

## Variations

The board of adjustment has the power 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. Iowa Code §§ 335.15 (counties) and 414.12 (cities).

A variance is an authorization to allow a landowner to do something that is generally forbidden by the ordinance. In order to be granted a variance, the applicant carries the burden of proving to the board that strict enforcement of the terms of the ordinance will inflict an unnecessary hardship on the landowner. Iowa courts have set out specific criteria that must be satisfied before the zoning board of adjustment may find that an unnecessary hardship exists, sufficient to grant a landowner a variance. The landowner must satisfy all three parts of the test to be granted a variance:

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

The Iowa courts have established several guidelines for assessing whether the above-listed criteria have been met:

- 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.
  - o It is not sufficient to show that the value of land merely has been depreciated by the zoning regulations, or that a variance would permit a landowner to maintain a more profitable use.
  - o It is not sufficient to show mere inconvenience to the applicant.
- Problems common to several properties do not constitute “unique circumstances.” The appropriate response is through a zoning amendment, not wholesale application of the discretionary power of the board of adjustment.
- The “unique circumstances” must not be created by the landowner's own actions. For example, a landowner cannot build a house to fill the building envelope of a lot (i.e., so that the walls are built to the minimum front, side and rear setback lines), then seek a variance to put a porch or deck on that house that will violate a setback.
- When a landowner purchases property he or she assumes the circumstances created by the previous landowner.
- A variance that alters the “essential character of the area” is beyond the authority of the board of adjustment to grant. The board cannot grant a variance that, in effect, constitutes a zoning amendment. Factors to consider in determining whether a variance will alter the “essential character of the neighborhood” include the degree of variation from district regulations, the size of the parcel, and the parcel's size and character in relation to the size of the district.

Remember that a variance should protect a landowner's property right, not grant a landowner a special privilege unavailable to other landowners.

