



## **CRITERIA FOR EVALUATING A VARIANCE**

A “variance” is the changing of law in a specific instance in order to lessen a hardship caused by the zoning regulations. **To grant a variance, the Zoning Board of Adjustment takes into consideration the following three factors:**

**1. Presence of Hardship** – Before the Board of Adjustment can approve a variance, it must find that a hardship exists.

1. The term “hardship” is defined as a situation or condition where enforcing the strict application of the zoning regulations will create conditions on your property unique to neighboring or other properties in the area, which should receive consideration for relaxation of the zoning regulations.
2. In demonstrating a hardship, the property owner must show that they can have no reasonable return on or use of the property.
3. The inability to put a property to its most profitable use, monetary loss or gain, inconvenience to the owner, and the presence of deed restrictions or contract terms does not create hardship.
4. The hardship must apply to the property in question and not to the surrounding area.
5. Support from neighboring properties for a variance cannot be considered since the variance applies to a specific property and is based on conditions on that property.
6. Another characteristic of hardship is that it cannot be the result of the property owner’s own action. If someone buys a property and is aware of zoning requirements which limit the use of the property, or if they alter the property in violation of the zoning regulations, a self-imposed problem has been created and cannot be considered a hardship.

**2. Harmony With Intent of Zoning Regulations** – The Board must determine that a variance is in harmony with the general intent of the Emmet County Zoning Regulations and the County Comprehensive Plan. Generally, a variance should not be granted when a property owner is attempting to expand a legal “nonconforming use” or where an owner is applying for a “use variance.” To do so would constitute an amendment to the Zoning Ordinance which can only be approved by the Board of Supervisors.

**3. Assurance of Public Safety, Welfare, and Justice** – The Board of Adjustment must determine that the interests of the entire county have been preserved and that this variance will not result in greater hardship on neighbors than benefit to the applicant.

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**In order to grant a Variance the Zoning Board of Adjustment shall make certain findings, summarized as follows:**

There are unnecessary hardships in the manner of carrying out the strict letter of the County’s regulations. In order to support this finding, the petitioner must prove:

- That if the applicant complies with the provisions of the zoning regulations, they can secure no reasonable return from, or make no reasonable use of the property. (This is a very strict requirement; it is not enough to show that greater profits could be secured from the property if the variance were granted, for this could be shown by almost any applicant. Ordinarily, some physical problem preventing development of the property in an authorized manner should be shown.)
- That the hardship results from the application of the zoning regulations. (The fact that a deed restriction, the charter of a corporate property owner, or some similar factor limits the use of the property should not be considered by the Board; it may consider only hardship created by operation of zoning.)

- That the hardship is not the result of the petitioner’s own actions. (Where a property owner has, knowingly or unknowingly, violated the regulations by erecting a forbidden type of building, they cannot cite their expenses as hardship which they will suffer if not permitted to continue; otherwise, no one would comply with zoning. Where a person buys property, knowing of zoning restrictions which prohibit the use, the applicant cannot be said to suffer a hardship if those restrictions are enforced – such hardship would be self-imposed.)
- That the hardship is peculiar to the applicant’s property. (Where the conditions cited as hardship are broad in scope, the proper remedy is not a variance, but rather a zoning amendment. Courts have held that the Board of Adjustment is not authorized to grant a variance in such a situation.)
- The variance is in harmony with the general purpose and intent of the zoning regulations and preserves its spirit. (Ordinarily, the courts have ruled that a Board should deny a variance as a violation of this finding where the petitioner attempts to extend a legal “non conforming use” or to make it more permanent, or where the application is for a “use variance”).
- In the granting of the variance, the public safety and welfare have been assured and substantial justice has been done. In making this finding, the Board must determine (a) that the interests of the county as a whole have been preserved and (b) that granting the variance will not result in greater hardship upon neighboring property owners than benefit to the applicant.

*The Board of Adjustment’s power to grant variances does not require approval by the County Board of Supervisors. If the applicant for a variance disagrees with a decision of the Board, an appeal may be filed with the District Court. Such petition of appeal shall be presented to the Court within thirty (30) days after the filing of the decision with the Zoning Administrator.*

## **PROCEDURES FOR REQUESTING A ZONING VARIANCE**

A Zoning Variance goes before the Zoning Board of Adjustment for consideration of approval.

1. Prior to requesting a variance, the petitioner should consult with the contracted Zoning Reviewer (Northwest Iowa Planning & Development Commission staff) to determine if the request is within the power of the Board of Adjustment to grant. Assuming the request is legal; a formal petition should be submitted to the Emmet County Zoning Administrator (e.g. Emmet County Assessor’s Office) with a **\$300.00** nonrefundable fee.
2. The petition shall be completely filled out, addressing all requirements of a variance.
3. The Emmet County Zoning Administrator will call a meeting of the Zoning Board of Adjustment to be held at the Emmet County Courthouse. The Zoning Administrator will also publish notice of a public hearing in the local newspaper of general circulation and finally, will also notify (by mail) the required amount of neighboring property owners as specified in the Zoning Ordinance.
4. Although not required, it is recommended that the applicant attend the Board of Adjustment meeting to answer any questions regarding the request.

<b><u>EMMET COUNTY ZONING ADMINISTRATOR APPROVAL:</u></b>	
The Variance Permit as presented on the date: _____	<input type="checkbox"/> Approved <input type="checkbox"/> Denied
Signed: _____ Zoning Administrator	
Copy Sent to County Assessor on: _____	
Copy Sent to Applicant on: _____	
Variance Permit Fee Paid: _____	<input type="checkbox"/> Yes <input type="checkbox"/> No

<b><u>NWIPDC ZONING REVIEW/RECOMMENDATION:</u></b>	
Date Application Received: _____	Date Review Completed: _____
This permit application is: <input type="checkbox"/> Recommended <input type="checkbox"/> Not Recommended	
Comments: _____	
Signed: _____ <div style="text-align: right;"><b>NWIPDC Zoning Reviewer</b></div>	