



An Agricultural Law Research Article

**Rural Land Use Regulation in Iowa:
An Empirical Analysis of County
Board of Adjustment Practices**

by

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Part 3 of 3

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on the premise that it had been built in open disregard of the zoning regulations.⁸²⁹

Even though these representative decisions may be in accord with notions of fairness, there is an inherent arbitrariness in the board's determination of the petitioners' good faith. The good faith exception is subject to the personal prejudices of board members concerning the perceived character of the petitioner and creates a loophole that is susceptible to manipulation by unscrupulous petitioners. Nonetheless, the equities seem to favor excusing good faith errors in variance determinations to avoid the inordinate financial burdens that can result from very minor violations of zoning ordinances.⁸³⁰

Variance applications for the placement of mobile homes often involve allegations of financial hardship and are a relatively common consideration of some county boards of adjustment in Iowa. The petitioner for a mobile home variance may argue that he or she is unable to afford conventional housing and, thus, that an ordinance prohibiting mobile homes in a particular district causes undue financial hardship.⁸³¹ However, the personal financial capacity of the petitioner is irrelevant to considerations of unnecessary hardship.⁸³² Moreover, mobile homes can be placed in mobile home courts and, in some counties, can be "converted to real estate."⁸³³ Thus, with very little financial burden, the petitioner could comply with the ordinance.

For whatever reason, twenty-seven of twenty-nine variance requests involving mobile homes were approved by county boards of adjustment in the past two years.⁸³⁴ This sort of leniency destroys one of the principal motives for zoning regulation in many counties. More than thirty-one percent of the zoning administrators who responded to the questionnaire indicated that the primary impetus for enacting zoning legislation in their counties was the control of mobile homes.⁸³⁵ Thus, the control over mobile

829. Cedar County Board of Adjustment Minutes, Petition of Martin (Apr. 30, 1982). A letter from the chairman of the board of supervisors was sent to the board of adjustment stating that the petitioner had obtained building permits in the past and, therefore, was aware of the existing regulations. Letter from Norman Kroemer, Chairman, Cedar County Board of Supervisors, to Cedar County Board of Adjustment (Apr. 19, 1982).

830. Several jurisdictions make exceptions for good faith errors. See text accompanying note 741 *supra*.

831. *E.g.*, Cedar County Board of Adjustment Minutes, Petition of Wethington (July 20, 1981); *id.* Petition of Wright (Feb. 13, 1981); *id.* Petition of Dallege (Feb. 19, 1980).

832. See text accompanying notes 707-09 *supra*.

833. Mobile homes that are "converted to real estate" are those attached to a permanent foundation and entered on the tax rolls of the county—the implication being that the home is no longer "mobile" and thus constitutes a permitted use. See, *e.g.*, Clayton County, Iowa, Zoning Ordinance and Subdivision Regulations § 1.7(52) (1980). *But see* Calhoun County, Iowa, Zoning Ordinance § 400.70 (1980) (mobile homes not permitted even though wheels are removed and mobile home is resting on permanent foundation).

834. See Appendix VII *infra* (Table 2).

835. See Appendix VI *infra* (Table 8).

homes that was supposedly gained by zoning is, in effect, vitiated because of the ease of obtaining variances.

4. *Personal Benefit or Detriment to the Petitioner*

Various personal convenience factors that are unrelated to the land influence variance decisions.⁸³⁶ One patently personal consideration is health. Variances for medical reasons typically involve the placement of a mobile home in close proximity to the principal residence of a family member who needs special care as a result of surgery or advanced age. However, the variances justified on medical grounds include cases that are even more remotely related to the need for a variance. For instance, one petitioner before the Polk County Board of Adjustment was granted a variance to operate a beauty parlor in her home due to a restricted diet.⁸³⁷

The information gathered in preparation of this Project suggests that health reasons are among the most persuasive factors weighing in favor of variance approval. No requests were denied when the variance petitioner alleged a medical necessity.⁸³⁸ Additionally, two-thirds of the board of adjustment members responding to the questionnaire said that the presence of medical hardship was overwhelming evidence, or at least made it more likely than not, that a variance should be granted.⁸³⁹

While such medical variances are not particularly offensive, they exemplify the tendency of county boards of adjustment to exceed their statutory authority. Medical difficulties should not be a factor in determining whether unnecessary hardship exists.⁸⁴⁰ If the board of supervisors wants the board of adjustment to decide whether variances should be made on medical grounds, that power should be specifically delegated in the form of a special exception.⁸⁴¹ Zoning ordinances need not be insensitive to the special needs of people. However, when a reduced standard is

836. Variances may not be granted to relieve mere inconvenience. *E.g.*, *Vassallo v. Penn Rose Civic Ass'n*, 429 A.2d 168, 172 (Del. 1981); *Strange v. Board of Zoning Appeals*, ___ Ind. App. ___, ___, 428 N.E.2d 1328, 1333 (1981); *Volkman v. City of Kirkwood*, 624 S.W.2d 58, 61 (Mo. Ct. App. 1981); *City of Madison v. Clarke*, 288 N.W.2d 312, 314 (S.D. 1980).

837. Polk County Board of Adjustment Minutes, Petition of McMain (Aug. 17, 1981). Despite the fact that the administrative staff had recommended denial based on the personal nature of the request, the board unanimously approved the variance. *Id.*

838. See Appendix VII *infra* (Table 2).

839. See Appendix IV *infra* (Table 35).

840. *E.g.*, *Carney v. City of Baltimore*, 201 Md. 130, 136-37, 93 A.2d 74, 76-77 (1952); *Aronson v. Board of Appeals*, 349 Mass. 593, 594-95, 211 N.E.2d 228, 229 (1965); *In re Kline*, 395 Pa. 122, 124, 148 A.2d 915, 915-16 (1959).

841. Muscatine County is one example of a county in which the board of adjustment has been empowered to grant special exceptions for medical difficulties. There, the ordinance provides that the board of adjustment may grant permits for mobile homes for the care of persons with severe physical handicaps. Muscatine County, Iowa, Revised Zoning Ordinance art. III, § 32.07 (1981).

imposed for one type of variance, it becomes difficult to apply the proper standard for other types.

Other personal considerations amounting to mere convenience are reflected in county variance records. The Clayton County Board of Adjustment, for example, allowed two variances for mobile homes on the premise that they would deter crime.⁸⁴² The Linn County Board of Adjustment allowed a mobile home to be placed temporarily, during the rebuilding of a petitioner's fire-damaged home.⁸⁴³ In order to save trees, the Dickinson County Board of Adjustment allowed a petitioner to violate the county's sideyard requirements.⁸⁴⁴ Also, for the convenience of the petitioners, several county boards of adjustment approved variances for the construction of garages or additions to existing structures in violation of setback requirements.⁸⁴⁵

One can imagine an endless list of personal difficulties that may arouse sympathy among board members. It appears that county boards of adjustment in Iowa engage in a balancing of those individual interests against the interests of society in determining whether a petitioner deserves the special privilege conferred by a variance. In most cases the interests of the individual petitioner prevail.⁸⁴⁶

5. *Benefit or Detriment to the Community*

Variance requests occasionally raise important policy questions concerning the desire of new businesses to locate in the county. Any one variance application may pose both advantages and disadvantages to the local community. For instance, a new industry may benefit the local economy and simultaneously create pollution or traffic congestion problems.

More relevant to this discussion, however, are the policy matters that involve weighing the interests served by the zoning ordinance against the benefits derived from commercial development. The board of adjustment is not uniquely qualified to balance these interests.⁸⁴⁷ In fact, the board

842. Clayton County Board of Adjustment Minutes, Petition of Four Oaks Country Club (Sept. 17, 1981); *id.* Petition of Walter (Sept. 17, 1981). The Muscatine County Zoning Ordinance authorizes the board of adjustment to grant special permits for the protection of property when the hardship is "unique and substantial." Muscatine County, Iowa, Revised Zoning Ordinance art. III, § 32.07 (1981).

843. Linn County Board of Adjustment Minutes, Petition of Prochaska (Mar. 22, 1982).

844. Dickinson County Board of Adjustment Minutes, Petition of Wallace (July 6, 1981).

845. *E.g.*, Cedar County Board of Adjustment Minutes, Petition of Wethington (Dec. 24, 1980) (variance allowed from setback requirements for garage); Dickinson County Board of Adjustment Minutes, Petition of Verdoorn (Aug. 11, 1980) (variance permitted for second-story addition to existing structure); Fayette County Board of Adjustment Minutes, Petition of Niedert (Sept. 23, 1980) (area variance approved for construction of three-stall garage); Johnson County Board of Adjustment Minutes, Petition of Yocum (Aug. 20, 1981) (variance granted to enable petitioner to move existing garage closer to lot line).

846. *See* text accompanying notes 691-93 *supra*.

847. Section 358A.8 of the Iowa Code provides for the appointment of a "county zoning

is considered a less desirable decisionmaker in this context than elected officials.⁸⁴⁸ Nonetheless, board members indicate that their judgment in variance cases is influenced significantly by local policy concerns, especially those affecting the economic prosperity of their respective communities.⁸⁴⁹ Board members' perceptions of what is "best" for the community improperly become a part of some variance decisions and, for obvious reasons, dominate the decision-making process.⁸⁵⁰

The tendency of boards of adjustment to accommodate commerce by granting variances may stem from fears that the businesses will locate elsewhere if not given the requested variances. This rationale ignores the fact that there may be other districts in which a prospective business would constitute a permitted use. However, businesses favor locations that are the least costly to develop and operate. If one board of adjustment will not make an exception to allow the most profitable alternative, chances are that another county board of adjustment will. In this way, businesses can dictate where development will occur through a type of economic coercion.⁸⁵¹

Other variance decisions made by county boards of adjustment illustrate the propensity of boards to rely on policy grounds even when direct commercial benefit is not involved. For example, the Johnson County Board of Adjustment granted one variance after considering the increased tax revenue that would flow to the county from the proposed use.⁸⁵² In another instance the Muscatine County Board of Adjustment granted a variance for a mobile home to permit a young man to reside on his parents' farm.⁸⁵³ The board member moving for approval stated, as the reason for granting the variance, a desire to keep young men in the community on the farm.⁸⁵⁴

commission" to fulfill an advisory function for the board of supervisors. IOWA CODE § 358A.8 (1983). Implicit in the zoning commission's role is the appraisal and balancing of competing policy interests that underlie the zoning ordinance itself. *See id.*

848. *See* Anderson, *The Board of Zoning Appeals—Villain or Victim?*, 13 SYRACUSE L. REV. 353, 387 (1962); Dukeminier & Stapleton, *supra* note 358, at 337; Shapiro, *supra* note 412, at 22.

849. *See* Appendix IV *infra* (Table 35 (9)).

850. For instance, a prospective businessman was granted a variance by the Clayton County Board of Adjustment after a discussion of the potential for increased employment in the community because of the proposed enterprise. Clayton County Board of Adjustment Minutes, Petition of Weeks (Aug. 20, 1981).

851. With a well-planned ordinance, there is likely to be land allotted for industrial and commercial growth. However, it is evident that many counties initially zoned all or most undeveloped land for agricultural uses. *See* notes 139-40 *supra* and accompanying text. Subsequent uses then have been accommodated by rezoning or variance. *Id.* The result of this ad hoc decision-making process is haphazard development on a case-by-case basis according to the whims of petitioners.

852. Johnson County Board of Adjustment Minutes, Petition of Fountain (Mar. 19, 1981).

853. Muscatine County Board of Adjustment Minutes, Petition of Fix (Aug. 11, 1981).

854. The recorded transcript from this particular variance case includes the following dialogue from one Board member:

The situation, to me, is that we don't have a hardship here but the basis that

Zoning should not be so inflexible that it inhibits the socio-economic growth of the county. However, zoning is based on the premise that there are optimal uses for certain areas and that, in conforming with those uses, the benefits to society are maximized.⁸⁵⁵ The question ultimately becomes: Who is best qualified to balance the interests of the community? When development within the zoning scheme is not compatible with the best interests of local citizens, the plan should be amended by legislators rather than by appointed officials.⁸⁵⁶

6. *Prior Cases and Similar Existing Uses*

County board of adjustment members in Iowa assert a strong allegiance to their own prior decisions. Only one factor, loss of prime agricultural land, was rated by board members as more influential in their variance decisions than the fact that previous variances had been granted in a particular area.⁸⁵⁷ Board members apparently think that if they permit one variance, they are obligated to grant all similar requests. Consequently, each variance, whether properly or improperly determined, provides the justification for future variances.⁸⁵⁸

Proper variance criteria must be applied initially; otherwise, each subsequent decision becomes nothing more than a senseless multiplication of a mistake. Moreover, to rely on precedent would necessitate adequate records of board of adjustment actions. Without a complete record, the board does not have an accurate method for comparing the factual circumstances of separate cases. However, the record of variance decisions in most counties is no more than the personal recollections of board members or the zoning administrator.⁸⁵⁹

If all variances were evaluated according to the doctrine of unnecessary hardship, reliance on precedent would be immaterial because all petitioners necessarily would be held to the same standard; each would receive equal treatment. Unfortunately, county boards of adjustment are guided by their prior decisions more than by the definition of unnecessary hardship

I would express my opinion on is almost strictly agricultural and that is the only stand I can make on this, if you will permit me. Establish a farm family, directly connected with agriculture and that would be where I would have to take a stand on this.

Id. Another Board member noted: "A hardship is in essence so that an individual can be close enough to a farm to help with the operation." *Id.* A third Board member moved to approve the petitioner's request, adding: "I am going to give as my reasons I want to keep as many of these young men in the area in farming if at all possible." *Id.*

855. See 1 E. YOKLEY, *supra* note 42, § 2-1, at 15.

856. Lovell v. Planning Comm'n, 37 Or. App. 3, 6-7, 586 P.2d 99, 101 (1978).

857. See Appendix IV *infra* (Table 35).

858. *Contra* Glasgow v. Beaty, 476 P.2d 75, 77 (Okla. 1970) ("ill-advised or illegal variances do not furnish grounds for repetition").

859. See text accompanying notes 774-75 *supra*.

advanced in *Deardorf v. Board of Adjustment*.⁸⁶⁰ Consequently, the improper granting of one variance is deemed to justify the granting of another, and so on, until the zoning plan gradually is eroded.

Members of county boards of adjustment in Iowa also tend to place great weight on the presence of preexisting uses that are compatible with the proposed variant use.⁸⁶¹ Preexisting uses are relied on as grounds for granting variances even when such uses did not occur as the result of board variances. For instance, existing nonconforming uses⁸⁶² may influence the board's decisions on whether to approve variances for similar uses in the same vicinity.⁸⁶³ In Jasper County the zoning administrator explained that the board of adjustment granted a variance to permit liquid fertilizer storage⁸⁶⁴ partly due to that use's compatibility with other nonconforming uses in the area.⁸⁶⁵ The board's action was contrary to the recently enacted ordinance.⁸⁶⁶ Otherwise, the existing nonconforming uses on which the board based its decision would have been designated as permitted uses in the new ordinance.

The presence of similar uses in the vicinity of a proposed use is not entirely irrelevant. One element in establishing unnecessary hardship is that a proposed variance will not alter the essential character of the neighborhood.⁸⁶⁷ Thus, evidence of existing uses may be pertinent in determining the potential impact of the proposed variance on the character of the locale. Nonetheless, all three elements of unnecessary hardship must be demonstrated before a variance is justified.⁸⁶⁸

860. 254 Iowa 380, 386, 118 N.W.2d 78, 81 (1962); see text accompanying notes 697-736 *supra*.

861. See Appendix IV *infra* (Table 35 (18)).

862. As used here, nonconforming uses are those that were lawful before the ordinance was enacted and, although prohibited by the ordinance, are allowed to continue due to their prior existence. See *City of Harrison v. Wilson*, 248 Ark. 736, 737, 453 S.W.2d 730, 731 (1970); *C & C, Inc. v. Semple*, 207 Va. 438, 439 n.1, 150 S.E.2d 536, 537 n.1 (1966).

863. Several ordinances specifically prohibit the board of adjustment from considering nonconforming uses of neighboring lands in the same district or similar permitted uses in neighboring districts as grounds for variances. *E.g.*, Calhoun County, Iowa, Zoning Ordinance § 1920.3(a)(4) (1979); Clay County, Iowa, Zoning Ordinance and Subdivision Regulations art. XXIV, § 3(3)(a)(4) (1979); Pocahontas County, Iowa, Zoning Ordinance art. XVI, § 1620.3(A)(4) (1979); Sioux County, Iowa, Zoning Ordinance and Subdivision Regulations art. 23, § 5.3(A)(4) (1979).

864. Jasper County Board of Adjustment Minutes, Petition of First Miss, Inc. (Sept. 3, 1981).

865. Interview with Larry E. Jontz, Jasper County Zoning Administrator, in Newton, Iowa (July 2, 1982).

866. The approved use was not among the uses permitted in the district. See Jasper County, Iowa, Zoning Ordinance art. 5 (1981).

867. See text accompanying notes 731-36 *supra*.

868. See text accompanying note 702 *supra*.

7. *Miscellaneous Factors*

A variety of factors are infrequently considered yet influence the board of adjustment's reasoning. Several county boards of adjustment were inclined to protect the aesthetic qualities of their communities. For instance, members of the Dickinson County Board of Adjustment consistently questioned whether a petitioner's proposed addition or garage would match the existing structures.⁸⁶⁹ Other boards used their variance power to coerce applicants to clean up unsightly property. For example, the Clayton County Board of Adjustment granted a variance for the placement of a sign conditioned on the petitioner's removal of junk cars.⁸⁷⁰ Similarly, the Johnson County Board of Adjustment threatened to withhold approval of a variance unless the petitioner agreed to clean up the property in question.⁸⁷¹

These board members' concern for the attractiveness of their communities is laudable but, nonetheless, misplaced. Although the board of adjustment can attach reasonable conditions to the grant of a variance for protection of the public health, safety, and welfare,⁸⁷² the applicant must first demonstrate that the prerequisites for a variance have been satisfied.⁸⁷³ Moreover, even though aesthetic factors should be weighed in the board's consideration of how a proposed variance will affect the character of the neighborhood, those factors alone are insufficient to justify a variance.⁸⁷⁴

Other variance factors articulated by board members were the petitioner's personality⁸⁷⁵ and willingness to compromise.⁸⁷⁶ One board member stated that "[t]he way lawyers fake people into a case" was a factor to consider.⁸⁷⁷ Perhaps the most novel argument for a variance, however, came from a county attorney. When asked by a board member why the petitioner had not sought to have the property rezoned, the zoning administrator replied that the county attorney thought it was much quicker to

869. Dickinson County Board of Adjustment Minutes, Petition of Kluver (Apr. 26, 1982); *id.* Petition of Hiemstra (Dec. 7, 1981); *id.* Petition of Gutknechts (Aug. 3, 1981); *id.* Petition of Nicolai (Apr. 20, 1981); *id.* Petition of Wilson (June 23, 1980).

870. Clayton County Board of Adjustment Minutes, Petition of Moore (May 21, 1981).

871. Johnson County Board of Adjustment Minutes, Petition of Wieland (Mar. 18, 1982).

872. *Allendale Nursing Home, Inc. v. Borough of Allendale*, 141 N.J. Super. 155, 160, 357 A.2d 333, 336 (Super. Ct. Law. Div. 1976).

873. *See Jacobs v. Philadelphia Zoning Bd. of Adjustment*, 1 Pa. Commw. 197, 200, 203-04, 273 A.2d 746, 748-49 (1971) (variance granted with conditions does not substitute for finding of unnecessary hardship).

874. *See Colby v. Town of Rye*, 122 N.H. 991, 992-93, 453 A.2d 1270, 1271 (1982) (even though home without proposed variance for a porch "looks like the devil" and is not in keeping with its Victorian design, plaintiffs failed to show that denial would result in unnecessary hardship).

875. Board of Adjustment Questionnaire Nos. 381, 593.

876. *Id.* No. 653.

877. *Id.* No. 404.

get a variance.⁸⁷⁸ The board approved the request for a variance despite the obvious inadequacy of the grounds asserted.⁸⁷⁹

C. Summary

Boards of adjustment are empowered to permit variances in exceptional circumstances amounting to unnecessary hardship.⁸⁸⁰ However, the record suggests that county boards of adjustment in Iowa have adopted a more lenient policy. Most Iowa county boards of adjustment do not comply with the concept of unnecessary hardship.⁸⁸¹ Many board members are unfamiliar with the standard,⁸⁸² do not understand it,⁸⁸³ or ignore it altogether.⁸⁸⁴ Rather than rely on unnecessary hardship as a measure of variance applications, county boards of adjustment normally grant a petitioner's request unless there is some compelling reason for denial. Consequently, the petitioner's burden of demonstrating exceptional circumstances is, for all practical purposes, shifted to the public to show why the benefits of zoning outweigh the burdens placed on an individual property owner. The ad hoc system that has developed is particularly susceptible to the influence of personal biases and the imposition of arbitrary standards. Furthermore, the ensuing variance decisions constitute special privileges for the relatively few persons who seek to sidestep county zoning regulations. On the other hand, citizens aggrieved by the inappropriate usurpation of authority by county boards of adjustment are entitled to pursue avenues of judicial relief.

VI. JUDICIAL REVIEW

Judicial review of agency action has long been an integral part of administrative life.⁸⁸⁵ Thus, the issue is not whether judicial review of board of adjustment action is or should be available, but rather, how and to what extent review is available.⁸⁸⁶ This part will begin with a brief survey of the procedures and scope of judicial review of county board of adjustment actions in Iowa. Recognizing that the main purpose of judicial review is to restrain administrative actions that may either exceed delegated power or violate private rights,⁸⁸⁷ the second subpart will examine zoning appeals filed in Iowa district courts during the past five years to measure the effectiveness of judicial review in achieving that restraining purpose.

878. Clayton County Board of Adjustment Minutes, Petition of Howe (Apr. 15, 1982).

879. *Id.*

880. IOWA CODE § 358A.15 (1983).

881. See text accompanying notes 774-878 *supra*.

882. See text accompanying note 706 *supra*.

883. *Id.*

884. See text accompanying notes 774-878 *supra*.

885. See ATTORNEY GENERAL'S COMM. ON ADMIN. PROCEDURE, FINAL REPORT 75-76 (1941).

886. *Id.*

887. *Id.* at 76.

A. Procedures for and Scope of Judicial Review

Iowa Code sections 358A.18 through 358A.23 define the structure of and procedures for invoking judicial review of county board of adjustment actions. Section 358A.18 grants standing to any person aggrieved by a decision of a county board, any taxpayer, or any officer or governmental unit of the county.⁸⁸⁸ This grant of standing is so broad that almost any resident of the county may sue to defend the county zoning scheme.⁸⁸⁹

The record search conducted by this Project, however, uncovered cases brought by only one of the classes empowered to sue. Only petitions brought by persons aggrieved—either those who were denied a permit or neighbors challenging the grant of a permit—were found. No county officers or governmental units brought suit against a county board of adjustment. The most likely suit by a governmental unit would be one brought by the board of supervisors or the zoning commission for an unprincipled grant of a variance permit. Apparently, these other county zoning officials are no more concerned with the indiscriminate relaxation of the zoning ordinance by variance than are board of adjustment members.⁸⁹⁰ In addition, most county officers are probably adverse to suing another branch of county government because of the resulting interpersonal conflicts and the inevitable drain on county resources that would occur.

888. IOWA CODE § 358A.18 (1983).

889. Literally, "any person . . . or taxpayer," *id.*, should include almost every adult resident of the county. However, Iowa courts do not accept such a broad reading of the standing provision. In *Reynolds v. Dittmer*, 312 N.W.2d 75 (Iowa Ct. App. 1981), the Iowa Court of Appeals adopted the view that only persons with special injury—injury different from the effect of the board action on the general public—have standing. *Id.* at 77-78. To find special injury, a court must examine the following factors: (1) the proximity of the petitioner's land to the land subject to the zoning action being appealed; (2) the character of the neighborhood; (3) the character of change proposed; and (4) whether the petitioner is entitled to notice under the zoning ordinance. *Id.* at 78.

Very rarely does even an immediate neighbor attempt to challenge a decision of an Iowa board of adjustment, so the special injury question is largely academic. However, taxpayer standing ought to be analyzed differently than standing of persons aggrieved. Standing of taxpayers has little to do with geographic proximity to the situs of the complaint. Thus, more county residents ought to have standing than would qualify under *Reynolds*. Compare *Sierra Club v. Morton*, 405 U.S. 727, 739-40 (1972) (mere interest in problem not sufficient to grant standing as a "person aggrieved" within meaning of Federal Administrative Procedure Act) and *City of Des Moines v. Public Employment Relations Bd.*, 275 N.W.2d 753, 759 (Iowa 1979) (to have standing as a "person aggrieved," party must demonstrate specific, personal, and legal interest, and establish that such interest has been specially and injuriously affected by the decision) with *Flast v. Cohen*, 392 U.S. 83, 102 (1968) (to have standing as a taxpayer, taxpayer must establish a link between that status and legislation being attacked and a nexus between that status and constitutional infringement alleged). See also Ayer, *The Primitive Law of Standing in Land Use Disputes: Some Notes From a Dark Continent*, 55 IOWA L. REV. 344, 346-48 (1969) (discussing scope of "person aggrieved" and taxpayer standing).

890. See Shapiro, *The Zoning Variance Power—Constructive in Theory, Destructive in Practice*, 29 MD. L. REV. 3, 16 (1969).

Research has not uncovered any suits that have been brought by taxpayers to challenge county board of adjustment actions in Iowa. Perhaps taxpayers think that seeking judicial enforcement of consistency in the application of the county zoning ordinance would not be worth the cost of litigating such matters.⁸⁹¹ Moreover, in view of the low number of building permits granted by each county board of adjustment over the large rural area of each county, the lack of such taxpayer suits is not surprising.

A petitioner seeking judicial review of board of adjustment action must first exhaust all administrative remedies.⁸⁹² The decision of the administrator to grant or deny a building permit satisfies the exhaustion requirement only in the case of a challenge to the facial constitutionality of the zoning ordinance.⁸⁹³ Neither the board of supervisors nor the board of adjustment has power to decide the constitutionality of the statute or ordinance under which it operates.⁸⁹⁴

The granting of a variance, special use permit, or amendment is generally considered a final administrative action for purposes of exhaustion. The denial by a board of adjustment of any of these three forms of relief may compel pursuit of another only if such action promises the potential for success.⁸⁹⁵ When an amendment is denied by the supervisors or a variance or special use permit is denied by the board of adjustment, resort to the other board is necessary only if the other board may take jurisdiction over the case.⁸⁹⁶ For example, a petitioner's challenge to a board of supervisors' denial of a zoning amendment must be taken in

891. *Cf. Oakes Constr. Co. v. City of Iowa City*, 304 N.W.2d 797, 806, (Iowa 1981) (judicial review as a remedy for land use regulation disputes is costly).

892. *Concerned Citizens of Palm Desert, Inc. v. Board of Supervisors*, 38 Cal. App. 3d 257, 266, 113 Cal. Rptr. 328, 334 (1974); *Matters v. City of Ames*, 219 N.W.2d 718, 719 (Iowa 1974); *Smith v. Nutter*, 113 N.H. 58, 60, 301 A.2d 90, 91 (1973).

893. *American Nat'l Bank & Trust Co. v. City of Chicago*, 130 Ill. App. 2d, 24, 27, 264 N.E.2d 847, 848 (1970); *Heram Holding Corp. v. City of Albany*, 33 A.D.2d 1086, 1087, 307 N.Y.S.2d 680, 682 (1970). A challenge to the constitutionality of the ordinance as applied to a particular property generally requires exhaustion of administrative remedies. *Exton Quarries, Inc. v. Zoning Bd. of Adjustment*, 425 Pa. 43, 56 n.11, 228 A.2d 169, 177 n.11 (1967); *Golden Gate Corp. v. Town of Narragansett*, 116 R.I. 552, 567, 359 A.2d 321, 329 (1976).

894. *See Wesley Chapel, Inc. v. Van Den Hende*, 32 A.D.2d 565, 565, 300 N.Y.S.2d 803, 805, *modified*, 25 N.Y.2d 930, 932, 252 N.E.2d 629, 629, 305 N.Y.S.2d 149, 149, (1969); *SMC Inc. v. Laudi*, 44 Ohio App. 2d 325, 327, 338 N.E.2d 547, 549 (1975); *Bidwell v. Zoning Bd. of Adjustment*, 4 Pa. Commw. 327, 334, 286 A.2d 471, 474 (1972).

895. *See generally Steel Hill Dev., Inc. v. Town of Sanbornton*, 392 F. Supp. 1144 (D.N.H. 1974); *Bianco v. Town of Darien*, 157 Conn. 548, 254 A.2d 898 (1969); *Matters v. City of Ames*, 219 N.W.2d 718 (Iowa 1974).

896. The requirement of exhaustion of administrative remedies does not compel resorting to an agency that does not have power to grant the desired relief. *See, e.g., Baxter v. Claytor*, 652 F.2d 181, 185 (D.C. Cir. 1981); *Salsbury Laboratories v. Iowa Dept. of Env'tl. Quality*, 276 N.W.2d 830, 836 (Iowa 1979); *Matters v. City of Ames*, 219 N.W.2d 718, 719 (Iowa 1974).

the form of an application for a variance or a special use permit only if the legal prerequisites for those permits arguably can be demonstrated. Such an overlap should be rare because the criteria for the grant of an amendment differ significantly from those necessary for the board of adjustment's relief.⁸⁹⁷ An appeal from the board of supervisors to the board of adjustment—or vice versa—is not available. In most instances, therefore, denial of an amendment, variance, or special use permit satisfies the exhaustion requirement.

The Iowa Legislature has provided certiorari as the method for appealing a board of adjustment action.⁸⁹⁸ The board of adjustment thus assumes the role of an inferior tribunal, and only the jurisdiction or legality of the board's action can be placed at issue.⁸⁹⁹ The court is not allowed to substitute its judgment on the facts of the petition for the judgment of the board.⁹⁰⁰

Section 358A.21 of the Iowa Code provides that judicial review shall be de novo.⁹⁰¹ Courts in other jurisdictions have construed de novo review in a variety of ways—from allowing a completely new hearing on facts and law, to being an unconstitutional intrusion on the administrative function.⁹⁰² The reviewing court's function has been limited in Iowa to less than a complete trial de novo on the entire petition.⁹⁰³ De novo review in the Iowa zoning context means that a court may take evidence beyond

897. See note 326 *supra*.

898. IOWA CODE § 358A.19 (1983); *In re McClure*, 415 Pa. 285, 287-88, 203 A.2d 534, 535-36 (1964).

899. *Grant v. Fritz*, 201 N.W.2d 188, 199 (Iowa 1972); *Anderson v. Jester*, 206 Iowa 452, 463, 221 N.W. 354, 359 (1928); *Frost v. Lucey*, 231 A.2d 441, 448 (Me. 1967); *Rosedale-Skinker Improvement Ass'n v. Board of Adjustment*, 425 S.W.2d 929, 937-38 (Mo. 1968); *Stratford Arms Inc. v. Zoning Bd. of Adjustment*, 429 Pa. 132, 135-36, 239 A.2d 325, 328 (1968).

900. *Cudd v. City of Homewood*, 284 Ala. 268, 271, 224 So. 2d 625, 628 (1969); *Ivancovich v. City of Tuscon Bd. of Adjustment*, 22 Ariz. App. 530, 535, 529 P.2d 242, 247 (1974); *Devon Civic League, Inc. v. Marion County Bd. of Zoning Appeals*, 140 Ind. App. 519, 524-25, 224 N.E.2d 66, 69-70 (1967); *Weldon v. Zoning Bd.*, 250 N.W.2d 396, 401-02 (Iowa 1977).

901. IOWA CODE § 358A.21 (1983).

902. In Oklahoma evidence is taken completely de novo, but the board's conclusion is presumed correct if substantial evidence is found to support it. *Banks v. City of Bethany*, 541 P.2d 178, 180-81 (Okla. 1975). Pennsylvania courts may review on the record and limit review to a search for substantial evidence or, if deemed necessary to proper resolution of the case, take new evidence. If new evidence is taken, trial is de novo on both fact and law. *Lutz v. East Hanover Township Zoning Hearing Bd.*, 17 Pa. Commw. 501, 504-05, 333 A.2d 229, 230-31 (1975). Kentucky courts consider de novo review of an administrative hearing that produces a record and findings of fact to be an unconstitutional intrusion on the administrative function. Only review on the record of the arbitrariness of the decision is allowed. See *Commonwealth v. Thomas* 467 S.W.2d 335, 337 (Ky. 1971); *American Beauty Homes Corp. v. Louisville & Jefferson County Planning & Zoning Comm'n*, 379 S.W.2d 450, 453-56 (Ky. 1964). See also 7 P. ROHAN, *supra* note 70, § 52.05[4] (discussing various jurisdictions' interpretation of the scope of "de novo" review).

903. *Trailer City, Inc. v. Board of Adjustment*, 218 N.W.2d 645, 647-48 (Iowa 1974).

the record advanced by the board only if the evidence is necessary to decide the questions of illegality asserted in the writ of certiorari.⁹⁰⁴

The deficient records kept by boards of adjustment⁹⁰⁵ have presented the Iowa Supreme Court with only two choices: conducting review *de novo* or requiring the maintenance of a more complete administrative record that clearly sets forth the reasons for the agency action. For many years judicial approval of procedural informality allowed boards of adjustment to keep incomplete records.⁹⁰⁶ Recently, however, the Iowa Supreme Court has expressed its exasperation with the frequently "chaotic condition of the subject matter"⁹⁰⁷ of board of adjustment appeals by requiring that boards make written findings of fact to support each decision.⁹⁰⁸

The findings requirement should have several positive effects on the review process. First, it will reduce the necessity of taking new evidence at trial and thus prevent courts from infringing on the board's factfinding function.⁹⁰⁹ Boards of adjustment will have to express their findings in terms of the facts of a particular case rather than merely forwarding the legal description of the property involved. Second, by requiring that boards of adjustment make factfindings, courts will more readily determine the issues that need additional evidence before rendering judgment. The factfinding requirement should lead boards of adjustment to clarify the basis for a decision, enabling parties and courts to focus on specific, alleged errors rather than being forced to start litigation on an empty record and

904. *Id.*; *Vogelaar v. Polk County Zoning Bd. of Adjustment*, 188 N.W.2d 860, 863 (Iowa 1971).

905. See text accompanying notes 625-49 *supra*.

906. Many counties still keep nothing more to present to a court in the event of an appeal than the petition written by the person seeking the variance or special use permit, see, e.g., *Appeal to the Zoning Board of Adjustment, Franklin County, Iowa* (variance/special exception application form); *Application for Special Exception to or Variance from Zoning Ordinance Requirements, Grundy County, Iowa* (application form), and minutes showing no more than a description of the property involved, the use proposed, the names of those attending the hearing, and the board of adjustment's decision, see, e.g., *Franklin County, Iowa, Board of Adjustment Minutes, Petition of Frerichs* (Dec. 21, 1981); *Grundy County, Iowa Board of Adjustment Minutes, Petition of Voss* (Sept. 14, 1981); *Page County, Iowa, Board of Adjustment Minutes* (March 10, 1982) (petitioner unknown; minutes disclose no more than property description and proposed use); *Shelby County, Iowa, Board of Adjustment Minutes, Petition of Schmitz* (Apr. 26, 1982).

Some commentators suggest that courts are reluctant to entertain challenges to board of adjustment actions. R. BABCOCK, *THE ZONING GAME* 101-11 (1966); Comment, *Judicial Review of Zoning Administration*, 22 CLEV. ST. L. REV. 349, 356-57 (1973). In reviewing board of adjustment cases, courts must often apply loose standards to inadequate records. 3 R. ANDERSON, *supra* note 9, § 20.01, at 464; note 467 *supra*. Iowa district court records show that the courts' distaste for zoning cases is accommodated in that a minimal number of county board cases are appealed. See text accompanying note 919 *infra*.

907. Comment, *Judicial Review of Zoning Administration*, 22 CLEV. ST. L. REV. 349, 357 (1973).

908. See *Citizens Against the Lewis & Clark (Mowery) Landfill v. Pottawattamie County Bd. of Adjustment*, 277 N.W.2d 921, 925 (Iowa 1979).

909. See text accompanying note 638 *infra*.

wait for the board to produce by affidavit the grounds for a decision that may be challenged.⁹¹⁰ Last, the findings requirement will allow courts to respect the stated basis of decisions made by boards of adjustment rather than being forced to conduct a trial de novo.⁹¹¹

Courts profess deference to factfindings and, to an extent, the decisions of administrative agencies.⁹¹² One of the primary reasons for that deference is the perceived expertise of the agency in dealing on a daily basis with the subject matter within its jurisdiction.⁹¹³ The feeling is especially strong in regard to the review of board of adjustment actions because of the peculiarly local nature of the subject matter and the largely factual nature of the basis for decision.⁹¹⁴

The findings of this Project raise questions concerning the expertise of members of Iowa county boards of adjustment.⁹¹⁵ A surprising number of board members surveyed appear to have little or no understanding of the substantive law applicable to their jurisdiction.⁹¹⁶ This lack of knowledge casts doubt on the wisdom of the judicial policy of deferring to board of adjustment decisions. Although solicitation of the factual basis for a variance or special use permit decision may be the main function of the board, the board also must apply the law.

A more intrusive standard of review is not recommended, however. Judicial deference to board action on questions of fact is desirable. Board members have better access to the material evidence than do judges;⁹¹⁷ thus, they are more qualified to answer questions of fact.⁹¹⁸ Nonetheless, deference to expertise requires that board members have knowledge of the law within their jurisdiction. The deliberation that would be required if the Iowa Supreme Court were to mandate promulgation of substantive rules would be a major step in the right direction. Strict adherence to

910. See text accompanying note 599 *infra*.

911. Note, *The Administration of Zoning Flexibility Devices: An Explanation for Recent Judicial Frustration*, 49 MINN. L. REV. 973, 1006 (1965); text accompanying note 638 *supra*.

912. See, e.g., *City of Davenport v. Public Employment Relations Bd.*, 264 N.W.2d 307, 312 (Iowa 1978); *Johnson v. Board of Adjustment*, 239 N.W.2d 873, 886-87 (Iowa 1976).

913. *Boffo v. Boone County Bd. of Zoning Appeals*, ___ Ind. App. ___, ___, 421 N.E.2d 1119, 1125 (1981).

914. Local authorities live "close to the circumstances and conditions which create the problem and shape the solution"; only in cases of arbitrariness or illegality should a court step in. *Byington v. Zoning Comm'n*, 162 Conn. 611, 613, 295 A.2d 553, 554 (1971). See also Note, *Zoning Variances and Exceptions: The Philadelphia Experience*, 103 U. PA. L. REV. 517, 522 (1955).

915. The Project writers are not the first to question the judicial assumption of board of adjustment expertise. See Shapiro, *The Zoning Variance Power—Constructive in Theory, Destructive in Practice*, 29 MD. L. REV. 3, 18 (1969).

916. Many respondents to the interviews confessed to never having read or heard of their own county ordinances, the state enabling legislation, or the concept of unnecessary hardship. See text accompanying note 180 *supra*.

917. See note 914 *supra*.

918. See note 914 *supra* and accompanying text.

the findings requirement would provide a sound basis thereafter for judicial and public confidence in the board's expertise.

B. Iowa District Court Review of County Board of Adjustment Actions

A total of only twenty-eight cases challenging board of adjustment action were found as part of the Project's record search. Of those cases, fourteen were either dropped by the petitioner before trial or remained pending at the time of the survey. Thus, only fourteen cases reached final disposition in court during a five-year period in which county boards of adjustment heard well over nine hundred cases.⁹¹⁹ Forty-five county boards of adjustment did not have any of their actions challenged during the five years surveyed.

Some of the reasons for such limited judicial oversight were discussed earlier in the section on standing.⁹²⁰ Another reason that there are so few challenges to board of adjustment action is that people who want to build will often do so either without regard to the zoning ordinance or, frequently, with full regard to the ordinance's strictures.⁹²¹ Legal loopholes also present resourceful petitioners with options other than judicial challenge as a means of relieving their lands from the burdens of zoning ordinances.⁹²² Boards of adjustment themselves also contribute to the infrequency of appeals by granting relief for illegal reasons or no reasons at all. Over ninety percent of the petitions for variance surveyed by this Project were granted.⁹²³ There is no need to sue when inexpensive administrative relief is so freely available.⁹²⁴

Whatever reasons explain the small number of cases being filed in the Iowa district courts, the limited extent of review allows many county boards of adjustment to operate in disregard of clear statutory or judicial directives. For example, only eighteen county boards of adjustment have promulgated procedural rules,⁹²⁵ and only fourteen boards make written

919. See Appendix IX *infra* (Table 1).

920. See text accompanying notes 890-91 *supra*.

921. See Appendix VI *infra* (Table 17).

922. For example, one petitioner described to the Project writers how she accomplished her objective of subdividing a small piece of land off her farmstead to give to a daughter on which to build a home. After a variance that would legalize a smaller lot than that required in the district was denied, the petitioner had the house built and retained title to the land but gave the house to the daughter. The county ordinance regulated lot size but did not regulate the number of structures per lot. The purpose of the area requirement—maintenance of low population density—was effectively circumvented. See Petitioner Interview No. 402 (June 30, 1982).

923. See Appendix VII *infra* (Table 1); see also note 140 *supra* (legislative relief in the form of rezoning also freely available).

924. Babcock has noted an "overtone of concern that zoning is rapidly becoming a system where little is certain except that the property owner must get permission from some local administrative body before he can do anything." Babcock, *The Unhappy State of Zoning Administration in Illinois*, 26 U. CHI. L. REV. 509, 521 (1959).

925. See Appendix IX *infra* (Table 2).

findings of fact.⁹²⁶ This situation exists despite a three-year old judicial directive that boards of adjustment promulgate rules of general applicability and record findings of fact in every case.⁹²⁷ In several instances directives from the Iowa Supreme Court went unheeded by county boards of adjustment until the boards were challenged and reversed in the district court. For example, the Humboldt County Board of Adjustment had its grant of a special use permit challenged and reversed in 1981 before it began observing the rule-making requirement.⁹²⁸

Judicial mandates of general application, such as the rule-making and fact-finding requirements, should be followed by all county boards of adjustment without the threat of actual litigation. Such repetitive litigation, however, seems to be necessary to communicate a judicial ruling to county zoning officials.⁹²⁹ Of the twenty-one county boards of adjustment that faced a judicial challenge during the period surveyed, over one-half have complied with the rule and findings requirements. Of the forty-five boards that went unchallenged, only four made findings and six have adopted rules.⁹³⁰

This ignorance of substantive zoning law pervades the county board of adjustment system in Iowa. The Project findings indicate that many board members consider "good common sense" a substitute for rules of law.⁹³¹ Fundamental fairness requires that a meaningful standard be applied consistently whenever the government regulates the conduct of its citizens.⁹³² The entire constitutional system is based on the premise of rule of law rather than arbitrary rule of the people who administer the law. The zoning law reflects that premise on paper, but its application in Iowa counties leaves much to be desired.

926. See Appendix IX *infra* (Table 2).

927. *Citizens Against the Lewis & Clark (Mowery) Landfill v. Pottawattamie County Bd. of Adjustment*, 277 N.W.2d 921, 925 (Iowa 1979). The boards' noncompliance is probably not intentional. Rather, ignorance of the law is the likely cause. In many counties neither the zoning administrator nor the board of adjustment members have read Iowa Code chapter 358A, and few county zoning officials have ever read a judicial opinion about zoning. See text accompanying notes 704-06 *supra*; Appendix IV *infra* (Tables 9 & 10); Appendix VI *infra* (Tables 9 & 10).

928. *Mussetter v. Board of Adjustment*, Law No. 14593, slip op. at 2-3 (Iowa Dist. Ct., Humboldt County, Iowa, July 10, 1981); Humboldt County Board of Adjustment Minutes (Oct. 26, 1981 and Aug. 17, 1981) (discussion concerning adoption of rules following disposition in *Mussetter*).

929. See R. BABCOCK, *THE ZONING GAME* 155-56 (1966). "Judicial surveillance of local procedure under our present enabling legislation is ineffectual. A reversal or remand by the courts because of sloppy procedure before the board of appeals of Broadview has not, in my experience, the slightest impact on the practices of neighboring Westchester." *Id.* at 156.

930. See Appendix IX *infra* (Table 2).

931. Several of the board of adjustment questionnaires were returned blank in part or entirety with only the comment that common sense was sufficient to determine variance requests. See, e.g., Board of Adjustment Questionnaire Nos. 043, 164, 165, 413 & 443.

932. See text accompanying notes 516-20 *supra*.

If Iowa's current land use regulation system is to be effective, a method must be devised to ensure that zoning officials come to understand the law and apply it as it was meant to be applied. The integrity of the system requires that zoning officials be educated on the legal requirements attached to the exercise of their powers. There are several methods by which the education of board of adjustment members could be improved. Counties may wish to pursue one or several options to improve board of adjustment practice without state coercion. Each board could benefit from advice given by the existing government's legal staff. For example, the Butler County Attorney's Office works closely with the county zoning administrator and board of adjustment. The County Attorney provides legal memoranda on subjects of particular interest in individual cases.⁹³³ All boards of adjustment should use their county legal staff in this way. This local approach would improve board of adjustment practices without state coercion.

Voluntary organizations present another potential for local initiative. The Eastern Iowa Planning and Zoning Officials Association, which was established in 1976, provides instruction on land use regulation to its members at its quarterly meetings. Guest speakers and discussions at such meetings help to enhance the members' knowledge of ways to improve zoning in eastern Iowa.⁹³⁴ Participation by more zoning officials and formation of other such groups across the state is encouraged.

Measures imposed by the state government should also be considered. The preparation of substantive rules would provide an initial step in the educational process by providing invaluable legal knowledge to the board members who would aid in preparing such rules. Also, the state legislature should consider uniform, statewide programs for educating all zoning officials. Iowa's Office for Planning and Programming (OPP) already possesses the authority to administer the educational program. The OPP has the authority to "[d]esign, establish, and maintain a state resource center for compiling information, data, and other materials, which will be available at the request of . . . local governments to aid in . . . implementing plans and programs."⁹³⁵

If the state government establishes a zoning education program, a

933. See, e.g., Letter from Habbo Fokkena, Asst. Butler County, Iowa, Attorney, to Alvin Rindels, Butler County, Iowa, Zoning Administrator (Sept. 10, 1981) (memorandum concerning the case of Marvel Stone, Butler County Board of Adjustment Minutes, Petition of Stone (July 8, 1981)); Letter from Habbo Fokkena, Asst. Butler County, Iowa, Attorney, to Alvin Rindels, Butler County, Iowa, Zoning Administrator (Jan. 12, 1980) (interpreting county ordinance provision regulating number of mobile homes allowed on one farm, Butler County, Iowa, Zoning Ordinance § XVII (1978)).

934. For more information, write to: E.I.P.Z.O.A., c/o Johnson County Council of Governments, 410 E. Washington Street, Iowa City, Iowa 52240.

935. IOWA CODE § 7A.3(7) (1983). The Office of Planning and Programming has already published some land use planning materials. See, e.g., IOWA OFFICE FOR PLANNING & PROGRAMMING, LOCAL LAND USE ENABLING LEGISLATION: A REVIEW AND CRITIQUE (1977).

method of ensuring that the information is read and understood by local officials will be needed. A simple certification system would be sufficient. The state agency administering the zoning education program could distribute a self-administered examination to all county and municipal boards of adjustment members and zoning administrators. Each zoning official would then complete the examination and return it to the agency. Only after satisfactory completion of the examination could a person assume a zoning official's position.

Judicial review exists as a method of reviewing the compliance of boards of adjustment with statutory and constitutional requirements. Unfortunately, judicial review is currently the only way some board of adjustment members discover applicable statutory and constitutional requirements. Once the needed information is published and made readily available in an understandable form, it can be used by local officials to improve current county zoning practices.

VII. CONCLUSIONS AND RECOMMENDATIONS

Stability is the hallmark of most areas of property law. Although rigid formalities of property law sometimes seem outdated and inequitable, they are preserved in the interest of predictability. Currently, county variance practices in Iowa are predictable only to the extent that most boards of adjustment do not follow the established legal standards. It is virtually impossible to predict what factors will influence a board's variance decision in any particular case.⁹³⁶ Moreover, this lack of predictability has not necessarily resulted in greater equity. Many variance decisions are made without regard for proper criteria, frequently resulting in arbitrary treatment of petitioners.⁹³⁷

Yet, consistency and fairness are vital components of an effective land use regulatory system. Substantial property rights are at stake in a zoning proceeding, and striking a balance between conflicting uses of land is often a delicate responsibility. To improve the accountability of the system in which these conflicting interests are judged, this Project makes three general recommendations: (1) increase state involvement in land use issues of statewide concern, (2) modify and clarify existing variance law, and (3) improve the expertise of local land use decisionmakers.

A. *State Involvement in Land Use Decisionmaking*

Current county land use control is almost exclusively a local matter. This Project has focused on the limitations of local autonomy, and the Project writers have concluded that state involvement in land use regulation is essential. Even though increased state participation in local land use regulation is necessary, however, total state control is neither prac-

936. See text accompanying notes 774-878 *supra*.

937. *Id.*

tical nor desirable. The costs of administration and enforcement of such a system would impose a substantial burden on the State of Iowa and, ultimately, its citizens. Furthermore, the special characteristics of each parcel of real property and the individuality of each community's land use objectives necessitate some flexibility at the local level.

Nevertheless, some land use issues are of relevant concern beyond local communities and, therefore, require some consideration of state policies. For instance, the state-wide importance of Iowa's agricultural productivity is axiomatic. The loss of prime farmland—Iowa's most valuable natural resource—is a significant threat to farm productivity and, consequently, Iowa's economy. Future land use projections indicate that by the year 2000, the amount of available cropland in Iowa will be one-half million acres less than that available in 1970.⁹³⁸ Undoubtedly, the need to preserve Iowa's prime agricultural soil is recognized as a primary land use objective. According to county zoning administrators, sixty-seven percent of the counties that zone do so for the purpose of protecting prime farmland.⁹³⁹ The reports of ninety-nine Temporary County Land Preservation Policy Commissions created by House File 210⁹⁴⁰ confirm the conclusion; seventy-nine counties rated the preservation of agricultural land as a "serious concern,"⁹⁴¹ indicating that they think that protection of productive farmland is "imperative."⁹⁴² No county indicated that the issue was of "no concern."⁹⁴³

The county commissions seemingly are in consensus on who should bear the ultimate responsibility for the preservation of prime soils. Nearly every county independently expressed a strong desire to retain local land use planning and decisionmaking.⁹⁴⁴ There was considerable interest, however, in some type of state participation in local land use regulation even though opinions varied on the extent of that participation.⁹⁴⁵ Only nine counties indicated that there was no need for state involvement.⁹⁴⁶ Assuming that some state participation is acceptable or even desirable,

938. IOWA TEMPORARY STATE LAND PRESERVATION POLICY COMM'N, THE IOWA LAND PRESERVATION AND DEVELOPMENT POLICY: INTERIM REPORT: APPENDICES, at B-9 (1979).

939. See Appendix VI *infra* (Table 8).

940. Act of June 30, 1977, ch. 53, 1977 Iowa Acts 141. House File 210 was enacted in part to develop land preservation and policy recommendations by establishing Temporary County Land Preservation Policy Commissions (TCLPPC). *Id.* § 3, 1977 Iowa Acts at 143. In turn, members of the county commissions elected representatives to serve on a Temporary State Land Preservation Policy Commission to fulfill the bill's purpose. *Id.* § 4, 1977 Iowa Acts at 145-46.

941. IOWA TEMPORARY STATE LAND PRESERVATION POLICY COMM'N, THE IOWA LAND PRESERVATION AND DEVELOPMENT POLICY: INTERIM REPORT: APPENDICES, at C-7, -9, -11, -13, -15, -16, -19, -20 (1979).

942. *Id.* at C-3.

943. *Id.* at C-7, -9, -11, -13, -15, -16, -19, -20.

944. *Id.* at D-7 to -25.

945. *Id.* at D-26.

946. *Id.*

determining the appropriate scope of state involvement in a primarily local land use system is crucial.

At a minimum, the state must assume responsibility for disseminating land use information and providing adequate training for local decision-makers. If county boards of adjustment are representative of local land use expertise, local knowledge of proper land use practices is woefully deficient.⁹⁴⁷ Second, the State should formulate specific land use guidelines as examples for local policymakers. Very few counties that have exercised their option to zone have enacted more than general policy statements concerning the preservation of prime agricultural soils.⁹⁴⁸ Even fewer have promulgated specific zoning provisions, and many have neither a general policy nor a specific ordinance provision.

One concern with a land use system that relies to a large degree on local regulation is that as long as land use planning and regulation are optional, a number of counties will choose not to participate in spite of the recognized need for action. However, the prospect of mandatory county land use planning and regulation is politically unappealing. Moreover, given the current practices of county boards of adjustment, local nullification of state-imposed land use regulation would be certain. Zoning is not universally popular even in the counties that have voluntarily elected to zone.⁹⁴⁹ In fact, dissatisfaction with the concept of zoning itself may underlie the unwillingness of county boards of adjustment to apply proper variance principles. Boards of adjustment in counties where land use regulations would be involuntarily enacted can be expected to resist compliance even more fervently. Therefore, mandatory county land use control may be an additional cost to the public with very little subsequent benefit.

A better alternative to mandatory county land use regulation is the adoption of a state land use plan that would apply to areas of state con-

947. See text accompanying notes 704-06 *supra*.

948. Most comprehensive plans, in counties that have them, state that the preservation of agricultural soils is a fundamental zoning objective. See, e.g., Black Hawk County, Iowa, Comprehensive Plan 64 (1980) (preserve agricultural uses on prime land); Crawford County, Iowa, Recommended Land Use Policy Statement 2 (1976) (prime agricultural cropland is not to be used for nonagricultural development unless "more appropriately suited" for that use). The implementation of those objectives is primarily the duty of the county legislative body when enacting zoning regulations. A few boards of supervisors have responded by promulgating definite land quality standards in their county ordinances to prevent prime farmland from being removed from agricultural use. Black Hawk County, Iowa, Zoning Ordinance § VIII (A) (1980); Butler County, Iowa, Zoning Ordinance § VII (A)(7) (1978); Clayton County, Iowa, Zoning Ordinance and Subdivision Regulations § 1.8, at Z-16 (1980); Clinton County, Iowa, Zoning and Subdivision Ordinances § 2.6, at 3 (1976); Grundy County, Iowa, Zoning Ordinance § VII (A) (7) (1978); Hardin County, Iowa, Zoning Ordinance § VIII (A)(7) (1979); Mitchell County, Iowa, Zoning Ordinance art. VIII (A)(2) (1980); Pottawattamie County, Iowa, Zoning Ordinance § 10.020.04 (1981); Poweshiek County, Iowa, Zoning Ordinance § 9 (A) (2) (1976); Scott County, Iowa, Revised Zoning Ordinance art. VII (2) (1981).

949. See text accompanying notes 176-78 *supra*.

cern in the absence of county regulation. A state entity, such as the Iowa Department of Soil Conservation, could take responsibility for enforcement and administration of the state land use plan at the county level. A state plan would not only guarantee state-wide protection of limited resources, such as prime farmland, but it also would enhance uniformity between counties by establishing exemplary standards.

Many counties that have not yet zoned would voluntarily do so if the state were already controlling land use at the county level. Others would be satisfied to let the state shoulder the burden of minimal land use planning and regulation. In either case the public would be assured, at the very least, that areas of critical state-wide concern would be subject to some type of control.

B. Modification and Clarification of Existing Variance Law

Assuming that the basic superstructure of zoning will survive regardless of the degree of state involvement in land use planning and regulation, a number of modifications are necessary to make the system more reliable. First, the authority of boards of adjustment to grant use variances should be revoked. Variance procedures were never meant to allow for more than a reasonably profitable use of property.⁹⁵⁰ Many experienced land use planners and scholars think that in most cases the mere relaxation of the area requirements of the zoning ordinance is sufficient to assure that any landowner will be left with a usable lot.⁹⁵¹ Many states and some Iowa counties recognize this fact and have already prohibited use variances.⁹⁵²

Careful scrutiny of county board of adjustment records reveals that few use variances are justified under appropriate legal standards.⁹⁵³ Moreover, those use variances that can be justified on the basis of proper variance considerations can be accommodated in other ways. For example, carefully drafted ordinances can alleviate most potential constitutional problems. If an entire area is subject to unnecessary hardship, a map amendment may be in order. Also, special exceptions can be provided in the zoning ordinance to maintain flexibility in individual cases, thereby ensuring the legislative approval that is lacking with use variances.

A potential problem with the elimination of use variances is that they may simply be replaced by spot zoning. Some counties already amend their ordinances rather than grant use variances. In Ida County, for example, the board of adjustment has been inactive, and in order to deviate from the terms of the ordinance, individual landowners petition the zoning commission for rezoning.⁹⁵⁴ Greene County has not appointed a board

950. See text accompanying notes 707-13 *supra*.

951. See, e.g., Anderson, *The Board of Zoning Appeals—Villain or Victim?*, 13 SYRACUSE L. REV. 353, 387 (1962); Shapiro, *The Zoning Variance Power—Constructive in Theory, Destructive in Practice*, 29 MD. L. REV. 3, 22 (1969).

952. See text accompanying notes 406-07 *supra*.

953. See text accompanying notes 774-878 *supra*.

954. Zoning Administrator Interview No. 224 (June 11, 1982).

of adjustment, and, likewise, uses the amendment process to provide relief for aggrieved citizens.⁹⁵⁵

A solution to the improper use of spot zoning as a substitute for use variances is to require that boards of supervisors follow adjudicatory procedures in carrying out their zoning amendment function. In practice, zoning amendments, like variance proceedings, are adjudicatory proceedings involving the legal rights and duties of a single named individual. Therefore, because findings of fact are required for variance actions,⁹⁵⁶ findings should also be required for zoning amendments. If supervisors are already considering the proper legal factors for amendment, the cost increase of making factfindings would be minimal.

Second, the substantive grounds on which boards of adjustment are expected to base their variance decisions should be clarified. Even after *Deardorf v. Board of Adjustment*,⁹⁵⁷ unnecessary hardship remains a somewhat ambiguous standard. Sixty years ago, the inherent variability and uniqueness of real estate compelled case-by-case adjudication under a broad unnecessary hardship standard. Today, real estate is no less unique and case-by-case adjudication is no less compelled. Sixty years of experience, however, provides the basic information needed to refine statutory standards.

At a minimum, legislators and boards of adjustment should attempt to delineate in more specific language the considerations that are or are not relevant in determining whether unnecessary hardship exists.⁹⁵⁸ The Project questionnaire sent to county zoning officials included a listing of many of the factual situations encountered by county boards of adjustment,⁹⁵⁹ and several county zoning ordinances list others.⁹⁶⁰ Listing

955. Zoning Administrator Interview No. 223 (June 7, 1982).

956. *Citizens Against the Lewis & Clark (Mowery) Landfill v. Pottawattamie County Bd. of Adjustment*, 277 N.W.2d 921, 925 (Iowa 1979).

957. 254 Iowa 380, 118 N.W.2d 78 (1962).

958. See text accompanying notes 516-75 *supra*.

959. See Appendix I *infra*.

960. The Linn County Zoning Ordinance, for example, specifies the factors to be considered in variance determinations. In pertinent part it provides:

7. *Variance*. 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 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.

7.1 No variation in the application of the provisions of this Ordinance shall be made unless and until the Board of Adjustment shall be satisfied that granting the variation will not:

7.11 Merely serve as a convenience to the applicant and is necessary to alleviate a demonstrable hardship or difficulty so great as to warrant the variation.

7.12 Impair the general purpose and intent of the regulations and provisions contained in this Ordinance.

7.13 Impair an adequate supply of light and air to adjacent properties.

such factors in the state enabling legislation would enhance uniformity of variance standards between boards. At the very least, express statutory standards would serve as a basis for factfindings to be made by county boards of adjustment.

Finally, a more effective method of assuring that county boards of adjustment comply with legal variance requirements should be established. Present provisions for judicial review of county board of adjustment deci-

- 7.14 Increase the hazard from fire and other damages to said property.
- 7.15 Diminish the value of land and buildings in the County.
- 7.16 Increase the congestion and traffic hazards on public roads.
- 7.17 Otherwise impair the public health, safety and general welfare of the inhabitants of the County.

8. Variances from the regulations of this Ordinance shall be granted by the Board of Adjustment only in accordance with the standards established in Numbers 7.11 through 7.17 above, and may be granted only in the following instances and in no other:

- 8.1 To permit any yard or setback less than a yard or a setback required by the applicable regulations;
 - 8.2 To permit the use of a legally subdivided existing lot or lots for a permitted use otherwise prohibited solely because of the insufficient area or width of the lot or lots;
 - 8.3 To permit the same off-street parking facility to qualify as required facilities for two or more uses, provided that substantial use of such facility by each user does not take place at approximately the same hours of the same day of the week;
 - 8.4 To reduce the applicable off-street parking or loading facilities required by not more than one parking space or loading space, or 25 percent of the required facilities whichever number is greater;
 - 8.5 To increase by not more than 25 percent the maximum distance that required parking spaces are permitted to be located from the use served;
 - 8.6 To permit the extension of a district zone to include less intensively zoned land where the boundary lines of such district divides a lot or tract held in single ownership at the time of the passage of this Ordinance; provided, however, that the less intensively zoned tract of land contained less than 4,000 square feet in area.
 - 8.7 To permit the reconstruction of a nonconforming building which has been damaged or destroyed by fire, explosion, act of God, or public enemy, to the extent of more than 65 percent of the fair market value of the building before damage, based upon insurance value, where the Board finds some compelling necessity requiring a continuance of the nonconforming use and the primary purpose of continuing the nonconforming use is not to continue a monopoly.
9. *Specified Variances Prohibited.* No Variance shall be granted which would:
- 9.1 Permit a use which is not allowed as a permitted use by the provisions of this Ordinance in the district in which a property is located, nor any use expressly or by implication prohibited therefrom.
 - 9.2 Permit the creation of a lot or parcel that cannot be developed in compliance with the zoning, subdivision, and other regulations applicable thereto.
 - 9.3 Be greater than the minimum variance necessary to relieve the practical difficulty or unnecessary hardship demonstrated by the applicant.

sions in Iowa Code chapter 358A⁹⁶¹ are inadequate for this purpose. Even though the Project writers discovered widespread disregard of legal requirements by county boards of adjustment, relatively few judicial challenges have been pursued to conclusion.⁹⁶² Variance hearings are characterized by very little public input, and only when a person is directly affected by a board of adjustment decision is that person likely to seek a judicial remedy. Even then, the cost of bringing the suit is generally much greater than the benefit to the aggrieved citizen in an individual capacity; consequently, action is seldom taken. As a result, there is very little incentive for boards of adjustment to adhere to the established legal requirements. The refusal of many county boards of adjustment to promulgate rules or make findings of fact since the decision in *Citizens Against the Lewis and Clark (Mowery) Landfill v. Pottawattamie County Board of Adjustment*⁹⁶³ illustrates this conclusion.⁹⁶⁴

Logically, some person or agency should be entitled to institute legal proceedings on behalf of the public when the benefit to society in the aggregate outweighs the cost of the allegedly illegal action. One simple method of facilitating these public benefit suits is to award attorneys' fees to successful petitioners. This solution, however, assumes that there is a party opposing the variance application, which is rarely the case.⁹⁶⁵ A better alternative than providing attorneys' fees would be to grant standing to a state or regional land use body—possibly the same body that is responsible for training and establishing land use guidelines—to bring actions in the public interest. Such suits should not be a substitute for attempts to train local decisionmakers on proper land use practices. Only when local zoning authorities willfully refuse to comply with legal requirements should the state or regional land agency institute judicial proceedings.

C. *Improving the Quality of Local Decisionmaking*

The root of many of the problems exposed by this Project is the inadequate training of board of adjustment members. Board members lack essential information that would help them fulfill their role in the county land use scheme.⁹⁶⁶ If sufficient training were provided for board members, board of adjustment decisions arguably would improve, thereby lessening the need for facilitating judicial review.

A state land planning agency should be responsible for conducting training sessions and disseminating land use information to board members. Possibly, certification by completing a certain number of hours of land use instruction could be required of board members before they assume

961. IOWA CODE §§ 358A.18-.23 (1983).

962. See text accompanying note 919 *supra*.

963. 277 N.W.2d 921 (Iowa 1979).

964. See text accompanying note 930 *supra*.

965. See text accompanying note 789 *supra*.

966. See text accompanying notes 704-06 *supra*.

their duties on the board of adjustment. To maintain and improve their skills, board members could be required to recertify periodically by attending seminars or receiving further instruction concerning land use regulation. Training and certification should be made as convenient as possible for local board members. Perhaps the requirements could be fulfilled through regional training sessions or self-administered tests, which could be completed locally and mailed to the state agency.

In the absence of a comprehensive training program operated by state officials, county attorneys are a logical source of needed information. Some county attorneys already provide their zoning administrators and board of adjustment members with the information needed to fulfill their responsibilities.⁹⁶⁷ Such a practice could be expanded and formally required. A state source, such as the Iowa Office of Planning and Programming, could be utilized to compile information and distribute it to the counties.

Finally, an attempt should be made to attract the most competent and highly motivated personnel for local land use planning. Specific qualifying criteria would be difficult to draft and probably of little utility. However, a willingness to spend the time necessary to become acquainted with proper variance practices is an essential qualification. For this time commitment, board members should receive at least minimal compensation. The questionnaire results revealed that board members who received mere mileage expenses were better informed than their unpaid counterparts.⁹⁶⁸ While compensation does not necessarily guarantee board member competence, this finding seems to suggest that some compensation makes board members feel more accountable for their performance. By creating this sense of accountability, compensation could provide an impetus for improvement.

This Project has focused on the theoretical and practical aspects of Iowa's county zoning scheme. The intention has not been to discredit the efforts of local planners and decisionmakers. Rather, the goal of this inquiry has been to point out the weaknesses that inhere in the present system and to propose potential solutions to the problems that exist. The proposals advanced here will cost money, the bulk of which must be borne by the state. Nevertheless, the costs of the present system—costs that ultimately will affect future generations—are certain to be much greater.

Joseph H. Bornong
Bradley R. Peyton

967. See text accompanying note 933 *supra*.

968. See Appendix V *infra* (Table 6).

APPENDIX I

A. County Land Use Regulation Survey

Instructions: Please circle the appropriate response and/or fill in the blank when necessary.

1. County name: _____
2. Does your county have a comprehensive land use plan? Yes No
 - a. When was it adopted? _____
 - b. Has it been revised? Yes No
 - c. If yes to b., when was the most recent revision completed?: _____
3. Has your county enacted a county zoning ordinance? Yes No
 - a. When was it originally enacted? _____
 - b. Has it been revised? Yes No
 - c. If yes to b., when was the most recent revision completed? _____
 - d. Are revisions made or proposed with reference to a comprehensive plan? Yes No
 - e. Does your county have a zoning administrator? .. Yes No
 - f. If yes to e., please check any other responsibilities the administrator may fulfill:
 - _____ Engineer
 - _____ Sanitarian
 - _____ Building Code Inspector
 - _____ Assessor
 - _____ Other (please specify): _____
 - g. If yes to e., approximately how much time per week does the zoning administrator devote to zoning duties?

 - h. Please check any or all of the following types of land use regulatory bodies that have been established by your county:
 - _____ Board of Adjustment
 - _____ Planning Staff
 - _____ Planning and Zoning Commission
 - i. What body is responsible for investigating rezoning requests? _____
 - j. What body is responsible for making recommendations on proposed variances and special exceptions?

 - k. What body is responsible for granting variances or special exceptions to the zoning ordinance?

- l. Are written findings of fact made regarding applications for variances or special exceptions? Yes No
- m. Are minutes of meetings of the board of adjustment kept? Yes No
- n. Please check any of the following specific regulations that your county has adopted:
 - _____ Environmental Provisions
 - _____ Floodplain Regulations
 - _____ Historic Preservation
 - _____ Nonconforming Use
 - _____ Planned Unit Development
 - _____ Soil Erosion Controls
 - _____ Subdivision Regulations
 - _____ Sign Regulations

4. Please indicate which, if any, aspects of this survey are unfamiliar to you: _____

5. Please make any additional comments that you feel might be helpful in describing land use regulation in your county: _____

6. Person completing questionnaire:
 Name _____ Title _____
 Address _____
 Phone (office) _____

The results of this survey will be available on request. Please indicate if you would like a copy to be sent to you.
 Yes No

Please return this questionnaire in the enclosed stamped, return-addressed envelope. Thank you for your time and consideration.

B. Board of Adjustment Questionnaire

Please circle answers, check the most correct response, or fill in the blanks when appropriate. Thank you for your time and consideration.

A. Personal Background

- 1. Age: _____
- 2. Sex: M F
- 3. Highest educational degree attained: _____
- 4. Has any of your formal education been in any way related to land use planning? Yes No
 If yes, please briefly explain the curriculum: _____
- 5. Occupation: _____
- 6. Number of years you have lived in the county: _____
- 7. You reside in an (incorporated/unincorporated) area of the county. (circle one)

8. How did you learn the skills needed for your position on the county board of adjustment? (check one or more)
- a. Experience
 - b. Instruction provided by the county zoning administrator
 - c. Instruction provided by the county attorney or assistant county attorney
 - c. Instruction provided by other board of adjustment members
 - d. Independent research
 - f. National, state or, regional land use planning conferences, symposia, etc.
 - g. Other, please specify:
9. Are you acquainted with Iowa Code chapter 358A? Yes No
If yes, please briefly describe the contents of chapter 358A:
10. Are you acquainted with any Iowa Supreme Court cases concerning zoning in general or actions taken by boards of adjustment in particular? Yes No
If yes, please give the name(s) or subject matter of the case(s) or both: _____
11. Please briefly describe the difference, if any, between a variance and a special use permit under your county's zoning ordinance:
12. In your opinion, what is the primary role of the board of adjustment as pertaining to variances? (check one)
- a. To allow deviations from the zoning ordinance that in your opinion will not be harmful to neighboring residents.
 - b. To ensure that the most beneficial use of land for the community is promoted.
 - c. To grant relief from the zoning ordinance to property owners who are affected by a poorly written zoning provision.
 - d. To ensure that the zoning ordinance does not burden a property owner's freedom to use the land as he/she pleases.
 - e. To grant relief from the zoning ordinance in extraordinary circumstances in which a property owner can otherwise make no reasonable use of the property without the requested variance.
 - f. To allow deviations from the zoning ordinance when the burden imposed on the property owner is greater than the benefits conferred to the public by the ordinance.
 - g. Other, please explain:

B. Length of Service on the Board of Adjustment

1. How were you appointed to the board of adjustment?
 - a. Volunteered
 - b. Responded to an advertisement
 - c. Approached by a county supervisor
 - d. Recommended by another board of adjustment member
 - e. Other, please explain:
2. How long have you served on the board of adjustment? ____ years
3. Are board of adjustment members allowed to serve more than one term? Yes No
 Have you served more than one term on the board of adjustment? Yes No
 If yes, how many terms have you served? _____
4. Do you currently serve or have you in the past served on a county board or commission other than the board of adjustment? Yes No
 If yes, please specify the board or commission, and the length of your term on the board or commission:

C. Board of Adjustment Rules and Procedures

1. Does the board of adjustment follow official procedural rules that are separate from the zoning ordinance? Yes No
 If yes, please check any of the following types of rules that are followed:
 - a. Robert's Rules of Order or similar form rule book
 - b. Written rules developed by the board of adjustment
 - c. Unwritten rules generally accepted by the board of adjustment members
 - d. Other, please explain:
2. Is a statement describing the procedures to be followed recited at the beginning of a hearing for the benefit of persons present? Yes No
3. Are Board of Adjustment members compensated for their services? Yes No
 If yes, please check any of the following types of expenses that are paid:
 - a. Mileage
 - b. Salary (fixed rate per year)
 - c. Per diem (fixed rate per meeting)
 - d. Hourly rate
 - e. Other, please explain:

4. How are board of adjustment meetings scheduled?
- a. Regularly (e.g., monthly, bimonthly)
 - b. On call only
 - c. Regularly and on call for special meetings
- If the board of adjustment meets on call only, who calls meetings?
- a. Chairman, Board of Adjustment
 - b. County Zoning Administrator
 - c. County Attorney
 - d. Other, please specify:
5. Approximately how often does the board of adjustment meet?
- a. Two times per month or more often
 - b. Once per month
 - c. Once every two months
 - d. Once every three months
 - e. Once every six months
 - f. Once per year
 - g. Once every two years or less often
6. How does the board of adjustment vote on variance and special use applications?
- a. Votes are taken in public, during the public hearing
 - b. Votes are closed to the public and are taken on the day of the public hearing
 - c. Voting can be done by mail, by proxy or by phone
 - d. Other, please explain:
- If you checked c., have you ever voted by one of the absentee methods? Yes No
7. Listed below are four typical policies concerning conflicts of interest. Please check the one policy that is most similar to the conflict of interest policy followed by your board of adjustment.
- a. The board of adjustment has a written policy describing criteria that are used to determine whether a member must abstain from voting due to a conflict of interest.
 - b. The entire board of adjustment, on a case-by-case basis, determines in which situations a member must abstain from voting due to a conflict of interest.
 - c. Board of adjustment members decide for themselves the situations in which they should abstain from voting due to a conflict of interest.
 - d. The board of adjustment has no recognized policy concerning the situations that call for a member to abstain from voting due to a conflict of interest.
8. What constitutes a conflict of interest that would require abstention from voting on an issue before your board of adjustment, as defined in your rules (if you checked 7a.), your experience (if you checked 7b.), or your opinion (if you checked 7c.):

- a. Personal acquaintance with the petitioner? Yes No
- b. Owning land near the petitioner’s land? Yes No
- c. Relation to petitioner by blood or by marriage? Yes No
- d. Financial interest in the board’s determination whether petitioner’s application is granted? Yes No
- e. Other, please specify:
- 9. Are petitioners and objectors permitted to:
 - a. Be represented by counsel at the public hearing on petitioner’s application? Yes No
 - b. Present testimony and other evidence specifically to rebut evidence presented by the opponent?
 - Yes No
 - c. Cross-examine opposing witnesses? Yes No
- 10. Has the board of adjustment subpoenaed witnesses in the last three years? Yes No
If yes, please explain the circumstances under which a witness was subpoenaed:
- 11. Has the board of adjustment ever sworn in witnesses?
Yes No
If yes, please explain the circumstances under which a witness was sworn to the oath:

D. Information Used to Determine the Outcome of an Application

Please indicate how often the following sources are considered in determining the outcome of a variance application. Use the following scale:

- 1—Never (in my experience)
- 2—Sometimes
- 3—In about one-half of the cases
- 4—More often than not
- 5—Always

- 1. Oral testimony presented at the hearing 1 2 3 4 5
- 2. Visits made to the property that is the subject of the application or reports of such visits 1 2 3 4 5
- 3. Recommendations made by the:
 - a. Zoning Administrator 1 2 3 4 5
 - b. Attorney 1 2 3 4 5
 - c. Zoning Commission 1 2 3 4 5
 - d. Other recommendations, please specify source: 1 2 3 4 5
- 4. Communications from interested citizens made before the public hearing 1 2 3 4 5
- 5. Prior cases with similar fact patterns 1 2 3 4 5

E. Criteria Considered in Evaluating an Application

Listed below are hypothetical facts that may apply to a variance

application made to the board of adjustment. Please indicate in the first column (A) the degree of importance that each fact merits in your personal deliberations in your consideration of a variance application. Please estimate and indicate in the second column (B) the degree of importance given each of these facts by the entire Board of Adjustment. Use the following scale:

- 1—This fact provides overwhelming evidence that the variance application should be *denied*.
- 2—This fact makes it more likely than not that the variance application should be *denied*.
- 3—This fact *makes no difference* in determining whether a variance application should be granted or denied.
- 4—This fact makes it more likely than not that a variance application should be *granted*.
- 5—This fact provides overwhelming evidence that the variance application should be *granted*.

| | | | | | | | | | | |
|------------------------|---|---|---|---|---|---|---|---|---|-------------------------|
| More likely to deny | | | | | | | | | | More likely to grant |
| 1 | 2 | 3 | 4 | 5 | 1 | 2 | 3 | 4 | 5 | 5 |

| | |
|---|--|
| A | B |
| Personal opinion as to degree of importance: | Board's opinion as to degree of importance: |

| | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|---|--|---|---|---|-----------|---|-----------|---|---|---|---|---|---|---|---|---|---|-----------|---|---|---|---|---|---|---|---|---|---|-----------|---|---|---|---|---|---|---|---|---|---|-----------|---|---|---|---|---|
| <ol style="list-style-type: none"> 1. Another use is available that would provide the petitioner with a reasonable profit without the need for a variance 2. Prime agricultural land will be lost to production if the variance application is granted 3. A zone in which the requested use is permitted is nearby 4. The zoning administrator or other county official recommends that the variance application be <i>denied</i> 5. The variance application is | <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20px;">1</td><td style="width: 20px;">2</td><td style="width: 20px;">3</td><td style="width: 20px;">4</td><td style="width: 20px;">5</td><td style="width: 20px;">.</td> <td style="width: 20px;">1</td><td style="width: 20px;">2</td><td style="width: 20px;">3</td><td style="width: 20px;">4</td><td style="width: 20px;">5</td> </tr> <tr> <td style="width: 20px;">1</td><td style="width: 20px;">2</td><td style="width: 20px;">3</td><td style="width: 20px;">4</td><td style="width: 20px;">5</td><td style="width: 20px;">.</td> <td style="width: 20px;">1</td><td style="width: 20px;">2</td><td style="width: 20px;">3</td><td style="width: 20px;">4</td><td style="width: 20px;">5</td> </tr> <tr> <td style="width: 20px;">1</td><td style="width: 20px;">2</td><td style="width: 20px;">3</td><td style="width: 20px;">4</td><td style="width: 20px;">5</td><td style="width: 20px;">.</td> <td style="width: 20px;">1</td><td style="width: 20px;">2</td><td style="width: 20px;">3</td><td style="width: 20px;">4</td><td style="width: 20px;">5</td> </tr> <tr> <td style="width: 20px;">1</td><td style="width: 20px;">2</td><td style="width: 20px;">3</td><td style="width: 20px;">4</td><td style="width: 20px;">5</td><td style="width: 20px;">.</td> <td style="width: 20px;">1</td><td style="width: 20px;">2</td><td style="width: 20px;">3</td><td style="width: 20px;">4</td><td style="width: 20px;">5</td> </tr> </table> | 1 | 2 | 3 | 4 | 5 | | 1 | 2 | 3 | 4 | 5 | 1 | 2 | 3 | 4 | 5 | | 1 | 2 | 3 | 4 | 5 | 1 | 2 | 3 | 4 | 5 | | 1 | 2 | 3 | 4 | 5 | 1 | 2 | 3 | 4 | 5 | | 1 | 2 | 3 | 4 | 5 |
| 1 | 2 | 3 | 4 | 5 | | 1 | 2 | 3 | 4 | 5 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1 | 2 | 3 | 4 | 5 | | 1 | 2 | 3 | 4 | 5 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1 | 2 | 3 | 4 | 5 | | 1 | 2 | 3 | 4 | 5 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1 | 2 | 3 | 4 | 5 | | 1 | 2 | 3 | 4 | 5 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

- for the placement of a mobile home 1 2 3 4 5 1 2 3 4 5
- 6. The application is one for a permitted *use*; only the *area* requirements (e.g., front-yard setback, lot area) are to be varied 1 2 3 4 5 1 2 3 4 5
- 7. The petitioner is likely to appeal to the district court if the variance is denied 1 2 3 4 5 1 2 3 4 5
- 8. Citizens are present to *oppose* the variance application 1 2 3 4 5 1 2 3 4 5
- 9. The community's economy would benefit if the variance were granted 1 2 3 4 5 1 2 3 4 5
- 10. The petitioner cannot make any reasonable legal use of the land without the variance 1 2 3 4 5 1 2 3 4 5
- 11. The petitioner is represented by an attorney 1 2 3 4 5 1 2 3 4 5
- 12. The petitioner or a member of his family would benefit from the variance for medical/health reasons .. 1 2 3 4 5 1 2 3 4 5
- 13. The zoning administrator or other county official recommends that the variance application be *granted* 1 2 3 4 5 1 2 3 4 5
- 14. The petitioner created the need for a variance by dividing the property into smaller parcels 1 2 3 4 5 1 2 3 4 5
- 15. The petitioner would make more money from his property if the variance were granted 1 2 3 4 5 1 2 3 4 5
- 16. Those persons opposing the variance are represented by an attorney 1 2 3 4 5 1 2 3 4 5
- 17. The area is more suitable for the requested use than the uses permitted by the zoning ordinance 1 2 3 4 5 1 2 3 4 5
- 18. Although not authorized, the requested use is compatible with other uses in the area 1 2 3 4 5 1 2 3 4 5

- 19. The requested use would cause only an insignificant deviation from the requirement of the zoning ordinance 1 2 3 4 5 1 2 3 4 5
- 20. Similar variances have been previously granted in the same area 1 2 3 4 5 1 2 3 4 5
- 21. The application is for a use not permitted in the district 1 2 3 4 5 1 2 3 4 5
- 22. The petitioner built a non-conforming use and now needs a variance to comply with the zoning ordinance 1 2 3 4 5 1 2 3 4 5
- 23. Citizens other than the petitioner are present to support the variance application . 1 2 3 4 5 1 2 3 4 5
- 24. The petitioner purchased the property knowing that his planned use did not comply with the requirements of the zoning ordinance 1 2 3 4 5 1 2 3 4 5
- 25. The petitioner's property is no different from the properties occupied by his neighbors 1 2 3 4 5 1 2 3 4 5
- 26. Other important factors (indicate whether each factor should make it more likely or less likely that the variance would be granted):
 - a) _____
 - b) _____
 - c) _____

Thank you for your cooperation.

C. Zoning Administrator Questionnaire

Please circle answers, check the most correct response, or fill in the blanks when appropriate. If you need more space to answer any question, please attach a separate sheet of paper. Thank you for your time and consideration.

A. Personal Background

- 1. Age: _____
- 2. Sex: M F
- 3. Highest educational degree attained: _____
- 4. Has any of your formal education been in any way related to land use planning? Yes No
If yes, please briefly explain the curriculum:

- 5. Full-time occupation prior to current county zoning administrator position: _____
- 6. Number of years you have lived in the county: _____
- 7. You reside in an (incorporated/unincorporated) area of the county. (circle one)
- 8. How did you learn the skills that you use as county zoning administrator? (check one or more)
 - ___ a. Experience
 - ___ b. Formal education
 - ___ c. Instructions provided by previous county zoning administrator
 - ___ d. Instructions provided by the county attorney or assistant county attorney
 - ___ e. Independent research
 - ___ f. Other, please specify:
- 9. Why was zoning originally adopted in your county? (check any that apply)
 - ___ a. Prerequisite to federal funds for some construction project (specify project: _____)
 - ___ b. Control placement of mobile homes in rural areas
 - ___ c. Preserve prime agricultural land
 - ___ d. To limit or plan for the expansion of municipal areas
 - ___ e. Other (explain):
- 10. Are you acquainted with Iowa Code chapter 358A? Yes No
If yes, please briefly describe the contents of chapter 358A:
- 11. Are you acquainted with any Iowa Supreme Court cases concerning the subject of zoning? Yes No
If yes, please give the name(s) or subject matter of the case(s) or both: _____

B. Length of Tenure as Zoning Administrator

- 1. How long have you served in your present capacity as county zoning administrator? _____ years
- 2. How many hours per week do you devote to zoning duties?
 - ___ a. 0-5 hours
 - ___ b. 6-10 hours
 - ___ c. 11-20 hours
 - ___ d. 21-30 hours
 - ___ e. 31-40 hours
 - ___ f. 40 + hours
- 3. How did you obtain your position as county zoning administrator? (check one or more)
 - ___ a. The position came with another job
 - ___ b. Applied in response to vacancy announcement

- ___ c. Approached by a supervisor or other county official
 ___ d. Other, please specify:

4. Have you ever held another appointed position in this or another county? Yes No

If yes, please list the position(s), county, and dates of service:

C. Duties

1. Does your county have a building code? Yes No
2. Do you grant building/zoning permits? Yes No
3. As your best estimate, how many building starts occur when the builder, through ignorance, negligence, or intention, commences construction without seeking a permit?
 ___ a. 0-5%
 ___ b. 6-25%
 ___ c. 26-50%
 ___ d. More than 50%

4. Do you seek advice on whether to grant individual building permits? Yes No

If yes, in what percentage of all cases do you seek such advice?

- ___ a. Less than 25%
 ___ b. 25-49%
 ___ c. 50-74%
 ___ d. 75% +

From whom do you seek such advice? (check all that apply)

- ___ a. Board of adjustment members
 ___ b. Zoning commission members
 ___ c. County attorney
 ___ d. Other county zoning administrators
 ___ e. Other, please specify:

D. Steps Taken After Denial of a Building Permit and Before Relief is Sought

1. Do you advise an applicant to seek relief in the form of a map amendment (rezoning) or variance after the denial of a building permit? Yes No
2. Do you advise an applicant on which form of relief—either a map amendment or a variance—should be pursued after the denial of the building permit? Yes No
3. Who makes the final decision on which form of relief—either a map amendment or a variance—is sought after a building permit is denied: you or the applicant? (circle one)
4. Do you tell the applicant whether you believe he or she will

be successful in attempting to seek relief from the denial of the building permit? Yes No

If yes, what reasons do you use to support your statement concerning chances of success? (check any that apply)

- a. Similar prior county cases
- b. Iowa Supreme Court cases
- c. Personal opinion
- d. Other, please specify:

5. In what percentage of the cases in which a building permit is denied are you successful in persuading the applicant not to appeal the denial of the permit?

- a. 95% or more
- b. 75-94%
- c. 50-74%
- d. 25-49%
- e. 0-24%

E. Steps Taken After Relief is Sought

1. Please indicate which of the following functions you perform and for which bodies. (check all that apply):

| | <u>Board of Adjustment</u> | <u>Zoning Commission</u> |
|---|--------------------------------|------------------------------|
| a. Attend all or most meetings .. | _____ | _____ |
| b. Act as secretary | _____ | _____ |
| c. Investigate petitions | _____ | _____ |
| d. Present objective factual background of each petition to the board or commission | _____ | _____ |
| e. Make a formal recommendation concerning each petition | _____ | _____ |
| f. Make a recommendation only on request | _____ | _____ |
| g. Other, please specify: | _____ | _____ |

2. In column A below check any of the following which usually occur in an ordinary board of adjustment hearing. In column B check any of the following which may occur if a case is expected to cause public controversy or lead to litigation:

| | <u>A</u> | <u>B</u> |
|---|----------|----------|
| a. A stenographic record is taken | _____ | _____ |
| b. Written or oral notice is given to interested per- | | |

- sons even though the ordinance does not require it _____
- c. Rules of procedure are adopted for the hearing _____
- d. An explanation of the hearing procedure is given before the hearing to those present _____
- e. Witnesses are subpoenaed _____
- f. An official report is prepared on an application by the administrative staff _____
- g. Board members visit the site or gather outside information _____
- h. The zoning commission or other officials submit a report on applications _____
- i. The county attorney is present at the hearing _____
- j. Witnesses are sworn to an oath _____

Please explain any other precautions which may be taken in those cases that are expected to be more controversial:

F. Zoning Ordinance Policy and Requirements

1. Check any of the following types of variances that are granted by your county board of adjustment:
 - _____ a. "Area" or "bulk" variances (i.e., variances which permit landowners to construct permitted uses on lots that do not comply with the zoning ordinance's minimum lot size or setback requirements)
 - _____ b. "Use" variances (i.e., variances which permit landowners to construct uses that are otherwise prohibited by the zoning ordinance such as a commercial building in an agricultural district)
 - _____ c. Other types of variances granted, please specify:
2. If "use" variances, as explained in 1(b) above, are not allowed in your county, it is because:
 - _____ a. The county zoning ordinance prohibits use variances.
 - _____ b. The board of adjustment has a policy not to allow use variances.
 - _____ c. Other, please explain:
3. If use variances are allowed in your county, please explain the circumstances in which you would recommend that the petitioner request a map amendment instead of a use variance or vice versa:
4. Is there a minimum lot size below which the zoning commission or board of supervisors will not consider a map amendment? Yes No
 If yes, what is the minimum lot size? _____

If yes, this minimum lot size is required:

___ a. By the county zoning ordinance.

___ b. By zoning commission or board of supervisors policy.

5. In your own words, please define "spot" zoning:

G. Criteria Considered by the Board of Adjustment in Ruling on a Variance Application

Listed below are hypothetical facts that may apply to a variance application made to the board of adjustment. Please indicate in the first column (A) the degree of importance that each fact merits, *in your personal opinion*, in the consideration of a variance application. Please estimate and indicate in the second column (B) the degree of importance given each of these facts *by the entire board of adjustment*. Use the following scale:

- 1—This fact provides overwhelming evidence that the variance application should be *denied*.
- 2—This fact makes it more likely than not that the variance application should be *denied*.
- 3—This fact *makes no difference* in determining whether a variance application should be granted or denied.
- 4—This fact makes it more likely than not that a variance application should be *granted*.
- 5—This fact provides overwhelming evidence that the variance application should be *granted*.

| | | | | | | | | | |
|--|---|---|---|---|---|---|---|---|---|
| More likely to deny | | | | | More likely to grant | | | | |
| 1 | 2 | 3 | 4 | 5 | 1 | 2 | 3 | 4 | 5 |
| A | | | | | B | | | | |
| Personal opinion as to degree of importance: | | | | | Board's opinion as to degree of importance: | | | | |

- 1. Another use is available that would provide the petitioner with a reasonable profit without the need for a variance 1 2 3 4 5 1 2 3 4 5
- 2. Prime agricultural land will be lost to production if the variance application is granted 1 2 3 4 5 1 2 3 4 5

3. A zone in which the requested use is permitted is nearby 1 2 3 4 5 1 2 3 4 5
4. The zoning administrator or other county official recommends that the variance application be *denied* 1 2 3 4 5 1 2 3 4 5
5. The variance application is for the placement of a mobile home 1 2 3 4 5 1 2 3 4 5
6. The application is one for a permitted use; only the area requirement (e.g., front yard setback, lot area) are to be varied 1 2 3 4 5 1 2 3 4 5
7. The petitioner is likely to appeal to the district court if the variance is denied 1 2 3 4 5 1 2 3 4 5
8. Citizens are present to *oppose* the variance application 1 2 3 4 5 1 2 3 4 5
9. The community's economy would benefit if the variance were granted 1 2 3 4 5 1 2 3 4 5
10. The petitioner cannot make any reasonable legal use of the land without the variance 1 2 3 4 5 1 2 3 4 5
11. The petitioner is represented by an attorney 1 2 3 4 5 1 2 3 4 5
12. The petitioner or a member of his family would benefit from the variance for medical/health reasons .. 1 2 3 4 5 1 2 3 4 5
13. The zoning administrator or other county official recommends that the variance application be *granted* 1 2 3 4 5 1 2 3 4 5
14. The petitioner created the need for a variance by dividing the property into smaller parcels 1 2 3 4 5 1 2 3 4 5
15. The petitioner would make more money from his property if the variance were granted 1 2 3 4 5 1 2 3 4 5
16. Those persons opposing the variance are represented by

- an attorney 1 2 3 4 5 1 2 3 4 5
- 17. The area is more suitable for the requested use than the uses permitted by the zoning ordinance 1 2 3 4 5 1 2 3 4 5
- 18. Although not authorized, the requested use is compatible with other uses in the area 1 2 3 4 5 1 2 3 4 5
- 19. The requested use would cause only an insignificant deviation from the requirements of the zoning ordinance 1 2 3 4 5 1 2 3 4 5
- 20. Similar variances have been previously granted in the same area 1 2 3 4 5 1 2 3 4 5
- 21. The application is for a *use* not permitted in the district 1 2 3 4 5 1 2 3 4 5
- 22. The petitioner built a non-conforming use and now needs a variance to comply with the zoning ordinance 1 2 3 4 5 1 2 3 4 5
- 23. Citizens other than the petitioner are present to *support* the variance application . 1 2 3 4 5 1 2 3 4 5
- 24. The petitioner purchased the property knowing that his planned use did not comply with the requirements of the zoning ordinance 1 2 3 4 5 1 2 3 4 5
- 25. The petitioner's property is no different from the properties occupied by his neighbors 1 2 3 4 5 1 2 3 4 5
- 26. Other important factors (indicate whether each factor should make it more likely or less likely that the variance would be granted):
 - a) _____
 - b) _____
 - c) _____

- H. In your opinion, what is the primary role of the board of adjustment pertaining to variances? (check one)
- _____ a. To allow deviations from the zoning ordinance that in the board's opinion will not be harmful to neighboring residents.
 - _____ b. To ensure that the most beneficial use of land for the community is promoted.

- c. To grant relief from the zoning ordinance to property owners who are affected by a poorly written zoning provision.
 - d. To ensure that the zoning ordinance does not burden a property owner's freedom to use the land as he/she pleases.
 - e. To grant relief from the zoning ordinance in extraordinary circumstances in which a property owner can otherwise make no reasonable use of the property without the requested variance.
 - f. To allow deviations from the zoning ordinance when the burden imposed on the property owner is greater than the benefits conferred to the public by the ordinance.
 - g. Other, please explain:
- I. Methods of Enforcing Compliance with the County Zoning Ordinance
1. Please check any of the following statements that describe the county zoning ordinance enforcement methods used in your county:
- a. The zoning administrator travels throughout the county to search out and identify structures built without a building permit.
 - b. The zoning administrator investigates building sites to verify that the construction conforms to the specifications of the building permit application.
 - c. Other county officials travel throughout the county to search out and identify structures built without a building permit. Please indicate the official(s):
 - d. The building permit requirement of the zoning ordinance is enforced only when a neighbor or other citizen complains that a structure has been built without a building permit.
 - e. No formal attempts are made to identify structures that have been built without prior issuance of a building permit.
 - f. Other enforcement mechanisms are used. Please specify:
- J. In your opinion, the board of adjustment in your county grants: (check one)
- a. More variances than are justified.
 - b. Fewer variances than are justified.
 - c. Approximately a justifiable number of variances.
- Please explain your answer to this question:

Additional Comments:

APPENDIX II

A. Board of Adjustment Member Interview Questions

Name: _____

Address: _____

County: _____

Age: _____ Sex: M F

1. a) Please briefly explain your occupational and educational background.
- b) How long have you lived in _____ County?
- c) Do you own land situated in the unincorporated portion of _____ County? The incorporated portion?
2. Which of your personal experiences or characteristics aid you in your role as a board member?
3. What is your view of the board of adjustment's role in county land use planning?
4. a) What is the function of the variance in county land use planning?
- b) What are the most important factors that you use in determining whether a variance should be granted?
- c) Approximately what percentage of variance requests are granted?
- d) What constitutes "unnecessary hardship" in the context of the county board of adjustment's determination of whether a variance permit should issue?
5. a) What constitutes effective notice of a board hearing to a petitioner?
- b) What constitutes effective notice of a board hearing to neighbors of a landowner who is seeking a variance?
- c) Do you or other board members seek information outside the board's hearing to aid in deciding whether a variance is warranted?
- d) Are petitioners and opponents permitted to be represented by legal counsel in board hearings?
- e) Are opponents permitted to present evidence to rebut the evidence presented by the petitioners in board hearings?
- f) Are petitioners and opponents permitted to cross-examine witnesses who give testimony in a board hearing?
6. a) Are board members allowed the opportunity to vote on a variance request regardless of whether they were present at the hearing?
- b) Is a board member required to abstain from the decision-making process in a case in which he or she has a conflict of interest? If so, are they required to do so by express rule or by mutual understanding of board members?
- c) What constitutes good cause for a conflict of interest disqualification?
7. What could be done to improve the present system by which boards of adjustment grant variances from county land use regulations?

B. Zoning Administrator Interview Questions

Name: _____

Address: _____

County: _____

Age: _____ Sex: M F

1. a) Please briefly describe your occupational and educational background.
- b) How long have you lived in _____ County?
- c) How long have you served as _____ County Zoning Administrator?
2. a) Please briefly describe your duties as county zoning administrator.
3. a) Do you play any part in the process by which variance permits are issued or denied? If so, what role do you play? (e.g., advisory before bd./adj. hearing; representative at bd./adj. hearing; advisory after bd./adj. hearing)
- b) Do you attend all meetings of the board of adjustment in which variance applications are considered?
4. Do you hold any position on a county land use regulatory agency other than zoning administrator or serve the county in any other capacity? If so, in what capacity?
5. a) What factors do you think the board of adjustment considers to be the most important in determining whether a variance should be granted?
- b) Does any county agency investigate variance requests and make recommendations to the board of adjustment?
- c) Do you think that the board of adjustment seriously considers those recommendations in determining whether individual variance permits should be granted?
- d) Are most applications for variance permits granted or denied by the board of adjustment?
- e) Approximately what percentage of variance applications are granted?
- f) What effect does the granting of variance permits have on the county land use plan? (i.e., effect on neighborhood or district)
- g) What constitutes "unnecessary hardship" in the context of the board of adjustment's determination of whether a variance permit should be issued?
6. What criteria are used in selecting new appointees to the board of adjustment?
7. a) What could be done to improve the present system by which boards of adjustment grant variances?
- b) Are there any feasible alternate methods that could be used to obtain needed flexibility in county land planning?

C. Board of Supervisors Member Interview Questions

Name: _____

Address: _____

County: _____

Age: _____ Sex: M F

1. a) Please briefly describe your occupational and educational background.
- b) How long have you lived in _____ County?
- c) Do you own land situated in the unincorporated portion of _____ County? The incorporated portion?
2. How long have you been on the board?
3. a) When did the board last consider amending the county zoning ordinance?
- b) About how often does the board of supervisors consider amendments to the county zoning ordinance?
- c) Who most commonly initiates proposals to amend the county zoning ordinance (i.e., board members, citizens, planning commission, zoning administrator)?
- d) Do your constituents offer input into the process by which the board of supervisors determines whether to amend the county zoning ordinance?
- e) Do you consider county land use regulation to be a significant political issue in _____ County?
4. a) What criteria are used in selecting new appointees to the county board of adjustment?
- b) What is your view of the board of adjustment's role in county land use planning (i.e., jury seeking to do "rough justice"; safety valve; quasi-administrative body applying established criteria)?
- c) Do variance permits granted by the board of adjustment affect the board of supervisors' consideration of amendments to the county zoning ordinance or comprehensive plan?

D. Petitioner Interview Questions

Name: _____

Address: _____

County: _____

Age: _____ Sex: M F

1. a) What type of variance did you apply for?
- b) What action did the board of adjustment take concerning your petition?
2. a) How were you notified that the board of adjustment would hold a hearing to obtain the facts necessary to determine whether to grant your requested variance?

- b) Were you informed whether you could be represented by legal counsel in the hearing before the board?
 - c) Were you permitted to present evidence to rebut evidence presented by opponents to your variance application?
 - d) Were you permitted to cross-examine witnesses who gave testimony in opposition to your proposed variance?
 - e) Did you know what procedural guidelines would be followed by the board before you attended the hearing?
 - f) Did the board of adjustment members consider any information other than that presented in the hearing (i.e., visits to proposed variance location, comments on complaints made by neighbors of variance applicant)?
 - g) Did the board of adjustment permit every person attending the hearing a chance to give testimony?
3. Before attending the hearing, did you know what you would have to prove to the board to obtain a variance permit? Did any county official or the variance application form explain the substantive criteria that the board of adjustment would use to determine whether a variance permit should be granted?
(If the petitioner's application was denied):
- 4. a) Did you appeal?
 - b) Why or why not?
 - c) Did the board of adjustment's denial of the variance mean that you have not been able to put the subject land to any profitable use?
(If petitioner's application was granted):
5. a) Did the type of use permitted by the variance detract from the character of the neighborhood?
- b) Did you receive any adverse reaction from your neighbors?

APPENDIX III

*County Zoning in Iowa*Table 1. *Summary of county planning and zoning.**

| County | Zoning | Date Enacted | Latest Revision | Comp. Plan | Date Adopted | Latest Revision |
|-------------|--------|--------------|-----------------|------------|--------------|-----------------|
| Adair | N | N/A | N/A | N | N/A | N/A |
| Adams | Y | N/R | N/R | N | N/A | N/A |
| Allamakee | Y | 1979 | 1981 | N | N/A | N/A |
| Appanoose | Y** | 1970 | 1980 | N | N/A | N/A |
| Audubon | Y | 1969 | 1977 | N | N/A | N/A |
| Benton | N | N/A | N/A | N | N/A | N/A |
| Black Hawk | Y | 1960 | 1980 | Y | 1980 | I/P |
| Boone | N | N/A | N/A | N | N/A | N/A |
| Bremer | Y | 1963 | 1975 | Y | 1963 | N |
| Buchanan | Y | 1974 | 1981 | Y | 1982 | N |
| Buena Vista | Y | 1966 | N | Y | N/R | N |
| Butler | Y | 1969 | 1978 | Y | 1968 | N |
| Calhoun | Y | 1969 | 1980 | Y | 1969 | 1976 |
| Carroll | Y | 1971 | 1980 | Y | 1971 | 1980 |
| Cass | Y | N/R | I/P | N | N/A | N/A |
| Cedar | Y | 1959 | 1975 | Y | 1959 | 1980 |
| Cerro Gordo | Y | N/R | 1971 | Y | 1971 | N |
| Cherokee | Y | 1966 | 1976 | Y | 1966 | N |
| Chickasaw | N | N/A | N/A | N | N/A | N/A |
| Clarke | N | N/A | N/A | N | N/A | N/A |
| Clay | Y | 1962 | 1979 | Y | 1975 | 1979 |
| Clayton | Y | 1971 | 1981 | Y | 1971 | N |
| Clinton | Y | 1964 | 1976 | N | N/A | N/A |
| Crawford | Y | 1976 | N | Y | 1976 | N |
| Dallas | Y | 1964 | 1974 | N | N/A | N/A |
| Davis | N | N/A | N/A | N | N/A | N/A |
| Decatur | N | N/A | N/A | N | N/A | N/A |
| Delaware | N | N/A | N/A | N | N/A | N/A |
| Des Moines | N | N/A | N/A | N | N/A | N/A |
| Dickinson | Y | 1971 | 1982 | Y | 1971 | 1982 |
| Dubuque | Y | 1971 | 1981 | Y | 1971 | 1975 |
| Emmet | Y | 1960 | 1976 | Y | 1979 | N |
| Fayette | Y | 1973 | 1976 | Y | 1972 | N |
| Floyd | Y | 1967 | 1982 | Y | 1967 | 1982 |
| Franklin | Y | 1976 | I/P | Y | N/R | I/P |
| Fremont | Y | 1967 | N | N | N/A | N/A |
| Greene | Y | N/R | I/P | N | N/A | N/A |
| Grundy | Y | 1977 | N | Y | 1971 | N |
| Guthrie | Y | 1972 | N | N/R | N/R | N/R |
| Hamilton | N | N/A | N/A | N | N/A | N/A |
| Hancock | N | N/A | N/A | Y | 1982 | N |
| Hardin | Y | 1964 | 1979 | Y | N/R | N |
| Harrison | Y | 1972 | N | N | N/A | N/A |
| Henry | Y | 1961 | N | Y | 1961 | N |
| Howard | N | N/A | N/A | N | N/A | N/A |
| Humboldt | Y | 1967 | 1976 | N | N/A | N/A |
| Ida | Y | 1979 | N/R | Y | N/R | N |
| Iowa | N | N/A | N/A | N | N/A | N/A |

| County | Zoning | Date Enacted | Latest Revision | Comp. Plan | Date Adopted | Latest Revision |
|---------------|--------|--------------|-----------------|------------|--------------|-----------------|
| Jackson | Y | 1976 | N | N | N/A | N/A |
| Jasper | Y | 1981 | N | Y | 1981 | N |
| Jefferson | N | N/A | N/A | N | N/A | N/A |
| Johnson | Y | 1960 | 1982 | Y | 1979 | N |
| Jones | N | N/A | N/A | N | N/A | N/A |
| Keokuk | N | N/A | N/A | N | N/A | N/A |
| Kossuth | Y | 1973 | 1980 | Y | 1973 | N |
| Lee | N | N/A | N/A | N | N/A | N/A |
| Linn | Y | 1959 | 1981 | Y | 1975 | 1982 |
| Louisa | Y | 1971 | 1979 | Y | 1971 | 1978 |
| Lucas | N | N/A | N/A | N | N/A | N/A |
| Lyon | Y | 1981 | N | Y | 1981 | N |
| Madison | Y | 1969 | N | Y | 1966 | N |
| Mahaska | N | N/A | N/A | N | N/A | N/A |
| Marion | Y | 1973 | 1982 | N | N/A | N/A |
| Marshall | Y | 1961 | 1982 | N | N/A | N/A |
| Mills | N | N/A | N/A | N | N/A | N/A |
| Mitchell | Y | 1981 | N | Y | 1980 | N |
| Monona | Y | 1978 | N | Y | 1978 | N |
| Monroe | N | N/A | N/A | N | N/A | N/A |
| Montgomery | Y | 1968 | N | Y | 1967 | N |
| Muscatine | Y | 1975 | 1981 | Y | 1975 | 1981 |
| O'Brien | N | N/A | N/A | I/P | N/A | N/A |
| Osceola | Y | 1971 | 1980 | Y | 1971 | 1980 |
| Page | Y | 1973 | I/P | N | N/A | N/A |
| Palo Alto | N | N/A | N/A | N | N/A | N/A |
| Plymouth | Y | 1965 | 1980 | N | N/A | N/A |
| Pocahontas | Y | 1979 | 1982 | Y | 1977 | 1979 |
| Polk | Y | 1959 | 1981 | Y | 1959 | N |
| Pottawattamie | Y | 1961 | 1981 | Y | 1969 | 1981 |
| Poweshiek | Y | 1976 | N | N | N/A | N/A |
| Ringgold | N | N/A | N/A | N | N/A | N/A |
| Sac | N | N/A | N/A | N | N/A | N/A |
| Scott | Y | 1949 | 1981 | Y | 1980 | N |
| Shelby | Y | 1973 | N | Y | 1973 | N |
| Sioux | Y | 1979 | N | Y | 1979 | N |
| Story | Y | 1958 | 1977 | Y | 1977 | N |
| Tama | Y | N/R | N | Y | 1966 | N |
| Taylor | N | N/A | N/A | N | N/A | N/A |
| Union | N | N/A | N/A | N | N/A | N/A |
| Van Buren | N | N/A | N/A | Y | 1973 | N |
| Wapello | Y | 1960 | 1971 | Y | 1960 | 1971 |
| Warren | Y | 1961 | 1980 | Y | 1961 | 1979 |
| Washington | N | N/A | N/A | N | N/A | N/A |
| Wayne | N | N/A | N/A | N | N/A | N/A |
| Webster | Y | 1972 | N | Y | 1972 | N |
| Winnebago | N | N/A | N/A | N | N/A | N/A |
| Woodbury | Y | 1971 | 1981 | Y | 1970 | N |
| Worth | Y** | 1970 | N | N | N/A | N/A |
| Wright | N | N/A | N/A | Y | 1980 | N |
| Totals | 66 Y's | — | — | 50 Y's | — | — |

*Source: County Board of Supervisors Chairpersons. Compiled June 1, 1982.

**Have zoned only for particular areas of the county.

Key: Y—Yes; N—No; N/A—Not applicable; N/R—No response; I/P—In progress.

Table 2. Summary of dates of zoning ordinance enactments and latest revisions.

| Time Period | Date of Implementation | | Date of Latest Revision | |
|-------------|------------------------|---------|-------------------------|--------|
| | No. | (%)* | No. | (%)* |
| Since 1980 | 3 | (4.5) | 24 | (36.4) |
| 1970-79 | 30 | (45.5) | 16 | (24.2) |
| 1960-69 | 23 | (34.8) | 0 | — |
| 1950-59 | 4 | (6.1) | 0 | — |
| Before 1950 | 1 | (1.5) | 0 | — |
| No Response | 5 | (7.6) | 2 | (3.0) |
| Totals | 66 | (100.0) | 42 | (63.6) |

*Percentage of the counties that have enacted zoning regulations (66).

Table 3. Summary of dates of comprehensive plan adoptions and latest revisions.

| Time Period | Date of Implementation | | Date of Latest Revision | |
|-------------|------------------------|-------|-------------------------|------|
| | No. | (%)* | No. | (%)* |
| Since 1980 | 8 | (16) | 8 | (16) |
| 1970-79 | 24 | (48) | 7 | (14) |
| 1960-69 | 12 | (24) | — | — |
| 1950-59 | 2 | (4) | — | — |
| No Response | 4 | (8) | — | — |
| Totals | 50 | (100) | 15 | (30) |

*Percentage of the counties that have formulated comprehensive plans (50).

Table 4. Other duties performed by the county zoning administrators.*

| Duty | No. |
|---------------------|-----|
| Sanitarian | 26 |
| Engineer** | 19 |
| Building Inspector | 5 |
| Assessor | 2 |
| Regional Planner*** | 2 |
| Other | 17 |
| No response | 8 |

*Some zoning administrators fulfilled more than one additional duty.

**Includes assistant engineers

***Iowa Regional Council of Governments

Table 5. County zoning according to population.

| 1980 Population* | No. counties | No. zoned | % zoned |
|-------------------|--------------|-----------|---------|
| Less than 15,000 | 38 | 20 | (52.6) |
| 15,001—30,000 | 41 | 28 | (68.3) |
| 30,001—70,000 | 11 | 9 | (81.8) |
| 70,001—125,000 | 5 | 5 | (100.0) |
| More than 125,000 | 4 | 4 | (100.0) |
| Totals | 99 | 66 | — |

*Source: IOWA DEV. COMM'N, IOWA 1982 STATISTICAL PROFILE 109-10 (1982).

Table 6. Summary of number of variance applications considered per county.*

| No. of applications | No. | (%)** |
|---------------------|-----|---------|
| 0 | 18 | (27.3) |
| 1-5 | 27 | (40.9) |
| 6-12 | 9 | (13.6) |
| More than 12 | 12 | (18.2) |
| Totals | 66 | (100.0) |

*The period covered is approximately two years. See note 27 *supra*.

**Percentage of the counties that have zoned (66).

Table 7. Summary of number of variance applications considered according to population.

| 1980 Population* | No. of variance applications considered** | | | | | | | |
|-------------------|---|--------|-----|--------|------|--------|-----|--------|
| | 0 | | 1-5 | | 6-12 | | 12 | |
| | No. | (%)*** | No. | (%)*** | No. | (%)*** | No. | (%)*** |
| Less than 15,000 | 10 | (50.0) | 10 | (50.0) | 0 | — | 0 | — |
| 15,001—30,000 | 8 | (28.6) | 10 | (35.7) | 6 | (21.4) | 4 | (14.3) |
| 30,001—70,000 | 0 | — | 5 | (55.6) | 2 | (22.2) | 2 | (22.2) |
| 70,001—125,000 | 0 | — | 2 | (40.0) | 0 | — | 3 | (60.0) |
| More than 125,000 | 0 | — | 0 | — | 1 | (25.0) | 3 | (75.0) |
| Totals | 18 | — | 27 | — | 9 | — | 12 | — |

*Source: IOWA DEV. COMM'N, IOWA 1982 STATISTICAL PROFILE 109-10 (1982).

**The period covered is approximately two years. See note 27 *supra*.

***Refers to the percentage of the counties in the same population group.

Table 8. Grouping of counties by variance approval rates.

| Variance approval rate | No. of counties* | |
|------------------------|---|--|
| | 5 or more variances considered in past 2 yrs. | Less than five variances considered in past 2 yrs. |
| 100% | 11 | 10 |
| 80-99% | 14 | 0 |
| 50-79% | 6 | 2 |
| Less than 50% | 0 | 4 |

*Does not include counties that have not considered any variance applications during the applicable period.

APPENDIX IV

*Board of Adjustment Questionnaire Responses*Table 1. *Question A-1: Age.*

| Age Group | No. | (%) |
|-------------|-----|---------|
| 26-30 | 5 | (2.0) |
| 31-40 | 18 | (7.4) |
| 41-50 | 39 | (16.0) |
| 51-60 | 71 | (29.1) |
| 61-70 | 70 | (28.7) |
| Over 70 | 25 | (10.2) |
| No response | 16 | (6.6) |
| Totals | 244 | (100.0) |

Table 2. *Question A-2: Sex.*

| Sex | No. | (%) |
|-------------|-----|---------|
| Male | 203 | (83.2) |
| Female | 27 | (11.1) |
| No Response | 14 | (5.7) |
| Totals | 244 | (100.0) |

Table 3. *Question A-3: Highest educational degree attained.*

| Education | No. | (%) |
|--------------------------|-----|---------|
| Less than high school | 16 | (6.6) |
| High school diploma | 130 | (53.3) |
| Some college experience | 35 | (14.3) |
| Four-year college degree | 34 | (13.9) |
| Post-graduate experience | 12 | (4.9) |
| No response | 17 | (7.0) |
| Totals | 244 | (100.0) |

Table 4. *Question A-4: Formal education related to land use planning.*

| Responses | No. | (%) |
|-------------|-----|---------|
| Yes | 10 | (4.1) |
| No | 210 | (86.1) |
| No response | 24 | (9.8) |
| Totals | 244 | (100.0) |

Table 5. *Question A-5: Occupation.*

| Occupations | No. | (%) |
|---------------------------------------|-----|---------|
| Farmer | 129 | (52.9) |
| Sales, Management, Administration* | 36 | (14.8) |
| Retired or Unemployed | 32 | (13.1) |
| Professional, Technical** | 17 | (7.0) |
| Blue Collar | 2 | (0.8) |
| No response | 28 | (11.4) |
| Totals | 244 | (100.0) |

*Includes real estate and insurance salesmen, advertisers, public relations workers, and industrial management personnel.

**Includes teachers, engineers, soil conservationists, an abstractor, and a registered nurse.

Table 6. *Question A-6: Number of years lived in the county.*

| Years | No. | (%) |
|--------------|-----|---------|
| 0-10 | 5 | (2.1) |
| 11-20 | 20 | (8.2) |
| 21-30 | 21 | (8.6) |
| 31-40 | 35 | (14.3) |
| 41-50 | 27 | (11.1) |
| 51-60 | 53 | (21.7) |
| 61-70 | 51 | (20.9) |
| More than 71 | 10 | (4.1) |
| No response | 22 | (9.0) |
| Totals | 244 | (100.0) |

Table 7. *Question A-7: Do you reside in an incorporated or unincorporated area of the county?*

| Responses | No. | (%) |
|----------------|-----|---------|
| Incorporated | 57 | (23.4) |
| Unincorporated | 163 | (66.8) |
| No response | 24 | (9.8) |
| Totals | 244 | (100.0) |

Table 8. *Question A-8: How did you learn the skills needed for your position on the county board of adjustment? (More than one response permissible).*

| Responses | No. | (%)* |
|--|-----|--------|
| By experience | 184 | (75.4) |
| Instruction provided by the county zoning administrator | 111 | (45.5) |
| Instruction provided by the county attorney's office | 31 | (12.7) |
| Instruction provided by other board of adjustment members | 54 | (22.1) |
| Independent research | 56 | (23.0) |
| Conferences or symposia | 38 | (15.6) |
| Other | 25 | (10.2) |
| No response | 19 | (7.8) |
| Totals | 518 | — |

*Percentage of the board of adjustment members responding (244).

Table 9. *Question A-9: Are you acquainted with Iowa Code chapter 358A?*

| Responses | No. | (%) |
|-------------|-----|---------|
| Yes* | 68 | (27.9) |
| No** | 147 | (60.2) |
| No response | 29 | (11.9) |
| Totals | 244 | (100.0) |

*Responses of "Yes" with no explanation included.

**Responses of "Yes" with patently incorrect explanation included.

Table 10. *Question A-10: Are you acquainted with any Iowa Supreme Court cases concerning zoning in general or actions taken by boards of adjustment in particular?*

| Responses | No. | (%) |
|-------------|-----|---------|
| Yes* | 16 | (6.6) |
| No** | 202 | (82.8) |
| No response | 26 | (10.6) |
| Totals | 244 | (100.0) |

*Responses of "Yes" with no explanation included.

**Responses of "Yes" with patently incorrect explanation included.

Table 11. *Question A-11: Please briefly describe the difference, if any, between a variance and a special use permit under your county's zoning ordinance.*

| | No. | (%) |
|-----------------------|-----|---------|
| Correct responses* | 46 | (18.9) |
| Incorrect responses** | 74 | (30.3) |
| No response | 124 | (51.8) |
| Totals | 244 | (100.0) |

*Any response that showed an understanding of the fact that special use permits are allowed by the ordinance while variances legalize an otherwise illegal use was accepted.

**The most common incorrect response was that special use permits are temporary while variances are permanent.

Table 12. *Question A-12: In your opinion, what is the primary role of the board of adjustment as pertaining to variances? (check one)*

| Responses | No. | (%) [*] |
|---|-------|------------------|
| To allow deviations from the zoning ordinance which in your opinion will not be harmful to neighboring residents. | 84 | (34.4) |
| To ensure that the most beneficial use of land for the community is promoted. | 71 | (29.1) |
| To grant relief from the zoning ordinance to property owners who are affected by a poorly written zoning provision. | 9 | (3.7) |
| To ensure that the zoning ordinance does not burden a property owner's freedom to use the land as he/she pleases. | 6 | (2.5) |
| To grant relief from the zoning ordinance in extraordinary circumstances in which a property owner can otherwise make no reasonable use of the property without the requested variance. | 47 | (19.3) |
| To allow deviations from the zoning ordinance when the burden imposed on the property owner is greater than the benefits conferred to the public by the ordinance. | 49 | (20.1) |
| Other | 13 | (5.3) |
| No response | 28 | (11.5) |
| Totals | 307** | — |

*Percentage of the board of adjustment members responding (244).

**Many questionnaires were returned with more than one response despite the instruction. When this question was cross-tabulated with other questions, surveys with more than one response were disregarded.

Table 13. *Question B-1: How were you appointed to the board of adjustment?*

| Responses | No. | (%) |
|---|-----|---------|
| Volunteered | 8 | (3.3) |
| Responded to an advertisement | 1 | (0.4) |
| Approached by a county supervisor | 194 | (79.5) |
| Recommended by another board of adjustment member | 11 | (4.5) |
| Other | 12 | (4.9) |
| No response | 18 | (7.4) |
| Totals | 244 | (100.0) |

Table 14. *Question B-2: How long have you served on the board of adjustment?*

| Years | No. | (%) |
|-------------|-----|---------|
| 1-5 | 128 | (52.5) |
| 6-10 | 64 | (26.2) |
| 11-23 | 27 | (11.1) |
| No response | 25 | (10.2) |
| Totals | 244 | (100.0) |

Table 15. *Question B-3 (Part 1): Are board of adjustment members allowed to serve more than one term?*

| Responses | No. | (%) |
|-------------|-----|---------|
| Yes | 215 | (88.1) |
| No | 1 | (0.4) |
| No response | 28 | (11.5) |
| Totals | 244 | (100.0) |

Table 16. *Question B-3 (Part 2): Have you served more than one term on the board of adjustment?*

| Responses | No. | (%) |
|-------------|-----|---------|
| Yes | 130 | (53.3) |
| No | 87 | (35.7) |
| No response | 27 | (11.0) |
| Total | 244 | (100.0) |

Table 17. *Question B-3 (Part 3): If yes, how many?*

| No. of terms | No. | (%) |
|--------------|-----|---------|
| 1 | 8 | (3.3) |
| 2 | 60 | (24.6) |
| 3 | 20 | (8.2) |
| 4-6 | 14 | (5.7) |
| No response | 142 | (58.2) |
| Totals | 244 | (100.0) |

Table 18. *Question B-4: Do you currently serve or have you in the past served on a county board or commission other than the board of adjustment?*

| Responses | No. | (%) |
|-------------|-----|---------|
| Yes | 81 | (33.2) |
| No | 133 | (54.5) |
| No response | 30 | (12.3) |
| Totals | 244 | (100.0) |

Table 19. *Question C-1 (Part 1): Does the board of adjustment follow official procedural rules that are separate from the zoning ordinance?*

| Responses | No. | (%) |
|-------------|-----|---------|
| Yes | 147 | (60.2) |
| No | 53 | (21.7) |
| No response | 44 | (18.1) |
| Totals | 244 | (100.0) |

Table 20. *Question C-1 (Part 2): If yes, please check any of the following types of rules that are followed:*

| Responses | No. | (%)* |
|---|-----|--------|
| Robert's Rules of Order or similar form rule book | 93 | (38.1) |
| Written rules developed by the board of adjustment | 58 | (23.8) |
| Unwritten rules generally accepted by the board of adjustment members | 44 | (18.0) |
| Other | 7 | (2.9) |
| Totals | 202 | — |

*Percentage of the board of adjustment members responding (244).

Table 21. *Question C-2: Is a statement describing the procedures to be followed recited at the beginning of a hearing for the benefit of persons present?*

| Responses | No. | (%) |
|-------------|-----|---------|
| Yes | 164 | (67.2) |
| No | 43 | (17.6) |
| No response | 37 | (15.2) |
| Totals | 244 | (100.0) |

Table 22. *Question C-3 (Part 1): Are board of adjustment members compensated for their services?*

| Responses | No. | (%) |
|-------------|-----|---------|
| Yes | 133 | (54.5) |
| No | 83 | (34.0) |
| No response | 28 | (11.5) |
| Totals | 244 | (100.0) |

Table 23. *Question C-3 (Part 2): If yes, please check any of the following types of expenses that are paid:*

| Responses | No. | (%)* |
|-----------------------------------|-----|--------|
| Mileage | 151 | (61.9) |
| Salary (fixed rate per year) | 1 | (4.1) |
| Per diem (fixed rate per meeting) | 17 | (7.0) |
| Hourly rate | 0 | — |
| Other | 3 | (1.2) |
| No response | 91 | (37.3) |
| Totals | 273 | — |

*Percentage of the board of adjustment members responding (244).

Table 24. *Question C-4 (Part 1): How are board of adjustment meetings scheduled?*

| Responses | No. | (%) |
|---|-----|---------|
| Regularly (e.g., monthly, bimonthly) | 28 | (11.5) |
| On call only | 154 | (63.1) |
| Regularly and on call for special meetings | 40 | (16.4) |
| No response | 22 | (9.0) |
| Totals | 244 | (100.0) |

Table 25. *Question C-4 (Part 2): If the board of adjustment meets on call only, who calls meetings?*

| Responses | No. | (%) |
|------------------------------|-----|---------|
| Board of adjustment chairman | 74 | (30.3) |
| County zoning administrator | 103 | (42.2) |
| County attorney | 0 | — |
| Other | 4 | (1.6) |
| No response | 63 | (25.9) |
| Totals | 244 | (100.0) |

Table 26. *Question C-5: Approximately how often does the board of adjustment meet?*

| Responses | No. | (%) |
|------------------------------------|-----|---------|
| Two times per month or more often | 0 | — |
| Once per month | 70 | (28.7) |
| Once every two months | 29 | (11.9) |
| Once every three months | 33 | (13.5) |
| Once every six months | 29 | (11.9) |
| Once per year | 21 | (8.6) |
| Once every two years or less often | 16 | (6.6) |
| No response | 46 | (18.8) |
| Totals | 244 | (100.0) |

Table 27. *Question C-6 (Part 1): How does the board of adjustment vote on variance and special use applications?*

| Responses | No. | (%) |
|--|-----|---------|
| Votes are taken in public, during the public hearing | 195 | (79.9) |
| Votes are closed to the public and are taken on the day of the public hearing | 13 | (5.3) |
| Voting can be done by mail, by proxy, or by phone (i.e., a board of adjustment member need not be present at the public hearing to vote) | 2 | (0.8) |
| Other | 4 | (1.6) |
| No response | 30 | (12.4) |
| Totals | 244 | (100.0) |

Table 28. *Question C-6 (Part 2): Have you ever voted by one of the absentee methods?*

| Responses | No. | (%) |
|-------------|-----|---------|
| Yes | 7 | (2.9) |
| No | 14 | (5.7) |
| No response | 223 | (91.4) |
| Totals | 244 | (100.0) |

Table 29. *Question C-7: Please check the one policy that is most similar to the conflict of interest policy followed by your board of adjustment.*

| Responses | No. | (%) |
|--|-----|---------|
| The board of adjustment has a written policy describing criteria that are used to determine whether a member must abstain from voting due to a conflict of interest. | 6 | (2.5) |
| The entire board of adjustment determines, on a case-by-case basis, in which situations a member must abstain from voting due to a conflict of interest. | 15 | (6.1) |
| Board of adjustment members decide for themselves the situations in which they should abstain from voting due to a conflict of interest. | 112 | (45.9) |
| The board of adjustment has no recognized policy concerning the situations that call for a member to abstain from voting due to a conflict of interest. | 72 | (29.5) |
| No response | 39 | (16.0) |
| Totals | 244 | (100.0) |

Table 30. *Question C-8: What constitutes a conflict of interest that would require your board of adjustment to abstain from voting on an issue, as defined in your rules, your experience, or your opinion:*

| Choices | Responses | | |
|--|----------------|---------------|---------------------------|
| | Yes No. (%) | No No. (%) | No Response No. (%) |
| Personal acquaintance with the petitioner? | 23 (9.4) | 67 (27.5) | 154 (63.1) |
| Owning land near the petitioner's land? | 55 (22.5) | 39 (16.0) | 150 (61.5) |
| Relation to petitioner by blood or by marriage? | 95 (38.9) | 17 (7.0) | 132 (54.1) |
| Financial interest in the board's determination whether petitioner's application is granted? | 109 (44.7) | 11 (4.5) | 124 (50.8) |
| Other | 7 (2.9) | 0 | 237 (97.1) |

Table 31. *Question C-9: Are petitioners and objectors permitted to:*

| Choices | Responses | | |
|--|----------------|---------------|---------------------------|
| | Yes No. (%) | No No. (%) | No Response No. (%) |
| Be represented by counsel at the public hearing on petitioner's application? | 188 (77.0) | 1 (0.4) | 55 (22.6) |
| Present testimony and other evidence specifically to rebut evidence presented by the opponent? | 166 (68.0) | 0 | 78 (32.0) |
| Cross-examine opposing witnesses? | 91 (37.3) | 46 (18.9) | 107 (43.8) |

Table 32. *Question C-10: Has the board of adjustment subpoenaed witnesses in the last three years?*

| Responses | No. | (%) |
|-------------|-----|---------|
| Yes | 6 | (2.5) |
| No | 204 | (83.6) |
| No response | 34 | (13.9) |
| Totals | 244 | (100.0) |

Table 33. *Question C-11: Has the board of adjustment ever sworn in witnesses?*

| Responses | No. | (%) |
|-------------|-----|---------|
| Yes | 11 | (4.5) |
| No | 197 | (80.7) |
| No response | 36 | (14.8) |
| Totals | 244 | (100.0) |

Table 34. Question D-1 to -5: Please indicate how often the following sources are considered in determining the outcome of a variance application. Use the following scale:

- 1—Never (in my experience)
 2—Sometimes
 3—In about one half of the cases
 4—More often than not
 5—Always

| | Responses | | | | | | | | | | | |
|---|-------------|--------|-----|--------|-----|--------|-----|--------|-----|--------|-----|--------|
| | No Response | | 1 | | 2 | | 3 | | 4 | | 5 | |
| | No. | (%) | No. | (%) | No. | (%) | No. | (%) | No. | (%) | No. | (%) |
| 1. Oral testimony presented at hearing | 40 | (16.6) | 15 | (6.1) | 15 | (6.1) | 15 | (6.1) | 54 | (22.1) | 105 | (43.0) |
| 2. Visits made to the property that is the subject of the application or reports of such visits | 42 | (17.2) | 22 | (9.0) | 69 | (28.3) | 27 | (11.1) | 39 | (16.0) | 45 | (18.4) |
| 3. Recommendations made by the county: | | | | | | | | | | | | |
| a. Zoning administrator | 53 | (21.7) | 24 | (9.8) | 46 | (18.9) | 23 | (9.4) | 62 | (25.4) | 36 | (14.8) |
| b. Attorney | 70 | (28.7) | 50 | (20.5) | 90 | (36.9) | 9 | (3.7) | 17 | (7.0) | 8 | (3.3) |
| c. Zoning commission | 66 | (27.1) | 65 | (26.6) | 52 | (21.3) | 13 | (5.3) | 27 | (11.1) | 21 | (8.6) |
| d. Other recommendations | 177 | (72.5) | 26 | (10.7) | 20 | (8.2) | 4 | (1.6) | 9 | (3.7) | 8 | (3.3) |
| 4. Communications from interested citizens made <i>before</i> the public hearing | 51 | (20.9) | 46 | (18.9) | 73 | (29.9) | 23 | (9.4) | 18 | (7.4) | 33 | (13.5) |
| 5. Prior cases with similar fact patterns | 60 | (24.6) | 33 | (13.5) | 69 | (28.3) | 33 | (13.5) | 33 | (13.5) | 16 | (6.6) |

Table 35. Question E-1 to -25: Listed below are hypothetical facts that may apply to a variance application made to the board of adjustment. Please indicate in the first column (A) the degree of importance that each fact merits, in your personal opinion, in the consideration of a variance application. Please estimate and indicate in the second column (B) the degree of importance given each of these facts by the entire board of adjustment. Use the following scale:

- 1—This fact provides overwhelming evidence that the variance application should be denied.
- 2—This fact makes it more likely than not that the variance application should be denied.
- 3—This fact makes no difference in determining whether a variance application should be granted or denied.
- 4—This fact makes it more likely than not that a variance application should be granted.
- 5—This fact provides overwhelming evidence that the variance application should be granted.

| | (A) Personal Opinion**** | | | | | | | | | | (B) Board's Opinion | | | | | |
|---|-----------------------------|--------------|--------------|--------------|--------------|--------------|--------------|------------|-----|--------------|------------------------|--------------|--------------|--------------|--------------|------------|
| | n* | 1 No. (%) | 2 No. (%) | 3 No. (%) | 4 No. (%) | 5 No. (%) | \bar{E} ** | ρ *** | n* | 1 No. (%) | 2 No. (%) | 3 No. (%) | 4 No. (%) | 5 No. (%) | \bar{E} ** | ρ *** |
| 1. Another use is available that would provide the petitioner with a reasonable profit without the need for a variance. | 177 | 41 (23.1) | 65 (36.7) | 61 (34.5) | 6 (3.4) | 4 (2.3) | 2.25 | 0.000 | 154 | 31 (20.1) | 48 (31.2) | 62 (40.3) | 8 (5.2) | 5 (3.2) | 2.40 | 0.000 |
| 2. Prime agricultural land will be lost to production if the variance application is granted. | 190 | 87 (45.8) | 70 (36.8) | 19 (10.0) | 5 (2.6) | 9 (4.7) | 1.84 | 0.000 | 161 | 61 (37.9) | 63 (39.1) | 26 (16.1) | 7 (4.3) | 4 (2.5) | 1.94 | 0.000 |
| 3. A zone in which the requested use is permitted is nearby. | 176 | 16 (9.1) | 40 (22.7) | 77 (43.8) | 37 (21.0) | 6 (3.4) | 2.87 | 0.073 | 153 | 11 (7.2) | 37 (24.2) | 67 (43.8) | 35 (22.9) | 3 (2.0) | 2.88 | 0.112 |
| 4. The zoning administrator or other county official recommends that the variance application be denied. | 182 | 28 (15.4) | 82 (45.1) | 60 (33.0) | 11 (6.0) | 1 (0.5) | 2.31 | 0.000 | 155 | 24 (15.5) | 72 (46.5) | 45 (29.0) | 12 (7.7) | 2 (1.3) | 2.33 | 0.000 |
| 5. The variance application is for the placement of a mobile home. | 171 | 23 (13.5) | 42 (24.6) | 87 (50.9) | 15 (8.8) | 4 (2.3) | 2.62 | 0.000 | 155 | 20 (12.9) | 35 (22.6) | 76 (49.0) | 18 (11.6) | 6 (3.9) | 2.71 | 0.000 |

*n = total number of responses in the sample (excludes "no response")

** \bar{E} = mean

*** ρ = probability (derived from "t" statistic, see note 32 *supra*)

****Most-correct response(s) are circled. See text accompanying note 450 *supra*.

| | (A) Personal Opinion | | | | | | | | | | (B) Board's Opinion | | | | | |
|--|-------------------------|--------------|--------------|--------------|--------------|--------------|----------------|--------------|-----|--------------|------------------------|--------------|--------------|--------------|----------------|--------------|
| | n* | 1 No. (%) | 2 No. (%) | 3 No. (%) | 4 No. (%) | 5 No. (%) | \bar{E}^{**} | ρ^{***} | n* | 1 No. (%) | 2 No. (%) | 3 No. (%) | 4 No. (%) | 5 No. (%) | \bar{E}^{**} | ρ^{***} |
| 6. The application is one for a permitted use; only the area requirements (e.g., front yard setback, lot area) are to be varied. | 181 | 7 (3.9) | 21 (11.6) | 40 (22.1) | 99 (54.7) | 4 (7.7) | 3.51 | 0.000 | 161 | 8 (5.0) | 19 (11.8) | 37 (23.0) | 83 (51.6) | 14 (8.7) | 3.47 | 0.000 |
| 7. The petitioner is likely to appeal to the district court if the variance is denied. | 181 | 17 (9.4) | 13 (7.2) | 47 (81.2) | 3 (1.7) | 1 (0.6) | 2.77 | 0.000 | 158 | 16 (10.1) | 16 (10.6) | 117 (74.1) | 8 (5.1) | 1 (0.6) | 2.76 | 0.000 |
| 8. Citizens are present to oppose the variance application. | 184 | 20 (10.9) | 71 (38.6) | 86 (46.7) | 4 (2.2) | 3 (1.6) | 2.45 | 0.000 | 161 | 24 (14.9) | 53 (32.9) | 73 (45.3) | 7 (4.3) | 4 (2.5) | 2.47 | 0.000 |
| 9. The community's economy would benefit if the variance were granted. | 179 | 8 (4.5) | 11 (6.1) | 53 (29.6) | 90 (50.3) | 7 (9.5) | 3.54 | 0.000 | 160 | 7 (4.4) | 7 (4.4) | 49 (30.6) | 83 (51.9) | 14 (8.8) | 3.56 | 0.000 |
| 10. The petitioner cannot make any reasonable legal use of the land without the variance. | 178 | 4 (2.2) | 13 (7.3) | 54 (30.3) | 80 (44.9) | 27 (15.2) | 3.64 | 0.000 | 161 | 4 (2.5) | 7 (4.3) | 51 (31.7) | 74 (46.0) | 54 (33.5) | 3.68 | 0.000 |
| 11. The petitioner is represented by an attorney. | 184 | 10 (5.4) | 13 (7.1) | 53 (83.2) | 6 (3.3) | 2 (1.1) | 2.88 | 0.005 | 161 | 6 (3.7) | 15 (9.3) | 125 (77.6) | 11 (6.8) | 4 (2.5) | 2.95 | 0.326 |
| 12. The petitioner or a member of the petitioner's family would benefit from the variance for medical/health reasons. | 175 | 3 (1.7) | 11 (6.3) | 57 (32.6) | 86 (49.1) | 18 (10.3) | 3.60 | 0.000 | 155 | 4 (2.6) | 4 (2.6) | 50 (32.3) | 82 (52.9) | 15 (9.7) | 3.65 | 0.000 |
| 13. The zoning administrator or other county official recommends that the variance application be granted. | 180 | 3 (1.7) | 6 (3.3) | 70 (38.9) | 94 (52.2) | 7 (3.9) | 3.53 | 0.000 | 160 | 4 (2.5) | 4 (2.5) | 45 (28.1) | 89 (55.6) | 18 (11.3) | 3.71 | 0.000 |
| 14. The petitioner created the need for a variance by dividing the property into smaller parcels. | 182 | 34 (18.7) | 68 (37.4) | 59 (32.4) | 15 (8.2) | 6 (3.3) | 2.40 | 0.000 | 156 | 21 (13.5) | 57 (36.5) | 59 (37.8) | 16 (10.3) | 3 (1.9) | 2.51 | 0.000 |
| 15. The petitioner would make more money from the property if the variance were granted. | 182 | 17 (9.3) | 34 (18.7) | 118 (64.8) | 9 (4.9) | 4 (2.2) | 2.72 | 0.000 | 156 | 8 (5.1) | 30 (19.2) | 104 (66.7) | 12 (7.7) | 2 (1.3) | 2.81 | 0.001 |
| 16. Those persons opposing the variance are represented by an attorney. | 182 | 10 (5.5) | 13 (7.1) | 53 (84.1) | 3 (1.6) | 3 (1.6) | 2.87 | 0.003 | 155 | 2 (1.3) | 22 (14.2) | 122 (78.7) | 6 (3.9) | 3 (1.9) | 2.91 | 0.043 |
| 17. The area is more suitable for the requested use than the uses permitted by the zoning ordinance. | 176 | 4 (2.3) | 14 (8.0) | 31 (17.6) | 101 (57.4) | 26 (14.8) | 3.74 | 0.000 | 156 | 4 (2.6) | 7 (4.5) | 36 (23.1) | 89 (57.1) | 20 (12.8) | 3.73 | 0.000 |
| 18. Although not authorized, the requested use is compatible with other uses in the area. | 178 | 6 (3.4) | 13 (7.3) | 39 (21.9) | 102 (57.3) | 18 (10.1) | 3.64 | 0.000 | 153 | 4 (2.6) | 10 (6.5) | 41 (26.8) | 80 (52.3) | 18 (11.8) | 3.64 | 0.000 |
| 19. The requested use would cause only an insignificant deviation from the requirements of the zoning ordinance. | 177 | 5 (2.8) | 11 (6.2) | 50 (28.2) | 85 (48.0) | 26 (14.7) | 3.66 | 0.000 | 157 | 3 (1.9) | 13 (8.3) | 42 (26.8) | 75 (47.8) | 24 (15.3) | 3.66 | 0.000 |

- 20. Similar variances have been previously granted in the same area.
- 21. The application is for a *use* not permitted in the district.
- 22. The petitioner built a nonconforming use and now needs a variance to comply with the zoning ordinance.
- 23. Citizens other than the petitioner are present to *support* the variance application.
- 24. The petitioner purchased the property knowing that his planned use did not comply with the requirements of the zoning ordinance.
- 25. The petitioner's property is no different from the properties occupied by his neighbors.

| | | | | | | | | | | | | | | | |
|-----|-----------|-----------|-----------|-----------|-----------|------|-------|-----|-----------|-----------|-----------|-----------|-----------|------|-------|
| 175 | 5 (2.9) | 7 (4.0) | 47 (26.9) | 90 (51.4) | 26 (14.9) | 3.71 | 0.000 | 157 | 6 (3.8) | 7 (4.5) | 37 (23.6) | 77 (49.0) | 30 (19.1) | 3.75 | 0.000 |
| 179 | 83 (46.4) | 69 (38.5) | 17 (9.5) | 6 (3.4) | 4 (2.2) | 1.77 | 0.000 | 150 | 56 (37.3) | 73 (48.7) | 16 (10.7) | 3 (2.0) | 2 (1.3) | 1.81 | 0.000 |
| 188 | 38 (20.2) | 54 (28.7) | 63 (33.5) | 22 (11.7) | 3 (1.6) | 2.43 | 0.000 | 154 | 25 (16.2) | 45 (29.2) | 59 (38.3) | 22 (14.3) | 3 (1.9) | 2.57 | 0.000 |
| 179 | 5 (2.8) | 11 (6.1) | 74 (41.3) | 73 (40.8) | 16 (8.9) | 3.47 | 0.000 | 156 | 6 (3.8) | 4 (2.6) | 63 (40.4) | 65 (41.7) | 18 (11.5) | 3.55 | 0.000 |
| 183 | 57 (31.1) | 65 (35.5) | 47 (25.7) | 5 (2.7) | 9 (4.9) | 2.15 | 0.000 | 152 | 36 (23.7) | 59 (38.8) | 44 (28.9) | 7 (4.6) | 6 (3.9) | 2.26 | 0.000 |
| 173 | 18 (10.4) | 16 (9.2) | 69 (39.9) | 60 (34.7) | 10 (5.8) | 3.16 | 0.041 | 150 | 10 (6.7) | 14 (9.3) | 64 (42.7) | 52 (34.7) | 10 (6.7) | 3.25 | 0.001 |

*n = total number of responses in the sample (excludes "no response")

** \bar{E} = mean

***p = probability (derived from "t" statistic, see note 32 *supra*)

****Most-correct response(s) are circled. See text accompanying note 450 *supra*.

APPENDIX V

Correlation Tables

Table 1. *Relationship between education level of board members (question A-3) and their knowledge of correct variance factors (questions E-1 to -25).*

| Category | n | Avg. no. correct responses* |
|--------------------------|-------|-----------------------------|
| Less than high school | 10 | 8.7 |
| High school | 107 | 12.4 |
| Some college experience | 31 | 12.7 |
| Four year college degree | 31 | 13.1 |
| Post-graduate experience | 12 | 13.4 |
| Total | 191** | — |

$p = 0.0321^{***}$

*Refers to correct responses to board of adjustment questionnaire questions E-1 to -25.

**All questionnaires with no response to question A-3 or no response to any of questions E-1 to -25 were omitted.

***As used here, p is derived from an F statistic. For a discussion of the statistical methods utilized in this Project, see note 32 *supra*.

Table 2. *Relationship between familiarity of board members with Iowa Code chapter 358A (question A-9) and/or zoning decisions by Iowa Supreme Court (question A-10) and their knowledge of proper variance factors (questions E-1 to -25).*

| Category | n | Avg. no. correct responses* |
|--|-------|-----------------------------|
| Acquainted with ch. 358A or Iowa Supreme Court Zoning decisions | 72 | 13.2 |
| Not acquainted with ch. 358A or Iowa Supreme Court zoning decisions | 172 | 8.4 |
| Total | 244** | — |

$p = 0.0000^{***}$

*Refers to correct responses to board of adjustment questionnaire questions E-1 to -25.

**All questionnaires with no response to questions A-9 or no response to any of questions E-1 to -25 were omitted.

***As used here, p is derived from an F statistic. For a discussion of the statistical methods in this Project, see note 32 *supra*.

Table 3. *Relationship between board members' understanding of the distinction between variances and special exceptions (question A-11) and their knowledge of proper variance factors (questions E-1 to -25).*

| Category | n | Avg. no. correct responses* |
|-----------------------------------|-------|-----------------------------|
| Understand the distinction | 46 | 13.8 |
| Do not understand the distinction | 74 | 10.7 |
| Total | 120** | — |

$p = 0.0000^{***}$

*Refers to correct responses to board of adjustment questionnaire questions E-1 to -25.

**All questionnaires with no response to question A-11 or no response to any of questions E-1 to -25 were omitted.

***As used here, p is derived from an F statistic. For a discussion of the statistical methods utilized in this Project, see note 32 *supra*.

Table 4. Relationship between board member's formal training in land use planning (question A-4) and their knowledge of proper variance factors (questions E-1 to -25).

| Category | n | Avg. no. of correct responses* |
|------------------------------|-----|--------------------------------|
| Have had formal training | 9 | 11.7 |
| Have not had formal training | 179 | 12.5 |
| Total | 188 | — |

$p = 0.5272^{**}$

*Refers to the number of correct responses to board of adjustment questionnaire questions E-1 to -25.

**As used here, p is derived from an F statistic. For a discussion of the statistical methods utilized in this Project, see note 32 *supra*.

Table 5. Relationship between the length of board of adjustment members' service (question B-2) and knowledge of proper variance factors (questions E-1 to -25).

| No. years of service | n | Avg. no. correct responses* |
|----------------------|-----|-----------------------------|
| No response | 53 | 12.9 |
| 1-5 | 59 | 12.7 |
| 6-10 | 41 | 11.7 |
| 11-23 | 35 | 12.2 |
| Total | 188 | — |

$p = .4886^{**}$

*Refers to the number of correct responses to board of adjustment questionnaire questions E-1 to -25.

**As used here, p is derived from an F statistic. For a discussion of the statistical methods utilized in this Project, see note 32 *supra*.

Table 6. Relationship between compensation of board members (question C-3) and their knowledge of proper variance factors (questions E-1 to -25).

| Compensated | n | Avg. no. correct responses* |
|-------------|-----|-----------------------------|
| Yes | 119 | 12.9 |
| No | 70 | 11.5 |
| Total | 189 | — |

$p = 0.0237^{**}$

*Refers to the number of correct responses to board of adjustment questionnaire questions E-1 to -25.

**As used here, p is derived from an F statistic. For a discussion of the statistical methods utilized in this Project, see note 32 *supra*.

Table 7. *Relationship between the frequency of board of adjustment meetings (question C-5) and board members' knowledge of proper variance factors (questions E-1 to -25).*

| Frequency of meetings | n | Avg. no. correct responses* |
|------------------------------|-----|-----------------------------|
| Two times per month or more | | |
| often | 0 | — |
| Once per month | 66 | 13.1 |
| Once every two months | 27 | 11.2 |
| Once every three months | 28 | 12.4 |
| Once every six months | 28 | 13.6 |
| Once per year | 12 | 13.6 |
| Once every two years or less | | |
| often | 13 | 12.4 |
| Total | 174 | — |

$p = 0.1689^{**}$

*Refers to the number of correct responses to board of adjustment questionnaire questions E-1 to -25.

**As used here, p is derived from an F statistic. For a discussion of the statistical methods utilized in this Project, see note 32 *supra*.

APPENDIX VI

*Zoning Administrator Questionnaire Responses*Table 1. *Question A-1: Age.*

| Age Group | No. | (%) |
|-------------|-----|---------|
| 25-35 | 18 | (28.1) |
| 36-45 | 10 | (15.6) |
| 46-55 | 14 | (21.9) |
| 56-65 | 13 | (20.3) |
| Over 66 | 7 | (10.9) |
| No response | 2 | (3.2) |
| Totals | 64 | (100.0) |

Table 2. *Question A-2: Sex.*

| Sex | No. | (%) |
|--------|-----|---------|
| Male | 59 | (92.2) |
| Female | 5 | (7.8) |
| Totals | 64 | (100.0) |

Table 3. *Question A-3: Highest educational degree attained.*

| Education | No. | (%) |
|--------------------------|-----|---------|
| Less than high school | 1 | (1.6) |
| High school diploma | 28 | (43.8) |
| Some college experience | 8 | (12.5) |
| Four-year college degree | 21 | (32.8) |
| Post-graduate experience | 4 | (6.3) |
| No response | 2 | (3.0) |
| Totals | 64 | (100.0) |

Table 4. *Question A-4: Has any of your formal education been in any way related to land use planning?*

| Responses | No. | (%) |
|-------------|-----|---------|
| Yes | 14 | (21.9) |
| No | 49 | (76.6) |
| No response | 1 | (1.5) |
| Totals | 64 | (100.0) |

Table 5. *Question A-6: Number of years lived in the county.*

| Years | No. | (%) |
|--------------|-----|---------|
| 1-5 | 11 | (17.2) |
| 6-10 | 7 | (10.9) |
| 11-15 | 9 | (14.1) |
| 16-20 | 1 | (1.6) |
| 21-30 | 6 | (9.4) |
| 31-40 | 5 | (7.8) |
| 41-50 | 8 | (12.5) |
| More than 50 | 11 | (17.2) |
| No response | 6 | (9.3) |
| Totals | 64 | (100.0) |

Table 6. *Question A-7: Do you reside in an incorporated or unincorporated area of the county?*

| Responses | No. | (%) |
|----------------|-----|---------|
| Incorporated | 13 | (20.3) |
| Unincorporated | 46 | (71.9) |
| No response | 5 | (7.8) |
| Totals | 64 | (100.0) |

Table 7. *Question A-8: How did you learn the skills that you use as county zoning administrator?*

| Responses* | No. | (%)** |
|---|-----|--------|
| Experience | 54 | (86.4) |
| Formal education | 15 | (23.4) |
| Instructions provided by previous county zoning administrator | 18 | (28.1) |
| Instructions provided by county attorney or assistant county attorney | 17 | (26.4) |
| Independent research | 29 | (45.3) |
| Other | 10 | (15.6) |
| No response | 3 | (4.7) |
| Totals | 146 | -- |

*More than one possible response per zoning administrator.

**Percentage of zoning administrators responding (64).

Table 8. *Question A-9: Why was zoning originally adopted in your county?*

| Responses* | No. | (%)** |
|---|-----|--------|
| Prerequisite to federal funds for some construction project | 3 | (4.7) |
| Control placement of mobile homes in rural area | 20 | (31.3) |
| Preserve prime agricultural land | 43 | (67.2) |
| To limit or plan for the expansion of municipal areas | 16 | (25.0) |
| Other | 18 | (28.1) |
| No response | 4 | (6.3) |
| Totals | 104 | -- |

*More than one possible response per zoning administrator.

**Percentage of zoning administrators responding (64).

Table 9. *Question A-10: Are you acquainted with Iowa Code chapter 358A?*

| Responses | No. | (%) |
|-------------|-----|---------|
| Yes* | 49 | (76.6) |
| No** | 8 | (12.5) |
| No response | 7 | (10.9) |
| Totals | 64 | (100.0) |

*Responses of "Yes" with no explanation included.

**Responses of "Yes" with patently incorrect explanation included.

Table 10. *Question A-11: Are you acquainted with any Iowa Supreme Court cases concerning the subject of zoning?*

| Responses | No. | (%) |
|-------------|-----|---------|
| Yes* | 15 | (23.4) |
| No** | 46 | (71.9) |
| No response | 3 | (4.7) |
| Totals | 64 | (100.0) |

*Responses of "Yes" with no explanation included.

**Responses of "Yes" with patently incorrect explanation included.

Table 11. *Question B-1: How long have you served in your present capacity as county zoning administrator?*

| Years | No. | (%) |
|--------------|-----|---------|
| 0-5 | 40 | (62.5) |
| 6-10 | 16 | (25.0) |
| 11-20 | 7 | (10.9) |
| More than 20 | 1 | (1.6) |
| Totals | 64 | (100.0) |

Table 12. *Question B-2: How many hours per week do you devote to zoning duties?*

| Hours | No. | (%) |
|--------------|-----|---------|
| 0-5 | 25 | (39.1) |
| 6-10 | 9 | (14.1) |
| 11-20 | 17 | (26.6) |
| 21-30 | 2 | (3.1) |
| 31-40 | 8 | (12.5) |
| More than 40 | 2 | (3.1) |
| No response | 1 | (1.5) |
| Totals | 64 | (100.0) |

Table 13. *Question B-3: How did you obtain your position as county zoning administrator?*

| Responses* | No. | (%)** |
|---|-----|--------|
| The position came with another job | 24 | (37.5) |
| Applied in response to vacancy announcement | 17 | (26.6) |
| Was approached by a Supervisor or other county official | 30 | (46.9) |
| Other | 6 | (9.4) |
| Totals | 77 | — |

*More than one possible response per zoning administrator.

**Percentage of zoning administrators responding (64).

Table 14. *Question B-4: Have you ever held another appointed position in this or another county?*

| Responses | No. | (%) |
|-------------|-----|---------|
| Yes | 31 | (48.4) |
| No | 28 | (43.8) |
| No response | 5 | (7.8) |
| Totals | 64 | (100.0) |

Table 15. *Question C-1: Does your county have a building code?*

| Responses | No. | (%) |
|-------------|-----|---------|
| Yes | 13 | (20.3) |
| No | 49 | (76.6) |
| No response | 2 | (3.1) |
| Totals | 64 | (100.0) |

Table 16. *Question C-2: Do you grant building/zoning permits?*

| Responses | No. | (%) |
|-------------|-----|---------|
| Yes | 63 | (98.4) |
| No | 0 | — |
| No response | 1 | (1.6) |
| Totals | 64 | (100.0) |

Table 17. *Question C-3: As your best estimate, how many building starts occur in which the builder, through ignorance, negligence, or intention, commences construction without seeking a permit?*

| Responses | No. | (%) |
|---------------|-----|---------|
| 0-5% | 35 | (54.7) |
| 6-25% | 18 | (28.1) |
| 26-50% | 5 | (7.8) |
| More than 50% | 4 | (6.3) |
| No response | 2 | (3.1) |
| Totals | 64 | (100.0) |

Table 18. *Question C-4 (Part 1): Do you seek advice on whether to grant individual building permits?*

| Responses | No. | (%) |
|-------------|-----|---------|
| Yes | 35 | (54.7) |
| No | 27 | (42.2) |
| No response | 2 | (3.1) |
| Totals | 64 | (100.0) |

Table 19. *Question C-4 (Part 2): If yes, in what percentage of all cases do you seek such advice?*

| Responses | No. | (%)* |
|---------------|------|--------|
| Less than 25% | 32 | (50.0) |
| 25-49% | 1 | (1.6) |
| 50-74% | 1 | (1.6) |
| More than 75% | 3 | (4.7) |
| Totals | 37** | — |

*Percentage of zoning administrators responding (64).

**Includes some respondents who answered "no" to question C-4 (Part 1).

Table 20. *Question C-4 (Part 3): From whom do you seek such advice?*

| Responses* | No. | (%)** |
|------------------------------------|-----|--------|
| Board of adjustment members | 14 | (21.9) |
| Zoning commission member | 21 | (32.8) |
| County attorney | 25 | (39.1) |
| Other county zoning administrators | 4 | (6.3) |
| Other | 12 | (18.8) |
| Totals | 76 | — |

*More than one possible response per zoning administrator.

**Percentage of zoning administrators responding (64).

Table 21. *Question D-1: Do you advise applicants that they can seek relief in the form of a map amendment (rezoning) or variance after the denial of a building permit?*

| Responses | No. | (%) |
|-------------|-----|---------|
| Yes | 53 | (82.8) |
| No | 4 | (6.3) |
| No response | 7 | (10.9) |
| Totals | 64 | (100.0) |

Table 22. *Question D-2: Do you advise applicants regarding which form of relief—either a map amendment or variance—should be pursued after the denial of the building permit?*

| Responses | No. | (%) |
|-------------|-----|---------|
| Yes | 52 | (81.3) |
| No | 5 | (7.8) |
| No response | 7 | (10.9) |
| Totals | 64 | (100.0) |

Table 23. *Question D-3: Who makes the final decision regarding which form of relief—either a map amendment or a variance—is sought after a building permit is denied: you or the applicant?*

| Responses | No. | (%) |
|----------------------|-----|---------|
| Zoning administrator | 16 | (25.0) |
| Applicant | 38 | (59.4) |
| Other* | 10 | (15.6) |
| Totals | 64 | (100.0) |

*Includes questionnaires with no response.

Table 24. *Question D-4 (Part 1): Do you tell applicants whether you believe they will be successful in attempting to seek relief from the denial of the building permit?*

| Responses | No. | (%) |
|-------------|-----|---------|
| Yes | 31 | (48.4) |
| No | 27 | (42.2) |
| No response | 6 | (9.4) |
| Totals | 64 | (100.0) |

Table 25. *Question D-4 (Part 2): If yes, what reasons do you use to support your statement concerning chances of success?*

| Responses* | No. | (%)** |
|----------------------------|-----|--------|
| Similar prior county cases | 30 | (46.9) |
| Iowa Supreme Court cases | 5 | (7.8) |
| Personal opinion | 13 | (20.3) |
| Other | 6 | (9.4) |
| Totals | 54 | — |

*More than one possible response per zoning administrator.

**Percentage of zoning administrators responding (64).

Table 26. *Question D-5: In what percentage of the cases in which a building permit is denied are you successful in persuading the applicant not to appeal the denial of the permit?*

| Responses | No. | (%) |
|------------------------|-----|---------|
| 95% or more | 14 | (21.9) |
| 75-94% | 4 | (6.3) |
| 50-74% | 6 | (9.4) |
| 25-49% | 4 | (6.3) |
| 0-24% | 15 | (23.4) |
| No attempt to persuade | 8 | (12.5) |
| No response | 13 | (20.2) |
| Totals | 64 | (100.0) |

Table 27. *Question E-1: Please indicate which of the following functions you perform and for which bodies.*

| Responses* | Board of Adjustment | | Zoning Commission | |
|--|---------------------|--------|-------------------|--------|
| | No. | (%)** | No. | (%)** |
| Attend all or most meetings | 59 | (92.2) | 56 | (87.5) |
| Act as secretary | 36 | (56.3) | 34 | (53.1) |
| Investigate petitions | 46 | (71.9) | 44 | (68.7) |
| Present objective factual background of each petition to the board or commission | 49 | (76.6) | 49 | (76.6) |
| Make a formal recommendation concerning each petition | 20 | (31.3) | 22 | (34.4) |
| Make a recommendation only on request | 32 | (50.0) | 29 | (45.3) |
| Other | 3 | (4.7) | 2 | (3.1) |
| Totals | 245 | — | 236 | — |

*More than one possible response per zoning administrator.

**Percentage of zoning administrators responding (64).

Table 28. *Question E-2: In column A below check any of the following which usually occur in an ordinary board of adjustment hearing. In column B check any of those which may occur if a case is expected to cause public controversy or lead to litigation:*

| Responses* | A | | B | |
|---|-----|--------|-----|--------|
| | No. | (%)** | No. | (%)** |
| A stenographic record is taken | 27 | (42.2) | 23 | (35.9) |
| Written or oral notice is given to interested persons even though the ordinance does not require it | 40 | (62.5) | 26 | (40.6) |
| Rules of procedure are adopted for the hearing | 33 | (51.6) | 29 | (45.3) |
| An explanation of the hearing procedure is given before the hearing to those present | 37 | (57.8) | 27 | (42.2) |
| Witnesses are subpoenaed | 1 | (1.6) | 10 | (15.6) |
| An official report is prepared on an application by the administrative staff | 23 | (35.9) | 14 | (21.9) |
| Board members visit the site or gather outside information | 38 | (59.4) | 35 | (54.7) |
| The Zoning Commission or other official submit a report on applications | 17 | (26.6) | 15 | (23.4) |
| The County Attorney is present at the hearing | 10 | (15.6) | 34 | (53.1) |
| Witnesses are sworn to an oath | 2 | (3.1) | 9 | (14.1) |
| Totals | 228 | — | 222 | — |

*More than one possible response per zoning administrator.

**Percentage of zoning administrators responding (64).

Table 29. *Question F-1: Check any of the following types of variances that are granted by your county board of adjustment:*

| Responses* | No. | (%)** |
|--|-----|--------|
| “Area” or “bulk” variances (i.e., variances which permit landowners to construct permitted uses on lots that do not comply with zoning ordinances’ minimum lot size or setback requirements) | 47 | (73.4) |
| “Use” variances (i.e., variances which permit landowners to construct uses that are otherwise prohibited by the zoning ordinance such as a commercial building in an agricultural district) | 20 | (31.3) |
| Other types of variances granted | 10 | (15.6) |
| No response | 9 | (14.1) |
| Totals | 86 | — |

*More than one possible response per zoning administrator.

**Percentage of zoning administrators responding (64).

Table 30. *Question F-2: If “use” variances, as explained in F-1 above, are not allowed in your county, it is because:*

| Responses | No. | (%) |
|--|-----|---------|
| The county zoning ordinance prohibits use variances. | 26 | (40.6) |
| The board of adjustment has a policy not to allow use variances. | 7 | (10.9) |
| Other | 3 | (4.7) |
| No response | 28 | (43.8) |
| Totals | 64 | (100.0) |

Table 31. *Question F-4 (Part 1): Is there an absolute minimum lot size below which the zoning commission or board of supervisors will not consider a map amendment?*

| Responses | No. | (%) |
|-------------|-----|---------|
| Yes | 29 | (45.3) |
| No | 27 | (42.2) |
| No response | 8 | (12.5) |
| Totals | 64 | (100.0) |

Table 32. *Question F-4 (Part 2): If yes, this absolute minimum lot size is required:*

| Responses | No. | (%) |
|--|-----|---------|
| By the county zoning ordinance | 25 | (39.1) |
| By zoning commission or board of supervisors | 6 | (9.4) |
| No response | 33 | (51.5) |
| Totals | 64 | (100.0) |

Table 33. Question G-1 to -25: Listed below are hypothetical facts that may apply to a variance application made to the board of adjustment. Please indicate in the first column (A) the degree of importance that each fact merits, in your personal opinion, in the consideration of a variance application. Please estimate and indicate in the second column (B) the degree of importance given each of these facts by the entire board of adjustment. Use the following scale:

- 1—This fact provides overwhelming evidence that the variance application should be denied.
- 2—This fact makes it more likely than not that the variance application should be denied.
- 3—This fact makes no difference in determining whether a variance application should be granted or denied.
- 4—This fact makes it more likely than not that a variance application should be granted.
- 5—This fact provides overwhelming evidence that the variance application should be granted.

| | (A) Personal Opinion | | | | | | | | | | (B) Board's Opinion | | | | | |
|---|-------------------------|--------------|--------------|--------------|--------------|--------------|----------------|-----------|----|--------------|------------------------|--------------|--------------|--------------|----------------|-----------|
| | n* | 1 No. (%) | 2 No. (%) | 3 No. (%) | 4 No. (%) | 5 No. (%) | \bar{E}^{**} | p^{***} | n* | 1 No. (%) | 2 No. (%) | 3 No. (%) | 4 No. (%) | 5 No. (%) | \bar{E}^{**} | p^{***} |
| 1. Another use is available that would provide the petitioner with a reasonable profit without the need for a variance. | 51 | 13 (25.5) | 16 (31.4) | 18 (35.3) | 2 (3.9) | 2 (3.9) | 2.29 | 0.000 | 47 | 4 (8.5) | 15 (31.9) | 24 (51.1) | 3 (6.4) | 1 (2.1) | 2.61 | 0.003 |
| 2. Prime agricultural land will be lost to production if the variance application is granted. | 52 | 21 (40.4) | 23 (44.2) | 4 (7.7) | 2 (3.8) | 2 (3.8) | 1.87 | 0.000 | 48 | 14 (29.2) | 22 (45.8) | 10 (20.8) | 1 (2.1) | 1 (2.1) | 2.02 | 0.000 |
| 3. A zone in which the requested use is permitted is nearby. | 52 | 5 (9.6) | 14 (26.9) | 18 (34.6) | 13 (25.0) | 2 (3.8) | 2.87 | 0.350 | 49 | 2 (4.1) | 9 (18.4) | 20 (40.8) | 15 (30.6) | 3 (6.1) | 3.16 | 0.232 |
| 4. The zoning administrator or other county official recommends that the variance application be denied. | 50 | 13 (26.0) | 22 (44.0) | 12 (24.0) | 2 (4.0) | 1 (2.0) | 2.12 | 0.000 | 46 | 8 (17.4) | 20 (43.5) | 12 (26.1) | 2 (4.3) | 4 (8.7) | 2.44 | 0.001 |
| 5. The variance application is for the placement of a mobile home. | 50 | 8 (16.0) | 9 (18.0) | 21 (42.0) | 6 (12.0) | 6 (12.0) | 2.86 | 0.412 | 46 | 6 (16.7) | 8 (17.4) | 23 (50.0) | 8 (17.4) | 1 (2.2) | 2.78 | 0.133 |

*n = total number of responses in the sample (excludes "no response")

** \bar{E} = mean

***p = probability (derived from "t" statistic, see note 32 supra).

| | (A) <i>Personal Opinion</i> | | | | | | | | (B) <i>Board's Opinion</i> | | | | | | | |
|--|--------------------------------|--------------|--------------|--------------|--------------|--------------|----------------|-----------|-------------------------------|--------------|--------------|--------------|--------------|--------------|----------------|-----------|
| | n* | 1 No. (%) | 2 No. (%) | 3 No. (%) | 4 No. (%) | 5 No. (%) | \bar{E}^{**} | p^{***} | n* | 1 No. (%) | 2 No. (%) | 3 No. (%) | 4 No. (%) | 5 No. (%) | \bar{E}^{**} | p^{***} |
| 6. The application is one for a permitted use; only the area requirements (e.g., front yard setback, lot area) are to be varied. | 52 | 4 (7.7) | 3 (5.8) | 7 (13.5) | 30 (57.7) | 8 (15.4) | 3.67 | 0.000 | 48 | 2 (4.2) | 3 (6.25) | 8 (16.7) | 25 (52.1) | 10 (20.8) | 3.79 | 0.000 |
| 7. The petitioner is likely to appeal to the district court if the variance is denied. | 53 | 4 (7.5) | 5 (9.4) | 40 (75.5) | 1 (1.9) | 3 (5.7) | 2.89 | 0.308 | 49 | 2 (4.1) | 5 (10.2) | 30 (61.2) | 10 (20.4) | 2 (4.1) | 3.10 | 0.375 |
| 8. Citizens are present to oppose the variance application. | 52 | 8 (15.4) | 17 (32.7) | 24 (46.2) | 1 (1.9) | 2 (3.8) | 2.46 | 0.000 | 47 | 8 (17.0) | 23 (48.9) | 12 (25.5) | 2 (4.3) | 2 (4.3) | 2.30 | 0.000 |
| 9. The community's economy would benefit if the variance were granted. | 54 | 2 (3.7) | 2 (3.7) | 26 (48.1) | 18 (33.3) | 6 (11.1) | 3.44 | 0.001 | 51 | 1 (2.0) | 4 (7.8) | 8 (15.7) | 32 (62.7) | 6 (11.8) | 3.75 | 0.000 |
| 10. The petitioner cannot make any reasonable legal use of the land without the variance. | 52 | 2 (3.8) | 1 (1.9) | 9 (17.3) | 27 (51.9) | 13 (25.0) | 3.92 | 0.000 | 48 | 0 — | 3 (6.3) | 6 (12.3) | 22 (45.8) | 17 (35.4) | 4.10 | 0.000 |
| 11. The petitioner is represented by an attorney. | 53 | 2 (3.8) | 1 (1.9) | 47 (88.7) | 2 (3.8) | 1 (1.9) | 2.98 | 0.799 | 50 | 2 (4.0) | 3 (6.0) | 34 (68.0) | 10 (20.0) | 1 (2.0) | 3.10 | 0.322 |
| 12. The petitioner or a member of the petitioner's family would benefit from the variance for medical/health reasons. | 51 | 2 (3.9) | 2 (3.9) | 25 (49.0) | 14 (27.5) | 8 (15.7) | 3.47 | 0.001 | 47 | 1 (2.1) | 6 (12.8) | 14 (29.8) | 20 (42.6) | 6 (12.8) | 3.51 | 0.001 |
| 13. The zoning administrator or other county official recommends that the variance application be granted. | 51 | 2 (3.9) | 1 (2.0) | 18 (35.3) | 24 (47.1) | 6 (11.8) | 3.61 | 0.000 | 46 | 1 (2.2) | 1 (2.2) | 12 (28.3) | 21 (67.4) | 11 (23.9) | 3.87 | 0.000 |
| 14. The petitioner created the need for a variance by dividing the property into smaller parcels. | 54 | 15 (27.8) | 21 (38.9) | 13 (24.1) | 2 (3.7) | 3 (5.6) | 2.20 | 0.000 | 48 | 11 (22.9) | 22 (45.8) | 8 (16.7) | 5 (10.4) | 2 (4.2) | 2.27 | 0.000 |
| 15. The petitioner would make more money from the property if the variance were granted. | 53 | 4 (7.5) | 12 (22.6) | 32 (60.4) | 3 (5.7) | 2 (3.8) | 2.76 | 0.036 | 49 | 1 (2.0) | 9 (18.4) | 27 (55.1) | 8 (16.3) | 4 (8.2) | 3.10 | 0.417 |
| 16. Those persons opposing the variance are represented by an attorney. | 52 | 2 (3.8) | 3 (5.8) | 45 (86.5) | 2 (3.8) | 0 — | 2.90 | 0.168 | 48 | 1 (2.1) | 11 (22.9) | 35 (72.9) | 1 (2.1) | 0 — | 2.75 | 0.002 |
| 17. The area is more suitable for the requested use than the uses permitted by the zoning ordinance. | 51 | 4 (7.8) | 4 (7.8) | 9 (17.6) | 24 (47.1) | 10 (19.6) | 3.63 | 0.000 | 45 | 1 (2.2) | 5 (11.1) | 10 (22.2) | 18 (40.0) | 11 (24.4) | 3.73 | 0.000 |
| 18. Although not authorized, the requested use is compatible with other uses in the area. | 49 | 5 (10.2) | 5 (10.2) | 13 (26.5) | 19 (38.8) | 7 (14.3) | 3.37 | 0.032 | 44 | 3 (6.8) | 8 (18.2) | 11 (25.0) | 14 (31.8) | 8 (18.2) | 3.36 | 0.048 |
| 19. The requested use would cause only an insignificant deviation from the requirements of the zoning ordinance. | 50 | 2 (4.0) | 5 (10.0) | 13 (26.0) | 22 (44.0) | 8 (16.0) | 3.58 | 0.000 | 47 | 1 (2.1) | 6 (12.8) | 7 (14.9) | 26 (55.3) | 7 (14.9) | 3.68 | 0.000 |

| | | | | | | | | | | | | | | | | |
|--|----|-----------|-----------|-----------|-----------|-----------|------|-------|----|-----------|-----------|-----------|-----------|-----------|------|-------|
| 20. Similar variances have been previously granted in the same area. | 53 | 2 (3.8) | 5 (9.4) | 15 (28.3) | 21 (39.6) | 10 (18.9) | 3.60 | 0.000 | 50 | 3 (6.0) | 4 (8.0) | 9 (18.0) | 24 (48.0) | 10 (20.0) | 3.68 | 0.000 |
| 21. The application is for a use not permitted in the district. | 53 | 24 (45.3) | 18 (34.0) | 7 (13.2) | 2 (3.8) | 2 (3.8) | 1.87 | 0.000 | 49 | 15 (30.6) | 19 (38.8) | 15 (30.6) | 9 (18.4) | 4 (8.2) | 2.08 | 0.000 |
| 22. The petitioner built a nonconforming use and now needs a variance to comply with the zoning ordinance. | 52 | 8 (15.4) | 12 (23.1) | 19 (36.5) | 9 (17.3) | 4 (7.7) | 2.79 | 0.188 | 47 | 15 (31.9) | 9 (19.1) | 13 (27.7) | 17 (36.2) | 3 (6.4) | 3.09 | 0.605 |
| 23. Citizens other than the petitioner are present to support the variance application. | 52 | 1 (1.9) | 2 (3.8) | 23 (44.2) | 21 (40.4) | 5 (9.6) | 3.52 | 0.000 | 48 | 2 (4.2) | 1 (2.1) | 12 (25.0) | 28 (58.3) | 5 (10.4) | 3.69 | 0.000 |
| 24. The petitioner purchased the property knowing that his planned use did not comply with the requirements of zoning ordinance. | 51 | 14 (27.5) | 19 (37.3) | 15 (29.4) | 1 (2.0) | 2 (3.9) | 2.18 | 0.000 | 45 | 10 (22.2) | 14 (31.1) | 16 (35.6) | 4 (8.9) | 1 (2.2) | 2.38 | 0.000 |
| 25. The petitioner's property is no different from the properties occupied by his neighbors. | 52 | 9 (17.3) | 10 (19.2) | 15 (28.8) | 15 (28.8) | 3 (5.8) | 2.87 | 0.418 | 47 | 2 (4.3) | 11 (23.4) | 13 (27.7) | 14 (29.8) | 7 (14.9) | 3.28 | 0.096 |

*n = total number of responses in the sample (excludes "no response")

** \bar{E} = mean

***p = probability (derived from "t" statistic, see note 32 *supra*).

Table 34. *Question H-1: In your opinion, what is the primary role of the board of adjustment pertaining to variances? (check one):*

| Responses | No. | (%)* |
|---|-------|--------|
| To allow deviations from the zoning ordinance that in the board's opinion will not be harmful to neighboring residents. | 22 | (34.4) |
| To ensure that the most beneficial use of land for the community is promoted. | 8 | (12.5) |
| To grant relief from the zoning ordinance to property owners who are affected by a poorly written zoning provision. | 3 | (4.7) |
| To ensure that the zoning ordinance does not burden a property owner's freedom to use the land as he/she pleases. | 4 | (6.3) |
| To grant relief from the zoning ordinance in extraordinary circumstances in which a property owner can otherwise make no reasonable use of the property without the requested variance. | 19 | (29.7) |
| To allow deviations from the zoning ordinance when the burden imposed on the property owner is greater than the benefits conferred to the public by the ordinance. | 14 | (21.9) |
| Other | 3 | (4.7) |
| No response | 9 | (14.1) |
| Totals | 101** | — |

*Percentage of zoning administrators responding (64).

**Some respondents checked more than one response.

Table 35. *Question I-1: Please check any of the following statements that describe the county zoning ordinance enforcement methods used in your county:*

| Responses* | No. | (%)** |
|--|-----|--------|
| The zoning administrator travels throughout the county to search out and identify structures built without a building permit. | 26 | (40.6) |
| The zoning administrator investigates building sites to verify that the construction conforms to the specifications of the building permit application. | 26 | (40.6) |
| Other county officials travel throughout the county to search out and identify structures built without a building permit. | 18 | (28.1) |
| The building permit requirement of the zoning ordinance is enforced only when a neighbor or other citizen complains that a structure has been built without a building permit. | 14 | (21.9) |
| No formal attempts are made to identify structures that have been built without prior issuance of a building permit. | 15 | (23.4) |
| Other enforcement mechanisms are used. | 10 | (15.6) |
| Totals | 109 | — |

*More than one possible response per zoning administrator.

**Percentage of zoning administrators responding (64).

Table 36. *Question J: In your opinion, the board of adjustment in your county grants:*

| Responses | No. | (%) |
|--|-----|---------|
| More variances than are justified. | 14 | (21.9) |
| Fewer variances than are justified. | 1 | (1.6) |
| Approximately a justifiable number of variances. | 41 | (64.1) |
| No response | 8 | (12.4) |
| Totals | 64 | (100.0) |

APPENDIX VII

Table 1. Summary of county board of adjustment actions.

| Type of action | Granted | | Denied | |
|------------------------|---------|--------|--------|--------|
| | No. | (%) | No. | (%) |
| Variances: | | | | |
| Use | 52 | (81.3) | 12 | (18.8) |
| Area | 418 | (91.5) | 39 | (8.5) |
| Total | 470 | (90.2) | 51 | (9.8) |
| Special Exceptions | 375 | (92.8) | 29 | (7.2) |
| Administrative Appeals | 7 | (87.5) | 1 | (12.5) |

Table 2. Summary of major variance factors derived from county board of adjustment minutes.

| Factor* | (% of total cases** | Granted | | Denied | |
|--------------------------------------|---------------------|---------|---------|--------|---------|
| | | No. | (%) | No. | (%) |
| Physical limitations*** | (13.6) | 65 | (91.5) | 6 | (8.5) |
| Benefit to local economy | (1.5) | 7 | (87.5) | 1 | (12.5) |
| Financial benefit to petitioner | (2.9) | 14 | (93.3) | 1 | (6.7) |
| Medical difficulties | (2.3) | 12 | (100.0) | 0 | — |
| Similar variances previously granted | (4.0) | 21 | (100.0) | 0 | — |
| Similar uses nearby | (3.3) | 16 | (94.1) | 1 | (5.9) |
| Mobile home | (5.6) | 27 | (93.1) | 2 | (6.9) |
| Favorable recommendation | (7.7) | 39 | (97.5) | 1 | (2.5) |
| Unfavorable recommendation | (5.8) | 20 | (66.7) | 10 | (33.3) |
| Built prior to variance application | (5.0) | 22 | (84.6) | 4 | (15.4) |
| Loss of productive farmland | (0.8) | 0 | — | 4 | (100.0) |
| No loss of productive farmland | (1.5) | 8 | (100.0) | 0 | — |
| Insufficient hardship | (1.9) | 0 | — | 10 | (100.0) |
| No explanation in minutes | (51.4) | 254 | (94.8) | 14 | (5.2) |

*More than one factor present in some cases.

**Total number of cases is 521, the total number of variance applications considered by county boards of adjustment.

***Includes cases in which productive farmland would or would not be lost by approving the application.

Table 3. Persons other than the petitioner present at the variance hearing.

| | (% of total cases* | Granted | | Denied | |
|-------------------------------------|--------------------|---------|---------|--------|--------|
| | | No. | (%) | No. | (%) |
| Petitioner's attorney | (2.7) | 12 | (85.7) | 2 | (14.3) |
| Objector's attorney | (1.2) | 3 | (50.0) | 3 | (50.0) |
| Both sides represented by attorneys | (1.0) | 1 | (20.0) | 4 | (80.0) |
| Objectors | (10.0) | 35 | (67.3) | 17 | (32.7) |
| Proponents | (4.0) | 21 | (100.0) | 0 | — |

*Total number of cases is 521, the total number of variance applications considered by county boards of adjustment.

APPENDIX VIII

A. Sample County Board of Adjustment Application No. 1

_____, 19____
Fee:

To: [County Zoning Administrator]

We, _____ request a variance to waive the _____ on the following described property:

for these reasons:

Signed _____

(A notarized statement of the decision is attached after the hearing. No reasons for the decision are included).

B. Sample County Board of Adjustment Application No. 2

REQUEST FOR VARIANCE of Section _____ of the Zoning Ordinance,
under which the Zoning Officer refused to issue a permit on _____, 19____.
Nature of variance requested (describe):

The applicant believes that the variance should be granted because:

a. He is unable to make reasonable use of his property for the following reason(s).

- Not financial in nature.
- Not self-created.
- Not based upon ignorance of restrictions prior to purchase.
- Suffered directly by the property in question.

and this hardship is:

- The result of the application of the Zoning Ordinance.
- Due to unique circumstances to the property in question and not shared by other properties in the vicinity.

b. The proposed variance will not alter the essential character of the neighborhood for the following reason(s):

c. The proposed variance is in accord with the purposes and intent of the Zoning Ordinance for the following reason(s):

Plans enclosed (see instruction sheet)

NOTE: I hereby certify that all of the above statements and the statements contained in any papers or plans submitted herewith are true to the best of my knowledge and belief.

(Signature)
Dated _____, 19____

APPENDIX IX

Table 1. *Boards of adjustment records on appeal.**

| Board Action | Court Action | |
|------------------------------|----------------|----------------|
| | Affirmed Board | Reversed Board |
| Grant of Variance | 0 | 3 |
| Denial of Variance | 0 | 0 |
| Grant of Special Use Permit | 1 | 3** |
| Denial of Special Use Permit | 2 | 2 |
| Administrative Appeal | 2 | 2 |
| Totals | 5 | 10*** |

*Fourteen cases challenging board action were dismissed before trial or were pending as of June 1982.

**Includes Spellmeyer v. Humboldt County Sanitary Landfill Comm'n, Civ. No. 14690, slip op. (Iowa Dist. Ct., Humboldt County, Iowa, May 13, 1982), in which an unknown disposition of a special use permit was reversed.

***Includes one case in which grant of both a variance and a special use permit was reversed in entirety.

Table 2. *Effect of judicial review on county board of adjustment compliance with judicial directives.**

| Counties in which boards of adjustment: | Have been sued | Have not been sued |
|---|----------------|--------------------|
| Have passed procedural rules*** | Black Hawk | Butler |
| | Buchanan | Cedar |
| | Clay | Dubuque |
| | Dickinson | Mitchell |
| | Hardin | Scott |
| | Humboldt | Story |
| | Jackson | 6 |
| | Linn | |
| | Marion | |
| | Polk | |
| | Pottawattamie | |
| | Woodbury | |
| | 12 | |
| Have not passed procedural rules | Cass | Adams |
| | Cerro Gordo | Allamakee |
| | Clinton | Appanoose |
| | Crawford | Audubon |
| | Dallas | Bremer |
| | Kossuth | Buena Vista |
| | Madison | Calhoun |
| | Poweshiek | Carroll |
| | Warren | Cherokee |
| | 9 | Clayton |
| | | Emmet |
| | | Fayette |
| | | Floyd |
| | Franklin | |
| | Fremont | |
| | Greene | |

| Counties in which boards of adjustment: | Have been sued | Have not been sued |
|---|---|---|
| Have not passed procedural rules | | Grundy Guthrie Harrison Henry Ida Jasper Johnson Louisa Lyon Marshall Monona Montgomery Muscatine Osceola Page Plymouth Pocahontas Shelby Sioux Tama Wapello Webster <u>Worth</u> 39 |
| Make findings** | Black Hawk Buchanan Cerro Gordo Clay Clinton Dickinson Humboldt Linn Marion Polk <u>Pottawattamie</u> 11 | Jasper Scott <u>Story</u> 3 |
| Do not make findings | Cass Crawford*** Dallas Hardin Jackson Kossuth Madison*** Poweshiek Warren <u>Woodbury</u> 10 | Adams Allamakee Appanoose Audubon Bremer Buena Vista Butler Calhoun Carroll Cedar Cherokee Clayton Dubuque |

| Counties in which boards of adjustment: | Have been sued | Have not been sued |
|---|----------------|--|
| Do not make findings | | Emmet Fayette Floyd Franklin Fremont Greene Grundy Guthrie Harrison Henry Ida Johnson Louisa Lyon Marshall Mitchell Monona Montgomery Muscatine Osceola Page Plymouth Pocahontas Shelby Sioux Tama Wapello Webster Worth |
| | | 42 |

*The period of the record search was approximately two years. See note 27 *supra*.

**See text accompanying notes 628-49 *supra* for discussion of the findings requirement.

***The Project's classification means that rules were or were not available to the public in June 1982.