

**CHAPTER 34**  
**BOARD OF ADJUSTMENT**

**Section 1. Creation and Membership.**

A Board of Adjustment is hereby created. The word "Board" when used in this Article shall mean the Board of Adjustment. The Board shall consist of five members serving without compensation, appointed by the Mayor, subject to the approval of the Council for a term of five years, excepting that when the Board shall first be created, one member shall be appointed for a term of five years, one for a term of four years, one for a term of three years, one for a term of two years, and one for a term of one year. Not more than two (2) members of the Board shall be members of the Plan and Zoning Commission. Any vacancy shall be filled by appointment by the City Council for the unexpired portion of the term. Should any member be absent from the City or become incapacitated, or disqualified, the Council shall appoint a substitute to serve as a member of the Board with the same powers and authority as the regular member of the Board until the regular member has returned or is able to serve on the Board.

**Section 2. Meetings and General Procedures.**

1. Meetings of the Board shall be held at the call of the Chair and at such other times as the Board may determine. Such Chair, or in his absence, the acting Chair, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public.
2. 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 keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record. A City representative shall serve as secretary of the Board and keep its records.
3. The Board shall have power to call on any municipal department or officer for assistance in the performance of its duties, and it shall be the duty of any such department to render such assistance as may reasonably be required.
4. The Board shall adopt, from time to time, such rules and regulations as it may deem necessary to carry into effect the power and authority granted it by the provisions of this Ordinance or any state law.
5. The concurring vote of three (3) members of the Board shall be necessary to decide any appeal, exception, or variation upon which the Board is authorized by this Ordinance to render a decision.
6. The Board shall render its decisions without unreasonable delay.

**Section 3. Jurisdiction.**

The Board shall have the following powers and authority:

1. Appeals: To hear and decide an appeal where it is alleged there is error in any order, requirement, decision, or determination made by the zoning administrator in the enforcement of this Ordinance.
2. Exceptions: To grant an exception in the following instances:
  - a) In the extension of a district where the boundary line of a district divides a lot or tract held in a single ownership on the effective date of this Ordinance.
  - b) In the determination that the actual street layout on the ground varies from the street layout as shown on the District Map.
  - c) In the erection and use of a building or the use of premises for railroads or public utility purposes.

- d) In the reconstruction of a nonconforming building which has been damaged by explosion, fire, act of God, or a public enemy, to the extent of more than fifty (50) percent of its fair market value, where the Board finds some compelling necessity requiring a continuance of the nonconforming use and that the primary purpose in continuing the nonconforming use is not to continue a monopoly.
- e) In the waiving or reduction of 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 provisions of the parking or loading facilities, or where such regulations would impose an unreasonable hardship upon the use of the lot, as contrasted with merely granting an advantage or convenience.
- f) In the permitting of land within three hundred (300) feet of a multiple dwelling to be improved for the parking spaces required in connection with a multiple dwelling.
- g) In the determination of whether an industry should be permitted within the M-1 Light Industrial District or the M-2 Heavy Industrial District because of the methods by which it would be operated and because of its effect upon uses in surrounding districts.
- h) In the extension or expansion of a nonconforming use on the same or adjoining property to provide parking for employees and for handicapped persons.
- i) After application by a junk yard owner and review of the request, the Board of Adjustment may grant an exception to the City's junk yard fence requirement. The Board shall consider the criteria set forth in the Marshalltown Municipal Ordinance 21-55 and shall have the power at anytime after granting such an exception, after notice and hearing, to revoke the exception and require the junk yard owner to construct a fence in accordance with the requirements set forth in Marshalltown Municipal Ordinance 21-55. The Board of Adjustment shall have no jurisdiction to grant an exception unless all three of the criteria set forth in Marshalltown Municipal Ordinance 21-55 are met.

3. Variations: To grant a variation in the following instances:

- a) In the yard requirements of any district where there are unusual or practical difficulties or unnecessary hardships in the carrying out of these provisions due to an irregular shape of the lot, topographical or other conditions provided such variations will not seriously affect any adjoining property or the general welfare.
- b) In the determination that a strict application of the terms of this Ordinance relating to the construction, or alterations of building or other structures, or use of land will impose upon the property owner unusual and practical difficulties or particular hardship.
- c) The following are variance review guidelines:
  - i. A variance is not the appropriate remedy for a general condition.
  - ii. Self-inflicted hardships are not grounds for a variance.
  - iii. Personal hardships are not grounds for a variance. The hardship must relate to the physical character of the property.
  - iv. Economic conditions are not grounds for a variance (solely).
  - v. Hardships must be severe. A variation from the strict application of the terms of this Ordinance shall be in harmony with its general purpose and intent, and the Board shall be satisfied that a granting of such variation will not merely serve as a convenience to the applicant, but will alleviate some demonstrable and unusual hardship.
  - vi. If granted, variance must not adversely affect the neighborhood.
  - vii. All applicants must be treated fairly.
  - viii. Substantial justice will be done with the grant of the variance.
- d) In granting any variance, the Board may prescribe appropriate conditions and safeguards in conformity with this ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this ordinance.

4. Home Occupation Special Use Permits: The Board shall approve all Home Occupation Special Use applications. Refer to Chapter 4, Section 11.6 for requirements.

5. Special Uses: To grant a Special Use Permit for uses listed in Chapter 30 and elsewhere in this Ordinance.
6. In considering all appeals and all proposed exceptions or variations to this Ordinance the Board shall, before making any exceptions or variations from the Ordinance in a specific case, first determine:
  - a) That it will not impair an adequate supply of light and air to adjacent property
  - b) That it will not unreasonably increase the congestion in public streets or increase the danger of fire or endanger the public safety,
  - c) That it will not unreasonably diminish or impair established property values within the surrounding area,
  - d) That it will not in any other respect impair the public health, safety, comfort, morals or welfare of the inhabitants of the City of Marshalltown.
7. Nothing herein contained shall be construed to give or grant to the Board the power or authority to alter or change the Zoning Ordinance or the District Map, such power and authority being reserved to the City Council of Marshalltown in the manner hereinafter provided in the City Code of Ordinances.

#### **Section 4. Appeals.**

1. Appeals to the Board may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the Board, by filing with the officer from whom the appeal is taken and with the City Clerk a notice of appeal, specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken. Any person may appear and testify at the hearing, either in person or by his agent or attorney.
2. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whose decision or action the appeal is taken certifies to the Board after the notice of appeal shall have been filed that by reason of acts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or by a court of record on application of notice to the officer from whom the appeal is taken and on due cause shown.

#### **Section 5. Notice and Fee.**

1. The Board shall make no findings except in a specific case and after a public hearing conducted by the Board. The Board shall select a reasonable time and place for the hearing of the appeal and shall give due notice thereof to the parties. The notice of the time and place of such public hearing shall be published in a Marshall County publication of general circulation in the City of Marshalltown at least ten (10) days previous to the hearing. Such notice shall contain the address or location of the property for which the variation or other ruling by the Board is sought, as well as a brief description of the nature of the appeal.
2. If a special use permit is requested a fee, set by resolution, shall be paid to the City Clerk at the time of the notice of appeal is filed. If a variance is requested a fee, set by resolution, shall be paid to the City Clerk at the time the notice of appeal is filed. Fees shall be credited to the general government fund of the City of Marshalltown, Iowa.

#### **Section 6. Relief.**

Any person or persons, jointly or severally aggrieved by any decision of the Board or any taxpayer, or any officer, department, board or bureau of the City of Marshalltown shall have recourse to such relief as is provided by statute.

**Section 7. Small Lot Exception**

Regardless of any provision to the contrary, set out above, the Marshalltown Board of Adjustment shall have no jurisdiction to grant either an exception or variance concerning any small lot in the City of Marshalltown, Iowa.