

ARTICLE XV: BOARD OF ADJUSTMENT

SECTION 1. CREATION AND MEMBERSHIP

A Board of Adjustment is hereby established and shall consist of five (5) members appointed by the Muscatine County Board of Supervisors. The five (5) members first appointed shall serve terms of one (1), two (2), three (3), four (4), and five (5) years respectively. Thereafter terms shall be five (5) years and vacancies shall be filled by any member whose term becomes vacant. The County Board of Supervisors shall have the power to remove any member of the Board of Adjustment for cause, upon written charges and after public hearing.

SECTION 2. CHAIRMAN AND MEETINGS

The Muscatine County Board of Supervisors shall name one of the members of the Board of Adjustment as Chairman for the first year, and thereafter such Chairman shall be elected by the Board of Adjustment. Such Chairman shall serve for a term of one (1) year only. All meetings of the Board of Adjustment shall be held at the call of the Chairman and at such other times as the Board of Adjustment may determine. Such Chairman, or in his absence, the Acting Chairman may administer oaths, and compel the attendance of witnesses. All meetings of the Board of Adjustment shall be open to the public.

The Board of Adjustment, shall keep minutes of its proceedings, showing the vote of each member on every questions, or if absent or failing to vote, indicate such fact, and shall keep complete records of its examinations and other official actions. Every rule, regulation, every amendment or repeal thereof, and every order, requirement, decision, or determination of the Board of Adjustment shall be immediately filed in the office of the Zoning Administrative Officer, and shall be a public record. The Board of Adjustment shall adopt its own rules of procedure not in conflict with this Ordinance, or with the Iowa Statute. The Board of Adjustment shall not be compensated, except for necessary expenses.

SECTION 3. APPEALS

The Board of Adjustment shall hear and decide appeals from any review, order, requirements, decision or determination made by the Zoning Administrative Officer in the enforcement of this Ordinance. Such appeal shall be taken within a period of not more than three (3) months, and in the manner prescribed by the rules of the Board of Adjustment, by filing with the Zoning Administrative Officer and with the Board of Adjustment a notice of appeal specifying the grounds thereof, and by paying a filing fee established by the Board of Supervisors to the Treasurer of Muscatine County, Iowa, in care of the Zoning Administrative Officer. When notice of the appeal is filed, the Zoning Administrative Officer shall transmit all of his records, or certified copies thereof, regarding the appeal to the Board of Adjustment, including a carbon copy of his letter to an applicant who has been refused a zoning permit. The Board of Adjustment shall take action upon this appeal within sixty (60) days.

SECTION 4. POWERS

The Board of Adjustment shall have the following powers, and it shall be its duty:

- 4.1 To hear and decide appeals, after a public hearing, where it is alleged that there is error of law in any order, requirement, decision or determination made by the Zoning Administrative Officer in the enforcement of this Ordinance as provided in Section 3 of Article XV.
- 4.2 To permit upon petition by a property owner and after a public hearing, exceptions to the terms of this Ordinance as follows:
 - 4.21 To permit the extension of a district where the boundary line of a district divides a lot held in single ownership at the time of the adoption of this Ordinance.

- 4.22 To permit, where the boundary line of a district divides a tract of land of not more than ten (10) acres under a single ownership, adjustment of such a line to conform with the topography of the ground where such tract is being subdivided, provided such a variation does not extend for a distance of more than five hundred feet (500'), and does not come closer than three hundred feet (300') to any boundary of a tract.
- 4.23 To interpret the provisions of this Ordinance in such a way as to carry out the intent and purpose of the plan as shown upon the zoning maps fixing the several districts accompanying and made a part of this Ordinance, where the road layout actually on the ground varies from the road layout as shown on the zoning maps aforesaid.
- 4.24 To permit the reconstruction of non-conforming building which has been damaged by explosion, fire, Act of God, or the public enemy, to the extent of more than sixty-five percent (65%) of its fair market value, where the Board finds some compelling public necessity requiring the continuance of the non-conforming use, and the primary purpose of continuing the non-conforming use is not to continue a monopoly.
- 4.3 To authorize by special use permit and after a public hearing, the location, construction or structural alteration of any of the buildings, structures or uses cited as Special Uses Permitted in a given district. No action shall be taken by the Board of Adjustment hereunder until they have reviewed the Muscatine County Development Proposal Review checklist, have held a public hearing and have possession of a copy of Approved Permits by the Iowa Department of Environmental Quality and/or Iowa State Board of Health, when these statutes are applicable.

Prior to the granting of any special use permit, the Board of Adjustment, shall stipulate such conditions and restrictions upon the establishment, location, construction, maintenance and operation of the special use as is deemed necessary for the protection of the public interest. In all cases in which special use permits are granted, the Board of Adjustment shall require such evidence and guarantees as it may deem necessary as proof that the conditions stipulated in connection therewith are being and will be complied with.

- 4.4 To grant upon petition by a property owner and after a public hearing, a variance in the yard requirements of any district where there are practical difficulties or unnecessary hardships in the carrying out of the provision of this Ordinance due to an irregular shape of the lot, topography, or other conditions, provided such variance will not seriously affect any adjoining property or the general welfare.
- 4.5 To authorize, upon petition and after a public hearing, whenever a property owner can show that a strict application of the terms of this Ordinance relating to the use, construction or alteration of buildings, or structures, or the use of land will impose upon him practical difficulties or particular hardships, such variations of the strict application of the terms of this Ordinance as are in harmony with its general purpose and intent, but only when the Board of Adjustment is satisfied that a 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 the comprehensive plan as established by this Ordinance, and at the same time the surrounding property will be properly protected.

SECTION 5. VOTING

In exercising the above powers, the concurring vote of three (3) members of the Board of Adjustment shall be necessary to reverse any order, requirements, decision or determination of the Zoning Administrative Officer, or to decide in favor of the applicant any matter upon which it is required to pass under this Ordinance. Every variation granted or denied by the Board of Adjustment shall be accompanied by a written finding of fact based on testimony and evidence, and specifying the reason for granting or denying the variation.

SECTION 6. HEARINGS

The Board of Adjustment, shall fix a reasonable time for the hearing of an appeal or petition, and give due notice thereof to the parties, and decide the same within a reasonable time. It shall give at least four (4) but not more than twenty (20) days notice of the time and place of such hearing by insertion in an official newspaper, or a paper of general circulation in the County. At the hearing, any party may appear in person, or by agent, or by attorney. The Board of Adjustment may reverse or confirm, wholly or partly, or may modify the order, requirement, decision, or determination as in its opinion ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken. Any person or persons jointly or severely aggrieved by a decision of the Board of Adjustment under the provisions of this Ordinance and Chapter 358A of the Code of Iowa, as amended, or any tax payer, or any officer, department or bureau of Muscatine County, Iowa, may present to a court of record a petition, duly verified setting forth that such decision is illegal in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the Court within thirty (30) days after the filing of the decision by the Board of Adjustment.

SECTION 7. BOARD OF SUPERVISORS REVIEW

The Board of Supervisors may provide for its review of variances granted by the Board of Adjustment before their effective date. The Board of Supervisors may remand a decision to grant a variance to the Board of Adjustment for further study. If remanded, the effective date of the variance is delayed for thirty days from the date of the remand.

SECTION 165.00

The Board of Adjustment, shall fix a reasonable time for the hearing of an appeal or petition, and give due notice thereof to the parties, and decide the same within a reasonable time. It shall give at least fifteen (15) days notice of the time and place of such hearing by insertion in an official newspaper, or a paper of general circulation in the County. At the hearing, any party may appear in person, or by agent, or by attorney. The Board of Adjustment may reverse or confirm, wholly or partly, or may modify the order, requirement, decision or determination as in its opinion ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken. Any person or persons jointly or severely aggrieved by a decision of the Board of Adjustment under the provisions of this Ordinance and Chapter 358A of the Code of Iowa, as amended, or any tax payer, or any officer, department or bureau of Muscatine County, Iowa, may present to a court of record a petition, duly verified setting forth that such decision is illegal in whole or in part, specifying the grounds of the illegality. Such a petition shall be presented to the Court within thirty (30) days after the filing of the decision by the Board of Adjustment.

SECTION 191.04

To require all petitioners who have had applications for appeals pursuant to Section 162.00, Special Use Permits, Zoning Classifications or Variances denied to wait six (6) months prior to resubmitting the proposal for review.

Variance

A modification or variation of the provisions of this Ordinance, as applied to a specific piece of property, where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of this Ordinance would result in unnecessary and undue hardship.

LEGAL STANDARDS FOR VARIANCES

As a potential applicant for a variance, you need to be aware of the legal standards under which variance applications are to be evaluated by the Board of Adjustment. A variance is not to be granted as a convenience to a property owner. Iowa courts have stated that variances are not to be granted routinely. To do so would defeat the purpose of having a zoning ordinance. Zoning ordinances are created for purpose of promoting health, safety, morals, or general welfare of the community. The courts have also stated that it is the burden of the application that meets the required standards.

In order to justify the granting of a variance, the applicant must show that an unnecessary hardship exists, that there is a unique property limitation, and that the variance would not be contrary to the public interest.

The following points are all drawn from Iowa case law, and are the standards under which a variance action would be reviewed by the courts:

UNNECESSARY HARDSHIP

What constitutes a hardship is to be determined from the facts and circumstances of each individual case. An applicant for a variance has the burden of showing all of the following:

1. The land in question cannot yield a reasonable return if used only for a purpose allowed in that zone. Lack of a reasonable return may be shown by proof that the owner has been deprived of all beneficial use of his land. All beneficial use is said to have been lost where the land is not suitable for any use permitted by the zoning ordinance.
2. The plight of the owner is due to unique circumstances and not to the general conditions in the neighborhood, which may reflect the unreasonableness of the zoning ordinance itself.
3. The use to be authorized by the variance will not alter the essential character of the locality.
(Iowa Code Section 414.12(3))

Unique Property Limitation

Unique physical characteristics of the property, not the desires of, or conditions personal to the applicant, must prevent the applicant from developing in compliance with the zoning ordinance. Such limitations may arise due to steep slopes, wetlands, or parcel shape that limits the reasonable use of property.

Protection of the Public Interest

Granting a variance must neither harm the public interest nor undermine the purposes of the ordinance. In granting a variance, the Board may attach special conditions to ensure that the public welfare will not be damaged. Such conditions must relate reasonably to the purpose and intent of the ordinance. Also, any variance granted should include only the minimum relief necessary to allow reasonable use of property.

The Board of Adjustment shall determine:

- That it will not impair an adequate supply of light and air to adjacent property.
- That it will not unreasonably increase congestion and traffic hazards on public roads.
- That it will not unreasonably diminish or impair established property values within the surrounding areas.
- That it will not in any other respect impair the public health, comfort, safety, morals or welfare of the inhabitants of the county.
- That it will not impair the general purpose and intent of the regulations and provisions contained in the Muscatine County Zoning Ordinance and Comprehensive Plan.

Items not grounds for hardship:

- Loss of profit or financial hardship is not in and of itself grounds for a variance.
- Self-imposed hardship is not grounds for a variance. When conditions giving rise to the need for a variance were created by the property owner or a former owner, the hardship is self-imposed.

The Board of Adjustment has authority to determine whether exceptions to an ordinance are to be allowed. It cannot amend or change an ordinance or declare an ordinance unconstitutional. The zoning commission and the Board of Supervisors have the power to change the zoning restrictions.

SPECIAL USE PERMITS

A special use is a use which needs to be provided in the County but, of its unique characteristics, is permitted only after review and approval of the Board of Adjustment. Special uses are approved if the characteristics of the particular location are appropriate for the special use requested. The special use will need to comply with the requirements and conditions set forth in the zoning ordinance for that zoning district. Examples of special uses include day care centers or bed and breakfasts in residential neighborhoods. Possible special uses for each zoning district are listed in the zoning ordinance. Unlisted special uses may be applied for when the applicant feels that the use which they propose is similar to permitted uses in the zoning district and compatible with surrounding uses but which may have not been specifically listed due to oversight or development since the ordinance was written.

The Board of Adjustment shall determine:

- That it will not unreasonably increase congestion and traffic hazards on public roads.
- That it will not unreasonably diminish or impair established property values within the surrounding areas.
- That it will not in any other respect impair the public health, comfort, safety, morals or welfare of the inhabitants of the county.
- That it will not impair the general purpose and intent of the regulations and provisions contained in the Muscatine County Zoning Ordinance and the Comprehensive Plan.
- That it will be in harmony with the area in which it is located.