

# APPLICATION TO THE BOARD OF ADJUSTMENT — VARIANCE —

DATE: \_\_\_\_\_

PROPERTY PARCEL NO. \_\_\_\_\_

APPEAL PROPERTY ADDRESS: \_\_\_\_\_

APPEAL PROPERTY ZONE: \_\_\_\_\_

APPEAL PROPERTY LOT SIZE: \_\_\_\_\_

APPLICANT:	Name: _____ Address: _____ Phone: _____ Email: _____
CONTACT PERSON:	Name: _____ Address: _____ Phone: _____ Email: _____
PROPERTY OWNER:	Name: _____ Address: _____ Phone: _____ Email: _____

Specific requested variance; applicable section(s) of the Zoning Chapter:

\_\_\_\_\_

Reason for variance request: \_\_\_\_\_

\_\_\_\_\_

Date of previous application or appeal filed, if any: \_\_\_\_\_

INFORMATION TO BE PROVIDED BY APPLICANT:

A. Legal description of property:

B. \*Plot plan drawn to scale showing:

1. Lot with dimensions;
2. North point and scale;
3. Existing and proposed structures with distances from property lines;
4. Abutting streets and alleys;
5. Land uses on and property owners of abutting lots; and
6. Parking spaces and trees - existing and proposed.

*[\*Submission of an 8" x 11" bold print plot plan is preferred.]*

C. List of property owners within 300 feet of the exterior limits of the property involved in this appeal:

<u>NAME</u>	<u>ADDRESS</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

APPLICANT'S JUSTIFICATION:

Section 14-7A-2 of the Iowa City Zoning Chapter gives the Board of Adjustment power to authorize upon appeal in specific cases such variances from the terms of the Zoning Chapter as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the Zoning Chapter will result in unnecessary hardship and so the spirit of the ordinance shall be observed and substantial justice done. **No variance to the strict application of any provision of the Zoning Chapter shall be granted by the Board unless the applicant demonstrates that all of the following elements are present:** (emphasis added)



NOTE: Conditions. In permitting a variance, the Board may impose appropriate conditions and safeguards, including but not limited to planting screens, fencing, construction commencement and completion deadlines, lighting, operational controls, improved traffic circulation requirements, highway access restrictions, increased minimum yard requirements, parking requirements, limitations on the duration of a use or ownership or any other requirement which the Board deems appropriate under the circumstances, upon a finding that the conditions are necessary to fulfill the purpose and intent of the Zoning Chapter. (Section 14-8C-2C4, City Code).

Orders. Unless otherwise determined by the Board, all orders of the Board shall expire six (6) months from the date the written decision is filed with the City Clerk, unless the applicant shall have taken action within the six (6) month period to establish the use or construct the building permitted under the terms of the Board's decision, such as by obtaining a building permit and proceeding to completion in accordance with the terms of the permit. Upon written request, and for good cause shown, the Board may extend the expiration date of any order without further public hearing on the merits of the original appeal or application. (Section 14-8C-1E, City Code)

Petition for writ of certiorari. Any person or persons, jointly or severally, aggrieved by any decision of the Board under the provisions of the Zoning Chapter or any taxpayer or any officer, department or board of the City may present to a court of record a petition for writ of certiorari duly verified, setting forth that such decision is illegal, in whole or in part, and specifying the grounds of the illegality. (Section 14-8C-1F, City Code.) Such petition shall be presented to the court within thirty (30) days after the filing of the decision in the office of the City Clerk.

Date: \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
Signature(s) of Applicant(s)

Date: \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
Signature(s) of Property Owner(s)  
if Different than Applicant(s)

## GENERAL EXPLANATION OF VARIANCES

A variance is a legal right granted to a property owner to use property in a manner prohibited by the Zoning Code. It has been said that a variance is an “escape valve” from the literal terms of the ordinance which, if strictly applied to a property owner, would deny all beneficial use of his land and thus amount to a confiscation.

A variance is not a personal license to the property owner. It is a right that runs with the land.

Under Iowa law, the Board of Adjustment, which has power to grant variances, is an independent, quasi-judicial body. That means that while the Board members are appointed by the City Council, they are not subordinate to the Council. Their actions are reviewable only by the courts. The Board conducts a hearing with respect to each variance application, after notices are posted on the property and mailed to owners of other properties within 200 feet of the property for which the variance is sought. That hearing will normally be relatively informal, but the Board will hear testimony and review documentary evidence in a manner similar to a court of law.

The City’s Department of Planning and Community Development assists the Board of Adjustment by reviewing variance applications and preparing a report which is sent to the Board members shortly before the hearing. The primary purpose of that report is to provide background information to members of the Board, and to inform them generally of the nature of the request for a variance. In preparing the report, the Department will use information provided in the application for a variance, and may, but is not required to, contact the applicant for further details. However, **applicants should be aware that under Iowa law, they, not the City, are responsible for demonstrating that they are entitled to the variance.**

The Iowa Supreme Court has rendered several decisions involving variances, including the following:

Deardorf v. Board of Adjustment of Fort Dodge, 254 Iowa 380, 8 N.W.2d 78 (962).

Board of Adjustment v. Ruble, 93 N.W.2d 497 (Iowa 974).

Graciano v. Board of Adjustment, City of Des Moines, 323 N.W.2d 233 (Iowa 982).

Greenwalt v. Board of Adjustment, City of Davenport, 345 N.W.2d 537 (Iowa 984).

Those cases give meaning to the requirement of the Iowa statute (Code Sec. 44.2(3)) that variances be granted only where unnecessary hardship will result. The Court has said unnecessary hardship is shown by establishing all of the following elements:

1. The land in question cannot yield a reasonable return if used only for a purpose allowed in the zone in which it is located.
2. The plight of the owner is not due to general conditions in the neighborhood which may reflect the unreasonableness of the zoning ordinance itself, and
3. The use to be authorized by the variance will not alter the essential character of the locality.

Questions regarding variance applications should be directed to the Department of Planning and Community Development (356-5230), or the City Attorney’s Office (356-5030).



## CITY OF IOWA CITY

410 East Washington Street  
Iowa City, Iowa 52240-1826  
(319) 356-5000  
(319) 356-5009 FAX  
[www.icgov.org](http://www.icgov.org)

Dear Applicant:

It is the goal of the Department of Neighborhood & Development Services to provide adequate public notification for development items. Following is a list of required items to include with your rezoning, subdivision, OPD, special exception, or variance applications. It is important to conform to these requests to prevent any delays in the process.

- ◆ A list of addresses must accompany every application for rezoning, subdivision, special exceptions and variances. This list must include all landowners of property within 300' of the proposed site, including public ways. This information is available at the City Assessors Office located at 913 S. Dubuque Street.
- ◆ The staff will post a sign at the time an application is filed. The sign must remain until the application is approved or denied. Larger sites will require one sign for every 200' of frontage on each street adjacent to the site. These signs will contain general information regarding the application and will provide a phone number for persons to contact Planning staff with questions regarding the application.

Staff will be responsible for removing the signs. If the applicant notices the sign has been removed or damaged between the time of application and final approval or denial of the request, the City of Iowa City Planning staff should be notified.

- ◆ A copy of the Iowa City's GOOD NEIGHBORHOOD POLICY (enclosed) will be provided to every applicant at the time of application. This policy has been developed to help create more opportunities for early and more effective citizen participation in both major and minor projects and encourages an applicant's participation beyond current legal requirements for notification.
- ◆ An application has been enclosed for your use. If you need additional forms, you may photo copy this form or you can obtain additional copies from our office, or online at [www.icgov.org/applications](http://www.icgov.org/applications).

If you have any additional comments or concerns about these changes, please contact our department at 356-5230.

Sincerely,

Janet Dvorsky, Administrative Secretary  
Department of Neighborhood & Development Services

CITY OF IOWA CITY  
**Board of Adjustment**  
 2019 Application Deadlines

APPLICATION DEADLINE (12:00 p.m.)	MEETING DATE
December 14, 2018.....	January 9, 2019
January 11, 2019.....	February 13, 2019
February 15, 2019.....	March 13, 2019
March 8, 2019.....	April 10, 2019
April 5, 2019.....	May 8, 2019
May 10, 2019.....	June 12, 2019
June 7, 2019.....	July 10, 2019
July 12, 2019.....	August 14, 2019
August 9, 2019.....	September 11, 2019
September 6, 2019.....	October 9, 2019
October 11, 2019.....	November 13, 2019
November 15, 2019.....	December 11, 2019
December 6, 2019.....	January 8, 2020
January 10, 2020.....	February 12, 2020
February 14, 2020.....	March 13, 2020

**APPLICATION FEES\***

Special Exception, Variance, or Appeal	<b>\$460</b>
Combination BOA Actions	<b>\$535</b>

\*These fees will be updated in February 2020 to reflect changes in the rate of inflation.

**Meeting time and location**

Board of Adjustment meetings are scheduled at 5:15 p.m. on the second Wednesday of each month in Emma Harvat Hall, City Hall, 410 East Washington Street. Attendees are advised to check the meeting agenda at [www.icgov.org/boa](http://www.icgov.org/boa) or contact the Department of Development Services at 319-356-5230 for possible change in a meeting agenda.

**For more information**

Contact Jesi Lile at 319-356-5240 or [jessica-lile@iowa-city.org](mailto:jessica-lile@iowa-city.org).

**Submit Application by Noon to:**  
 City Clerk's Office, City Hall, 410 E. Washington Street

# Board of Adjustment: Frequently Asked Questions

## What is the Board of Adjustment?

The Board of Adjustment is a panel made up of Iowa City citizens appointed by the City Council. The board reviews and grants special exceptions and variances and also considers appeals when there is a disagreement about an administrative zoning decision made by the City. Members of the board act like judges, making decisions about individual properties and uses that may have difficulty meeting a specific zoning regulation or to resolve disputes about administrative zoning decisions. The actions and decisions of the Board of Adjustment are binding upon all parties unless overturned upon appeal to District Court.

## What is a special exception?

There are two types of special exceptions.

1. Within the zoning code a number of land uses are set apart as special exceptions that may be permitted in certain zones. Rather than permitting these uses outright, each is reviewed on a case-by-case basis to ensure that they do not negatively affect surrounding properties. For example, daycare centers are permitted in residential zones by special exception. The same is true of churches and private schools. All may be appropriate uses in residential zones, if certain criteria such as parking, screening, and other requirements are met.

2. Adjustments to specific zoning requirements in cases where there are unique circumstances. Again, the opportunity to adjust these requirements and the criteria for allowing such adjustments are described in the Zoning Code. For example, a homeowner may apply for a reduction in a building setback in order to accommodate an addition or other improvement to their property.

The Zoning Code lists explicitly each use and standard for which a special exception may be considered. In other words, you can't request a special exception for everything—only those things called out as special exceptions in the Code. The Code also provides criteria specific to each request. Applicants must provide evidence that they satisfy each of these criteria, and the Board must consider these criteria when making a determination as to whether to grant a special exception.

## What is a variance?

A variance grants a legal right to an owner to develop property in a manner that deviates from a specific provision of the Zoning Code and for which a special exception is not expressly allowed. In seeking relief from the restrictions in the Zoning Code, the property owner applying for the variance must show that the strict application of the Zoning Code would cause and unnecessary hardship such that the property in question is unusable or that a literal interpretation of the ordinance would deprive the applicant of rights commonly enjoyed by other properties in the zoning district. In addition the circumstances that create this hardship must be unique to the property in question and must not be of the property owner's own making.

## What is an appeal?

The Board considers and rules on appeals from any citizen who believes there is an error in any decision, determination, or interpretation made by the City or its designee in the administration of the Zoning Code. As with their other decisions, the Board's ruling is binding on all parties unless overturned on appeal to the District Court.

## How does the review process work?

An application requesting a special exception, variance, or an appeal is a request. The Board makes a decision on whether to grant a specific request only after City staff have provided a review of an application and the public has had an opportunity to make its concerns known. The Board not only has the right to approve or deny requests, but may also choose to approve request subject to certain conditions.

In making decisions, the Board may only consider comments and evidence relevant to the specific standards provided in the code. City Planning Staff provide reports to the Board for each application on the agenda. The Staff Report provides background information on the application, informs the Board of all the criteria in the Code that a particular application must satisfy, and interprets whether and how an application has satisfied these criteria.

## How can I participate in the process?

Because most applications will be reviewed and decided upon at a single public hearing, it is important for interested parties to respond in a timely and informed manner. Those who wish to speak for or against an application are given an opportunity to be heard by the Board at the hearing, but may also submit written comments prior to the meeting.

Written comments must be delivered to the Department of Planning at City Hall no later than 5 days before the hearing in order to be included with the Staff Report. All correspondence submitted after that time will be delivered to the Board at the time of the hearing.

The Board considers the application, the recommendation of staff (in the staff report) and any additional information, correspondence, or testimony provided at the hearing. Board of Adjustment hearings are usually held on the second Wednesday of each month at 5:15 p.m. in Emma J. Harvat Hall in City Hall.

The Staff Report can be very useful to anyone who is unfamiliar with the BOA process or with the Zoning Code and will provide an understanding of the criteria that the Board must consider in rendering its decision. Staff Reports may be obtained from the Department of Planning and Community Development. E-mail [jessica-lile@iowa-city.org](mailto:jessica-lile@iowa-city.org) to request a copy of a report.

If you have questions about an application or if you simply want more information about issues related to the Board of Adjustment, please feel free to contact Jesi Lile at 356-5240 or e-mail [jessica-lile@iowa-city.org](mailto:jessica-lile@iowa-city.org).

To submit comments to the Board of Adjustment write to the Board of Adjustment c/o the Department of Planning, 410 E. Washington St., Iowa City IA 52240.



*Good Neighbor meetings are NOT required as part of the review process in Iowa City but they are strongly encouraged in most instances. If you state that you will or have participated in the program, **the following steps must be followed by the applicant:***

- **Meeting facilities located as close to the subject property and neighbors as possible.** The Neighborhood Outreach Coordinator can make suggestions and final arrangements in most cases.
- **Good Neighbor meeting notice reviewed by City staff prior to distribution.** The Neighborhood Outreach Coordinator will ensure that it is reviewed/approved and be responsible for sending it on to representatives of impacted neighborhood associations for their distribution.
- **Meeting notice sent by applicant to all property owners within 300' of the subject property by applicant and sent out not less than 7 days prior to Good Neighbor meeting date.**
- **Good Neighbor Meeting occurs no less than 7 days prior to the scheduled board/commission meeting** to enable adequate time to provide input.
- **Good Neighbor meeting attended by a City staff representative if necessary.** Staff will be available as a resource to respond to questions related to process, schedule, and zoning, etc. Staff can be arranged by the Neighborhood Outreach Coordinator.
- **Summary Report for Good Neighbor Meeting completed by applicant and submitted prior to board/commission review.** A fill-in form of the Summary Report is available at [www.icgov.org/goodneighbor](http://www.icgov.org/goodneighbor).



Neighborhood and  
Development Services  
410 E. Washington Street  
Iowa City, IA 52240

Phone: 319-356-5230  
Fax: 319-356-5217

# Good Neighbor Program

[www.icgov.org/goodneighbor](http://www.icgov.org/goodneighbor)

City of Iowa City  
Neighborhood and  
Development Services

The Office of Neighborhood Outreach is available to assist with the Good Neighbor Program by arranging meeting rooms, providing sample meeting notices, notifying neighborhood association contacts, and other information and advice.

Contact Marcia Bollinger, Neighborhood Outreach Coordinator

Phone: 319-356-5237

E-mail: [Marcia-Bollinger@iowa-city.org](mailto:Marcia-Bollinger@iowa-city.org)

## History and Background

Iowa City's Good Neighbor Program is part of an effort to make the development process run more smoothly between property owners and developers who seek zoning and related changes, and the neighborhoods that may be affected by those changes. The Good Neighbor Program is not a requirement, but rather a recommended approach that encourages proactive dialogue between property owners, developers, and neighbors that may help identify and resolve issues before the project is reviewed by the Planning and Zoning Commission or the Board of Adjustment.

For minor projects, such as a yard setback reduction, the approach may be as simple as knocking on neighbors' doors to discuss the proposed project with them. For a rezoning or subdivision, it may be appropriate to hold a neighborhood meeting or open house to present the project and invite questions and comments from your neighbors.

While the Good Neighbor Program does not guarantee specific outcomes, answering neighbors' questions and hearing their concerns or suggestions may provide the opportunity to developers/applicants to address concerns or objections before the project is reviewed in a public forum. This can minimize controversy and delays when a project is reviewed by the Board of Adjustment, Planning and Zoning Commission, or the City Council.

## Helpful Tips for a Good Neighbor Meeting



### ***What information can you provide that neighbors will find useful?***

- Background information including a description of your project and the public process it must go through.
- Site plans, elevations, models, aerial photos, drawings, etc. This will help them visualize the changes you wish to make.
- Information or other resources that discuss the zoning or land development process. The Neighborhood Outreach Coordinator can provide you with this information or is available at [www.icgov.org/goodneighbor](http://www.icgov.org/goodneighbor)



### ***View it from their perspective: How will neighbors see your project?***

- Put yourself in the place of the people who surround your property. Will they view your project as an enhancement or unexpected change?
- How might your project impact traffic or pedestrian safety in the area?
- Does your project enhance or complement existing

neighborhood character or does it contrast with what surrounds it?

- Will your project alter the natural landscape, impact views, etc.?
- Might your project reduce the sense of privacy for a neighboring property owner?



### ***Ways to respond to concerns***

- Listen and be respectful—give people the chance to be heard.
- Focus on identifying problems. This meeting is a chance for you to gather input that may be useful to you in getting your project through the review process. The issues that your neighbors raise are often the same issues that may be raised by the Planning and Zoning Commission or the Board of Adjustment.
- Be open to options that could be reasonable or affordable ways to alleviate or address problems.
- Resolving problems at the meeting is not necessary, but it may be helpful to identify areas where there is some flexibility in your plans.
- Know that you won't necessarily be able to please everyone, but that you are providing an opportunity for dialogue. The neighbors will appreciate your effort and the opportunity to share their views.