

165.20 BOARD OF ADJUSTMENT.

1. Confirmation of Existing Board of Adjustment. The five (5) members of the existing Board of Adjustment are hereby confirmed to continue their appointed terms of office. Future members of the Board of Adjustment shall be appointed by the Council for a term of five years. Members of the Board of Adjustment may be removed from office by the City Council for cause upon written charges and after a public hearing. Vacancies shall be filled by the City Council for the unexpired term of the resigning member.
2. Proceedings of the Board of Adjustment. The Board of Adjustment shall adopt rules necessary to the conduct of its affairs, and in keeping with the provisions of this chapter. Meetings shall be held at the call of the Chairperson and at such other times as the Board may determine. The Chairperson, or in the absence of the Chairperson, the acting Chairperson may administer oaths and compel attendance of witnesses. All meetings shall be open to the public. The Board of Adjustment 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 keep records of its examination and other official actions, all of which shall be a public record and be immediately filed in the office of the Administrative Officer. The presence of three (3) members shall constitute a quorum.
3. Hearings, Appeals, Notice. Appeals to the Board of Adjustment concerning interpretation or administration of this chapter may be taken by any person aggrieved or by any officer or bureau of the City affected by a decision of the Administrative Officer. Such appeals should be taken within a reasonable time, not to exceed 30 days, by filing with the Administrative Officer and with the Board of Adjustment, a notice of appeal specifying the grounds thereof. The Administrative Officer shall forthwith transmit to the Board all papers constituting the record upon which the action appealed was taken. The Board of Adjustment shall fix a reasonable time for the hearing of appeals, give public notices thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. At the hearing any party may appear in person, by agent or attorney. A fee to be determined by resolution of the Council shall be paid to the Administrative Officer at the time the notice is filed.
4. Stay on Proceedings. An appeal stays all proceedings in furtherance of the action appealed, unless the Administrative Officer from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal is filed with such officer, that by reason of facts stated in the certificate, a stay would, in the opinion of the Administrative Officer, cause imminent peril to life and property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application, on notice to the Administrative Officer from whom the appeal is taken and upon due cause shown.
5. Powers and Duties. The Board of Adjustment shall have the following powers and duties:
 - A. Administrative Review. To hear and decide appeals where it is alleged that there is error in any order, requirement, decision, or determination made by the Administrative Officer in the enforcement of this chapter.

B. Special Exceptions. To hear and decide only such exceptions as the Board of Adjustment is specifically authorized to pass on by the terms of this chapter.

C. Variances. To authorize upon appeal in specific cases such variance from the terms of this chapter as will not be contrary to the public interest where, owing to the special conditions, a literal enforcement of the provisions of this chapter would result in unnecessary hardship. A variance from the terms of this chapter shall not be granted by the Board of Adjustment unless and until:

(1) A written application for a variance is submitted demonstrating:

a. Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district.

b. Literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this chapter.

c. The special conditions and circumstances do not result from the actions of the applicant.

d. Granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, structures, or buildings in the same district. No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted use of land, structures or buildings in other districts shall be considered grounds for the issuance of a variance.

(2) A public hearing shall be held, with the notice of such hearing being provided according to State statute. If feasible, notice of the public hearing shall be mailed to property owners within 200 feet of the proposed variance.

(3) The Board of Adjustment shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure.

(4) The Board of Adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this chapter, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

(5) The application for a variance shall be accompanied by a fee to be determined by resolution of the Council.

(6) In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this chapter. Violations of such conditions and safeguards, when

made a part of the terms under which the variance is granted, shall be deemed a violation of this chapter.

6. Decisions of the Board of Adjustment. In exercising the above mentioned powers, the Board of Adjustment may, so long as such action is in conformity with the terms of this chapter, reverse or affirm, wholly or partly, or may modify the order, requirements, decision, or determination as ought to be made and to that end shall have powers of the Administrative Officer from whom the appeal is taken. The concurring vote of three (3) members of the Board shall be necessary to reverse any order, requirement, decision, or determination of the Administrative Officer, or to decide in favor of the applicant on any matter upon which it is required to pass under this chapter, or to effect any variation in application of this chapter.

7. Appeals from the Board of Adjustment. Any person, board, taxpayer, department, or bureau of the community aggrieved by any decision of the Board of Adjustment may seek review of such decision of the Board of Adjustment by a court of record in the manner provided by Chapter 414, *Code of Iowa*. The Council may vote to delay a decision of the Board of Adjustment for a 30-day period, but such vote may not overrule a decision of the Board of Adjustment. During the 30-day delay the Board of Adjustment may – or may not – review its previous decision.

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