

## SECTION 1.06

### BOARD OF ADJUSTMENT

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## 1.06.01 - BOARD OF ADJUSTMENT: ESTABLISHMENT AND PROCEDURE

- A. There is hereby established a Board of Adjustment. Said Board of Adjustment may in appropriate cases and subject to appropriate conditions and safeguards make special exceptions to the terms of the Ordinances in harmony with its general purpose and intent and in accordance with general or specific rules therein contained and provided that any property owner aggrieved by the action of the council in the adoption of such regulations and restrictions may petition the said Board of Adjustment directly to modify regulations and restriction as applied to such property owners.

The Board of Adjustment shall consist of five (5) members each to be appointed, by the Mayor with the consent of the City Council, for a term of five (5) years, excepting that when the Board shall first be created, one member shall be appointed for a term of five years, one for a term of two years, and one for a term of one year. Members shall be removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

- B. Proceedings of the Board of Adjustment. The Board of Adjustment shall adopt rules necessary to conduct of its affairs and in keeping with the provisions of this Ordinance. Meetings shall be held at the call of the Chairman and at other time as the Board may determine. The Chairman, or in his absence the Acting Chairman, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the Public.

The Board of Adjustment shall, through its Secretary, keep minutes of its proceedings, showing the vote of each member upon each question of 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 and shall be public record. All actions of the Board concerning appeals, special exceptions or variances shall also be recorded in the office of the county Recorder. It shall be the responsibility of the applicant to record said action and all corresponding stipulations and further said action shall take effect upon the Board receiving sufficient confirmation of the same. A copy of said action shall also be filed in the office of the Administrative Official.

- C. Hearings, Appeals, Notice. Appeals to the Board of Adjustment concerning interpretation of administration of this Ordinance may be taken by any person aggrieved or by any officer or bureau of the governing body of the City affected by any decision of the Administrative Official and with the Board of Adjustment a notice of appeal specifying the grounds thereof. The Administrative Official shall forthwith transmit to the Board all papers constituting the record upon which the action appealed form was taken.

The Board shall fix a reasonable time for the hearing of the appeal and give not less than five (5) days public notice thereof by the posting of not less than one sign of at least

nine square feet in area with white background and black letters at least three inches high containing notice of the hearing in a conspicuous place on or near the property upon which application for appeal is made, as well as due notice to parties in interest, and decide the same within 30 days. At said hearing, any party may appear in person, by agent or by attorney.

- D. Stay of Proceedings. An appeal stays all proceedings in furtherance of the action appealed from, unless the Administrative Official from whom the appeal is taken certifies to the Board that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril of 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 Official from whom the appeal is taken on due cause shown.

#### 1.06.02 - BOARD OF ADJUSTMENT: 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 there is error in any order, requirement, decision, or determination made by the Administrative Official in the enforcement of this Ordinance.
- B. Special Exceptions: Conditions Governing Applications; Procedure. To hear and decide only such special exceptions as the Board of Adjustment is specifically authorized to pass on by the terms of this Ordinance; to decide such questions as are involved in determining whether special exceptions should be granted; and to grant special exception with such conditions and safeguards as are appropriate under this Ordinance, or to deny special exceptions when not in harmony with the purpose and intent of this Ordinance. A special exception shall not be granted by the Board of Adjustment unless and until:
1. A written application for a special exception is submitted indicating the section of this Ordinance under which the special exception is sought and stating the grounds on which it is requested;
  2. The property owner of the property for which special exception is sought or his agent shall be notified by mail of the time and date of the hearing. Notice of such hearings shall be posted at the City Hall, and published in newspaper of general circulation in the city; at least 15 days and not more than 20 days prior to the Public Hearing;
  3. The public hearing shall be held. Any party may appear in person, or by agent or attorney;

4. The Board of Adjustment shall make a finding that it is empowered under the section of this Ordinance described in the application to grant the special exception, that the granting of the special exception, will not adversely affect the public interest.
- C. Variance, Conditions Governing Application: Procedures. To authorize upon appeal in specific cases such a variance from the terms of this Ordinance as well not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship. A variance from the terms of this Ordinance shall not be granted by the Board of Adjustment unless and until:
1. A written for a variance is submitted demonstrating:
    - a) That special conditions and circumstances exist which are peculiar to land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district;
    - b) That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance;
    - c) That the special conditions and circumstances do not result from the actions of the applicant;
    - d) That granting the variance request will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structures, or buildings in the same district.

No non-conforming use of neighboring land, structures, or buildings in the same district, and not permitted or non-conforming use of land, structures, or buildings in other districts may be considered ground for issuance of a variance.
  2. Notice of Public Hearing shall be provided given as in Section 1.06.01.
  3. The Public Hearing shall be held. Any party may appear in person, or by agent or by attorney.
  4. The Board of Adjustment shall make findings that requirements of Section 1.06.02 have been met by the applicant for a variance.
  5. 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 land, building, or structure.

6. 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 Ordinance, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

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 for this Ordinance and punishable under Section 1.09.03 of this Ordinance.

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.

- D. Board Has Powers of Administrative Official on Appeals: Reversing Decision of Administrative Official. In exercising the above mentioned powers, the Board of Adjustment may, so long as such action is in conformity with the terms of this Ordinance, reverse or affirm wholly or partly, or may modify the order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the administrative official from whom the appeal is taken

The concurring vote of three members of the Board shall be necessary to reverse any order, requirement, decision, or determination of the administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance, or to effect any variation in the application of this Ordinance.

#### 1.06.03 - APPEALS FROM THE BOARD OF ADJUSTMENT

Any person or persons, or any board, taxpayer, department, board or bureau of the City aggrieved by any decision of the Board of Adjustment may seek review by a court or record of such decision, in the manner provided by the laws of the State and particularly by Chapter 414, Code of Iowa.