

ARTICLE XXII

BOARD OF ADJUSTMENT

SECTION 1. APPOINTMENTS AND TERMS.

Subsection A. A Board of Adjustment is hereby created. Such Board shall consist of five (5) members appointed by the Board of Supervisors. The five members of the first Board of Adjustment shall serve terms of one (1), two (2), three (3), four (4) and five (5) years respectively. Thereafter, terms shall be for five years and vacancies shall be filled for the unexpired term of any member whose term becomes vacant. 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.

SECTION 2. MEETINGS.

Subsection A. The Board of Adjustment shall organize and adopt rules in accordance with provisions of this Ordinance and the Code of Iowa. All meetings of the Board of Adjustment shall be held at the call of the Chairman and at such time and place within the County 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, and shall keep complete records of its votes, hearings and other official actions. Every rule, regulation, amendment or repeal thereof, and every order, requirement or decision of the Board of Adjustment shall be a public record. The presence of three (3) members shall be necessary to constitute a quorum.

SECTION 3. APPLICATIONS, APPEALS, HEARINGS AND STAY OF PROCEEDINGS.

Subsection A. Applications. An application in cases in which the Board of Adjustment has original jurisdiction under the provisions of this Ordinance may be taken by any property owner including a tenant, or by a governmental officer, department, board or bureau. Such application shall be filed with the Planning and Zoning Administrator who shall transmit same to the Board of Adjustment. Upon approval of a variance the Zoning Administrator shall cause the permit to be recorded by the applicant, or their agent, with the County Recorder and shall have a copy of the recorded permit on file in the Zoning Office. Failure to record the variance within thirty days of the hearing at which it was approved shall cause the variance to expire and it shall be deemed invalid.

Subsection B. Appeals. An appeal to the Board of Adjustment may be taken by any person aggrieved or by any officer of the County affected by any decision of the Planning and Zoning Administrator. Such appeal shall be taken within twenty (20) days after the decision by filing with the Administrator and with the Board of Adjustment a notice of appeal specifying the grounds thereof. The Administrator shall forthwith submit to the Board of Adjustment all the papers constituting the record upon which the action appealed from was taken.

Subsection C. Hearings. The Board of Adjustment shall fix a reasonable time for the hearing of the appeal or application for variance, give ten (10) days notice by letter to all owners within seven hundred fifty (750) feet in all directions from the property for which the appeal or variation is being sought, and publication at least once, not less than four nor more than 20 days before the date of the hearing in one or more newspapers which meet the requirements of Section 618.14, and decide the same within a reasonable time after it is submitted.

(1) At the hearing, any party may appear in person or by attorney. Any taxpayer, or any officer, department, board or bureau of Marshall 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, alleging that such decision is illegal, in whole or in part, specifying the ground of illegality. Such petition shall be presented to the court within thirty (30) days after the filing of the decision in the office of the Administrator.

Subsection D. Stay of Proceedings. An appeal to the Board of Adjustment stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal shall have been filed with the officer that by reason of facts stated in the certificate, a stay would, in the officer's opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application of notice to the officer from whom the appeal is taken and on due cause shown.

SECTION 4. JURISDICTION AND POWERS OF THE BOARD OF ADJUSTMENT.

Subsection A. The Board of Adjustment shall have the following powers and it shall be its duty:

- (1)** To hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in the enforcement of the Ordinance or of any supplement or amendment thereof.
- (2)** To hear and decide special exception to the terms of this Ordinance upon which such Board of Adjustment is required to pass under this Ordinance.
- (3)** 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 special conditions a literal enforcement of the provisions of the Ordinance will result in unnecessary hardship, and so that the spirit of the Ordinance shall be observed and substantial justice done.
- (4)** To vary the application of the set-back, side yard and rear yard regulations in specific cases where this Ordinance would impose practical difficulties or unnecessary hardship.
- (5)** To authorize Special Uses as set forth in Article XVIII of this Ordinance.
- (6)** Any variance, or appeal hearing requires filing for said action on the appropriate application forms and submitting those forms and other materials as requested by the Zoning Administrator or by the members of the Board along with a \$200.00 hearing fee..

Subsection B. No variation in the application of the provisions of this Ordinance shall be made unless and until the Board of Adjustment shall be satisfied that granting the variation will not:

- (1)** Merely serve as a convenience to the applicant and is not necessary to alleviate a demonstrable hardship or difficulty so great as to warrant the variation.
- (2)** Impair the general purpose and intent of the regulations and provisions contained in this Ordinance.
- (3)** Impair an adequate supply of light and air to adjacent properties.
- (4)** Increase the hazard from fire and other danger to said property.
- (5)** Diminish the value of land and buildings in the County.
- (6)** Increase the congestion and traffic hazards on public roads.
- (7)** Otherwise impair the public health, safety and general welfare of the inhabitants of the County.

Subsection C. The concurring vote of three (3) members of the Board of Adjustment shall be necessary to reverse any requirement, decision, order or determination of the Administrator or to decide in favor of the applicant in regard to any matter upon which the Board is authorized by this Ordinance to render a decision.

Subsection D. It is not the intention to grant the Board of Adjustment the power or authority to alter or change the Zoning Ordinance or the District Maps. Such power and authority rest solely with the Board of Supervisors, in the manner hereafter provided in Article XXIII.