

**SIoux COUNTY ZONING ORDINANCE
REFERENCE and CRITERIA**

Article 3: Definitions/Use Classifications, Section 3.1. Definitions	
118. VARIANCE: The relaxation of the terms of the zoning ordinance where such variance will not be contrary to the public interest and where, owing to conditions and peculiarity of the property and not the results of actions of the applicant, a literal enforcement of the zoning regulations would result in an unnecessary and undue hardship. A variance is authorized only for height, area, and size of structure or size of yards and open spaces. Establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconformities in the zoning district or uses in an adjoining zoning district.	
<i>Standard has been reviewed & determined to have been met:</i>	FOR OFFICIAL USE ONLY
	SECTION 26.5. VARIANCES A variance from the terms of this ordinance shall not be granted by the Board of Adjustment unless and until:
(26.5.1) The following required materials have been filed with the Zoning Administrator for review:	
<input type="checkbox"/> Yes <input type="checkbox"/> No	a. Name address of owner & applicant
<input type="checkbox"/> Yes <input type="checkbox"/> No	b. Address & legal description of the property
<input type="checkbox"/> Yes <input type="checkbox"/> No	c. If applicable, signed statement verifying applicant is authorized agent of the owner
<input type="checkbox"/> Yes <input type="checkbox"/> No	d. Statement describing variance requested & reasons why it complies with the criteria for variances set forth in Section 26.5 of the Zoning Ordinance
<input type="checkbox"/> Yes <input type="checkbox"/> No	e. Property address/location, & name & mailing address of the owner of each lot within 200 ' of the property
<input type="checkbox"/> Yes <input type="checkbox"/> No	f. Site plans, as prepared in accordance with Article XVIII, Site Plans
<input type="checkbox"/> Yes <input type="checkbox"/> No	(26.5.2) Additional items, if requested by administrator, have been submitted for review
<input type="checkbox"/> Yes <input type="checkbox"/> No	(26.5.3) Notice of Public Hearing appeared in the _____ on _____
<input type="checkbox"/> Yes <input type="checkbox"/> No	(26.5.8) Required fee for Variance Application has been paid by applicant.
<i>B.O.A.: Affirmative finding of fact:</i>	26.5. The Board of Adjustment(B.O.A.) may grant a variance if it makes affirmative findings of fact on <u>each</u> of the following criteria. This application has been reviewed and the B.O.A. finds:
<input type="checkbox"/> Yes <input type="checkbox"/> No	5.a. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district;
<input type="checkbox"/> Yes <input type="checkbox"/> No	5.b. That literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance
<input type="checkbox"/> Yes <input type="checkbox"/> No	5.c. That the special conditions and circumstances do not result from the actions of the applicant
<input type="checkbox"/> Yes <input type="checkbox"/> No	5.d. That granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same district. (No nonconforming uses of neighboring lands, structures or buildings, nor permitted uses of land, structures or buildings in other districts shall be considered grounds for the issuance of this variance.)
<input type="checkbox"/> Yes <input type="checkbox"/> No	6. That the reasons set forth in the application justify the granting of the variance and that the variance is the minimum variance that will make possible the reasonable use of the land, building or structure
<input type="checkbox"/> Yes <input type="checkbox"/> No	7. That the granting of the variance is in harmony with the general purpose and intent of the ordinance, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare
ADDITIONAL COMMENTS (BY THE BOARD):	

**From the Sioux County Zoning Ordinance:
Information Pertaining to Variances**

26.4.3. POWERS AND DUTIES. [VARIANCES]: The Board of Adjustment shall have the following powers and duties:

Variances: To authorize upon appeal in specific cases such variance from the terms of this ordinance as will not be contrary to the public interest where, owing to the special conditions, a literal enforcement of the provisions of this ordinance would result in unnecessary hardship.

26.5. VARIANCES.

A variance from the terms of this ordinance shall not be granted by the Board of Adjustment unless and until:

- 1) An application for a variance shall be filed with the zoning administrator. The application shall include the following:
 - a. Name and address of the owner and applicant.
 - b. Address and legal description of the property.
 - c. If the applicant is not the legal owner of the property, a statement that the applicant is the authorized agent of the owner.
 - d. A statement describing the variance requested and the reasons why it complies with the criteria for variances provided in this section.
 - e. The property address, name and mailing address of the owner of each lot within 200 feet of the subject property.
 - f. Site plans, as prepared in accordance with Article XVIII, Site Plans.
- 2) The Board of Adjustment may grant a variance if it makes affirmative findings of fact on each of the following criteria.
 - a. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district;
 - b. That literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance;
 - c. That the special conditions and circumstances do not result from the actions of the applicant;
 - d. That granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same district. No nonconforming uses of neighboring lands, structures or buildings nor permitted uses of land, structures or buildings in other districts shall be considered grounds for the issuance of a variance.
- 6) The Board of Adjustment shall further make a finding that the reasons set forth in the application justify the granting of the variance and that the variance is the minimum variance that will make possible the reasonable use of the land, building or structure.
- 7) The Board of Adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this ordinance, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.
- 8) A fee determined by the Board of Supervisors shall accompany the application for a variance.

Additional Variance Conditions: In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this ordinance. Violations 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 and punishable under Article XXIV, Violation and Penalty.

Lapse of Variance: Unless a longer time period shall be specifically established as a condition of approval, a variance shall lapse and become void one (1) year following the date on which the variance became effective, unless prior to the expiration of one year a building permit is issued and construction is commenced and diligently pursued toward completion on the site which was the subject of the variance application, or a certificate of occupancy is issued for the site or structure which was the subject of the variance application, or the site is occupied if no building permit or certificate of occupancy is required.

Revocation of Variance: Upon violation of any applicable provision of this ordinance, or if granted subject to the conditions, upon failure to comply with conditions, a variance shall be revoked upon notification to the owner of the use or property subject to the variance.

Variance to Run With Land or Structure: Unless otherwise specified at the time a variance is granted, a variance shall run with the land and shall continue to be valid upon a change of ownership of the site or structure to which it applies.

**From the Sioux County Zoning Ordinance:
Information Pertaining to Variances**

26.6. DECISIONS OF THE BOARD OF ADJUSTMENT.

1) In exercising the above mentioned powers, the Board of Adjustment may, so long as such action is in conformity with the terms of this ordinance and Chapter 335, Code of Iowa, reverse or affirm, wholly or partly, or may modify the order, requirements, decision, or determination as ought to be made and to that end shall have powers of the zoning administrator from whom the appeal is taken. The concurring vote of three (3) members of the Board shall be necessary to reverse any order, requirement, decision or determination of the zoning administrator, or to decide in favor of the applicant on any matter upon which it is required to pass under this ordinance, or to affect any variation in application of this ordinance. The action of the Board shall not become effective until it has a written decision describing such action, the vote of each member participating therein and the reasons for such action, specifying the manner in which the applicant either satisfied or failed to satisfy each of the applicable standards, conditions or elements set forth in this Article.

Every variation and exception granted or denied by the board shall be supported by a written testimony or evidence submitted in connection therewith.

If any application for a variance or exception shall have been denied by the Board of Adjustment, no new application for the same relief shall be considered for one (1) year by the board unless the board shall find that conditions have changed.

Any taxpayer or any officer, department, board, or bureau of the county or persons jointly or severally aggrieved by any decision of the Board of Adjustment may present to a court of record a petition for writ of certiorari, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of illegality. The petition shall be presented to the court within 30 days after the filing of the decision in the office of the Board of Adjustment. All decisions of the Board of Adjustment, except decisions granting use variances or a variance from any separation requirement shall be final immediately upon filing. Each decision granting a use variance or a variance from separation requirement may be referred to the Board of Supervisors for review. The Board of Supervisors shall review such decision within 30 days after the decision is filed. After such review, the Board of Supervisors may remand the decision to the Board of Adjustment for further study. If the Board of Supervisors does not act to review the decision within 30 days after it is filed, the decision shall become effective on the 31st day. If the Board of Supervisors declines to remand a decision, that decision shall become final on the date of the Board's action. If the Board of Supervisors remands a decision to the Board of Adjustment, the effective date of the decision is delayed for 30 days from the date of remand.

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26.7. APPEALS FROM THE BOARD OF ADJUSTMENT.

Any person or persons, or any board, taxpayer, department, board or bureau of the county aggrieved by any decision of the Board of Adjustment may seek review of such decision of the Board of Adjustment by a court of record in the manner provided