



# ZONING VARIANCE

A Variance is the changing of law in a specific instance in order to lessen a hardship caused by the zoning regulations. Regulations for Variances can be found under *Chapter 17.50 Board of Adjustment* of the Zoning and Subdivision Code for the City of Burlington, Iowa.

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_

Address / Location of Variance: \_\_\_\_\_

\_\_\_\_\_

**Applicants must include the following information:**

**1. Detailed Description of Variance Requested:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**2. Criteria which Justify the Variance (see attached criteria, shall address hardship):** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**3. Attach a separate sheet showing a sketch of the property in question; including lot lines, dimensions, existing/proposed structures, and/or changes being requested.**

**4. Petition is to be accompanied by a non-refundable fee of \$100. Submitting an application does not guarantee approval; the Board considers the applicant's information and the attached criteria when reviewing a request.**

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

## CRITERIA FOR EVALUATING A VARIANCE

A “variance” is the changing of law in a specific instance in order to lessen a hardship caused by the zoning regulations. **To grant a variance, the Zoning Board of Adjustment takes into consideration the following three factors:**

1. **Presence of Hardship** – Before the Board can approve a variance, it must find that a hardship exists.
  - x The term “hardship” is defined as a situation or condition where enforcing the zoning regulations makes a property useless and, therefore, of no value to the owner.
  - x In demonstrating a hardship, the property owner must show that he / she can have no reasonable return on or use of the property.
  - x The inability to put a property to its most profitable use, monetary loss or gain, inconvenience to the owner, and the presence of deed restrictions or contract terms does not create hardship.
  - x The hardship must apply to the property in question and not to be surrounding area.
  - x If the condition used to support a variance exists throughout your neighborhood, a change in the zoning regulations may be appropriate.
  - x Furthermore, neighborhood support for a variance cannot be considered since the variance applies to a specific property and is based on conditions on that property.
  - x Another characteristic of hardship is that it cannot be the result of the property owner’s own action. If someone buys a property and is aware of zoning requirements which limit the use of the property, or if he / she alters the property in violation of the zoning regulations, a self-imposed problem has been created and cannot be considered a hardship.
2. **Harmony with Intent of Zoning Regulations** – The Board must determine that a variance is in harmony with the general intent of the zoning regulations.
  - x Generally, a variance should not be granted when a property owner is attempting to expand a legal “nonconforming use” or where an owner is applying for a “use variance.” To do so would constitute an amendment to the Zoning Ordinance which can only be approved by the City Council.
3. **Assurance of Public Safety, Welfare, and Justice** – The Board must determine that the interests of the entire community have been preserved and that the variance will not result in greater hardship on neighbors than benefit to the applicant.

**In order to grant a Variance the Zoning Board of Adjustment shall make certain findings, summarized as follows:**

1. There are unnecessary hardships in the manner of carrying out the strict letter of the regulations. In order to support this finding, the petitioner must prove:
  - x That if he/she complies with the provisions of the zoning regulations, he/she can secure no reasonable return from, or make no reasonable use of the property. (This is a very strict requirement; it is not enough to show that greater profits could be secured from the property if the variance were granted, for this could be shown by almost any applicant. Ordinarily, some physical problem preventing development of the property in an authorized manner should be shown.)
  - x That the hardship results from the application of the zoning regulations. (The fact that a deed restriction, the charter of a corporate property owner, or some similar factor limits the use of the property, should not be considered by the Board; it may consider only hardship created by operation of zoning.)

- x That the hardship is suffered by the property in question. (In areas where there is a neighborhood wide condition, a change should be addressed through an amendment to the zoning ordinance, not through individual variances for multiple properties.)
  - x That the hardship is not the result of the petitioner's own actions. (Where a property owner has, knowingly or unknowingly, violated the regulations by erecting a forbidden type of building, he / she cannot cite his / her expenses as hardship which he / she will suffer if he / she is not permitted to continue; otherwise no one would comply with zoning. Where a person buys property, knowing of zoning restrictions which prohibit the use he / she wants to make, he / she cannot be said to suffer a hardship if those restrictions are enforced – such hardship would be self-imposed.)
  - x That the hardship is peculiar to the petitioner's property. (Where the conditions cited as hardship are neighborhood-wide, the proper remedy is not a variance, but rather an amendment. Courts have held that the Board is not authorized to grant a variance in such a situation.)
2. The variance is in harmony with the general purpose and intent of the zoning regulations and preserves its spirit.
- x Ordinarily, the courts have ruled that a Board should deny a variance as a violation of this finding where the petitioner attempts to extend a legal "non conforming use" or to make it more permanent or where the application is for a "use variance" (e.g., a variance authorizing the property to be used in a way prohibited by the regulations as distinguished from a variance of dimensional requirements (lot area, yard size, building height, or other)).
3. In the granting of the variance, the public safety and welfare have been assured and substantial justice has been done.
- x In making this finding, the Board must determine (a) that the interests of the community as a whole have been preserved and (b) that granting the variance will not result in greater hardship upon the neighbors than benefit to the applicant.

*The Board's power to grant variances does not require approval by the City Council. If the applicant for a variance disagrees with a decision of the Board, an appeal may be filed with the District Court. Such petition of appeal shall be presented to the court within thirty days after the filing of the decision in the office of the Board of Adjustment (Development Department).*

*The Zoning Board of Adjustment typically files decisions on the day following a public hearing.*

## **PROCEDURES FOR REQUESTING A ZONING VARIANCE**

A Zoning Variance goes before the Zoning Board of Adjustment for consideration of approval.

- x Prior to requesting for a variance, the petitioner should meet with Development Department Staff to determine if the request is within the power of the Board to grant. Assuming the request is legal, a formal petition should be submitted with a **\$100**, nonrefundable fee.
- x The petition shall be completely filled out, addressing all requirements of a variance.
- x A signed letter must be submitted by the property owner for approval of Zoning Variances that apply to rental properties prior to submitting a petition.
- x Although not required, it is recommended that the petitioner attend the Board meeting to answer any questions regarding the request. Hearings concerning variances may be recessed provided that the time and place for resumption of the hearing is established.