

Variance v. Special Exception



Iowa Code §414.7

“Board of adjustment — review by council.

1. The council shall provide for the appointment of a board of adjustment. In the regulations and restrictions adopted pursuant to the authority of this chapter, the council shall provide that the board of adjustment may in appropriate cases and subject to appropriate conditions and safeguards **make special exceptions to the terms of the ordinances in harmony with its general purpose and intent and in accordance with general or specific rules contained in the ordinance** and provide that any property owner aggrieved by the action of the council in the adoption of such regulations and restrictions may petition the board of adjustment direct to modify regulations and restrictions as applied to such property owners.” (emphasis added)



Iowa Code §414.12

“Powers.

The board of adjustment shall have the following powers:

1. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this chapter or of any ordinance adopted pursuant thereto.
2. To **hear and decide special exceptions** to the terms of the ordinance upon which such board is required to pass under such ordinance.
3. To **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.” (**emphasis** added)

Variance Standard of Review

WDM City Code §2-2-4

1. Plight of the owner is due to *special or exceptional circumstances* and not the general conditions of the neighborhood.
2. Literal enforcement of the ordinance will result in an **UNNECESSARY HARDSHIP**:
 - a. The land in question **cannot yield a reasonable return** if the variance is not granted.
 - Proof that owner has been deprived of ALL beneficial use of the land.
 - NOT SUFFICIENT to show that the value of land has been depreciated, or that the variance would permit the owner to maintain a more profitable use.
 - b. The plight of the owner is **due to unique circumstances not of the owner's making** and not due to the general conditions of the neighborhood.
 - c. The use of the variance will not alter the essential character of the locality.
3. The *spirit of the ordinance* shall be observed even when the variance is granted.
4. *Substantial justice* shall be done as a result of granting the variance.



Zoning: RS-10 – typically min lot width of 80’

Lot width: 65’

Setbacks: 35’ front yard

35’ rear yard

8’ min side yard setback on one side

20’ min sum side yard setbacks

**Request: reduce side yard setback to 4’

Applying the **Variance Standard** likely would result in denial:

1. Plight of the owner is due to special or exceptional circumstances and not the general conditions of the neighborhood.
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 - NOT SUFFICIENT to show that the value of land has been depreciated, or that the variance would permit the owner to maintain a more profitable use.
 - b. The plight of the owner is **due to unique circumstances not of the owner’s making** and not due to the general conditions of the neighborhood.
 - c. The use of the variance will not alter the essential character of the locality.
3. The spirit of the ordinance shall be observed even when the variance is granted.
4. Substantial justice shall be done as a result of granting the variance.

Special Exception Standard of Review

- Language mirrors that of City of Des Moines.
- Des Moines allows for zoning exceptions as long as the request does not exceed 50% of the applicable numerical regulation.

1. The requested exception is reasonably necessary due to **PRACTICAL DIFFICULTIES** related to the subject property
 - setbacks are adopted for valid health and safety reasons, but when those regulations treat an applicant unfairly in relation to unique aspects of the land, they should be relaxed.
2. The requested exception by its design, construction and operation:
 - a. Will adequately safeguard the health, safety and welfare of the occupants of adjoining and surrounding property
 - b. Will not impair an adequate supply of light and air to adjacent property;
 - c. Will not unduly increase congestion in the public streets;
 - d. Will not increase public danger of fire and safety; and
 - e. Will not diminish or impair established property values in the surrounding area
3. The practical difficulties related to the subject property *cannot be overcome by any feasible alternative* means other than an exception;
4. The requested exception will *not have a significant adverse impact on the essential character of the surrounding area*; and
5. The requested exception *relates entirely to a use classified by applicable district regulations as either a principal permitted use, a permitted accessory use, or a permitted sign, or to off-street parking or loading areas accessory to such a permitted use.*



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Applying the **Practical Difficulties** standard, could result in a different decision:

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 - b. Will not impair an adequate supply of light and air to adjacent property;
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