



**CLIVE BOARD OF
ADJUSTMENT**
AGENDA, REGULAR MEETING
1900 NW 114th ST
September 16, 2025 5:30 PM

This meeting will be conducted in-person in the Clive City Hall Council Chambers and virtually via Zoom platform. To participate virtually use the following link:

<https://us06web.zoom.us/j/81878042406>

Call to Order

Roll Call

Introduction of New Board Member

Election of Officers

Approval of Meeting Minutes

1. Approve Meeting Minutes 07/15/2025

Training

1. Board Training

Staff Report

Adjournment

BOARD OF ADJUSTMENT MINUTES
July 15, 2025

This meeting was held in the Public Safety Training Room. Public access was provided in-person at City Hall and via Zoom. Information on how to access via Zoom was provided on the city's website and on the agenda. The recording of the meeting is available on the city's website at:

https://www.cityofclive.com/boards_and_commissions/board_of_adjustment.php

FORTE CALLED THE MEETING TO ORDER AT 5:30 P.M.

PRESENT: ROSIE FITZGERALD, PATRICIA HEMPHILL, ROBERT FORTE

ABSENT: TERRY BROWN

STAFF: GRUTZMACHER, PURVIS, RIVERA

MOTION WAS MADE BY HEMPHILL, SECONDED BY FITZGERALD to approve the January 21, 2025 minutes

VOTE: YES – UNANIMOUS

2025 Legislative Updates

Amanda Grutzmacher, Senior Planner, went over the 2025 Legislative updates affecting Board of Adjustment cases and training required for newly appointed board members (all newly elected or appointed public officials).

Case #SU25-000001: 1500 NW 118th ST – Apiary Schools

The case was continued at the January 21, 2025, meeting to allow the applicant to provide a traffic study; however, they have decided to withdraw their Special Use request. Staff recommended the Board receive and file the applicant's withdrawal.

Case #SU25-000002: 1400 NW 100th ST – Salvation Army Church

The applicant requested approval of a Special Use Permit to allow for a religious institution located at 1400 NW 100th ST to operate outside of the current office hours.

Currently the building is used for the Salvation Army offices. Allowing the additional church use will not create parking burdens, diminish property values, etc. To allow growth of the church, staff suggested allowing up to 3,200 sf, the maximum area currently in conformance with on-site parking requirements, to operate as a religious institution.

MOTION WAS MADE BY HEMPHILL, SECONDED BY FITZGERALD to grant a Special Use Permit for Case #SU25-000002: 1400 NW 100th ST – Salvation Army Church

VOTE: YES – UNANIMOUS

Case #BOA25-000001: 9051 Swanson BLVD – Calvary Chapel Living Hope

The applicant requested a variance to allow a reduction in the number of required parking spaces for a church.

The applicant entered into a purchase agreement for the former Big Brothers/Big Sisters building but has inadequate parking to allow for the religious institution. Calvary Chapel Living Hope has a draft agreement with the property to the west to allow overflow parking at 9083 Swanson BLVD. There are 20 parking spaces on the subject property and 35 spaces are required for the proposed church use. The agreement would provide an additional 20 spaces for parking, bringing the total available parking to 40 spaces.

Edward and Suzanne Walters, 8925 Luin Drive, raised concern about traffic accidents due to the “blind driveway” on 9051 Swanson in combination with speeding vehicles and the historically low traffic volumes at the subject property. Ann Koontz, daughter of Edward and Suzanne Walters, also spoke to her parents’ concerns and suggested additional signage to warn drivers on Swanson BLVD of the potential for exiting vehicles. Amanda Grutzmacher, Senior Planner, advised the driveway location is an existing condition that cannot feasibly be changed and is not directly related to the request for approval of an off-site parking agreement. Grutzmacher further stated staff would review motor vehicle incidents in the vicinity and consider whether any additional signage is necessary.

MOTION WAS MADE BY HEMPHILL, SECONDED BY FITZGERALD to grant the parking variance to 9051 Swanson BLVD – Calvary Chapel Living Hope based on the execution and maintenance of a parking agreement with the owner of 9083 Swanson BLVD.

VOTE: YES – UNANIMOUS

Being no further business before the Board, the meeting was adjourned at 6:13 pm.





COUNCIL APPROVED
Date 7/24/2025

**ZONING BOARD OF ADJUSTMENT
CITY OF CLIVE, IOWA
DECISION AND ORDER**

This Decision and Order of the Board of Adjustment does not constitute approval of any construction. All necessary permits must be obtained before any construction is commenced upon the property. A Certificate of Occupancy must be obtained before any structure is occupied or reoccupied after a change of use. Any conditions allowed by this Decision and Order shall not be commenced or resumed until all the requirements imposed on such use by the Zoning Ordinance and this Order have been satisfied.

The conditions allowed by this Order must commence within **90 days** or this Order will be void and of no further force and effect.

CASE NUMBER: SU25-000002

APPLICANT: Daniel Hull on behalf of the Salvation Army Church

PROPERTY: 1400 NW 100TH ST

PUBLIC HEARING: Jul 15, 2025

LAND USE REQUESTED: Religious institution

FINDINGS OF FACT

Testimony was taken at the public hearing at 8800 Hickman Road, Clive, Iowa on Jul 15, 2025. At that hearing, Kathryn Purvis, Planner, represented the City of Clive. Daniel Hull was present on behalf of the applicant.

The following information was presented at the hearing:

1. The subject property is located at 1400 NW 100th Street in a C-4 Shopping Center Commercial District.
2. The subject property is legally described as Lot 4, Dahls Plaza, an official plat in Clive, Polk County, Iowa.
3. At the time of the public hearing and deliberation by the Board, the subject property was owned by The Salvation Army.
4. Clive City Code Section 11-7-4 "Principal Permitted Uses" states a Special Use Permit is required to operate a Religious Institution in a C-4 Planned Shopping Center Commercial District.

5. The applicant is requesting a special use permit to approve the use of approximately 2,475 square feet of the existing building for worship services and ancillary needs, such as Sunday school, bible study, and general fellowship.
6. The site contains 32 parking spaces. The existing office use of the property requires 41 parking spaces and is permitted non-conforming due to changes in parking requirements overtime.
7. Clive City Code Section 11-13-8 "Number of Parking Spaces Required" states Religious organizations are required to provide 1 space per 4 fixed seats; in cases where an auditorium is not involved, 10 per 1,000 square feet of gross floor area.
8. The subject property provides parking to allow up to 3,200 square feet of the existing building to operate as a religious institution and remain in compliance with Section 11-13-8.
9. The applicant states the proposed use will adequately safeguard the health, safety, and general welfare by only servicing a small congregation, not interrupting the current services the Salvation Army offices provide at this location, and providing additional ways to "engage the neighborhood in community activities" with potential planned events in the future.
10. The proposed use does not propose any substantial exterior modifications and therefore will not impair light or air surrounding the property.
11. Local data indicates the proposed use will not diminish established property values. The applicant will operate in a way that "continues to positively impact and enhance the community with their physical, spiritual, emotional, and relational services and programs."
12. There is adequate public utilities to serve the subject property and the proposed use.
13. The subject property is served by an existing hard surface driveway and has adequate shared ingress/egress access to the surrounding properties to provide safe circulation and emergency access if needed.
14. Public notice was sent to surrounding property owners within 310-feet of the subject site on July 2, 2025.
15. A public notification sign was posted on the property on July 7, 2025.

DECISION AND ORDER

Based upon this information and its interpretation of the cited code provisions, the general sentiment of the Board is that:

1. The requested land use **WILL NOT** affect the health, safety, and general welfare of those living or working in the surrounding area.
2. The requested land use **WILL NOT** impair an adequate supply of light and air to the surrounding properties.
3. The requested land use **WILL NOT** unduly increase congestion in the streets or public danger of fire and safety.
4. The requested land use **WILL NOT** diminish or impair established property values in the surrounding area.
5. The requested land use **WILL NOT** unduly burden public utilities.

IT IS THEREFORE RESOLVED BY THE BOARD that the requested special use permit for Religious institution for the above-described property for Case # SU25-000002 - 1400 NW 100TH ST is:

DENIED

GRANTED AS REQUESTED

GRANTED AS FOLLOWS:

To allow up to 3,200 square feet of the existing building to operate as a religious institution.

Signed and entered into record on the 15th day of July, 2025.



Robert Forte, Chair



Kelly Rivera, Secretary



COUNCIL APPROVED
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The conditions allowed by this Order must commence within 90 days or this Order will be void and of no further force and effect.

CASE NUMBER: BOA25-000001

APPLICANT: Steve Freeman

PROPERTY: 9051 SWANSON BLVD

PUBLIC HEARING: Jul 15, 2025

AFFECTED CODE SECTION: 11-13-8: Number of Parking Spaces Required

VARIANCE REQUESTED: We are requesting a variance on the required number of parking spaces for our use of the building as a church. The code requires 35 spaces. With the parking easement agreed upon with our neighbor to the west, we would be able to get to 40 spaces.

FINDINGS OF FACT

Testimony was taken at the public hearing at 8800 Hickman Road, Clive, Iowa on Jul 15, 2025. At that hearing, Amanda Grutzmacher, Senior Planner, represented the City of Clive. James Carlton was present on behalf of the applicant.

The following information was presented at the hearing:

1. The subject property is located at 9051 Swanson Boulevard, legally described as Lot 1, Westtown Industrial Park, in a M-1 Light Industrial Zoning District.
2. At the time of the public hearing and deliberation by the Board, the subject property was owned by Big Brothers Big Sisters of Central Iowa, Inc.

3. At the time of the public hearing and deliberation by the Board, the applicant had entered into a purchase agreement for the subject property.
4. The subject property is an irregular shaped lot and was platted in conformance with the City of Clive's Subdivision Regulations.
5. Clive City Code Section 11-10-2 Principal Permitted Uses states religious institutions are Permitted in M-1 Districts.
6. Clive City Code Section 11-13-8 states required parking for religious organizations where an auditorium with fixed seats is not involved is calculated as 10 spaces per 1,000 square feet of gross floor area.
7. The existing building is 4,144 square feet, including a 700 square foot interior garage space.
8. The required parking for a religious institution in the existing building is 35 parking spaces.
9. The subject property can provide a maximum of 20 parking spaces, including the interior garage space.
10. The applicant is requesting a variance to utilize an off-site parking agreement with the adjacent property to provide a portion of the required parking. Under the proposed parking agreement, a total of 40 parking spaces will be available for use by the proposed religious institution.
11. If the variance is not granted, the size of the building under the current parking ordinance would restrict the full use of the building as a religious institution based on the available parking on site. Only permitted uses requiring 4 or fewer parking spaces per 1,000 square feet of gross floor area would be able to utilize the property.
12. The property is unique due to the irregular shape of the lot. Due to the triangular shape, the easternmost approximately 100 feet of the lot is unusable for any improvements to the property. The property has provided the maximum amount of parking feasible while maintaining safe vehicular movements and meeting all other zoning requirements related to parking space size, layout, and setbacks.
13. The subject property is unable to construct additional parking on-site due to the layout of the existing improvements, even though there is an excess of required open space.
14. The applicant states "the parking available at our neighbor's lot is closely aligned. Both provide direct access to the building, either via a short walk on the sidewalk or a short walk across the grass."
15. The applicant states granting the "variance is consistent with the spirit and intent of the Zoning Ordinance because it helps provide adequate and safe parking access for attendees to the property."
16. There are no viable alternatives that allow use of the property as requested. Additional parking cannot be accommodated on-site.
17. The 2025 Iowa Legislative session passed HF652 which adds a standard of "practical difficulty" for dimensional variances. The variance application has not been updated to reflect the change in state law and still refers to "unnecessary hardship"; however, the new standard shall be used in determining if the variance should be approved.

DECISION AND ORDER

Based upon this information and its interpretation of the cited code provisions, the general sentiment of the Board is that:

1. The subject property **DOES** have unique physical characteristics.
2. The hardship stated above **IS NOT** self-imposed.
3. The hardship stated above **IS NOT** based solely on property value or other financial considerations.
4. The granting of the variance **IS** necessary for the reasonable use of land for a permitted use in the property's zoning district designation.
5. The granting of the variance **IS** in harmony with the general purpose and intent of Title 11 Zoning Regulations of the City of Clive Code of Ordinances.
6. The granting of the variance **WILL NOT** be injurious to the neighborhood or otherwise detrimental to the public welfare.
7. The variance requested **IS** the minimum variance that will accomplish this purpose. If the variance requested is not the minimum required, a lesser variance may still be approved.

IT IS THEREFORE RESOLVED BY THE BOARD that the requested variance from Section [code] of the Clive Zoning Ordinance for the above-described property for Case # BOA25-000001 - 9051 SWANSON BLVD is:

DENIED

GRANTED AS REQUESTED

GRANTED AS FOLLOWS:

Subject to execution and recording of the proposed parking agreement. A recorded copy of the agreement shall be provided to the City.

Signed and entered into record on the 15th day of July, 2025.



Robert Forte, Chair



Kelly Rivera, Secretary



Memo

TO: Board of Adjustment members

FROM:

Amanda Grutzmacher, Senior Planner

DATE: September 16, 2025

RE: Board Training

SYNOPSIS:

Staff will present annual training to the Board. The training will cover:

- Purpose of Board of Adjustment
- Appeals/Interpretations
- Special Uses
- Variances
- Record of Board decisions
- Appeals to Board decisions
- Dealing with the public
- Conduct of Board members

Attachments:

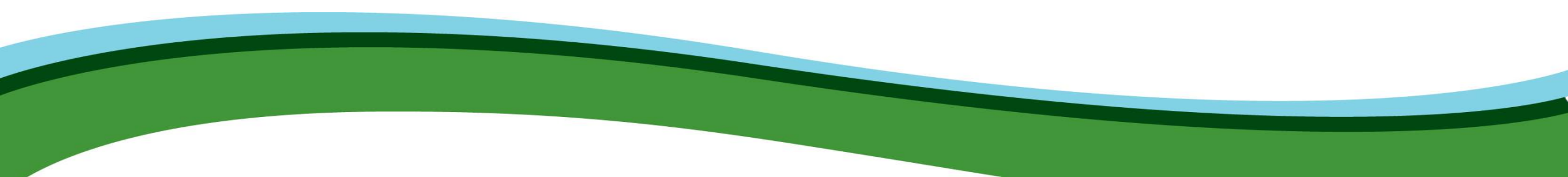
1. Training Presentation
2. ISU Extension Variances

Board of Adjustment 2025 Training

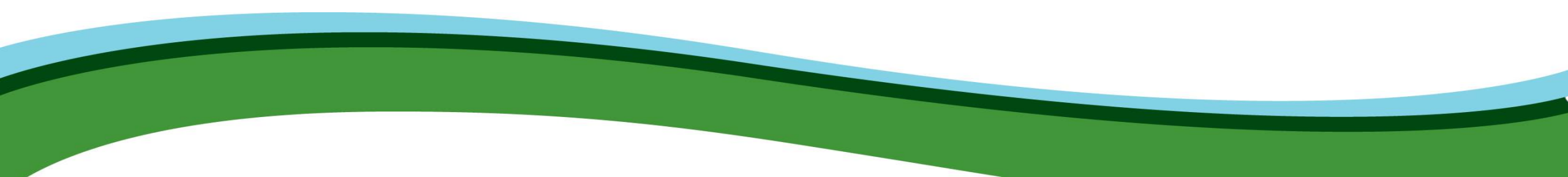
September 16, 2025



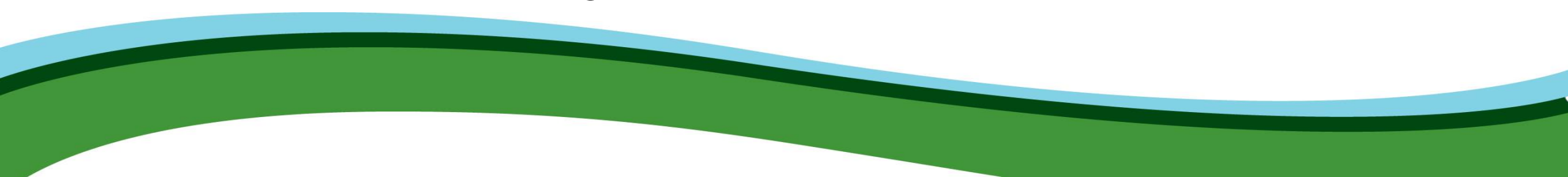
Zoning Board of Adjustment

- Performs a quasi-judicial function:
Interpret and apply the standards of the ordinance to requests made by landowners.
 - Job is narrowly defined by state law:
Appeals/requests for interpretation, special uses, variances
 - Decisions are final at the local level
 - City Council can remand an affirmative decision of the Board for reconsideration, but ultimately up to BOA if they reconsider the request
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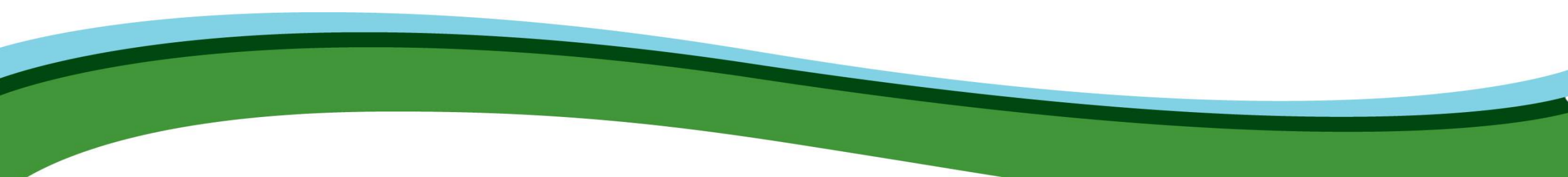
Appeals/Interpretations

- Applicant or other impacted parties may appeal a decision by the zoning administrator
 - Party challenging the decision has the burden to show why it was wrong
 - BOA should consider a reasonable interpretation by the zoning administrator; however, free to interpret the ordinance differently
- 

Special Uses

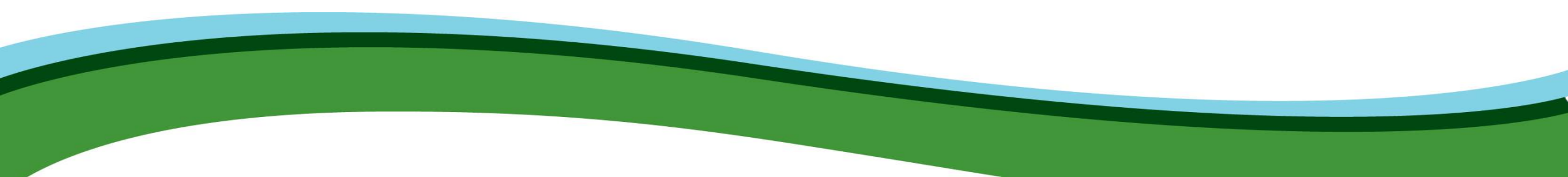
- Each zoning district has a list of permitted uses, which are uses allowed by right
 - Some uses are listed as special uses which require BOA for approval
 - Zoning ordinance lists the criteria the landowner must meet to be granted a special use permit
 - If the criteria is met, the special use must be granted
 - Purpose is to ensure slightly-out-of-character uses are made to “fit” with surroundings
- 

Variations

- A variance approved by BOA is an authorization to use property in a manner generally forbidden by the ordinance
 - No list of “acceptable variations”
 - Burden is on the landowner/applicant to prove
 - 2025 legislative change differentiating use and dimensional variations
- 

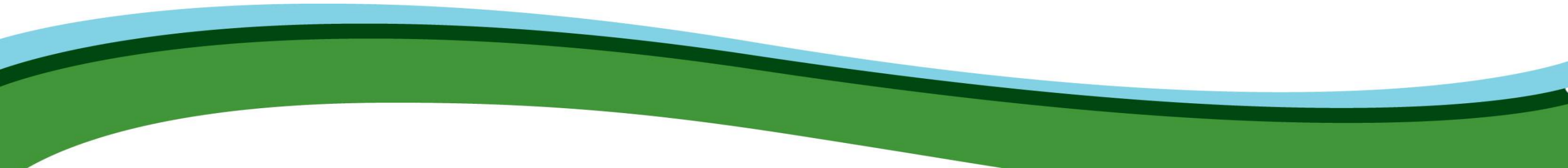
Variations

A variance should prevent a hardship/practical difficulty, not grant a special privilege not available to other landowners faced with similar situations

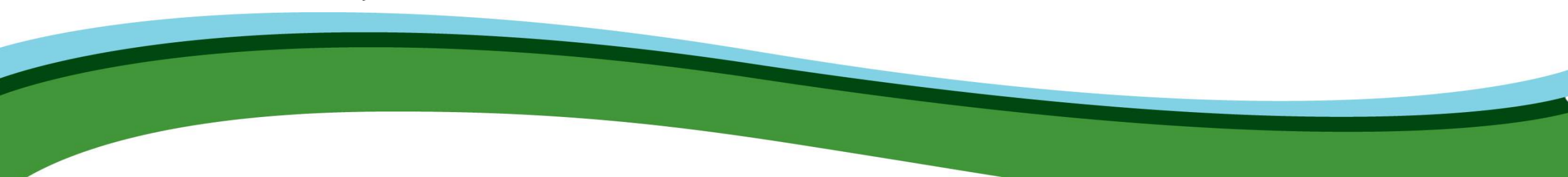


Variations - Use

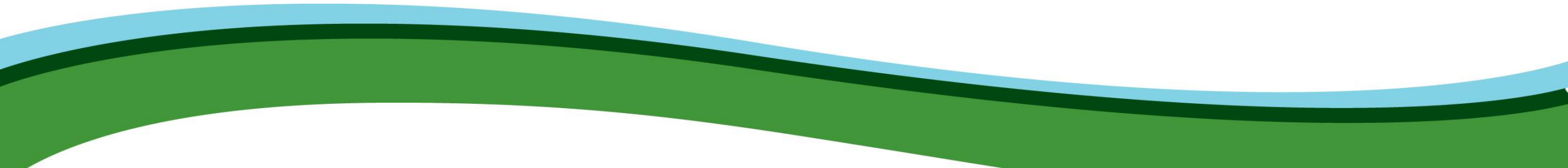
- Uncommon variance application locally
 - Addressed through updates to the zoning ordinance text
 - Addressed through permitted uses language

Where a use is not expressly listed below, the Community Development Director shall have authority to determine if the use is compatible and consistent with the surrounding environment.
 - Only granted if the landowner proves an unnecessary hardship will result if the zoning regulations are enforced
 - Intent of the standard is to prevent property from being worthless as zoned
- 

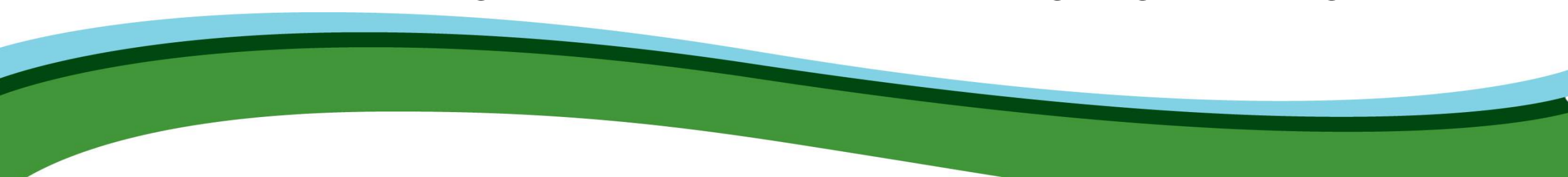
Variances - Dimensional

- Only granted if the landowner proves a practical difficulty will result if the zoning regulations are enforced
 - Plight of owner due to unique physical circumstances and not general conditions in the neighborhood/community
 - Practical difficulty must not be self-created
 - Practical difficulties cannot be alleviated by a feasible method other than a variance
 - Variance will not alter or be injurious to essential character of the locality
- 

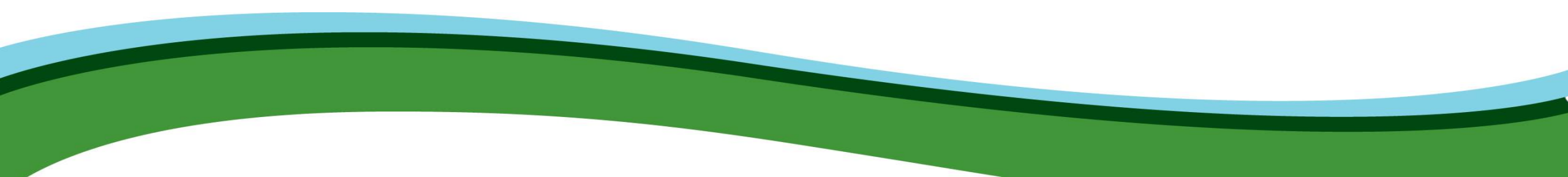
Substantial justice and protecting the public welfare

- Variance shall not be injurious to the neighborhood or public welfare
 - Injurious: causing or likely to cause damage or harm
 - Injurious \neq “I’m a neighbor and I don’t like it”
 - Injurious could = “I’m a neighbor and this request will block all of the natural light my yard receives if approved”
 - Substantial justice must be done and account for parties not represented at the hearing
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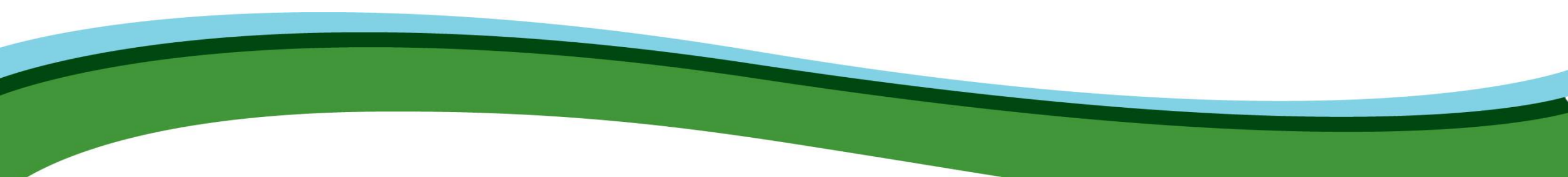
Conditions on variances and special uses

- BOA may place conditions on variances and special uses to ensure the project is compatible with surroundings
 - If request cannot be made compatible, permit should not be granted
 - Once imposed, conditions can be enforced the same as ordinance provisions
 - Conditions should have a rational basis
 - Variances should not have an expiration condition unless the situation causing the need for a variance is going to change
- 

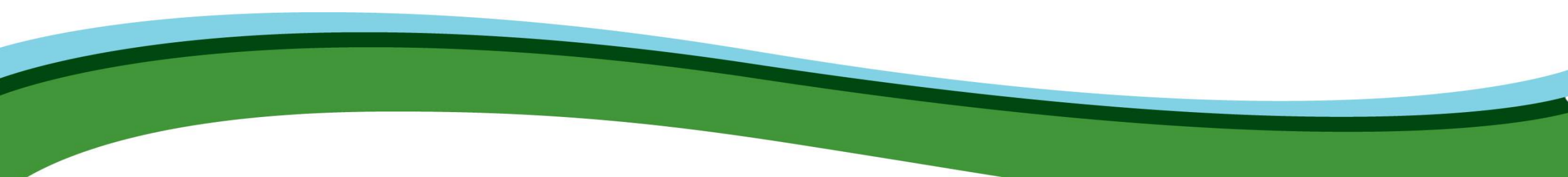
Record of BOA decisions

- BOA shall make written findings of fact on all issues presented in any adjudicatory proceeding
 - Intent is “to enable a reviewing court to determine with reasonable certainty the factual basis and legal principles upon which the board acted.”
 - A-Line Iron & Metals v. Cedar Rapids ZBA (2010)
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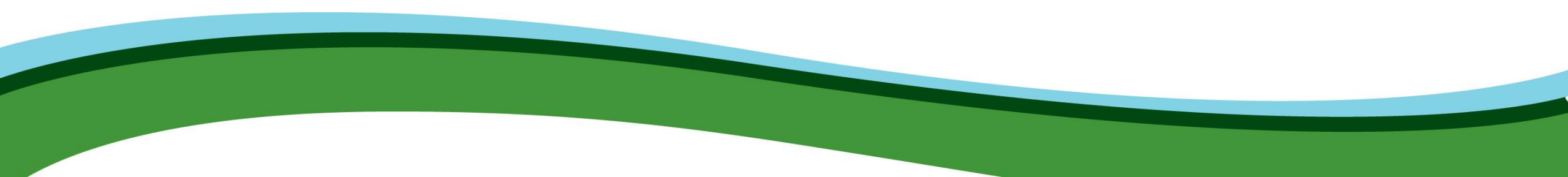
Record of BOA decisions

- Minutes that only reflect vote result will not stand up in court if the decision is challenged
 - Detailed minutes or a transcript of the hearing have been found to be sufficient to allow for judicial review
 - Give explanations as to how the standards in the ordinance have or have not been met
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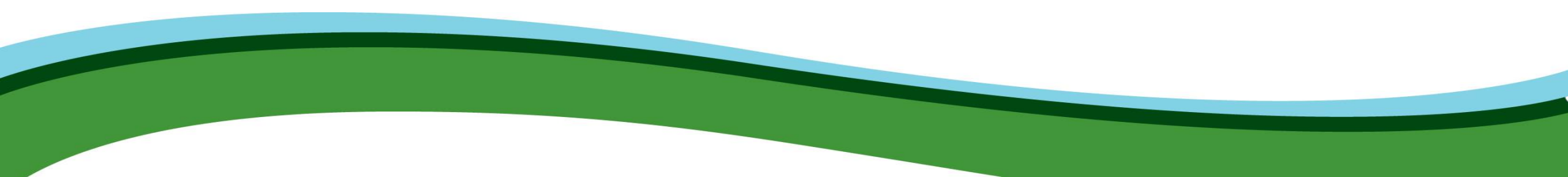
Appeals to BOA decisions

- Parties have 30 days to appeal following “filing of the decision in the office of the board”
 - If minutes were only record, they are not “filed” until approved at the following meeting
 - Other physical document of the decision can be approved and filed at the same meeting (Decision & Order)
- 

Dealing with the public

- Limit discussion prior to the hearing; disclose communications
 - Chair can limit length of comments before beginning
 - Those wishing to speak must come forward to the podium
 - Speaker must direct comments/questions to chair - not the applicant, staff, or other audience members
 - No applause or heckling should be tolerated
 - Limit discussion to the case at hand and relevant to the case
- 

Conduct of Board members

- Prepare for the hearing in advance
 - Refrain from discussing merits of case before motion is made, including engaging in conversation with the applicant or audience member
 - Chair does not make motions
 - Person who makes or seconds a motion may speak against it
 - Motions made in the affirmative
- 

VARIANCES GENERALLY

A variance is an authorization to allow a landowner to do something that is generally forbidden by the ordinance. State law sets out the circumstances under which a board of adjustment is authorized to grant variances. The language is identical for county boards of adjustment (found at Iowa Code 335.15) and city boards of adjustment (found at Iowa Code 414.12): With regard to variances, a board of adjustment has the power to:

Authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done. (Iowa Code 335.15(3) for counties; Iowa Code 414.12(3) for cities)

Authorize on appeal, in specific cases, such variance from the terms of the ordinance with respect to the area, dimensional, or other numerical limitations as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the ordinance will result in practical difficulties to the property owner in making a beneficial use of the property allowed by the zoning ordinance, and so that the spirit of the ordinance shall be observed and substantial justice done. (Iowa Code 335.15(4) for counties; Iowa Code 414.12(4) for cities)

USE VARIANCES

The first paragraph above, referencing Iowa Code 335.15(3) and Iowa Code 414.12(3), is intended to place strict limits on a board of adjustment's ability to grant variances from the uses allowed in a zoning district; for example, to limit a board's ability to allow a commercial or industrial use in a district that permits only residential uses. The standards are intentionally strict to prevent boards from granting variances that, in practical application, amount to rezonings. The appropriate avenue for a landowner to seek a use not allowed in the zoning district is to request the property be rezoned to a district that does allow the desired use.

The key phrase in that paragraph that limits the circumstances under which a board of adjustment may grant use variances is unnecessary hardship. Iowa courts have set out specific criteria that must be satisfied before a board is allowed to find that an unnecessary hardship exists sufficient to grant a landowner a use variance. The landowner must demonstrate that their application meets all of the following criteria to be granted a use variance:

1. The land in question cannot yield reasonable return if used only for purpose allowed in that zone,
2. The plight of the landowner is due to unique circumstances and not to general conditions in neighborhood, and
3. The use to be authorized by variance will not alter essential character of locality.





The Iowa courts have established several guidelines for assessing whether the above-listed criteria have been met:

- Lack of a “reasonable return” may be shown only by proof that the owner has been deprived of all beneficial use of his land. All beneficial use is said to have been lost where the land is not suitable for any use permitted by the zoning ordinance. This standard is extremely difficult to prove and is where the vast majority of applications for use variances will fail.
 - It is not sufficient to show that the value of land merely has been depreciated by the zoning regulations, or that a variance would permit a landowner to maintain a more profitable use.
 - It is not sufficient to show that the applicant has incurred substantial expenses in developing the property in anticipation of receiving a variance.
 - It is not sufficient to show mere inconvenience to the applicant.
- Problems common to several properties do not constitute “unique circumstances.” The appropriate response is through a zoning amendment, not wholesale application of the discretionary power of the board of adjustment.
- The “unique circumstances” must not be created by the landowner’s own actions. For example, a landowner cannot build a house to fill the building envelope of a lot (i.e., so that the walls are built to the minimum front, side and rear setback lines), then seek a variance to put a porch or deck on that house that will violate a setback. The key is whether the landowner’s actions after the enactment of the zoning ordinance created the unique circumstances (in which case the variance should not be granted) or whether the adoption or amendment of the ordinance itself created the unique circumstances for the landowner’s property (in which case a variance may be an appropriate remedy).
 - Likewise, the “unique circumstances” must not have been created by the actions of the landowner’s predecessor in title. In other words, when a landowner purchases property they assume the circumstances created by the previous landowner.
- A variance that alters the “essential character of the area” is beyond the authority of the board of adjustment to grant. Factors to consider in determining whether a variance will alter the “essential character of the neighborhood” include the degree of variation from district regulations, the size of the parcel, and the parcel’s size and character in relation to the size of the district.

DIMENSIONAL VARIANCES (AKA, NUMERICAL OR AREA VARIANCES)

In 2025, the Iowa legislature added the second paragraph in the quoted text above (referencing Iowa Code 335.15(4) and Iowa Code 414.12(4)). The intent was to create a more permissive standard than unnecessary hardship for a landowner to be granted a variance from “area, dimensional, or other numerical limitations” imposed in a zoning district. The legislature attempted to clarify what it meant by area, dimensional or numerical limitations by stating they “include but are not limited to requirements for minimum lot size, setbacks, yard widths, height, bulk, sidewalks, fencing, signage, and off-street parking,” although situations can conceivably arise that raise questions about whether a landowner’s request constitutes a dimensional variance or a use variance.

The more permissive standard for dimensional variances does not mean that they should be granted automatically. The added language states that, to receive a dimensional variance, the property owner still must prove “that the practical difficulties faced are unique to the property at issue and not self-created and must also demonstrate that granting the variance will not significantly alter the essential character of the surrounding neighborhood.” In effect, the new language removed the requirement to prove a “lack of reasonable return” standard that causes most use variance applications to fail, but kept the “unique circumstances” and “essential character” standards in place for dimensional variances.



This institution is an equal-opportunity provider. For the full non-discrimination statement or accommodation inquiries, go to <https://www.extension.iastate.edu/legal>.