide such information as it reasonably deems necessary and may request technical assistance and/or elevation of a professional engineer or other expert person or agency, including the Iowa Natural Resource Council, when a conditional use permit of a floodplain variance is being considered.

**17.50.103 Appeal:** An appeal may be taken to the Zoning Board of Adjustment by any person, municipality, state or federal official, department, board or bureau affected by an alleged error of law by any decision of the administrative officer responsible for enforcing zoning regulations, request for a special use permit, exception, or variance.

Such appeals may only be taken upon the subjects and instances upon which the Board is authorized to act under the provisions of this chapter. Such appeal will be taken within such time as shall be prescribed by the Board by general rules, or by filing an application specifying the nature of the appeal with the Development Department. The Development Department shall transmit to the Board all papers, plans, and supporting documents constituting the record upon which the action appealed from or for was taken.

**17.50.104 Application Fees:** All fees will be set by the City Council and shall be received in full prior to any action or public hearings being set for the applicant.

**17.50.105 Public Hearing – Notice:** The Board shall make no decision on a specific case until after a public hearing that is open to public inspection and comment has been conducted by the Board. A notice of the time and place shall be published one time in a Burlington publication having general circulation at least fifteen (15) days prior to the meeting date. Such notice shall contain the

address or location of the property for which a ruling by the Board is sought, along with a brief description of the nature and extent of the appeal.

**17.50.106 Powers:** The Board shall have the following powers:

1. To hear and decide appeals where it is alleged there is error of law in any order, requirement, decision or determination made by the administrative officer in the enforcement of the zoning regulations. In passing upon an appeal, the Board may, so long as such action is in conformity with the provisions of the zoning regulations, reverse or affirm, wholly or in part, or modify the order, requirement, decision or determination appealed from.
2. Grant the following exceptions:
  - a. Interpret the provisions of this chapter and other zoning regulations in such a way as to carry out the intent and purpose of said regulations, including the zoning district map, where street layout actually on the ground varies from the street layout as shown on the zoning district map;
  - b. Allow the reconstruction of a nonconforming building/structure which has been damaged by explosion, fire, act of God, or the public enemy to the extent of more than fifty percent (50%) of its market value, but only when the Board finds some compelling necessity requiring a continuance of the nonconforming use and the primary purpose of continuing the nonconforming use is not to continue a monopoly;
  - c. Waive or reduce the parking and loading requirements in any of the districts whenever the character or use of the building is such as to make unnecessary the full provision of parking or loading facilities, or where such regulations would impose an unreasonable hardship upon the use of a lot, as contrasted with merely granting an advantage or a convenience.
3. To grant the following variances, :
  - a. Grant a variance in the yard requirements of any district where there are unusual and practical difficulties or unnecessary hardships in the carrying out of these provisions due to an irregular shape of the lot, topographical or other conditions, provided such variation will not seriously affect any adjoining property or the general welfare or the community.
  - b. Grant a variance whenever a property owner can show that a strict application of the provisions of the zoning regulations relating to the use, construction or alteration of buildings, structures or the use of land will impose upon him or her unusual and practical difficulties or a particular hardship. Such variation from the strict application of the provisions of the zoning regulations may be granted only when the Board is satisfied it is in harmony with the general purpose and intent of said regulations and the comprehensive City plan, and that granting of such variation will not merely serve as a convenience to the applicant but will alleviate some demonstrable and unusual hardship or difficulty so great as to warrant a variation from said regulations and plan, and at the same time, the surrounding property will be properly protected.
4. To grant a conditional use permit in conformance with the regulations contained in Chapter 17.65 of this code.
5. To grant a special use permit in conformance with the regulations contained in Chapter 17.30 of this code, specifically considering all relevant factors specified in Section 17.30.30.

**17.50.107 Limitations of Power:** Nothing in this chapter of this code shall be construed to give or grant to the Board the power or authority to alter or change the provisions and text of any zoning regulations or the zoning district map, such power and authority being reserved to the City Council.

**17.50.108 Board Considerations:** In considering appeals and proposed exceptions, variations, special use permits, conditional use permits or floodplain variances, the Board shall:

1. Determine that any exception, variation or granting of an appeal will not:
  - a. Substantially increase traffic hazards or congestion;
  - b. Substantially increase fire hazards;
  - c. Adversely affect the character and property values of the neighborhood;
  - d. Adversely affect the general welfare of the community;
  - e. Overtax public utilities; or
  - f. Be in major conflict with the comprehensive City plan.
2. Determine that the granting of a special use permit meets the standards governing their approval as specified in Chapter 17.30.30 of this code.
3. Determine that the granting of a conditional use permit meets the standards governing their approval as specified in Chapter 17.65 of this code.
4. Determine that the granting of a floodplain variance meets the standards governing their approval as specified in Chapter 17.65 of this code. Floodplain variances must also meet the following standards:
  - a. The applicant shall obtain the preliminary approval of the Iowa Natural Resources Council before action by the Board of Adjustment.
  - b. No floodplain variance shall be granted for any development within the floodway district, which would result in any increase in floods during the occurrence of the one-hundred-year flood.
  - c. Floodplain variances shall only be granted upon:
    - I. A showing of good and sufficient cause;
    - II. A determination that failure to grant the floodplain variance would result in exceptional hardship to the applicant; and
    - III. A determination that the granting of the floodplain variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization to the public.
  - g. Floodplain variances shall only be granted upon a determination that the floodplain variance is the minimum necessary, considering the flood hazard, to afford relief.
  - h. In cases where the floodplain variance involves a lower level of flood protection for buildings than what is ordinarily required by this chapter, the applicant shall be notified in writing over the signature of the zoning administrator that:
    - I. The issuance of a floodplain variance will result in increased premium rates for flood insurance up to amounts as high as twenty-five dollars for one hundred dollars of insurance coverage;
    - II. Such construction increases risks to life and property.

**17.50.109 Vote Required:** The concurring vote of four members of the Zoning Board of Adjustment shall be necessary to reverse any order, requirement, decision, or determination of the Development Department or to decide in favor of the applicant or application on any appeal, exception, or variance. The concurring vote of three members of the Zoning Board of Adjustment shall be necessary to decide in favor of the applicant or application on any special use or conditional use as authorized by this code.

**17.50.110 Building Permits:** If the Board approves the appeal, building permits and certificates of occupancy may be issued, even though the use of the land does not conform in every respect to the district regulations in which the project is to be located.

**17.50.111 Relief:** Any person or persons, governmental official or local, state or federal governmental agency, jointly or severally aggrieved by any decision of the Board shall have recourse to such relief as provided by law of statutes.