

CHAPTER 165.80 BOARD OF ADJUSTMENT

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165.80.010 Establish the Board of Adjustment

A Board of Adjustment is hereby established which shall consist of five members. The terms of office of the members of the Board and the manner of their appointment and of filling the vacancies shall be as provided by statute.

165.80.020 Rules

The Board shall adopt its own rules of procedure not in conflict with this chapter nor with the Iowa statutes.

All meetings of the Board shall be held at the call of the chair and at such times as the Board may determine. The chair, or in its absence the acting chair, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The Board 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 also keep records of its examinations, hearings and other official actions. Findings of fact shall be included in the minutes of each case of a requested variation, and the reasons for recommending or denying such variation shall be specified. Every rule or regulations, and every amendment or repeal thereof, every order, requirement, decision or determination of the Board shall be filed immediately, in the office of the Board and shall be public record.

165.80.030 Appeal, Hearing and Notice

An appeal may be taken to the Board by any person, for or corporation aggrieved, or by an officer, department or board of the city affected by any decision of the Building Official. Such appeal shall be taken within a reasonable time as shall be prescribed by the Board by general rules, by filing with the Building Official and with the Board a notice of appeal, specifying the grounds thereof. The Building Official shall forthwith transmit to the Board all of the papers constituting the record upon which the action appealed from was taken.

The Board shall select a reasonable time and place for the hearing of the appeal and give notice thereof. Following the conclusion of the hearing, a decision on the appeal shall be rendered without unreasonable delay. Any person may appear, testify at any hearing, either in person or by counsel.

A fee of \$100.00 shall be paid to the City of DeWitt for all special use and conditional use permits, and appeals, exceptions, and variances at the time the notice of appeal is filed, which the Building Official shall forthwith provide to the Director of Finance to the credit of the general revenue fund of the City. No part of such fee shall be returnable to the appellant.

165.80.040 Powers of the Board

The Board shall have the following powers and it shall be its duty to act on the matters hereinafter described.

165.80.042 Appeal of Administrative Decision

To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Building Official in the enforcement of this Chapter.

165.80.044 Exceptions

To hear and decide by granting or denying an exception to the provisions of this Chapter including but not limited to the following instances:

- A. A request for the extension of a district where the boundary line of a district divides a lot or tract held in single ownership at the time of the passage of this Chapter.
- B. Interpret the provisions of this Chapter in such a way as to carry out the intent and purpose of the zoning plan, as shown upon the maps fixing the several districts, accompanying and made a part of this Chapter, where the street layout actually existing on the ground varies from the street layout as shown on the map or maps.
- C. Permit the erection and use of a building or structure or the use of premises for railroad or public utility purposes.
- D. Permit the reconstruction of a non-conforming building which has been damaged by fire or other causes to the extent of more than 60% of its actual value, where the Board finds that the public interest will best be served by permitting a continued existence of the structure.

165.80.46 Appeals for Variances

The Board may consider appeals for variances to waive or reduce the parking and loading requirements in any of the districts whenever the character or use of the building is such as to make unnecessary the full provision of parking or loading facilities, or whenever such regulations would impose an unreasonable hardship upon granting an advantage or a convenience.

The Board also shall have authority to authorize upon appeal in specific cases variances from the terms of this Chapter when the following is demonstrated by the property owner:

- A. Whenever a property owner can show that a strict compliance with the terms of this Chapter relating to the use, construction or alteration of buildings or structures or the use of land will impose upon such owner unusual and practical difficulties or particular hardships.
- B. That the variance if granted will be in harmony with the general purpose, intent and spirit of this Chapter.
- C. That the Board determines that the granting of the requested variance will not serve merely as a convenience to the applicant, but will alleviate a demonstrable hardship so as to warrant a variance from the official City plan, while at the same time, surrounding property will be reasonably protected and the proposed variance will be in character with the surrounding neighborhood.
- D. That by granting the request for a variance substantial justice will be done.

165.80.047 Granting Special Use Permits and Conditional Use Permits

- A. The Board shall have authority to authorize the granting of a special use in accord with the conditions of this Chapter as particularly set forth in 165.72 and in the various zoning districts which provide for special uses.
- B. The Board shall have authority to oversee and grant conditional permits to:
 - 1. Conduct home occupations in accord with the provisions of the R-1, R-2, and R-3 Districts.
 - 2. Approve a special location plan for parking in accord with 165.65.130.
 - 3. Allow installation of two business/identification signs in accord with 165.67.085.

165.80.048 Completeness of Requirements

The Board shall have the authority to decide upon the correctness and appropriateness of all external additions, expansions and improvements to areas developed under development plans mandated by this Chapter which have been completed as certified by a final resolution of the Council. This authority shall obligate the Board to review the intent of the original concept so that improvements, beyond routine good maintenance, do not detract from, either directly or incrementally over a period of time, the concept which makes the development desirable and practical.

In its consideration of a specific case, the Board must determine that the granting of a variance from the terms of this Chapter will not be contrary to the public interest, where owing to special conditions, fully demonstrated on the basis of the facts presented, a literal enforcement of the provisions of this Chapter will result in unnecessary hardship, and that the spirit of this Chapter shall be observed and substantial justice done.

165.80.050 Determination

In considering all appeals, special uses and any proposed exception or variance to this Chapter, the Board, before making any decision in a specific case, shall first determine:

- A. That the granting of the request will not permit any use in any district which would be in conflict with the permitted uses of such district under the terms of this Chapter.
- B. That it will not impair an adequate supply of light and air to adjacent property.
- C. That it will not unreasonably increase the congestion in public streets.
- D. That it will not increase the danger of fire or of the public safety.
- E. That it will not unreasonably diminish or impair established property values within the surrounding area.
- F. That it will not in any other respect impair the public health, comfort, safety, morals or welfare of the inhabitants of the City.

165.80.060 Required Majority

The concurring vote of three members of the Board shall be necessary to reverse any order, requirement, decision or determination of the Building Official or to decide in favor of the applicant any matter upon which the Board is authorized by this Chapter to render a decision.

165.80.070 Powers and Procedure

In exercising its powers, the Board may, in conformity with the provision of this Chapter, reverse or affirm, wholly or in part, or may modify the order, requirement, decision or determination appealed from and make such order, requirement, decision or determination as ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken. Nothing herein contained shall be construed to give or grant to the Board the power or authority to alter or change the zoning Chapter or the district map, such power and authority being reserved to the Council.

The Board shall make no finding except in a specific case and after a public hearing conducted by the Board. Notice of the time and place of such public hearing shall be published at least once not less than seven days nor more than 20 days prior to the date of the hearing, in a Clinton County publication having a general circulation with the City. Such notice shall contain the address and location of the property for which the variance or other ruling by the Board is sought as well as a brief description of the nature of the appeal.

165.80.090 Recourse

Any person jointly or severally aggrieved by any decision of the Board under the provision of this chapter or any taxpayer, or any officer, department, board or bureau of the City shall have recourse to such relief as is provided by the statutes of the State of Iowa.

**CITY OF DEWITT, IOWA
VARIANCE REQUEST FORM**

VARIANCE REQUEST NO. _____

**BUILDING OFFICIAL
CITY OF DEWITT
CITY HALL (563)659-3811**

Legal description of land proposed for Variance _____

Address of land proposed for Variance _____

Existing zoning _____

Proposed Variance _____

Total area (sp. ft or acres) _____

Applicant _____

Applicant address _____

Telephone number () _____ - _____

Interest in land _____

Title holder (if other than applicant) _____

Title holder address _____

Telephone number () _____ - _____

Contact person _____

Contact person address _____

Telephone number () _____ - _____

Signature of applicant _____

ATTACH FEE \$100.00 payable to City of DeWitt

Note: If applicant is other than title holder, documentation is required to show control of property, e.g., accepted offer to purchase, option, etc.

Applicant shall follow the City's checklist in preparing materials in support of the Variance Application.