

Durant, Iowa



**PACKET FOR BOARD OF
ADJUSTMENT REQUEST FOR
VARIANCE CONSIDERATION**

APPLICATION FOR REQUEST OF VARIANCE

The City of Durant Board of Adjustment consists of five members appointed by the Mayor. The Board is empowered through Chapter 414 of the Code of Iowa and ARTICLE XXI of the Municipal Code to grant special exceptions as provided in the Zoning Ordinance and to hear appeals to decisions made in the enforcement of the Zoning Chapters. Further explanation of the Board and its' duties are attached.

A variance is not a right, and it shall not be granted for hardships that are created by the property owner. The Board is also empowered through Chapter 196.02 to issue special permits authorizing the location of buildings or uses, as outlined in Chapter 196 of the Municipal Code, in any district from which they are prohibited by the Zoning Ordinance.

***PLEASE READ THE FOLLOWING ATTACHED INFORMATION
CAREFULLY BEFORE COMPLETING THE VARIANCE
APPLICATION.***

ARTICLE XX1. BOARD OF ADJUSTMENT: ESTABLISHMENT AND PROCEDURE.

A Board of Adjustment is hereby established, which shall consist of five members appointed by the City Council, each for a term of five years, excepting that when the board shall first be created one member shall be appointed for a term of five years, one for a term of four years, one for a term of three years, one for a term of two years, and one for a term of one year. Members shall be removable for cause by the City Council upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

SECTION 2102. 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. Meeting shall be held at the call of the chairman and at such other times as the board may determine. The chairman, or in his absence the acting chairman, may administer oaths and compel the 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. The presence of three (3) members shall be necessary to constitute a quorum.

SECTION 2103. HEARINGS: APPEALS: NOTICE. Appeals to the Board of Adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the City of Durant affected by any decision of the zoning administrator. Such appeals shall be taken within fifteen (15) days 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 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 on the 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 by agent or attorney. Before an appeal is filed with the board, the appellant shall pay a fee of fifty dollars (\$50) to the City Clerk to be credited to the general fund of the City of Durant.

SECTION 2104. STAY OF PROCEEDINGS. An appeal stays all proceedings in furtherance of the action appealed from, unless the zoning administrator certifies to the board of adjustment after the notice of appeal is filed with him, that by reason of facts stated in the certificate, a stay would, in his 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 record on application, on notice to the zoning administrator and on due cause shown.

ARTICLE XXII. BOARD OF ADJUSTMENT: POWERS AND DUTIES.

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

SECTION 2201. ADMINISTRATIVE REVIEW. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the zoning administrator in the enforcement of this ordinance.

SECTION 2202. SPECIAL EXCEPTIONS. To permit the following exceptions to the district regulations set forth in this ordinance, provided all exceptions shall by their design, construction and operation

adequately safeguard the health, safety and welfare of the occupants of adjoining and surrounding property, shall not impair an adequate supply of light and air to adjacent property, shall not increase congestion in the public streets, shall not increase public danger of fire and safety, and shall not diminish or impair established property values in surrounding areas.

- a. To permit erection and use of a building or the use of the premises or vary the height, yard or area regulations in any location for a public service corporation for public utility purposes, or for purposes of public communication, which the board determines is reasonably necessary for the public convenience or welfare.
- b. To permit the use of property in residential districts for off-street parking purposes as accessory to permitted residential district uses where said parking lots do not immediately adjoin the permitted residential district use.
- c. To permit the extension of a zoning district where the boundary line or a district divides a lot in single ownership as shown of record or by existing contract or purchase at the time of the passage of this ordinance, but in no case shall such extension of the district boundary line exceed thirty (30) feet in any direction.
- d. To issue permits and decide and such matters as may be required by other sections of this ordinance.

SECTION 2204. VARIANCES: CONDITIONS GOVERNING APPLICATIONS: PROCEDURES. 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 this ordinance would result in unnecessary hardship. A variance from the terms of this ordinance shall not be granted by the Board of Adjustment unless and until:

- a. A written application for a variance is submitted demonstrating:
 1. 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;
 2. That literal interpretation of the provisions of this ordinance would deprive the applicants of rights commonly enjoyed by other properties in the same district under the terms of this ordinance;
 3. That the special conditions and circumstances do not result from the actions of the applicant;
 4. That granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same district.

Non-conforming use of neighboring lands, structures, or buildings in the same district, and permitted or non-conforming use of lands, structures, or buildings in other districts shall not be considered grounds for the issuance of a variance.

- b. The Board of Adjustment shall make findings that the requirements of Section 2102.a. have been met by the applicant for a variance;
- c. 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;

- d. 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 ordinance, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this ordinance. Violation 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 Article XXIV of this ordinance.

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

SECTION 2205. DECISIONS OF THE BOARD OF ADJUSTMENT. In exercising the above mentioned powers, the board may, in conformity with the provisions of law, reverse or affirm, wholly or partly, or modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as it believes proper, and to that end shall have all the powers of the zoning administrator. The concurring vote of three (3) of the members of the board 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; provided, however, that the action of the board shall not become effective until after the resolution of the board, setting forth the full reason for its decision and the vote of each member participating therein, has been filed. Such resolution, immediately following the board's final decision, shall be filed in the office of the board, and shall be open to public inspection.

Every variation and exception granted or denied by the board shall be supported by a written testimony or evidence submitted in connection therewith.

Any taxpayer, or any officer, department, board or bureau of the City of Durant, or any person or persons jointly or severally aggrieved by any decision of the board 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. Such petition shall be presented to the court within thirty (30) days after the final of the decision in the office of the board.

ARTICLE XXIII. AMENDMENTS.

The City Council may, from time to time, on its own action or on petition, after public notice and hearings as provided by law, and after report by the zoning commission, amend, supplement, or change the boundaries or regulations herein or subsequently established, and such amendment shall not become effective except the favorable vote of a majority of all the members of the City Council.

SECTION 2300. PROCEDURES. Whenever any person, firm or corporation desires that any amendment, or change be made in this ordinance, including the text and/ or map, as to any property covered by this ordinance, and there shall be presented to the Council a petition requesting such change or amendment and clearly describing the property and its boundaries as to which the change or amendment is desired, duly signed by the owners of fifty (50) percent of the area of all real estate included within the boundaries of said tract as described in said petition, and in addition, duly signed by the owners of fifty (50) percent of the area of all real estate lying outside of said tract but within two hundred fifty (250) feet of the boundaries thereof, and intervening streets and alleys not to be included in computing such

two hundred fifty (250) feet, it shall be the duty of the Council to vote upon such petition within a reasonable time after filing of such petition with the City Clerk.

Prior to voting or holding a public hearing upon the petition as submitted, the City Council shall refer the petition to the zoning commission requesting its comments and recommendations. The Commission, after public hearing, shall advise the City Council of its recommendations and the vote thereon.

In case the proposed amendment, supplement or change be disapproved by the zoning commission, or a protest be presented duly signed by the owners of twenty (20) percent or more either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof, extending the depth of one lot or not to exceed two hundred (200) feet therefrom, or of those directly opposite thereto, extending the depth of one lot or not to exceed two hundred (200) feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of at least three-fourths (3/4) of all members of the Council. Whenever any petition for amendment, supplement or change of the zoning districts or regulations herein contained or subsequently established shall have been denied by the City Council, then no new petition covering the same property or the same property and additional property shall be filled with or considered by the City Council until one (1) year shall have elapsed from the date of filing of the first petition.

SECTION 2301. FILING FEES. Before any action shall be taken as provided in this article, the owner or owners of the property proposed or recommended to be changed in the district regulations or district boundaries shall pay to the City Clerk the sum fifty dollars (\$50) to cover the costs of the procedure. Under no conditions shall said sum or any part thereof be refunded for failure of said amendment to be enacted into law.

ARTICLE XXIV. COMPLAINTS REGARDING VIOLATIONS.

Whenever a violation of this ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint stating fully the causes and basis thereof shall be filed with the zoning administrator. He shall record properly such complaint, immediately investigate, and take action thereon as provided by this ordinance.

ARTICLE XXV. PENALTIES FOR VIOLATION

Violation of the provisions of this ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances or special exceptions) shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$100 or imprisoned for not more than 30 days, or both, and in addition shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense.

Nothing herein contained shall prevent the City from taking such other lawful action as is necessary to prevent or remedy any violation.

Durant, Iowa



Date Filed _____

Fee: \$150.00 nonrefundable

City Hall: 402 6th Street
PO Box 818 Durant IA 52747
(563) 785-4451

CITY OF DURANT
Board of Adjustment Zoning Appeals

OWNER OF PROPERTY: _____

PROPERTY ADDRESS: _____

PHONE NUMBER(S): _____

To the Chairman, Board of Adjustment:

I HEREBY APPEAL the decision of the Zoning Administrator date _____

Description of Proposed/Existing Building

1.) Size of building at street level: Width _____ (ft) Depth _____ (ft)
Height _____ (ft) Number of stories _____

Type of building proposed: _____

2.) Please check appropriate description:

Residential: Single Family Dwelling _____ Multi-family dwelling _____ (qty)

Industrial or commercial: # employed Presently _____ Proposed _____

3.) Current zoning of property: (Circle one)

- | | | |
|---------------------|-----------------------|-----------------------|
| R1-Single Family | R1A Single & 2 family | R2 Multiple Family |
| R3 Mobile Home | C1 Central Commercial | C2 General Commercial |
| I1 Light Industrial | I2 Heavy Industrial | |

4.) Character of construction- (Circle one) Frame Brick Other

5.) Lot Size (ft) Width _____ Depth _____

Briefly describe or attach a written statement to the purpose of the appeal. Also attach a detailed drawing of the plans and sectional drawings of the proposed building and location on the lot. Also show all existing structures on drawing:

Proposed completion date _____.

I hereby certify that all of the above information and papers submitted herewith are true and accurate.

Signature of Applicant Date: _____



FOR ADMINISTRATIVE USE ONLY

Date of Hearing _____ Date of publication for hearing _____

Decision of the Board of Adjustment: Approved Denied

Reasons or remarks:
