

**City of Decorah
Board of Adjustment
Variance Request Application for Approval**

Name of Applicant(s): _____

Submittal Date: _____ **Fee \$150.00 - Date Paid:** _____

VARIANCE INFORMATION

A variance is a minor exception to the existing zoning rules that allows a landowner to do what is otherwise forbidden by a zoning ordinance due to an unnecessary hardship on the landowner. According to Iowa Code Section 414.12(3), a city board of adjustment may:

...authorize upon appeal in specific cases such variance from the terms of the ordinance 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 unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done.

Pursuant to Iowa Code Chapter 414 and City of Decorah Code Chapter 17.28, the Board of Adjustment may authorize upon appeal in specific cases such variance from the terms of this title as will not be contrary to the public interest where, owing to the special conditions, a literal enforcement of the provisions of this title would result in unnecessary hardship. A variance from the terms of this title shall not be granted by the board of adjustment unless and until the following requirements are met:

- 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 title would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this title,
 - 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 title to other lands, structures or buildings in the same district, and that no permitted use of land, structures or buildings in other districts shall be considered grounds for the issuance of a variance;
- B. Notice of public hearing shall be given as in subsection (A) (2) of Section 17.28.060;
- C. The public hearing shall be held. Any party may appear in person or be represented by an agent or an attorney.

The Iowa Supreme Court has a three-part test to establish that an unnecessary hardship exists for approval of a variance. The Iowa Supreme Court requires the landowner show:

- (1) the land in question cannot yield a reasonable return if used only for a purpose allowed in that zone;
- (2) the plight of the owner is due to unique circumstances and not to the general conditions in the neighborhood ...; and
- (3) the use to be authorized by the variance will not alter the essential character of the locality.”

Earley v. Board of Adjustment of Cerro Gordo County, 955 N.W.2d 812, 817 (Iowa, 2021)

The burden is upon the party seeking the variance to show that an unnecessary hardship would result if the variance request is denied. All three parts of the test must be established. *If the party seeking the variance fails to establish any of the three elements, the board of adjustment is without statutory authority to grant the variance.* The Iowa Supreme Court further explained:

[A] variance should be granted where, and only where, the application of the regulation in question to particular property greatly decreases or practically destroys its value for any permitted use, or where such application bears so little relationship to the purposes of zoning that, as to the property in question, the regulation is in effect confiscatory, arbitrary, or capricious, or constitutes an unnecessary, unwarranted, or unjust invasion of, or interference with, a fundamental right of property.

Please understand that the Board does not have to grant the request, as the Board is required to uphold the City's zoning requirements. According to the Iowa Supreme Court, variances should be granted sparingly with great caution and in exceptional instances only.

INSTRUCTIONS FOR VARIANCE REQUESTS

Requests for a variance cannot be processed until all required materials are submitted. In addition to completion of this application, the following information is required for submission.

- Site plan that shows the pertinent dimensions, drawn to scale.
- Application fee. An application is not considered filed until filing fee is paid.

FURTHER DUTY OF APPLICANTS: Approval of this request for variance by the Board of Adjustment in no way absolves the applicant from subsequently obtaining the necessary development approvals, such as site plan, building permits, etc. from the City of Decorah or any other applicable agency.

NOTICE OF APPEAL RIGHTS: Any person who wishes to appeal a decision of the Board of Adjustment to a court of record must do so within 30 days after the filing of the decision of the office of the board. Any such person wishing to appeal a Board of Adjustment decision is encouraged to consult with their own private legal counsel. City staff cannot give legal advice.

THE CITY OF DECORAH ZONING CODE can be found at https://library.municode.com/ia/decorah/codes/code_of_ordinances

For setback requirements, please see "Bulk regulations" for each zoning district found in the Zoning Code.

Applicant Information

Name of Applicant(s): _____

Applicant Address: _____

Phone/Cell: _____ Email Address: _____

| Property Information | |
|---|--|
| Property owner(s): | |
| Address of the property affected: | |
| Legal description of the property affected: | |
| Zoning District: | |
| Principal Use: | |

| Zoning Regulation | Required | Proposed/Actual |
|--------------------------------------|-----------------|------------------------|
| Lot/ Tract area Sq. Feet | | |
| Front yard Setback | | |
| Side yard Setback | | |
| Rear yard Setback | | |
| Maximum height/ Number of stories | | |
| Off-street parking | | |
| Other | | |

Applicant's Request for a Variance

Applicants must answer all of the following questions. Failure to answer any question may result in rejection of the application. Attach drawing depicting request and attach additional pages as needed.

1. A variance is requested from Decorah City Code Section(s):

- _____
- _____
- _____
- _____
- _____

2. NARRATIVE. Explain the proposed project and the purpose for the application for a variance from the City of Decorah Zoning Code:

3. Describe any special conditions and circumstances that exist that are peculiar to the land, structure, or building involved and that are not applicable to other lands, structures, or buildings in the same district. *(Describe any irregularities in your lot or buildings that prevent you from constructing without a variance. In other words, describe what makes your property different from others in the area. Demonstrate that the physical circumstances creating the hardship are not shared by other properties in your neighborhood. Physical circumstances include things such as oddly shaped lots, small lots, and the presence of mature trees, flood plains, steep slopes or other natural features. The board will be looking for proof from you that your property is somehow different from other property in the neighborhood.)*

4. **Unnecessary hardship.** Under Iowa law, a variance may be granted only where due to special conditions a literal enforcement of the provisions of the ordinance will result in unnecessary hardship. To establish an unnecessary hardship, the Iowa Supreme Court requires that all three of the following elements be clearly established*:

a. **Explain why the property in question cannot yield a reasonable return if used only for a purpose allowed in the zone where the property is located.**

| |
|--|
| Board use only: Did the applicant provide an adequate explanation. Yes _____ No _____ (reason why) |
|--|

b. **Explain how the owner's situation is unique or peculiar to the property in question, and the situation not shared with other landowners in the area or due to general conditions in the neighborhood.**

| |
|--|
| Board use only: Did the applicant provide an adequate explanation. Yes _____ No _____ (reason why) |
|--|

c. **Explain how the hardship is not of the landowner's or applicant's own making or that of a predecessor in title.**

| |
|--|
| Board use only: Did the applicant provide an adequate explanation. Yes _____ No _____ (reason why) |
|--|

***Failure to answer any of the above questions will result in denial of the application for a variance.**

FURTHER DUTY OF APPLICANTS: Approval of this request for variance by the Board of Adjustment in no way absolves the applicant from subsequently obtaining the necessary development approvals, such as site plan, building permits, etc. from the City of Decorah or any other applicable agency.

PROPERTY OWNER(S) SIGNATURE

Signature of property owner

Signature of property owner

Street address

Street address

City, State ZIP

City, State ZIP

Phone number

Phone number

(Attach additional pages if necessary)

If the applicant is other than the property owner, sign below:

APPLICANT'S SIGNATURE

Signature of Applicant

Signature of Applicant

Street address

Street address

City, State ZIP

City, State ZIP

Phone number

Phone number

(Attach additional pages if necessary)

Affix by staple any attachments behind this sheet.