

CHAPTER 4. BOARD OF ADJUSTMENT

4.1 Board of Adjustment Created. In accordance with Iowa Code Section 335.10, a Board of Adjustment is hereby established by the Jackson County Board of Supervisors. The Board shall consist of five (5) members to be appointed by the Board of Supervisors for a term of five (5) years, except that when the Board of Adjustment shall first be created one (1) member shall be appointed for a term of five (5) years, one for a term of four (4) years, one for a term of three (3) years, one for a term of two (2) years and one for a term of one (1) year. Members of the Board of Adjustment may be removed from office by the Board of Supervisors for cause upon written charges and after public hearing. Vacancies shall be filled by the Board of Supervisors for the unexpired term of the member.

4.2 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 Ordinance. Meetings shall be held at the call of the chair and at such other times as the Board may determine. The chair, or in the absence of the chair, the acting chair, 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 examinations and other official actions, all of which shall be a public record and be immediately filed in the office of the Board.

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

A. In accordance with Iowa Code Section 335.15:

1. **Appeals.** To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Zoning Administrator or an administrative official in the enforcement of this Ordinance or of any ordinance adopted pursuant thereto.
2. **Conditional Use Permits.** To hear and decide special exceptions to the terms of the Ordinance upon which the Board of Adjustment is required to pass under this Ordinance by granting conditional use permits. 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 conditional use permits should be granted; and to grant conditional use permits with such conditions and safeguards as are appropriate under this Ordinance and to deny conditional use permits when not in harmony with the purpose and intent of this Ordinance.
3. **Dimensional Variances.** To authorize on appeal, in specific cases, such variance from the terms of the Ordinance with respect to the quantitative requirements for 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. Such variance from quantitative requirements of this Ordinance shall require a dimensional variance to be granted by the Board of Adjustment, providing in situations involving setbacks from public roads, the County Engineer has determined that the interests of government entities in safety, engineering, and potential cost factors are negligible.

4. **Variances.** To authorize upon appeal in specific cases such variance from non-quantitative requirements under 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.

B. In accordance with the Jackson County Code of Ordinances:

1. Title III Business and Occupations, Chapter 3. Alcohol Licenses Regulations, Section 3-3-2 Restrictions.
2. Title IV Property and Land Use, Chapter 2. Flood Plain Management, Section 6-2-9 Appointment and Duties of Board of Adjustment.
3. Title IV Property and Land Use, Chapter 3. Airport Tall Structure Zoning Ordinance, Section 6-3-5 Variances.

4.4 Appeals. Appeals to the Board of Adjustment concerning interpretation or administration of this Ordinance may be taken by any person aggrieved or by any officer or bureau of the governing body of the County affected by any decision of the Administrator.

A. Stay of Proceedings. An appeal stays all proceedings in furtherance of the action appealed from, unless the Zoning Administrator from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal is filed with the Zoning Administrator, that by reason of facts stated in the certificate, a stay would, in the Zoning Administrator's opinion, 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 and notice to the Zoning Administrator from whom the appeal is taken and on due cause shown.

B. Procedures. Such appeals shall be taken within a reasonable time, not to exceed sixty (60) days as provided by the rules of the Board, 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 from was taken.

The Board of Adjustment shall fix a reasonable time for the hearing of 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 appear virtually, or represented by agent or attorney. In accordance with Iowa Code Section 335.6, notice of the time and place of the hearing shall be published as provided in Iowa Code Section 331.305.

1. A written application indicating the administrative decision or the section of this Ordinance being appealed.
2. A fee (established by rule of the Board of Supervisors) shall be paid to the Zoning Administrator at the time the notice of appeal is filed which the Zoning Administrator shall forthwith pay over to the credit of the general fund of the County.
3. The public hearing shall be held. Any party may appear in person or appear virtually, or by agent or attorney. A complete record of the hearing shall contain the following:

- a. The original application.
- b. The records of any action on the appeal by an administrative official.
- c. Proof of notice sent prior to the hearing date to the applicant by mail for the purpose of due notice of the hearing.
- d. All relevant information, including but not limited to, maps, drawings, and/or photographs.
- e. Minutes of the public hearing.

C. Final Decision. The final decision shall include the findings of fact and the conclusions reached by the Board of Adjustment. The decision must be in writing and include all conditions that may be associated with the decision. The decision should not be a mere conclusion or statement. Each decision shall be accompanied by specific findings of fact related to the specific appeal.

4.5 Conditional Use Permits. Any person may submit to the Board of Adjustment an application requesting a conditional use permit in accordance with the regulations of this Ordinance.

A. Procedures. A conditional use permit shall not be granted by the Board of Adjustment unless and until:

1. A written application for a conditional use permit is submitted indicating the section of this Ordinance under which the conditional use permit is sought and stating the grounds on which it is requested.
2. A fee (established by the Board of Supervisors), shall be paid to the Zoning Administrator at the time the application is filed, which the Zoning Administrator shall forthwith pay over to the credit of the general fund of the County.
3. In accordance with Iowa Code Section 335.6, notice of the time and place of the hearing shall be published as provided in Iowa Code Section 331.305 and by contacting by mail, for the purpose of a courtesy notice of the public hearing, all property owners within five hundred (500) feet of the exterior boundaries of the property for which the conditional use permit is requested. The notice shall state the location of the district affected by naming the township and section, and the boundaries of the district shall be expressed in terms of streets or roads if possible.
4. The public hearing shall be held. Any party may appear in person or appear virtually, or by agent or attorney.

B. Standards for Review. In reviewing an application for a conditional use permit, the Board of Adjustment shall consider the following:

1. The Jackson County Land Use Policy Statement and the Comprehensive Plan.
2. Other policy statements adopted by the Board of Supervisors including Subsection 2.8.H. of this Ordinance addressing the preservation of ancient burial mounds.
3. The purpose and intent of the Ordinance and of its specific districts.
4. The most appropriate use of the land.
5. The conservation and stabilization of property values.
6. Adequate open spaces for light and air.
7. Concentration of population.

8. Congestion of public streets.
9. The promotion of the public safety, health, convenience and comfort.
10. The general welfare of the persons residing or working in the general area.

C. Findings. Before any conditional use permit is granted, the Board of Adjustment shall make the following written findings regarding the case in question:

1. The Board of Adjustment is empowered under this Ordinance to grant the conditional use permit.
2. It complies with any specific regulations governing individual conditional use permit .
3. Satisfactory provision has been made concerning the following, where applicable:
 - a. Vehicular access to property with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe.
 - b. Off-street parking, loading and service areas where required.
 - c. Economic, noise, dust, heat, glare or odor effects of the conditional use permit on surrounding properties.
 - d. Utilities, with reference to locations, availability, adequacy and compatibility.
 - e. Screens and buffers with reference to type, dimensions, character and adequacy.
 - f. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with surrounding properties.
 - g. Required setbacks and other open spaces.
 - h. General compatibility with surrounding properties.
4. It is in harmony with the Land Use Policy Statement and the Comprehensive Plan.
5. It will not adversely affect the public interest.

D. Conditions.

1. In granting any conditional use permit, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this Ordinance.
2. Violation of such conditions and safeguards, when made a part of the terms under which the conditional use permit is granted, shall be deemed a violation of this Ordinance and punishable under **Section 3.4** of this Ordinance.
3. The Board of Adjustment may prescribe a time limit within which the action for which the conditional use permit is required to be begun or completed, or both. Failure to begin or complete, or both, such action within the time limit set shall void the conditional use permit.

E. Extension of Conditional Use Permits.

1. **Time Limits.** The Board of Adjustment may prescribe a time limit within which the action authorized by a conditional use permit shall be begun, completed, or both, subject to administrative renewal. Unless otherwise stated in the approval, such authorization shall expire one (1) year from the date of final approval if substantial construction or establishment of the use has not commenced.

2. **Extension Requests – General Requirement.** Any request to extend the expiration date of a special exception or conditional use permit shall be submitted in writing to the Zoning Administrator no fewer than thirty (30) days before the expiration date. The request shall include:
 - a. A completed application form and the required fee.
 - b. A statement of the reasons for the delay.
 - c. Evidence of compliance with all conditions of approval to date.
 - d. A revised timeline for completion.
3. **Public Hearing Requirement.** Extension requests shall be reviewed and acted upon by the Board of Adjustment at a public hearing with notice given in the same manner as the original approval, except as provided in Subsection 4.5.E.4. of this Ordinance. Public notice for Board-reviewed extensions shall be given in accordance with Subsection 4.5.A.3. of this Ordinance for conditional uses permits, including mailed notice to all owners of record within five hundred (500) feet of the subject property.
4. **Administrative Extensions.**
 - a. The Zoning Administrator may grant one (1) administrative extension of up to twelve (12) months without a public hearing if all of the following apply:
 - (1) The original approval expressly states that administrative renewal is permitted.
 - (2) Substantial construction or establishment of the use has commenced and is being diligently pursued.
 - (3) No complaints or violations related to the approval have been filed.
 - (4) No changes to the site plan, use, or conditions are proposed.
 - b. Upon granting the administrative extension, the Zoning Administrator shall mail a written decision to the applicant, the Board of Adjustment, and surrounding property owners within five hundred (500) feet of the subject property.
5. **Limitations.**
 - a. No more than two (2) total extensions (administrative and/or Board) may be granted.
 - b. If an extension is denied, all work or use not in compliance with the underlying zoning district regulations must cease by the original expiration date or as otherwise ordered by the Board.
6. **Fees.** All extension requests, whether administrative or Board-reviewed, shall be accompanied by a fee established by the Board of Supervisors to cover administrative, public notice, and mailing costs.

4.6 Dimensional Variances. Any person may submit to the Board of Adjustment an application requesting a dimensional variance in accordance with the regulations of this Ordinance.

A. Procedures. A dimensional variance shall not be granted by the Board of Adjustment unless and until:

1. A written application for a dimensional variance is submitted indicating the quantitative requirements of this Ordinance for which the dimensional variance is sought and stating the grounds on which it is requested.

2. A fee (established by the Board of Supervisors), shall be paid to the Zoning Administrator at the time the application is filed, which the Zoning Administrator shall forthwith pay over to the credit of the general fund of the County.
3. In accordance with Iowa Code Section 335.6, notice of the time and place of the hearing shall be published as provided in Iowa Code Section 331.305 and by contacting by mail, for the purpose of a courtesy notice of the public hearing, all property owners within five hundred (500) feet of the exterior boundaries of the property for which the dimensional variance is requested. The notice shall state the location of the district affected by naming the township and section, and the boundaries of the district shall be expressed in terms of streets or roads if possible.
4. The public hearing shall be held. Any party may appear in person or appear virtually, or by agent or attorney.

B. Burden of Proof for Property Owner. To receive the requested dimensional variance, the property owner must meet the “burden of proof” for “practical difficulties” in accordance with Iowa Code Section 335.15.4.

C. Standards for Review. In reviewing an application for a dimensional variance, the Board of Adjustment shall consider the following standards for review.

1. The property owner has met the “burden of proof” in accordance with Iowa Code Section 335.15.4.
2. The Jackson County Land Use Policy Statement and the Comprehensive Plan.
3. Other policy statements adopted by the Board of Supervisors, including Subsection 2.8.H. of this Ordinance addressing the preservation of ancient burial mounds.
4. The purpose and intent of the Ordinance and of its specific districts.
5. The most appropriate use of the land.
6. The conservation and stabilization of property values.
7. Adequate open spaces for light and air.
8. Concentration of population.
9. Congestion of public streets.
10. The promotion of the public safety, health, convenience and comfort.
11. The general welfare of the persons residing or working in the general area.
12. In situations involving setbacks from public roads, the County Engineer has determined that the interests of government entities in safety, engineering, and potential cost factors are negligible.

D. Findings. Before any dimensional variance is granted, the Board of Adjustment shall make the following written findings regarding the case in question:

1. The property owner has met the “burden of proof” in accordance with Iowa Code Section 335.15.4.
2. The Board of Adjustment is empowered under this Ordinance to grant the dimensional variance.
3. It complies with any specific regulations governing an individual dimensional variance .
4. Satisfactory provision has been made concerning the following, where applicable:

- a. Vehicular access to property with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe.
 - b. Off-street parking, loading and service areas where required.
 - c. Economic, noise, dust, heat, glare or odor effects of the dimensional variance on surrounding properties.
 - d. Utilities, with reference to locations, availability, adequacy and compatibility.
 - e. Screens and buffers with reference to type, dimensions, character and adequacy.
 - f. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with surrounding properties.
 - g. Required setbacks and other open spaces.
 - h. General compatibility with surrounding properties.
5. It is in harmony with the Land Use Policy Statement and the Comprehensive Plan.
 6. It will not adversely affect the public interest.

E. Conditions.

1. In granting any dimensional variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this Ordinance.
2. Violation of such conditions and safeguards, when made a part of the terms under which the dimensional variance is granted, shall be deemed a violation of this Ordinance and punishable under **Section 3.4** of this Ordinance.
3. Under no circumstances shall the Board of Adjustment grant a dimensional variance to allow a use or structure not allowed in the district involved or any use or structure expressly or by implication prohibited by the terms of this Ordinance in said district.
4. The effective date that a dimensional variance is granted shall be twenty-one (21) days from the date of granting, except that when a dimensional variance has been reaffirmed, with or without modification, after being remanded by the Board of Supervisors under the provisions of this Ordinance, the dimensional variance shall be effective immediately or as specified in the motion to reaffirm.

4.7 Variances. Any person may submit to the Board of Adjustment an application requesting a variance from non-quantitative requirements in accordance with the regulations of this Ordinance.

A. Procedures. A variance the terms of this Ordinance shall not be granted by the Board of Adjustment unless and until:

1. A written application for a variance is submitted demonstrating:
 - a. That 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. That literal interpretation of the provisions of this Ordinance would deprive the property owner 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 property owner.
 - d. That granting the variance requested will not confer on the property owner any special privilege that is denied by this Ordinance to other lands, structures or buildings in the same district. No nonconforming use of neighboring lands, structure or buildings in other districts shall be considered grounds for the issuance of a variance.
2. A fee (established by the Board of Supervisors), shall be paid to the Zoning Administrator at the time the application is filed, which the Zoning Administrator shall forthwith pay over to the credit of the general fund of the County.
3. In accordance with Iowa Code Section 335.6, notice of the time and place of the hearing shall be published as provided in Iowa Code Section 331.305 and by contacting by mail, for the purpose of a courtesy notice of the public hearing, all property owners within five hundred (500) feet of the exterior boundaries of the property for which the variance is requested. The notice shall state the location of the district affected by naming the township and section, and the boundaries of the district shall be expressed in terms of streets or roads if possible.
4. The public hearing shall be held. Any party may appear in person or appear virtually, or by agent or by attorney.

B. Burden of Proof for Property Owner. To receive the requested variance from the terms of the Ordinance, the property owner must prove to the Board of Adjustment that the strict enforcement of the terms of this Ordinance will inflict an “unnecessary hardship” on the property owner and are not self-created and must also demonstrate that granting the variance will not significantly alter the essential character of the surrounding neighborhood.

C. Standards for Review. In reviewing an application for a variance, the Board of Adjustment shall consider the following standards for review. No variance shall be granted unless the property owner shall show and the Board of Adjustment shall find the following:

1. The Iowa courts have set out specific criteria that must be satisfied before the Board of Adjustment may find that an “unnecessary hardship” exists, sufficient to grant a property owner a variance. The property owner must satisfy all three (3) criteria listed below to be granted a variance:
 - a. The land in question cannot yield reasonable return if used only for a purpose allowed in that zoning district,
 - b. The plight of the property owner is due to unique circumstances and not to general conditions in neighborhood, and
 - c. The use or structure to be authorized by a variance will not alter essential character of the locality.
2. The Iowa courts have established the following guidelines for assessing whether the above-listed criteria have been met:
 - a. Failure to yield a “reasonable return” may be shown by proof that the property owner has been deprived of all beneficial use of the land. All beneficial use is said to have been lost

where the land is not suitable for any use allowed by this Ordinance. It is not sufficient to show that the value of land merely has been depreciated by the zoning regulations, or that a variance would permit a property owner to maintain a more profitable use. It is not sufficient to show mere inconvenience to the applicant.

- b. Problems common to several properties do not constitute “unique circumstances.” The condition or situation is not of so general or recurring a nature as to make reasonably practical a general regulation to be adopted as an amendment of this Ordinance.
 - c. This disadvantage of “unique circumstances” does not exist as a result of conditions created by the current owner or previous owners of the property.
 - d. A variance that alters the “essential character of the area” is beyond the authority of the Board of Adjustment to grant. The Board of Adjustment cannot grant a variance for a change in use that, in effect, constitutes a rezoning or Ordinance amendment. Factors to consider in determining whether a variance will alter the “essential character of the neighborhood” include the degree of variation from district regulations, the size of the parcel, and the parcel’s size and character in relation to the size of the district.
3. In granting a variance, the Board of Adjustment shall not consider prospective financial loss or gain to the applicant.

Under no circumstances shall the Board of Adjustment grant a variance to allow a use or structure not allowed under the terms of the Ordinance regulations in the district involved, or any use or structure expressly or by implication prohibited by the terms of the regulations in said district.

4. No non-conforming use of neighboring lands, structures, or buildings in the same district and no allowed or non-conforming use of lands, structures, or buildings in other districts shall be considered grounds for the granting of a variance.

D. Findings. Before any variance is granted, the Board of Adjustment shall make the following written findings regarding the case in question:

- 1. The property owner has met the “burden of proof” in accordance with the Iowa courts.
- 2. The Board of Adjustment is empowered under the section of this Ordinance described in the application to grant the variance.
- 3. The requirements of this Ordinance have been met by the property owner for a variance.
- 4. 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.
- 5. 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.

E. Conditions.

1. In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this Ordinance.
2. 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 Section 3.4 of this Ordinance.
3. Under no circumstances shall the Board of Adjustment grant a variance to allow a use or structure not allowed in the district involved or any use or structure expressly or by implication prohibited by the terms of this Ordinance in said district.
4. The effective date that a variance granted shall be twenty-one (21) days from the date of granting, except that when a variance has been reaffirmed, with or without modification, after being remanded by the Board of Supervisors under the provisions of this Ordinance, the variance shall be effective immediately or as specified in the motion to reaffirm.

4.8 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, 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 powers of the Zoning Administrator from whom the appeal is taken. The concurring vote of a quorum of three (3) 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 or to effect any variation in application of this Ordinance.

4.9 Remanding of Variances by the Board of Supervisors. Under the authority of Iowa Code Section 335.10, the Board of Supervisors shall have the power to remand any dimensional variance or variance granted by the Board of Adjustment. Accordingly, the following provisions shall apply:

- A. A written report of all actions taken by the Board of Adjustment shall be provided promptly by its secretary to the applicant, the property owner, and to the Board of Supervisors, to include also the effective date of any variances granted.
- B. Upon considering the report of actions and any other information available, the Board of Supervisors may choose to remand any decision to grant a variance, so long as it acts by official motion and before the effective date of the variance. The remanding of a variance will automatically delay its effective date for thirty (30) days from the date of the remand, or until the Board of Adjustment has taken an official action on the remand, as required by this Ordinance, whichever comes first.
- C. Upon notice of such remand, the Board of Adjustment shall schedule a special public hearing, to occur before the new effective date of the variance, to hear any new testimony available on the matter. Notice of this hearing shall be provided in the customary manner and to the applicant, the property owner, and to all persons who commented on the request, either at the original hearing or in writing to the Board of Adjustment.

- D. Upon holding such special hearing, the Board of Adjustment shall make findings and take action to affirm its original decision, or to modify it by the placement of conditions on the variance, or by denying the variance.
- E. If the Board of Adjustment fails to act before the effective date of a variance, the variance stands and any further redress of grievances shall come from a court of record as noted below.

4.10 Appeals from the Board of Adjustment: Any person or persons or any board, taxpayer, department, board or bureau of the county aggrieved by any decision of the Board of Adjustment may seek review by a court of record of such decision in the manner provided by the laws of the State and particularly by Iowa Code Chapter 358A.