



# ZONING VARIANCE

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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 170.50 Board of Adjustment* of the Zoning and Subdivision Code for the City of Burlington, Iowa.

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

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

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

Detailed Description of Variance Requested: \_\_\_\_\_

Hardships which Justify the Variance (see attached, justification must meet hardship requirements): \_\_\_\_\_

\*Attach a separate sheet showing a sketch of the property where the variance will apply, including lot lines, dimensions, existing/proposed structures, and/or changes being requested.

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.

Petition is to be accompanied by a non-refundable fee of **\$125**.

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. 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. In demonstrating a hardship, the property owner must show that he / she can have no reasonable return on or use of the property. 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.

The hardship must apply to the property in question and not to be surrounding area. If the condition used to support a variance exists throughout your neighborhood, a change in the zoning regulations may be appropriate. 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.

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. 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.

## PROCEDURES FOR REQUESTING A ZONING VARIANCE

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

Prior to asking 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 **\$125**, nonrefundable fee.

The petition shall include, as a minimum, the following information:

1. Name, address, and phone number of applicant.
2. Address where variance will apply.
3. Detailed description of the variance requested and hardships which justify the variance.

4. Sketch of property where variance will apply, including lot lines, dimensions, existing structures, and proposed structures / changes.
5. Signature of the petitioner.

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.

In order to grant a variance, the Board must make certain findings summarized as follows:

1. There are practical difficulties or unnecessary hardships in the manner of carrying out the strict letter of the regulations. In order to support this finding, the petitioner must prove:
  - A. 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, at the expense of the neighbors. Ordinarily, some physical problem preventing development of the property in an authorized manner should be shown.)
  - B. 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.)
  - C. That the hardship is suffered by the property in question. (The fact that there is no grocery store in the neighborhood might create hardship for the owners, but it does not create hardship bearing directly on the property of the person seeking to erect such a store.)
  - D. That the hardship is not the result of the petitioner's own actions. (Where the 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 ever comply with zoning. Similarly, 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 hardship if those restrictions are enforced – such hardship would be self-imposed.)
  - E. 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.

Ordinarily, the courts have ruled that a Board should deny a variance as a violation of this finding (a) where the petitioner attempts to extend a legal "non conforming use" or to make it more permanent and (b) 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 in the lot area, yard size, building height, or other “dimensional requirements”).

3. In the granting of the variance, the public safety and welfare have been assured and substantial justice has been done.

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.

## **ZONING BOARD OF ADJUSTMENT REGULATIONS**

Under *Chapter 17.50 Board of Adjustment* of the City of Burlington Zoning and Subdivision Code, the following regulations apply to Variance requests.

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

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.

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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 City of Burlington Zoning Board of Adjustment typically files decisions on the day following a public hearing.