

APPEAL TO THE BOARD OF ADJUSTMENT FOR A VARIANCE:

This notice of a Variance appeal to the Muscatine County Board of Adjustment is from the decision of the determination made by the Muscatine County Zoning Administrator for Muscatine County.

Facts in this case are as follows:

The premises affected is zoned:

Containing approximately: \_\_\_\_\_

Located in parts of the: \_\_\_\_\_

Parcel #/District: \_\_\_\_\_

Address of Property affected: \_\_\_\_\_

That said Zoning Administrator denied or refused to issue a Variance request for the reason that it was a matter, which in their opinion, should properly come before the Muscatine County Board of Adjustment. (I) (We), therefore, request that a Variance be granted as follows:

\_\_\_\_\_ and that the Muscatine County Zoning Administrator be authorized and instructed to issue a Variance for this use, and (I) (We) contend you have such authority as set out in Article XVIII, Section 3, after your Board has held a public hearing and approved the Variance.

That attached, hereto, is our non-refundable fee in the amount of \$150.00 per request made payable to the Muscatine County Treasurer, Zoning Office Receipt # \_\_\_\_\_ .

Respectfully submitted on this date: \_\_\_\_\_ and signed by:

The undersigned is/are the owner(s) of the described property on this application, located in the unincorporated area of Muscatine County, Iowa, assuring the information provided herein is true and correct. By signing below, I hereby give my consent for the Muscatine County Zoning Office to conduct a site visit and photograph the subject property.

**X**

\_\_\_\_\_  
Applicant's Signature  
(if different than Record Owner)

\_\_\_\_\_  
Record Owner Signature

\_\_\_\_\_  
Print Applicant's Name  
(if different than Record Owner)

\_\_\_\_\_  
Print Record Owner's Name

\_\_\_\_\_  
Print Applicant's Address  
(if different than Record Owner)

\_\_\_\_\_  
Print Record Owner's Address

\_\_\_\_\_  
Print Applicant's Telephone #  
(if different than Record Owner)

\_\_\_\_\_  
Print Record Owner's Telephone #

\_\_\_\_\_  
Print Applicant's Email Address  
(if different than Record Owner)

\_\_\_\_\_  
Print Record Owner's Email Address

## **LEGAL STANDARDS FOR VARIANCES**

As a potential applicant for a variance, you need to be aware of the legal standards under which variance applications are to be evaluated by the Board of Adjustment. A variance is not to be granted as a convenience to a property owner. Iowa courts have stated that variances are not to be granted routinely. To do so would defeat the purpose of having a zoning ordinance. Zoning ordinances are created for purpose of promoting health, safety, morals, or general welfare of the community. The courts have also stated that it is the burden of the application that meets the required standards.

In order to justify the granting of a variance, the applicant must show that an unnecessary hardship exists, that there is a unique property limitation, and that the variance would not be contrary to the public interest.

The following points are all drawn from Iowa case law, and are the standards under which a variance action would be reviewed by the courts:

### **Unnecessary Hardship**

What constitutes a hardship is to be determined from the facts and circumstances of each individual case. An applicant for a variance has the burden of showing all of the following:

1. The land in question cannot yield a reasonable return if used only for a purpose allowed in that zone. Lack of a reasonable return may be shown by proof that the owner has been deprived of all beneficial use of his land. All beneficial use is said to have been lost where the land is not suitable for any use permitted by the zoning ordinance.
2. The plight of the owner is due to unique circumstances and not to the general conditions in the neighborhood, which may reflect the unreasonableness of the zoning ordinance itself.
3. The use to be authorized by the variance will not alter the essential character of the locality. (Iowa Code Section 414.12(3))

### **Unique Property Limitation**

Unique physical characteristics of the property, not the desires of, or conditions personal to the applicant, must prevent the applicant from developing in compliance with the zoning ordinance. Such limitations may arise due to steep slopes, wetlands, or parcel shape that limits the reasonable use of property.

## **Protection of the Public Interest**

Granting a variance must neither harm the public interest nor undermine the purposes of the ordinance. In granting a variance, the Board may attach special conditions to ensure that the public welfare will not be damaged. Such conditions must relate reasonably to the purpose and intent of the ordinance. Also, any variance granted should include only the minimum relief necessary to allow reasonable use of property.

The Board of Adjustment shall determine:

- That it will not impair an adequate supply of light and air to adjacent property.
- That it will not unreasonably increase congestion and traffic hazards on public roads.
- That it will not unreasonably diminish or impair established property values within the surrounding areas.
- That it will not in any other respect impair the public health, comfort, safety, morals or welfare of the inhabitants of the county.
- That it will not impair the general purpose and intent of the regulations and provisions contained in the Muscatine County Zoning Ordinance and Comprehensive Plan.

## **Items Not Grounds for Hardship**

- Loss of profit or financial hardship is not in and of itself grounds for a variance.
- Self-imposed hardship is not grounds for a variance. When conditions giving rise to the need for a variance were created by the property owner or a former owner, the hardship is self-imposed.

The Board of Adjustment has authority to determine whether exceptions to an ordinance are to be allowed. It cannot amend or change an ordinance or declare an ordinance unconstitutional. The zoning commission and the Board of Supervisors have the power to change the zoning restrictions.

## **SECTION 7. BOARD OF SUPERVISORS REVIEW**

The Board of Supervisors reviews variances granted by the Board of Adjustment, usually within two weeks of the Board of Adjustment's decision. The Board of Supervisors may remand a decision to grant a variance to the Board of Adjustment for further study. If remanded, the effective date of the variance is delayed for thirty days from the date of the remand.

## VARIANCE QUESTIONNAIRE

(Some questions may not apply – just mark n/a if that is the case)

1. What do you feel is the unnecessary hardship?  

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2. Will the granting of this Variance impair an adequate supply of light and air to adjacent property?  

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3. What is the unique property limitation?  

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4. Will the proposed use alter the character of this property in any way?  

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5. Will the proposed use unreasonably increase congestion and traffic hazards on public roads?  

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6. Will the proposed use unreasonably diminish or impair established property values within the surrounding areas?  

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7. Will the proposed use impair the public health, comfort, safety, morals or welfare of the inhabitants of the county?  

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8. Will the proposed use impair the general purpose and intent of the regulations and provisions contained in the Muscatine County Zoning Ordinance and Comprehensive Plan?  

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9. What are the proposed days and hours of operation?  

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10. What type of county, state and/or federal permits will be needed to conduct the business?  

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11. How many employees will be coming to the site?  

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12. What type of traffic will be generated by the proposed use?

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13. Estimate the water and sewage demands created by the proposed use.

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14. Describe the amount and types of equipment and/or materials to be stored on site.

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15. Will there be any offensive odors, noise or fumes created by the proposed use?

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