

ARTICLE XVII

Board of Adjustment

Article 17: Board of Adjustment

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Section 17.1. CONFIRMATION OF THE BOARD OF ADJUSTMENT.

The members of the Board of Adjustment are hereby confirmed to continue their appointed terms of office. The board shall consist of five (5) members to be appointed by the City Council. Future members of the Board of Adjustment shall be appointed by the City Council for a term of five (5) years. Members of the board may be removed from office by the City Council for cause upon written charges and after a public hearing. Absence by any board member for three (3) or more consecutive meetings without prior excuse from the chairperson shall be sufficient cause for removal. Vacancies shall be filled by the City Council for any unexpired or vacated term.

Section 17.2. 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 provision of this ordinance. Meetings of the board shall be held at the call of the chairperson and at such other times as the board may determine. The chairperson or the acting chairperson may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The Zoning Administrator may be an ex-officio member and may act as the secretary for the Board of Adjustment. The board shall keep minutes of its proceedings showing the vote of each member on each question, or if absent or failing to vote; and shall keep records of its official actions, all of which shall be a public record and immediately filed in the office of the Zoning Administrator. The presence of three (3) members shall be necessary to constitute a quorum, even in the instance of absentee members or during conflicts of interest.

Section 17.3. HEARINGS, APPEALS AND NOTICE.

Appeals to the Board of Adjustment concerning interpretation or administration of this ordinance may be taken by any person aggrieved or by any officer, department, board or bureau of the City of Okoboji affected by any decision of the Zoning Administrator. All notices of appeal shall be in writing and shall include an abstracter's certificate setting forth the name and address of each property owner within two hundred feet (200') of the subject property. Such appeal shall be taken within ten (10) days of the date of the decision or the action to which objection is made by filing a written notice of appeal with the Zoning Administrator and with the board, specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the board all papers constituting the record upon which the action appealed from is taken. The Board of Adjustment shall fix a reasonable time for the hearing of appeals, 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. The Board of Adjustment shall make written findings of fact and conclusions of law, on all issues presented in any adjudicatory proceeding. A fee, established by resolution of the City Council, shall be paid at the time the notice of appeal is filed.

Section 17.4. STAY OF PROCEEDINGS.

An appeal stays all proceedings in furtherance of the action appealed, unless the Zoning Administrator from whom the appeal is taken certifies to the board after the notice of appeal is filed that by reason of facts stated in the certificate, a stay would 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, or notice to the Zoning Administrator from whom the appeal is taken and upon due cause shown.

Section 17.5. POWERS AND DUTIES.

The Board of Adjustment shall have the following powers and duties:

1. Administrative Review: To hear and decide appeals where it is alleged that there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this ordinance, or amendment.
2. Interpretation of Zoning Map: Where reasonable doubt occurs on a boundary between zoning districts, the board shall interpret the zoning map to carry out the intent of this ordinance.
3. Conditional Uses: To hear and decide conditional uses upon which the Board of Adjustment is specifically authorized to pass by the terms of this ordinance, and as provided for in Article XVIII, Conditional Uses. Upon application, the board is hereby empowered to authorize the conditional uses to permit the extension of a district where the boundary line of a district divides a lot in single ownership as shown on record, and to permit the erection and use of a building or the use of premises in any location for a public service corporation necessary for the public convenience or welfare.
4. Variances: To authorize upon appeal in specific cases such variance from the terms of this ordinance as will not be contrary to the public interest where, owing to the special conditions, a literal enforcement of the provisions of this ordinance would result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done.

Section 17.6. VARIANCES.

A variance in the application of the provisions of this ordinance shall not be granted by the Board of Adjustment unless and until:

1. A written application for a variance shall be submitted with the Zoning Administrator. The application shall include the following:
 - a. Name and address of the owner and applicant.
 - b. Address and legal description of the property.
 - c. If the applicant is not the legal owner of the property, a statement that the applicant is the authorized agent of the owner.

- d. A statement describing the variance requested and the reasons why it complies with the criteria for variances provided in this section.
 - e. An abstractor's certificate showing the names and mailing addresses of the owners of all adjacent property and properties within two hundred feet (200') of the property for which the change is requested.
 - f. A site plan, in accordance with Article IX, if requested by the Board of Adjustment.
2. The Zoning Administrator may request additional information necessary to enable a complete analysis and evaluation of the variance request, and a determination as to whether the circumstances prescribed for the granting of a variance exist.
 3. Notice of public hearing by the board shall be given to property owners within two hundred feet (200') of the subject property through ordinary mail and by publication in a newspaper of general circulation in the city. Such notice shall be at least seven (7) days prior to the hearing and shall contain the time and location of such hearing. In the event that there is more than one property owner for any parcel of property, it shall be sufficient to notify only one owner of each parcel by mail.
 4. The public hearing shall be held. Any party may appear in person or by agent or attorney.
 5. The Board of Adjustment may grant a variance if it makes affirmative findings of fact on each of the following criteria.
 - a. Special conditions and circumstances exist that are peculiar to the land, structure, or building and are not applicable to other lands, structures, or buildings in the same district;
 - b. A literal interpretation 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. Special conditions and circumstances do not result from the actions of the applicant;
 - d. Granting the variance requested will not confer on the applicant special privileges denied by this ordinance 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 on other districts shall be considered grounds for the issuance of a variance.
 6. The Board of Adjustment shall 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.
 7. 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.
 8. A fee, to be determined by resolution of City Council, shall accompany the application.
 9. Additional Variance Conditions: In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this ordinance. 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 ordinance and punishable under Article XVI of this ordinance.

10. Lapse of Variance: Unless a longer time period shall be specifically established as a condition of approval, a variance shall lapse and shall become void one (1) year following the date on which the variance became effective, unless prior to the expiration of one year a zoning compliance permit is issued and construction is commenced and pursued toward completion on the site which was the subject of the variance application.
11. Revocation of Variance: Upon violation of any applicable provision of this ordinance, or if granted subject to the conditions, upon failure to comply with conditions, a variance shall be revoked by the Board of Adjustment upon notification to the owner of the use or property subject to the variance.
12. Variance to Run With Land or Structure: Unless otherwise specified at the time a variance is granted, a variance shall run with the land and shall continue to be valid upon a change of ownership of the site or structure to which it applies.

Section 17.7. 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 ordinance, and Chapter 414, Code of Iowa, reverse or affirm, wholly or partly, or may modify the order, requirements, decisions, or determination as ought to be made and to that end shall have powers of the Zoning Administrator from whom the appeal is taken. The concurring vote of three (3) members of the whole board, even upon instances of absentee members or during conflicts of interest, 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 which it is required to pass under this ordinance, or to effect any variation in application of this ordinance. The action of the board shall not become effective until it has a written decision describing such action, the vote of each member participating therein, and reasons for such action specifying the manner in which the action either satisfied or failed to satisfy each of the applicable standards set forth in this Article. Under the provisions of Section 414.7, Code of Iowa, the City Council may provide for a review of variances granted by the Board of Adjustment before their effective date. The City Council may remand a decision to grant a variance to the Board of Adjustment for further study. The board shall meet again and can stand by their original decision or make a new decision on such variance, but in no instance shall the City Council be deemed to reverse or alter any decision of the Board of Adjustment. The effective date of any variance shall be delayed until the day after the next regular City Council meeting, but in no event shall the effective date be delayed beyond thirty (30) days from and after the original date first granted by the Board of Adjustment.

Section 17.8. APPEALS FROM A DECISION OF THE BOARD OF ADJUSTMENT.

Any person or persons, taxpayer, or any officer, department, board or bureau of the City of Okoboji 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. The court may reverse or affirm, wholly or in part, or may modify the decision brought up for review. Otherwise, all decisions of the Board of Adjustment shall be final immediately upon filing.