

1201 Dakota Drive  
Wahpeton  
Milford, IA 51351-7240  
(712) 337-3522

## APPEALS TO THE BOARD OF ADJUSTMENT

If your building permit application is denied, the following steps should be taken if you wish to exercise your right of appeal to the Board of Adjustment.

1. Your appeal must be in the form of a letter addressed to the Zoning Administrator within ten (10) days from the notification of denial, stating your wish to appeal and the grounds upon which you are basing your appeal as detailed in Chapter 165.17 of the Wahpeton Code of Ordinances.
2. The appeal fee is \$200.00 which covers the costs to the City for publication fees, notices to adjoining property owners, Administration costs and hearing. The fee must accompany your application.
3. Your application must include an Abstractor's Certificate listing the legal description, names and addresses of all property owners within two-hundred (200) feet of your property.
4. The property involved in this variance request must be staked to demonstrate the proposed construction at least (1) one week prior to the meeting of the Board, so that Board members have the opportunity to review the request.

Upon receipt of the above information, the Zoning Administrator will contact the Chairman of the Board of Adjustment. The Board of Adjustment meets the third Thursday of every month at 5:00 p.m. in the Wahpeton City Hall. You will need to be present at this meeting or you will need someone there to represent you.

This procedure usually takes approximately (30) thirty days but every effort will be made to facilitate your appeal application. You should understand that the Board of Adjustment is very reluctant to grant Variances, Special Use and Conditional Permits from the Zoning Ordinance unless very unusual circumstances exist and there are no guarantees that your request will be granted.

Attached is that portion of the Wahpeton Zoning Ordinance concerning the Board of Adjustment and the appeal procedure.



Jess Radcliffe  
Zoning Administrator

## **165.17 BOARD OF ADJUSTMENT**

1. Confirmation of the Board of Adjustment
2. Proceedings of the Board of Adjustment
3. Hearings, Appeals, and Notice
4. Powers and Duties
5. Variances
6. Decisions of the Board of Adjustment
7. Appeals from the Board of Adjustment

### **Section 1. CONFIRMATION OF THE BOARD OF ADJUSTMENT.**

The five (5) member Board of Adjustment is hereby confirmed to continue their appointed terms of office. Members of the Board of Adjustment shall be appointed by the City Council for a term of five (5) years. Members of the Board of Adjustment may be removed from office by the City Council for cause upon written charges and after a public hearing. Vacancies shall be filled for the unexpired term of any resigning or removed member by the City Council.

### **Section 2. PROCEEDINGS OF THE BOARD OF ADJUSTMENT.**

The Board of Adjustment shall adopt rules of administrative procedures necessary to conduct its affairs, and in keeping with the provisions of this Chapter. 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 in the absence of the Chairperson, the Acting Chairperson, may administer oaths and compel attendance of witnesses. All meetings shall be open to the public. The Zoning Administrator may be an ex-officio member and/or act as secretary for the Board of Adjustment. The Board shall keep minutes of its proceedings, including a Findings of Fact form for each case heard by the Board showing the vote of each member upon each question. The Board shall keep records of its meetings and other official actions or decisions, 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. The lack of three members voting in the affirmative shall constitute denial of the motion.

### **Section 3. HEARINGS, APPEALS AND NOTICE.**

Appeals to the Board of Adjustment may be taken by any person aggrieved or by any officer or bureau of the city affected by a decision of the Zoning Administrator. Such appeals should be taken within a reasonable time, not to exceed thirty (30) days, by filing with the Zoning Administrator and the Board, a notice of appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Board all papers constituting the record from which the action was taken.

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

The Board of Adjustment shall fix a reasonable time for the hearing of appeal, give public notices thereof, as well as due notice to the parties of interest, and decide the same within a reasonable time. At the hearing any party may appear in person or by agent or attorney. A fee, to be determined by resolution of the City Council, shall be paid to the City at the time the notice of appeal is filed.

The Board of Adjustment shall act on the appeal within 30 days following the closing of the public hearing. In exercising the powers set out in this section, the Board may, in conformity with the provisions of this Chapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, and may take such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the Zoning Administrator from whose action the appeal was taken. The Board shall notify the appellant of its decision by mail. The concurring vote 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 for any matter upon which it is required to pass under these provisions. The lack of three (3) members of the Board voting in the affirmative shall constitute denial of the motion.

#### **Section 4. 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 the Zoning Administrator in the enforcement of this Chapter, or any supplement or amendment.
2. Conditional Uses. To hear and decide conditional uses as the Board of Adjustment is specifically authorized to review by the terms of this Chapter, and as provided for in Section 165.18, Conditional Uses.
3. Variances: To authorize upon appeal in specific cases such variance from the terms of this Chapter as will not be contrary to the public interest where, owing to the special conditions, a literal enforcement of the provisions of this Chapter would result in unnecessary hardship, so the spirit of this Chapter shall be observed and substantial justice done.

#### **Section 5. VARIANCES.**

A variance from the terms of this Chapter shall not be granted by the Board of Adjustment unless and until:

1. A written application for the variance shall be filed 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 list providing the property names and addresses of the owner of each lot within two hundred feet (200') of the subject property.

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 shall be given to property owners and residents within two hundred feet (200') of the property requesting such variance.
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 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. Literal interpretation of this Chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Chapter;
  - 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 any special privilege that is denied by this Chapter to other lands, structures, or buildings in the same district. No nonconforming use of neighboring lands, structures or buildings in other districts shall be considered grounds for the issuance of a variance.
6. The Board of Adjustment shall further 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 Chapter, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.
8. A fee, determined by resolution of City Council, shall accompany the variance application.
9. In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this Chapter. 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 Chapter.
10. 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 (1) year a zoning compliance permit is issued and construction is commenced and diligently pursued toward completion on the site which was the subject of the variance application.
11. Upon violation of any applicable provision of this Chapter, or if granted subject to the conditions, upon failure to comply with conditions, a variance shall be revoked upon notification to the owner of the use or property subject to the variance.
12. Unless otherwise specified at the time a variance is granted, an approved and completed variance shall run with the land; and a completed variance shall continue to be valid upon a change of ownership of the site or structure to which it applies.

13. Under no circumstances shall the Board grant a variance to allow a use not permissible under the terms of this Chapter in the district involved, or any use expressly or by implication prohibited by the terms of this Chapter in said district.

**Section 6. DECISIONS OF THE BOARD OF ADJUSTMENT.**

1. In exercising the above mentioned powers, the Board of Adjustment may, so long as such action is in conformity with the terms of this Chapter and Chapter 414, Code of Iowa, reverse or affirm, wholly or partly, or may modify, order requirements, 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 three (3) members of the entire 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 upon which it is required to pass under this Chapter, or to affect any variation in application of this Chapter. The lack of three (3) members of the board voting in the affirmative shall constitute denial of the motion.
2. 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 the reasons for such action, specifying the manner in which the applicant either satisfied or failed to satisfy each of the applicable standards, conditions or elements set forth in this Chapter.
3. If any application for a variance or conditional use permit is denied by the Board of Adjustment, no new application for the same shall be considered for one (1) year from the date of the Board's decision, unless the Board shall find that conditions have changed.

**Section 7. APPEALS FROM THE BOARD OF ADJUSTMENT.**

Any taxpayer or any officer, department, board, or bureau of the City 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, setting forth that such decision is illegal, in whole or in part, specifying the grounds of illegality. The petition shall be presented to the court within 30 days after the filing of the decision in the office of the Board. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.



**BOARD OF ADJUSTMENT MEETING DATES  
AND APPLICATION SUBMISSION DEADLINES**

**\*\*MEETING TIME IS 5:00 P.M.\*\***

<b>MEETING</b>	<b>APPLICATION DEADLINE</b>	<b>MEETING DATE</b>
<b>MONTH</b>		
Nov 16	Monday, October 17, 2016	Thursday, November 17, 2016
Dec 16	Monday, November 21, 2016	Thursday, December 15, 2016
Jan 17	Monday, December 19, 2016	Thursday, January 19, 2017
Feb 17	Monday, January 16, 2017	Thursday, February 16, 2017
Mar 17	Monday, February 20, 2017	Thursday, March 16, 2017
April 17	Monday, March 20, 2017	Thursday, April 20, 2017
May 17	Monday, April 17, 2017	Thursday, May 18, 2017
June 17	Monday, May 15, 2017	Thursday, June 15, 2017
July 17	Monday, June 19, 2017	Thursday, July 20, 2017
Aug 17	Monday, July 17, 2017	Thursday, August 17, 2017
Sept 17	Monday, August 21, 2017	Thursday, September 21, 2017
Oct 17	Monday, September 18, 2017	Thursday, October 19, 2017
Nov 17	Monday, October 16, 2017	Thursday, November 16, 2017
Dec 17	Monday, November 20, 2017	Thursday, December 21, 2017
<b>Fees for Appeal:</b>		
<b>Board of Adjustment: \$200.00</b>		
<b>Conditional Use Permit: \$200.00</b>		
<b>Building Permit: \$1.50/\$1,000 Valuation or \$50 minimum</b>		