



# IOWA COUNTY OFFICE OF PLANNING & DEVELOPMENT

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## **IOWA COUNTY BOARD OF ADJUSTMENT HEARING APPLICATION**

Filing Fee: **\$400**, payable to Office of Planning & Development  
**(not refundable after notice publication)**

Applicant: \_\_\_\_\_ Address: \_\_\_\_\_  
City/Zip Code: \_\_\_\_\_

Landowner: \_\_\_\_\_ Address: \_\_\_\_\_  
(if different than applicant) City/Zip Code: \_\_\_\_\_

Applicant Phone: (\_\_\_\_) \_\_\_\_\_ Landowner Phone: (\_\_\_\_) \_\_\_\_\_  
Email: \_\_\_\_\_ Please contact by: \_\_\_email \_\_\_postal mail

I/We are requesting a  variance or  appeal to interpretation to allow (feel free to attach more detailed explanation)

\_\_\_\_\_  
\_\_\_\_\_

Town of \_\_\_\_\_ Parcel Number(s) \_\_\_\_\_  
Section \_\_\_ Town \_\_\_ N Range \_\_\_ E Qtr \_\_\_ Qtr \_\_\_ Acres of affected property \_\_\_\_\_  
An appeal to Section(s) \_\_\_\_\_ of the Iowa County \_\_\_\_\_ Ordinance(s)

**Along with this application and filing fee, please include a scaled drawing that includes at least the following:**

1. The location and size of the property, including all lot line dimensions.
2. Indicate north.
3. Show the location and names of all surrounding public roads/highways.
4. Show the location of all area lakes, ponds, rivers or streams.
5. Indicate all existing buildings, wells and private septic systems.
6. Show the requested change or construction and include the following measurements:
  - a) Distance from the centerline of all public roads/highways
  - b) Distance from the right-of-way of all roads/highways
  - c) Distance to all lot lines
  - d) Distance to all lakes, ponds, rivers or streams
  - e) Distance from existing private septic tanks and fields
  - f) Distance from existing wells

# Variance Standards of Review

Since the BOA is a quasi-judicial body, it is required by law to apply the standards for a variance that have been established by court cases. The BOA is not a policy-making body and therefore does not have the same discretionary authority. Its decisions are not precedent setting.

## Variance Granting Criteria

Please respond to the following criteria established by case law for granting a variance: (please attach additional sheets if necessary)

1. Describe why you feel there is “unnecessary hardship”, which is defined as complying with the petitioned ordinance standard would unreasonably prevent you from using the property for a permitted use or would render conformity with such restrictions unnecessarily burdensome.

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2. Describe what unique property limitations exist that prevent ordinance compliance and are not common to adjacent properties.

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3. Describe how you consider the hardship under both items above is not self-created.

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4. Describe how you feel the granting of this variance would not harm public interests as you consider the general purpose of the ordinance and the specific provision being petitioned.

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# Guiding Principles to Grant Variance

There is ample case law concerning variances that provide the following guiding principles that a BOA should rely on in their decision whether to grant a variance.

**Parcel-as-a-whole.** The entire parcel, not just a portion of a parcel, must be considered when applying the unnecessary hardship test. *State v. Winnebago County*, 196 Wis.2d 836, 844-45 n.8, 540 N.W.2d 6 (Ct. app. 1995)

**Self-imposed hardship.** An applicant may not claim hardship because of conditions created by his/her actions. *State ex rel. Markdale Corp. v. Bd. of Appeals of Milwaukee*, 27 Wis. 2d 468, 479, 247 N.W.2d 98 (1976)

**Circumstances of applicant.** Specific circumstances of the applicant, such as a growing family or desire for a larger garage are not a factor in deciding variances. *Snyder v. Waukesha County Zoning Bd. of Adjustment*, 74 Wis. 2d 468, 478-79, 247 N.W.2d 98 (1976)

**Financial hardship.** Economic loss or financial hardship do not justify a variance. The test is not whether a variance would maximize economic value of a property or be the least expensive option for the applicant. *State v. Winnebago County*, 196 Wis. 2d 836, 844-45, 540 N.W.2d 6 (Ct. App. 1995); *State v. Ozaukee County Bd. of Adjustment*, 152 Wis. 2d 552, 563, 449 N.W.2d 47 (Ct. App. 1989)

**Nearby violations.** Nearby ordinance violations, even if similar to the requested variance, do not provide grounds for granting a variance. *Von Elm v. Bd. of Appeals of Hempstead*, 258 A.D. 989, 17 N.Y.S.2d 548 (N.Y. App. Dev. 1940)

**Previous variance requests.** Previously granted or denied variances, even if similar to the requested variance, cannot be used in deciding a variance. The decision must be based on the facts of the individual case before the BOA.

**Objections from neighbors.** The lack of objections from neighbors does not provide a basis for granting a variance. *Arndorfer v. Sauk County Bd. of Adjustment*, 162 Wis. 2d 246, 254, 469 N.W.2d 831 (1991)

**Variance to meet code.** Variances to allow a structure to be brought into compliance with building code requirements have been upheld by the courts. *Thalhofer v. Patri*, 240 Wis. 404, 3 N.W.2d 761 (1942); *State v. Kenosha County Bd. of Adjustment*, 218 Wis. 2d 396, 419-420, 577 N.W.2d 813 (1998)

**Judicial Review**

Following are the general review standards which courts have used to decide appeals of Board of Adjustment decisions. You might consider these points to determine whether any decision you have an interest in is likely to be reversed on appeal.

- Did the Board decide a matter which it is empowered by statute or ordinance to act on (subject matter jurisdiction)?
- Did the Board follow proper procedures (e.g. notice, hearing, reviewable record, open meeting law, etc.)?
- Did the Board apply proper standards in making the decision (e.g. 3-step test for a variance)?
- Was there a rational basis for the decision (could a reasonable person have reached this conclusion)?
- Is there evidence in the record (facts) to support the decision?

**NOTE:**

- \* The applicant or representative must be present at the public hearing.
- \* You may be required to stake out the site of the proposed construction/development so staff may inspect the site while preparing for the hearing. Please check this box if you do not grant permission for staff to inspect the site.
- \* It will be the decision of the Office of Planning & Development to determine when this application is deemed complete. Additional information may be requested.
- \* The Board of Adjustment review of this application is a quasi-judicial proceeding and is subject to the Wisconsin Open Meetings Law. You will have an opportunity to present information of your application. Do not speak to any member of the Board about your application except at the hearing. Please direct any written communication about your application to the Office of Planning & Development. Your failure to observe these rules may invalidate your application.

Applicant(s) Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Landowner(s) Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
(if other than applicant)

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**For Office Use Only:** Rcv'd by \_\_\_\_\_ Date \_\_\_\_\_ Fee \_\_\_\_\_ Check # \_\_\_\_\_ Cash \_\_\_\_\_  
zoning status \_\_\_\_\_ floodplain \_\_\_\_\_ shoreland/wetland \_\_\_\_\_