

Article IX. Board of Adjustment

Section 9.01 Organization and Meetings

- 9.01.01 The Board of Adjustment hereafter referred to by the words “Board of Adjustment,” is hereby continued. Such Board of Adjustment shall consist of five members appointed by the Board of Supervisors. Terms shall be as provided by State statute. The Board of Supervisors shall have power to remove any member of the Board of Adjustment for cause upon written charges and after public hearing.
- 9.01.02 The meetings of the Board of Adjustment shall be held at the call of the chairperson and at such other times as the Board of Adjustment may determine. Such chairperson, or in their absence the acting chairperson, 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 each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board of Adjustment and shall be a public record. The presence of three (3) members shall be necessary to constitute a quorum.

Section 9.02 Appeal

- 9.02.01 Appeals to the Board of Adjustment may be made by any person aggrieved or by any officer, department, board or bureau of Boone County affected by any decision of the Zoning Administrator. Such appeal shall be made within *twenty (20) days* of the decision by filing with the Zoning Administrator and with the Board of Adjustment a notice of appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Board of Adjustment all papers constituting the record upon which the action appealed is taken from.
- 9.02.02 An appeal stays all proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Board of Adjustment, after notice of appeal shall have been filed with him, that by reason of the facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order, which may not be granted by the Board of Adjustment, or by a court of record on application, on notice to the Zoning Administrator and on due cause shown.
- 9.02.03 The Board of Adjustment shall fix a reasonable time for the hearing on the appeal, give public notice 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 or by agent, or by attorney. Before an appeal is filed with the Board of Adjustment, the appellant shall pay a fee according to the Schedule of Fees: Boone County Zoning Ordinance, which is on file in the Office of the Zoning Administrator.

Section 9.03 Powers

The Board of Adjustment shall have the following powers:

- 9.03.01 To hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by the Administrator in the enforcement of this ordinance.
- 9.03.02 Except as provided in section 9.03.02.01, To grant a variation from the terms of this Ordinance; provided, however, that all variations granted under this clause shall be in harmony with the intent of this Ordinance and the applicable State statute, Iowa Code Section 335.15.
- A. In granting approval or conditional approval of a variance, the Board of Adjustment shall conclude by findings of fact that all of the conditions below apply to the application.
1. **Special Circumstances.** Special circumstances exist relating to the physical character of the property that are peculiar to the property and that do not apply generally to other properties in the same zoning district. And these circumstances are not of so general or recurrent a nature as to make it practical to provide, in the form of an amendment to this Ordinance, a general rule to cover them.
 2. **Hardship or Practical Difficulties.** Because of these special circumstances, the literal application of the provisions of this Ordinance would, without a variance, result in unnecessary and undue hardship or practical difficulties for the applicant, as distinguished from mere inconvenience.
 3. **Not Resulting from Applicant's Actions.** The special circumstances and either practical difficulties or hardship that are the basis for the variance have not resulted from any act, undertaken subsequent to the adoption of this Ordinance or any applicable amendment thereto, of any party with a present interest in the property.
 4. **Reasonable Use and Return.** Without the requested variance, the property cannot yield a reasonable return, or cannot be reasonably used consistent with the intent of the zoning district and the use of other properties therein, but the purpose of the variance is not otherwise to increase the return from the property or to confer special privileges not ordinarily enjoyed by other properties in the same district.
 5. **Not Alter Local Character.** The variance will not alter the essential character of the locality or substantially impair public safety or welfare or property values in the area.
 6. **Minimum Variance Needed.** The variance approved is the minimum required to allow reasonable use and enjoyment of the property.
- B. In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violation 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 Ordinance and punishable under this Ordinance.
- C. Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of this Ordinance in the District

involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said District.

9.03.02.01 To authorize on appeal, in specific cases, such variance from the terms of the ordinance with respect to the area, dimensional, or other numerical limitations as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the ordinance will result in practical difficulties to the property owner in making a beneficial use of the property allowed by the zoning ordinance, and so that the spirit of the ordinance shall be observed and substantial justice done.

- A. Area, dimensional, or other numerical limitations subject to variances include but are not limited to requirements for minimum lot size, setbacks, yard widths, height, bulk, sidewalks, fencing, signage, and off-street parking.
- B. To receive the requested area, dimensional, or other numerical variance, the property owner must prove that:
 - 1. the practical difficulties faced are unique to the property at issue, and
 - 2. not self-created, and
 - 3. must also demonstrate that granting the variance will not significantly alter the essential character of the surrounding neighborhood.
- C. In granting approval or conditional approval of a variance under this subsection, the Board of Adjustment shall conclude by findings of fact that all of the conditions provided in this subsection are satisfied.
- D. The Board of Adjustment may grant approval or conditional approval under this subsection or 9.03.02.01 or both, and need not state specifically under which subsection approval or conditional approval is made so long as there is sufficient findings of facts for one or either subsection.

9.03.03 To permit the following exceptions to the District regulations set forth in the Ordinance, provided all exceptions shall be their design, construction and operation adequately safeguard the health, safety and welfare of the occupants of adjoining and surrounding property, shall not impair an adequate supply of light and air to adjacent property, shall not increase congestion in the public streets, shall not increase public danger of fire and safety, and shall not diminish or impair established property values in surrounding areas:

- A. To permit erection and use of a building or the use of premises or vary the height, yard or area regulations in any location for a public service corporation for public utility purposes, or for purposes of public communication, which the Board of Adjustment determines is reasonably necessary for the public convenience or welfare.
- B. To permit the extension of a zoning district where the boundary line of a district divides a lot in single ownership as shown of record or by existing

contract or purchase at the time of the passage of this Ordinance, but in no case shall such extension of the District boundary line exceed fifty (50) feet in any direction.

- 9.03.04 To issue special permits and decide such matters as may be required by other sections of this Ordinance.

Section 9.04 Decisions of the Board of Adjustment

- 9.04.01 In exercising the above mentioned powers, the Board of Adjustment may, in conformity with the provisions of law, reverse or affirm, wholly or partly, or modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determinations as it believes proper, and to that end shall have all the powers of the Zoning Administrator.
- 9.04.02 The concurring vote of three (3) of the members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision or determination of the Zoning Administrator or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance; provided, however, that the action of the Board of Adjustment shall not become effective until after the resolution of the Board of Adjustment, setting forth the full reason for its decision and the vote of each member participating therein, has been filed. Such resolution, immediately following the Board of Adjustment's final decision, shall be filed in the office of the Board of Adjustment, and shall be open to public inspection.
- 9.04.03 Every variation and exception granted or denied by the Board of Adjustment shall be supported by testimony or evidence submitted in connection therewith.
- 9.04.04 Any taxpayer, or any officer, department, board or bureau of Boone County, or any person or persons jointly or severally aggrieved by any decision of the Board of Adjustment 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 in the office of the Board of Adjustment.*