

CHAPTER 165 ZONING REGULATIONS

SECTION 165.02 PROCEDURES, AMENDMENT, AND ENFORCEMENT

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1. CONFORMANCE REQUIRED

Except as hereinafter specified, no building or structure shall be erected, converted, enlarged, reconstructed or structurally altered, nor shall any building or land be used, which does not comply with all of the district regulations established by the Zoning Ordinance for the district in which the building or land is located.

2. BUILDING PERMIT AND SITE PLAN REQUIRED

No building, structure, foundation, tower, fence, or wall shall be constructed or erected without prior approval and receipt of a building permit from the City. No building permit and no certificate of occupancy shall be issued until a Site Plan or Special Use Permit has been approved as provided herein this Chapter. Approval of a Site Plan is required as follows for all uses in accordance with the procedures and requirements of Chapter 165.06 herein this ordinance. A record of applications and site plans shall be kept in the office of the Zoning Administrator.

3. ADMINISTRATION AND ENFORCEMENT

A. Zoning Administrator

There is hereby created the position of Zoning Administrator, who shall be named by the City Manager. The Zoning Administrator shall administer and enforce the provisions of the Zoning Ordinance and shall have the following powers and duties in connection therewith:

- (1) To issue all permits and certificates required by the Zoning Ordinance.

- (2) To notify in writing the person responsible for any violations of any of the provisions of the Zoning Ordinance, indicating the nature of the violation and ordering the action necessary to correct it.
- (3) To order discontinuance of illegal use of land, buildings, or structures or of additions, alterations or structural changes thereto; discontinuance of any illegal work being done, or take any other action authorized by the Zoning Ordinance to ensure compliance with or to prevent violation of its provisions.

The City Manager may delegate the powers and duties of the office of Zoning Administrator to any other officer or employee of the City or may combine the powers and duties of this office with any other office or position.

B. Board of Adjustment

A Board of Adjustment is hereby established which shall consist of five (5) members appointed by the Mayor subject to confirmation by the Council for staggered terms of five years. The terms of office of the members of the Board of Adjustment and the manner of their appointment shall be as provided by statute. Vacancies will occur in said Board on the death, resignation, or failure to meet residency requirements of any member of said board. If any member fails to attend at least 75% of the official meetings in one year an automatic vacancy will exist on said board. A member may have only one excused absence per year. The excused absence shall only be granted by the Chairperson of the Board. When a vacancy occurs, the vacancy will then be filled in the same manner as the original appointment for the remainder of the unexpired term.

- (1) Meetings: The meetings of the Board shall be held at the call of the Chairperson and at such other times as the Board may determine. Such Chairperson or, in the absence of the Chairperson, the acting Chairperson may administer oaths, subpoena witnesses and compel the attendance of witnesses. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member on each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the City Clerk and shall be a public record. The presence of three (3) members is necessary to constitute a quorum.
- (2) Appeals: Appeals to the Board may be taken by any person aggrieved or by any officer, department, board or bureau of the City affected by any decision of the Zoning Administrator. Such appeal shall be taken within ten (10) days by filing with the Zoning Administrator and with the Board a notice of appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Board all papers constituting the record upon which the action appealed from is taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Board, after notice of appeal shall have been filed with the Zoning Administrator, that by reason of the facts stated in the certificate, a stay would, in the Administrator's opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or by a court of record on application, on notice to the Zoning Administrator and on due cause shown. The Board shall fix a reasonable time for the hearing on the appeal, give public notice thereof as well as due notice to the parties in interest, and decide the same within a reasonable time. At the hearing any party may appear in person or

by agent, or by attorney. Before an appeal is filed with the Board of Adjustment, the appellant shall pay to the City Clerk the fee as established by resolution of the City Council.

(3) Power and Duties: The Board shall have the following powers and duties:

- a. **Appeals** - To hear and decide appeals where it is alleged there is an error in any order, requirements, decision or determination made by the Zoning Administrator in enforcement of the Zoning Ordinance.
- b. **Variances** - To grant a variance from the terms of the Zoning Ordinance when a property owner can show that the owner's property was acquired in good faith and where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property, or where by reason of exceptional topographical conditions or other extraordinary or exceptional situation, the strict application of the terms of the Zoning Ordinance actually prohibits the use of such property in a manner reasonably similar to that of other property in the same district, and where the Board is satisfied under the evidence before it that a literal enforcement of the provisions of the Zoning Ordinance would result in unnecessary hardship; provided, however, all variations granted under this clause shall be in harmony with the general purpose and intent of the Zoning Ordinance. Furthermore, the following findings shall be made in order to grant a variance:
 - i. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district;
 - ii. That literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance;
 - iii. That the special conditions and circumstances do not result from the actions of the applicant;
 - iv. That granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same district. No nonconforming use of neighboring lands, structures or buildings in other districts shall be considered grounds for the issuance of a variance.

In granting any variance, the Board may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violation of any such conditions and safeguards shall be deemed a violation of this Ordinance. Under no circumstances shall the Board grant a variance to allow a use not permissible under the terms of the Zoning Ordinance in the district involved, or any use expressly or by implication prohibited by the terms of the Zoning Ordinance in said district.

If relevant and applicable, the Board may prescribe a time limit within which the action for which the variance is required shall begin or be completed, or both. Failure to begin or complete, or both, such action within the time limit shall void the variance. If no time limit is set by the Board and if relevant to the variance, then the granted variances shall become

void eighteen months after the date of the Board approval unless a building permit has been issued for the construction provided for by the variance. In the event the building permit for the construction provided for by the variance expires or is canceled, then the variance approval shall become void.

- c. **Special Use Permits** - To review and consider approval of a Special Use Permit for a Special Use as identified Permitted and Special Uses Table contained in CHAPTER 165.05 of the Zoning Regulations. The following shall be required:
- i. Special Use Permit Application - A site plan (including number of copies), application form, and any additional information and details as specified and required by the Zoning Administrator as necessary to determine compliance with all applicable codes and requirements shall be submitted to the Zoning Administrator along with the Special Use Permit Application fee as established by resolution of the City Council.
 - ii. Special Use Permit Procedure - The Special Use Permit Application shall be reviewed by the Zoning Administrator, or their designee, for completeness. Incomplete applications shall be returned to the applicant with a list of the missing items or details. Applications deemed completed shall be distributed to other city departments and other agencies as necessary for review and comment as to its compliance with all zoning regulations and other pertinent city codes, regulations, and policies.
 - iii. Special Use Permit Review by Board of Adjustment - Subsequent to review by the Zoning Administrator and other city departments and agencies, the Zoning Administrator, or their designee, shall submit to all members of the Board a copy of the Special Use Permit Application along with a written recommendation as to the application's conformity with the rules and regulations of the city.
 - iv. The Board shall subsequently hold a duly noticed public hearing as prescribed by their rules of procedures, and the noticing requirements contained herein, and review the Application for conformity with the zoning regulations and standards. The Board may approve, approve with conditions, or deny the Special Use Permit Application.
 - v. Findings for Approval - In order to approve a Special Use Permit, the Board shall make the following findings:
 - 1 - The proposed use, site improvements, and site plan comply with the minimum requirements of the zoning district in which it is proposed to be located;
 - 2 - The property is of adequate size to accommodate the proposed use and site improvements including setbacks, open space, stormwater management, and off-street parking;
 - 3 - The proposed use and site improvements will not unduly impact the health, safety, and general welfare of persons residing or working in adjoining property or surrounding area;

- 4 - The proposed use and site improvements shall not unduly increase traffic congestion;
 - 5 - The proposed use and site improvements will not unduly burden public utilities or increase risk to flooding;
 - 6 - The proposed use and site improvements are compatible with the surrounding neighborhood and shall not diminish or impair established property values in adjoining or surrounding property; and,
 - 7 - The issuance of the Special Use Permit will not endanger, jeopardize or harm the health, safety or welfare of the properties and the community.
- vi. Expiration of Special Use Permit Approval - All Special Use Permit approvals shall expire and terminate 24-months after the date of the Board approval unless a building permit has been issued for the construction provided for in the related site plan. In the event the building permit for the construction provided for in the related site plan expires or is canceled, then such site plan approval shall thereupon terminate.
- d. **Public Hearing Noticing**
- Notice of each Board of Adjustment public hearing shall be mailed by first class mail 10 days prior to the meeting to all property owners within 200 feet of the boundary of the property requesting a Variance or Special Use Permit.
- e. **Decisions of the Board.**
- i. In exercising the above powers, the Board may, in conformity with the provisions of law, reverse or affirm, wholly or in part, or modify the order, requirement, decision or determination appealed from, and make such order, requirement, decision or determination as it believes proper, and to that end shall have all of the powers of the Zoning Administrator. The concurring vote of three (3) of the members of the Board shall be necessary to reverse any order, requirement, decision or determination of the Zoning Administrator, or to decide in favor of the applicant on any matter on which it is required to pass under this chapter.
 - ii. No act of the Board shall become effective until after the decision of the Board has been filed. Such decision may be contained within the minutes of the Board.
 - iii. Each variance granted by the Board shall contain a date upon which it shall be effective.
 - iv. Every appeal, variance, or Special Use Permit granted or denied by the Board shall be supported by a written testimony or evidence submitted in connection therewith.
 - v. Any taxpayer, or any officer, department, board or bureau of the City, or any person or persons jointly or severally aggrieved by any decision of the Board may present to a court of record a petition, pursuant to Iowa Code 17A.19, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality.

Such petition shall be presented to the court within thirty (30) days after the filing of the decision in the office of the Board.

4. CERTIFICATE OF OCCUPANCY

No land shall be occupied or used, and no building hereafter erected or structurally altered shall be occupied or used in whole or in part for any purpose whatsoever, until a certificate is issued by the Zoning Administrator, stating that the building and use comply with the provisions of the Zoning Ordinance. No change of use shall be made in any building or part thereof, now or hereafter erected or structurally altered, without a permit being issued therefor by the Zoning Administrator. No permit shall be issued to make a change unless the changes are in conformity with provisions of the Zoning Ordinance. Nothing in this section shall prevent the continuance of a nonconforming use as authorized in the Zoning Ordinance, unless discontinuance is necessary for the safety of life or property.

A. Construction Compliance Certificate

Subsequent to the adoption of this chapter a construction compliance certificate shall be obtained from the Administrative Officer before any building or structure shall be erected, reconstructed, or structurally altered to increase the exterior dimensions, height, or floor area, or remodeled to increase the exterior dimensions, height, or floor area, or remodeled to increase the number of dwelling units or accommodate a change in use of the building and/or premises or part thereof. The construction compliance certificate shall state that the proposed construction complies with all provisions of this chapter, and no subsequent modifications shall be made to plans or to actual construction that would be in violation of this chapter. A construction compliance certificate issued under this section shall lapse six months from the date of its issuance unless construction has begun within that period and shall also lapse if construction is stopped after it is initiated for a period of time in excess of 120 days. In the event that a construction compliance certificate lapses for either of the above reasons, a new certificate shall be required before construction can resume. This amendment shall apply to all outstanding building permits at the time of its adoption so that if construction is not commenced within six months after the date of this amendment, the rights under the building permit shall lapse.

B. Multiple-Dwelling Construction Compliance Certificates

Requests for construction of multiple-dwelling compliance certificates shall be examined by the Fire Chief who shall make a recommendation for approval or disapproval to the Zoning Administrator who shall finally either approve or disapprove the request.

C. Occupancy Compliance Certificate

Subsequent to the effective date of this chapter, no change in the use or occupancy of land nor any change in use or occupancy in an existing building, other than for single-family dwelling purposes, shall be made, nor shall any new building be occupied for any purpose other than a single-family dwelling until an occupancy compliance certificate has been issued by the Administrative Officer. Every occupancy compliance certificate shall state that the new occupancy complies with all provisions of this chapter and no subsequent modifications shall be made to the occupancy, use, or method of operation that would be in violation of this chapter. No single-, two-, or multiple-family dwelling or other structure designed for human use or occupancy shall be occupied nor shall

any occupancy compliance certificate be issued for any of the foregoing until and unless all improvements and installations required by Chapter 170 of this Code of Ordinances have been made and accepted by the City.

D. Application for Compliance Certificates

Applications for compliance certificates shall be made prior to beginning construction or assuming occupancy on fully completed application forms obtained from the Administrative Officer, accompanied by such plans and information necessary to determine that the proposed construction or occupancy complies with all applicable provisions of this chapter.

5. AMENDMENTS

The City Council may, from time to time, on its own action or on petition, after public notice and hearings as provided by law, and after report by the Zoning Commission, amend, supplement, or change the boundaries or regulations herein or subsequently established, and such amendment shall not become effective except by the favorable vote of a majority of all the members of the Council. The procedures for amendment are as follows:

A. Request by Petition

Whenever any person desires that any amendment, or change be made in the Zoning Ordinance, including the text and/or map, as to any property covered by the Zoning Ordinance, and there is presented to the Council a petition requesting such change or amendment and clearly describing the property and its boundaries as to which the change or amendment is desired, duly signed by the owners of fifty percent (50%) of the area of all real estate included within the boundaries of said tract as described in said petition, and in addition, duly signed by the owners of fifty percent (50%) of the area of all real estate lying outside of said tract but within two hundred (200) feet of the boundaries thereof, and intervening streets and alleys not to be included in computing such two hundred (200) feet, it is the duty of the Council to receive and refer the request to the Zoning Commission for its review and consideration at a duly noticed public meeting in accordance to the Commission's rules of procedures and the noticing requirements contained herein. The findings and recommendations of the Zoning Commission shall then be forwarded to the City Council for consideration and action.

B. City Council Referral

The owner of a property may submit a written request to the Zoning Administrator for their property to be rezoned. If the requested rezoning is not consistent with the adopted Comprehensive Plan, the property owner may further request the Comprehensive Plan be amended as part of the requested rezoning. The Zoning Administrator will then present this request to the City Council, who, at their discretion, may adopt a motion to refer the request to the Zoning Commission for consideration at a duly noticed public meeting in accordance with their procedures and the noticing requirements contained herein. The findings and recommendations of the Zoning Commission shall then be forwarded to the City Council for consideration and action. The City Council may further by motion forward their own request to the Zoning Commission to review and consider an amendment to the adopted Comprehensive Plan, the rezoning of a given property or properties, or amendments to the zoning regulations.

C. Zoning Commission Disapproval or Protest Petition

In case the proposed amendment, supplement or change is disapproved by the Zoning Commission, or a protest is presented duly signed by the owners of twenty percent (20%) or more either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof, extending the depth of one lot or not to exceed two hundred (200) feet therefrom, or of those directly opposite thereto, extending the depth of one lot or not to exceed two hundred (200) feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of at least three-fourths ($\frac{3}{4}$) of all members of the Council. Whenever any petition for amendment, supplement or change of the zoning districts or regulations herein contained or subsequently established has been denied by the Council, then no new petition covering the same property or the same property and additional property shall be filed with or considered by the Council until one year shall have elapsed from the date of filing of the first petition.

D. Public Hearing Noticing

Not less than seven nor more than 20 days' notice of the time and place of the City Council hearing to consider any proposed amendment or change in the Zoning Ordinance or zoning district boundaries shall be published in a newspaper having general circulation in the City. The Commission shall not make any recommendation to the Council on an amendment to any zoning district boundaries until a sign 18 inches by 24 inches indicating the amendment requested has been prepared and posted by the City in a visible location on the premises for a period of 10 days. Notice of the Commission meeting shall be mailed by first class mail 10 days prior to the meeting to all property owners within 200 feet of the boundary of the property requesting an amendment to its zoning district boundaries.

E. Filing Fees

Before any action is taken as provided in this section, the owner or owners of the property requesting the proposed changed in the district regulations or district boundaries shall pay to the City Clerk the fee as established by resolution of the City Council.

6. APPLICATIONS AND FEES

The Zoning Administrator shall establish and provide the application form and information required for all applications as may be necessary and required this ordinance. The fees for all applications shall be as established by resolution of the City Council.

7. PENALTIES

Any person who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of the Zoning Ordinance shall, upon conviction, be fined for each offense up to the maximum amount as allowed by the Code of Iowa. Each day that a violation is permitted to exist constitutes a separate offense.