

CHAPTER 25.06 ADMINISTRATION

SUBCHAPTER 25.06-A ADMINISTRATIVE BODIES

Sec. 25.06.030 Bodies Established and Authorized

Subsection 25.06.030.3 Board of Adjustment

1. **Membership.**

- a. *Membership, Terms, and Qualifications.* Pursuant to Chapter 414 of the Iowa Code, there is established a Board of Adjustment, which may consist of nine members appointed by the City Council for terms of five years. Unless specifically authorized by the City Council, no member, however, shall be appointed to more than two consecutive five-year terms. Members of the Board of Adjustment shall be qualified resident electors of Sioux City, and shall not be officers or employees of the City or any agency or department of the City. A majority of the members of the Board of Adjustment shall be persons representing the public at large and shall not be involved in the business of purchasing or selling real estate. A person appointed to the Board of Adjustment shall also be appointed to the Planning and Zoning Commission. Members of the Board of Adjustment shall serve without compensation.
- b. *Vacancy.* Permanent vacancies on the Board of Adjustment shall be filled by the City Council, in the same manner as other appointments, for the unexpired term of the former member whose place has become vacant. Members whose terms have expired shall continue to serve until a successor has been appointed.
- c. *Removal.* Any member of the Board of Adjustment may be removed for cause by the City Council at any time; provided, however, that before any such removal, such member shall be presented with specific charges in writing and shall be given an opportunity to be heard in his/her own defense at a public hearing. Cause for removal of a member shall include:
 1. Any undisclosed or unlawful conflict of interest;
 2. Any violation of the codes, ordinances, or rules applicable to the member's performance of his/her duties;
 3. Any unwillingness or inability to carry out his/her duties in a prompt, conscientious, and competent manner;
 4. Any conduct tending to cast doubt upon the integrity or objectivity of the member in performing his/her duties; or
 5. Any other specific conduct of the member found by the City Council to be detrimental to the proper functioning of the Board of Adjustment. A member removed for cause under this Subsection shall automatically be removed from the Planning and Zoning Commission also.

2. **Chairperson and Vice-Chairperson.** The members of the Board of Adjustment shall annually elect one of their members as Chairperson, to preside at all meetings and hearings and to fulfill the customary functions of that office, and another of their members as Vice-Chairperson. The Chairperson and Vice-Chairperson may administer oaths and compel the attendance of witnesses. In the absence of the Chairperson, the Vice-Chairperson shall act as Chairperson and shall have all of the powers of the Chairperson. The Vice-Chairperson shall have other powers and duties as may from time to time be provided by the rules of the Board of Adjustment.

3. **Secretary, Minutes, and Public Records.**

- a. *Secretary.* The Administrator, or a designee, shall serve as Secretary to the Board of Adjustment. The Secretary shall attend all the proceedings of the Board of Adjustment.
 - b. *Minutes.* The Secretary shall provide for the keeping of minutes of the proceedings of the Board of Adjustment, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall maintain permanent records of all Board of Adjustment meetings, hearings, and proceedings, and all correspondence of the Board of Adjustment.
 - c. *Public Records.* The Secretary shall provide for keeping a file of all records of the Board of Adjustment, and such records shall be public records open to inspection at reasonable times and upon reasonable notice. The Secretary shall perform such other duties as may be established from time to time by the rules of the Board of Adjustment.
4. **Quorum and Necessary Vote.**
- a. No business shall be transacted by the Board of Adjustment without a quorum, consisting of four members, being present. The concurring vote of a least four members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision, or determination appealed to it, to decide in favor of the applicant or any application made, or to effect any variance from the provisions of this Code. If less than a quorum is present, a hearing may be adjourned for a period not exceeding three weeks at any one time. The Secretary shall, in writing, notify all members of the date of the adjourned hearing and the Secretary will also notify such other interested parties as may be designated in the vote of adjournment.
 - b. No member absent from any portion of a hearing shall be qualified to vote upon the matter heard unless he/she shall first certify on the record that he/she has reviewed the entire record of any portion of the hearing during which he/she was absent and has fully informed himself/herself of the essential facts and issues of the matter being heard so as to be able to cast an informed and independent vote.
 - c. A tie vote by the Board of Adjustment shall mean that the application for an appeal, interpretation, or variance is denied for failure to obtain four concurring votes.
5. **Records and Decisions.**
- a. The transcript of testimony, if any; the minutes of the Secretary; all applications, requests, exhibits, and papers filed in any proceeding before the Board of Adjustment; and the decision of the Board of Adjustment shall constitute the record. The Board of Adjustment may rely on the personal knowledge of its members, on its inspections of the property, and on any reports available to it; provided, however, that reliance on such matter shall not be allowed unless the Board of Adjustment shall have made the particular knowledge, inspection, or report a matter of record at the public hearings, and afforded every party reasonable time to respond to it.
 - b. Every decision of the Board of Adjustment shall:
 - 1. Be by written record which shall include findings of fact;
 - 2. Refer to all the evidence in the record and to the exhibits, plans, or specifications upon which such decision is based;
 - 3. Specify the reason or reasons for such decision;
 - 4. Contain a conclusion or statement separate from the findings of fact setting out the specific relief granted or denying relief; and
 - 5. Expressly set out any limitations or conditions imposed on any relief granted or work or use authorized.
 - c. In any case where this Code provides that the failure of the Board of Adjustment to act within a fixed period shall be deemed a grant or denial of an application, such failure shall, notwithstanding the absence of required findings and conclusion, be considered to be a

decision of the Board of Adjustment rendered on the day following the expiration of such fixed period; in any other case where the Board of Adjustment acts without the required written record, such action shall be considered to be a decision of the Board of Adjustment. Such decisions shall be appealable in the same manner as any other decision but, on such appeal, shall be entitled to no presumption of correctness.

- d. The Secretary shall immediately file any decision of the Board of Adjustment in the office of the Board of Adjustment. Within seven days following any decision of the Board of Adjustment, the Secretary shall mail notice to each person entitled to such notice pursuant to Subsection [25.06.070.9](#), *Public Notice*.
6. **Conflicts.** No member of the Board of Adjustment shall participate in the hearing or disposition of any matter in which he/she is interested. For purposes of this Subsection, "interested" includes any direct or indirect financial or personal interest held by a member or of any member of his/her family. Prior to any hearing or disposition, a member shall cite any conflict of interest and withdraw from participation or may disclose the facts involved and request a determination of whether or not a conflict of interest exists. Any question of whether a member has a conflict of interest sufficient to disqualify him/her shall be decided by a majority vote of the members of the Board of Adjustment, not including the member whose qualification is at issue. Where such vote results in a tie, the member shall be disqualified.
7. **Petition for Certiorari.** Any person(s), jointly or severally, aggrieved by any decision of the Board of Adjustment, or any taxpayer, or any officer, department, or board of the City, may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the filing of the decision in the office of the Board of Adjustment.
8. **Powers and Duties.** The Board of Adjustment shall hear and decide upon:
 - a. *Appeals.* Subject to the provision of Subsection [25.06.090.20](#), *Administrative Appeals*, to hear and decide appeals where it is alleged there is error in any order, requirement, decisions, or determination made by the Administrator, or designee, or another administrative official or agency, in the enforcement of this Code or any regulations relating to the location or soundness of structures.
 - b. *Interpretations.* Interpretations of the provisions of this Code and the Official Zoning Map, upon referral by the Administrator; and
 - c. *Variances.* Subject to the provisions of Subsection [25.06.090.24](#), *Variance*, to authorize upon appeal, variances, including avigation, sign, and floodplain variances, so as to relieve difficulties or hardship from the strict application of these regulations as will not be contrary to the public interest where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of enactment of this Code; or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application would result in peculiar and exceptional practical difficulties to or exceptional and undue hardships upon the owner of such property.
 1. Findings by Board. The Board of Adjustment shall make findings that the requirements of Item H.3.a., above, have been met by the applicant for a variance.
 2. Conditions for granting a variance.
 - A. In granting any variance, the Board of Adjustment may prescribe conditions and safeguards in conformity with these regulations. Violation of such conditions and safeguards, when made in part of the terms under which the variance is granted, shall be deemed a violation of these regulations and punishable under Subsection [25.06.160.3](#), *Violations*;

- B. No nonconforming use of neighboring lands, structures, or buildings in the same district and no allowed or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.
- 3. Reversing decisions by the Administrator. In exercising the above mentioned powers, the Board of Adjustment may, so long as such action is in conformity with the terms of this Subsection, reverse or affirm, wholly or partly, or may modify the order, requirement, decisions, or determination as ought to be made, and to that end shall have powers of the Administrator from whom the appeal is taken.
- d. *Approvals.*
 - 1. Hear, review, and finally decide applications for conditional use permit approval.
 - 2. Hear, review, and finally decide applications for temporary use approval for the following:
 - A. Public and commercial events with an expected peak attendance of more than 1,500 persons and where indicated as "conditional" in Table 25.02.200, Temporary Uses; and
 - B. Construction, storage, and refuse collection uses where indicated as "conditional" in Table 25.02.200, Temporary Uses
- e. *Amendments.* Initiate changes and amendments to the text of this Code.
- f. *Advisement.* Upon reasonable, written request, make special knowledge and expertise available to any official, department, board, commission, or agency of the City, County, State, or Federal governments to aid them in the performance of their respective duties relating to zoning and its administration in the City.
- g. *Zoning Administration.* Make investigations, maps and reports, and recommendations relating to zoning and its administration in the City provided, however, that the expenditures of the Board of Adjustment shall not exceed the amount appropriated.
- 9. **Referral of Matters to Planning and Zoning Commission; Reports.** If the Board of Adjustment believes that the standards for granting a variance or an appeal have not been met, but that the applicant has made a reasonable argument that there may be grounds for review of a provision of this Code, then the Board of Adjustment shall forward a report on the matter to the Planning and Zoning Commission for discussion. The Planning and Zoning Commission retains full discretion regarding enforcement of the specified Code provision, and shall act upon the Board of Adjustment's report if it concurs that a text amendment may be reasonable. Upon such a general finding, the Planning and Zoning Commission shall place the item on a subsequent agenda for further discussion or consideration.

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