

Questions for Board of Adjustments to Consider

1. Jurisdictional Check: Is this a "Use Variance"?

- **Does the applicant's request seek to allow a use that the Alders just voted down?** If the Alders rejected rezoning a plot from single-family residential to commercial, the BOA must ask if the applicant is now asking for a "use variance" to run that exact same thing.
- **The Board's Answer:** In most jurisdictions, the BOA **must answer "Yes" and reject the case**. Granting a use variance after a legislative rejection amounts to unauthorized, illegal rezoning. The BOA can only adjust dimensional rules (like setbacks or heights), not alter the map. [[1](#), [2](#), [4](#), [5](#)]

2. Evaluating the Hardship under the Old Rules

- **Is there a physical hardship inherent to the land itself?** The board must ask if the plot has unique physical constraints—such as steep topography, severe rock formations, or an irregular shape.
- **The Board's Answer:** The board must determine if the land's physical limitations make it impossible to build what is permitted under current zoning. **The Alders' rejection of the zoning change cannot be cited as the hardship.**

3. The "Reasonable Use" Test

- **Does the existing zoning deny all reasonable economic use of the property?** Can the property owner still build a compliant structure under the current rules.
- **The Board's Answer:** The board cannot grant relief just because the current rules prevent the owner from making a higher profit.

4. Preserving the Spirit of the Comprehensive Plan

The BOA is legally bound to uphold the "spirit and intent" of the city's development guidelines.

- **Will granting this adjustment conflict with the city's master plan or the Alders' policy goals?** If the Alders rejected the rezoning because it contradicts the town's [Comprehensive Plan](#), the BOA must evaluate if a variance would create the exact same issue.
- **The Board's Answer:** The BOA must determine if the requested modification bypasses or undermines the broader legislative intent of the city's elected leadership.

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5. The Traffic & Public Safety Test

Because the Alders flagged traffic and school safety as core issues, the BOA must rigidly evaluate these factors against the existing R-1 standards.

- **Will granting an adjustment to the R-1 rules worsen the traffic or safety hazards near the school?**
 - **The Board's Answer:** The BOA must determine if any modification (such as altering driveway placements or reducing street setbacks) will negatively impact school bus routes, student crosswalk safety, or general traffic congestion. If the modification compromises public safety near the school, the board must deny