

Board of Adjustment

Cities and Villages

- ▶ Cities and Villages derive their authority to grant variances from Nebraska Revised Statutes §19-907 through §19-912.
- ▶ These same statutes provide communities with board membership guidelines, basic procedures, and the requirements a variance must meet.

Board Membership

- ▶ State Statute requires a 5 member board with one alternate. The alternate may sit in and vote when one of the 5 regular board members is absent. (Village trustees may appoint themselves as the Village Board of Adjustment)
- ▶ Board members are appointed by the governing body of the City (City Council) for 3 year terms and receive no compensation.
- ▶ One member of the Board of Adjustment must be a sitting member of the City Planning Commission to convey any recommendations by the Board to the Commission. If that person loses their seat on the Commission, they must also give up their seat on the Board of Adjustment. Said member may not be the alternate of either Board.
- ▶ If more than 200 people reside in the Extraterritorial Zoning Jurisdiction, one member of the Board must reside in the ETJ.

Board Requirements

- ▶ The Board must adopt rules and by-laws for the general conduct of the meeting.
- ▶ Meetings shall be opened to the public; the Open Meetings Law applies to meetings of the Board of Adjustment.
- ▶ The Board Secretary shall keep minutes of the proceedings.
- ▶ The vote of each member shall be recorded in the minutes including all findings of fact.
- ▶ The Board shall meet at least once a year, by call of the Chairperson, or as the Board may determine.

Procedures

- ▶ The Board is a quasi-judicial body and may administer oaths and compel the attendance of witnesses.
- ▶ The applicant may appear in person, by agent, or with an attorney.

Board Functions

- ▶ The Board has three functions as defined in State Statute.
 1. To hear and decide appeals where it is alleged by the appellant that there is an error in any order, requirement, decision, or refusal made by an administrative official or agency based on or made in the enforcement of any zoning regulation or any regulation relating to the location and soundness of structures. (Interpret Code; in Alliance this includes our adopted building code)
 2. To hear and decide, in accordance with the provisions of any regulation, the interpretation of any official City map.
 3. A variance from the municipal code for reason of an exceptional hardship as detailed below.

Code Variances

- ▶ In order to grant a variance, the applicant is required by Nebraska State Statute to prove the existence of a hardship on the property to the Board to Adjustment. A hardship is defined as:
 - 1) Exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the enactment of the zoning ordinance; or
 - 2) By reason of exceptional topographic condition, or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any enacted regulation would result in peculiar and exceptional practical difficulties.

Code Variances

- ▶ The Board must make the following findings in order to issue a variance. No variance shall be authorized by the Board unless it finds that the applicant has clearly proved that:
 - 1) the strict application of the zoning regulation would produce undue hardship (as defined by State Law);
 - 2) such hardship is not shared generally by other properties in the same zoning district and the same vicinity*;
 - 3) the authorization of such variance will not be of substantial detriment to the adjacent property and the character of the district will not be changed by the granting of the variance; and
 - 4) the granting of such variance is based upon reason of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit, or caprice.

Code Variances

* No variance shall be authorized unless the Board finds that the condition or situation of the property concerned is not of so general or recurring nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the zoning regulations.

Board Findings

- ▶ The Board shall make findings based off of the material and testimony presented to them during the Public Hearing.
- ▶ These findings shall list each of the State requirements for a variance and detail how the property does or does not meet these requirements.
- ▶ The final decision of the Board and all findings of fact shall be filed with the permanent record of the property and meeting records.

Appeal

- ▶ Any person(s) aggrieved, any officer, taxpayer, department, board, or bureau of the municipality, may appeal the Board of Adjustments decision to district court within 15 days of the Boards decision by submitting a verified petition to the court specifying the grounds of the decisions illegality.
- ▶ A summons and a copy of the petition will be served to the Board of Adjustment by the court. Return of service shall be delivered to the court within 4 days after the summons and petition are served to the Board.
- ▶ The Boards response shall be sent and filed with the court within 10 days of receipt of the summons.
- ▶ The court will proceed to hear and render judgement according to law. If the court decides more evidence is needed the court may take additional evidence.
- ▶ In making a decision the court may reverse or affirm, wholly or partly, or modify the decision brought to the court for review.

Scenario 1

- ▶ Dave would like to build a detached garage in his back yard. He has a pie shaped lot and it gets narrower towards the rear. He would like to build his garage at the rear property line setback of 5 feet but he will need to encroach on both of the 5 foot side property line setbacks by 3 feet. Staff recommends that he either make the garage narrower but longer or push the garage farther towards the house (front) to meet the side setbacks. He doesn't want to do this because it will make his back yard less usable. He says most of the people in town have garages built at the 5 foot rear setback and his lot shape is preventing him from having the same thing everyone else has.

Scenario 2

- ▶ Dave wants to add on to his family's house. He submits construction drawings that show the addition encroaching 4 feet into the 5 foot side property line setback. Staff points this out to Dave and recommends he build the addition on the back of the house. Dave states that he doesn't want to take up any more of his back yard since he has a detached garage and there is a slight slope so he would have to haul in a substantial amount of dirt. He said his neighbor doesn't care if he encroaches on the property line and Dave even brought in a signed statement from his neighbor that says its okay with him.

Scenario 3

- ▶ Dave's business is looking to expand. The property he finds for sale has a steep drop off half way down the property and what fill there is down there is loose rocks and gravel. His engineer states it is not suitable to build on that type of fill so it would have to be cleared and a substantial amount of dirt brought in. The rear of the property has a small amount of the floodplain in it and the engineer cannot certify the fill needed to make the lot buildable will not raise the base flood elevation upstream by more than 1 foot. Dave and his company apply for a variance to the front yard setback to encroach on the 25 foot setback by 10 feet. They explain the City did not take in to consideration the unique circumstances of this property when they zoned it and have essentially made it unbuildable which is why its vacant.

Alliance Specific Appeals

- ▶ Expansion of a Nonconforming Use.
 - Nebraska Revised Statute 19-904.01 allows communities to adopt code for the expansion of a legal, preexisting, nonconforming use.
 - Section 109-6 (F) in the Alliance Municipal Code provides the City's guidelines on such an expansion.
 - The structure enlargement may not exceed an amount greater than 25% of the original floor area. Such floor area shall be documented with the permanent record of the property.
 - The applicant must show certain finding of fact in order for the Board of Adjustment to allow the expansion. The requirements are:
 - Such use is a legal, preexisting, nonconforming use.
 - Such use is not generally the same as the other properties in the same zoning district and area.
 - The expansion will not be of substantial detriment to the adjacent property and the character of the district.
 - The expansion shall not be for reasons of convenience, profit, or caprice.