

### **176.36 ZONING BOARD OF ADJUSTMENT.**

1. Organization. A Zoning Board of Adjustment is hereby established, which shall consist of five regular members and two alternates. The word "Board" when used in this section shall mean the Zoning Board of Adjustment. Membership of the Board shall be as follows:

A. Members of the Board shall be appointed by the Mayor and confirmed by the Council to serve respectively for the following terms one for one year, one for two years, one for three years, one for four years, and one for five years. The successor to each member so appointed shall serve a term of five years.

B. Alternate members shall be appointed by the Mayor and confirmed by the Council to serve terms of five years.

C. Vacancies shall be filled by the Mayor and confirmed by the Council for any unexpired term.

D. Members of the Board may be removed by the Mayor, with consent of the Council, for cause after written charges have been filed and after a public hearing has been held.

E. One of the members of the board shall be designated by the Mayor, with the consent of the Council, as Chairperson of the Board and shall hold office as Chairperson until a successor Chairperson is appointed.

F. The Board shall adopt rules of procedure in accordance with the provisions of this ordinance and the Code of Iowa.

G. Meetings of the Board shall be held at the call of the Chairperson and at such other times as the Board may determine.

H. The Chairperson, or in his/her absence, the acting Chairperson, may administer oaths and compel the attendance of witnesses.

I. All meetings of the Board shall be open to the public. Any person may appear and testify at a hearing either in person or by duly authorized agent or attorney.

J. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact. Findings of fact and the reasons for approving or denying each question before the Board shall be included in the minutes. Any limitations or conditions imposed on any relief granted or work or use authorized, shall be specifically set forth.

K. A copy of every rule or regulation, order, requirement, decision, or determination of the Board shall be filed immediately in the office of the Board and shall be a public record.

The concurring vote of three members of the Board shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Official or to decide in favor of the applicant on any matter upon which it is required to pass under the Zoning Ordinance, or to affect any variance in such ordinance.

2. Appeals to the Board. 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 Official. Such appeal shall be taken within a reasonable time, as may be provided by the rules of the Board, by filing with the Zoning Official and with the Board a notice of appeal specifying the grounds of such appeal. The Zoning Official shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

A. Any person making application to the Board shall at the time of application, pay a filing fee. The amount of the filing fees for various types of appeals and approval requests shall be set by City Council resolution. Said filing fees are not refundable.

B. The Board shall make no finding except to a specific case and after a public hearing conducted by the Board.

C. Effect of Appeal - An appeal stays all proceedings in furtherance of the action appealed from, unless the Zoning Official certifies to the Board after the notice of appeal has been filed that by reason of facts stated in the certificate a stay would in the opinion of the Zoning Official cause imminent peril to life or property. In such case, proceedings shall not be stayed except by a restraining order which may be granted by the Board or by a court of record in application on notice to the Zoning Official and on due cause shown.

3. Notice of Hearing.

A. Notice of time and place of public hearings to be conducted by the Board shall be published in a Linn County publication of general circulation in the City, in accordance with Section 362.3 of the Code of Iowa, The notice shall contain the address or location of the property for which the request is being made, legal description of the property in question, and a brief description of the nature of the request.

B. Each applicant requesting an appeal, variance, exception, or conditional use from the Board shall secure notification signs from the Clerk which shall be conspicuously posted by the applicant on the property for which application has been made. The signs shall be placed so that they may be seen from an adjoining street. In cases of double-fronted or corner

lots, signs shall be posted on both sides of the lot. The signs shall include the date, time, and place of the public hearing and brief description of the request.

(1) Notification signs shall be posted at least four (4) days prior to the public hearing date and shall remain posted until the Board has made a determination on the request.

(2) If the notification signs are not posted in accordance with the preceding requirements, no action shall be taken on the application by the Board.

4. Powers. The Board shall have the following powers:

A. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the Zoning Official in the enforcement of this Zoning Ordinance.

B. To hear and decide by granting or denying an exception to this Zoning Ordinance in the following instances:

(1) A request for the extension of a district where the boundary line of a district divides a lot of record held in single ownership.

(2) Interpret the provisions of the Zoning Ordinance in such a way as to carry out the intent and purpose of the official Zoning District Map where the street layout actually existing on the ground varies from the street layout as shown on the map.

(3) Permit the erection and use of a building or the use of premises for railroads or public utility purposes.

(4) Permit the reconstruction of a nonconforming building which has been damaged by fire, explosion, or act of God, to the extent of more than 65% of its fair market value, where the Board finds some compelling necessity requiring a continuance of the nonconforming use and the Board further finds that the public interest will best be served by permitting a continuance of the nonconforming use.

(5) Waive or reduce the parking, loading, or screening requirements in any of the zoning districts whenever the character or use of the building is such as to make unnecessary the full provisions of such requirements, or where such regulations would impose an unreasonable hardship on the lot as contrasted with merely granting an advantage or convenience.

(6) Permit uses not specifically designated as principal permitted uses in a zoning district, provided that the Board determines that such use is similar and compatible to uses allowed as principal permitted uses in that district.

C. To authorize upon appeal in specific cases variances from the terms of the Zoning Ordinance when the following are made to appear by the property owner:

(1) That a strict application of the terms of the Zoning Ordinance will impose upon the property owner unusual and practical difficulties or particular hardship.

(2) That the variance granted is in harmony with the general purpose, intent, and spirit of the Zoning Ordinance.

(3) That the Board determines that the granting of the requested variance will not merely serve as a convenience to the applicant but will alleviate some demonstrable and unusual hardship or difficulty so great as to warrant a deviation from the Zoning Ordinance.

(4) That surrounding property will be protected.

(5) That by granting the request for a variance, substantial justice will be done.

D. To authorize the granting of conditional uses as provided in subsection 6 of this section.

E. To authorize the granting or denying of a special use permit for functional families to reside in excess of the permitted limit for unrelated persons residing together in a single dwelling in any district that permits residential uses, subject to the following:

(1) That the proposed functional family must function as a single housekeeping unit by living, cooking and eating together; or,

(2) That the proposed functional family must be in the nature of permanent living arrangement and stable rather than a transient living arrangement, except that a non-permanent/transient living arrangement is not required when handicapped persons function as a single housekeeping unit or in the case of a group exclusively made up of clerics, but in both cases not in a number that is in excess of the limit on group home occupancy in the applicable zoning district; or,

(3) That the proposed functional family consists of a group headed by one or two persons caring for a number of unrelated children in a manner substantially similar to a biologically unitary family; or,

(4) That the proposed functional family consists of a group of not more than four persons each of which is a recipient of Social Security benefits.

5. Standards for Review - General. In considering all requests for appeals, variances, exceptions, or conditional uses, the Board, before making any decision in a specific case, shall first determine:

- A. That the granting of a request will not permit any use which is not allowed as a permitted use, or as a conditional use except in accordance with the provisions set forth in this section, in the zoning district in which a property is located, or any use expressly or by implication prohibited from the district.
- B. That it will not materially diminish or impair an adequate supply of light and air to adjacent property.
- C. That it will not materially increase the congestion in public streets.
- D. That it will not materially increase the danger of fire or of the public safety.
- E. That it will not unreasonably diminish or impair established property values within the surrounding area.
- F. That it will not in any other respect materially diminish or impair the public health, comfort, safety, morals, or welfare of the inhabitants of the City.

6. Conditional Use.

A. Intent. Conditional uses are those uses having certain special or unique characteristics which require a careful review of their location, design, configuration, and impacts to determine the desirability of permitting their establishment on any given site. They are uses which may or may not be appropriate in a particular location depending upon consideration in each case of the public need, public benefit, local impact, and specific site plan of the proposed conditional use, all within the context of the intent and purpose of this ordinance and the Comprehensive Community Plan.

B. Application for Conditional Use - An application for a conditional use shall be filed with the Zoning Official and shall contain such information and documentation as the Board, by rule, may require. Such application shall in all instances contain at least the following documents and information:

- (1) Petition - A written petition containing the following information:
  - a. Applicant's name and address and his/her legal interest in the subject property.
  - b. The titleholder's name and address, if different than the applicant.
  - c. Street address or common description and complete legal description of the property.
  - d. The zoning district classification of the property.
  - e. A general description of the proposed conditional use.

(2) Vicinity Sketch Map - A map of appropriate scale covering sufficient adjoining property to clearly indicate nearby street patterns, property lines, and other significant features which will have a bearing upon the request. This map shall also identify existing zoning districts within 600 feet of the subject property.

(3) Site Development Plan - A site plan at an appropriate scale containing the following:

- a. Existing and proposed lot lines and property dimensions.
- b. Location of such physical site conditions as water courses, flood plains, and unique natural features.
- c. The location and dimensions of existing and proposed principal and accessory buildings and structures on site, including identity of building types by usage, floor area, and number of units (if for residential purposes).
- d. The location and dimensions of driveways, access points, off-street parking and loading areas, walkways, and screening areas.
- e. Such other information as may be requested by the Board to perform their review of the request.

C. Application Review Procedure:

(1) The Zoning Official shall forward copies of the conditional use application to the Board and Commission.

(2) Prior to the Board's scheduled public hearing on the application, the Commission shall review such application and return a written report of their findings and recommendations to the Board. In their review, the Commission shall consider each of the standards for review of conditional use requests as set forth in this section.

(3) After receiving the report from the Commission, and after conducting the public hearing on the application, the Board shall consider the application and shall either grant the application for conditional use, grant it subject to conditions or modifications, or deny the application. In their view, the Board shall consider each of the standards for review of conditional use requests as set forth in this section.

D. Conditions Imposed - The Board may impose such conditions, including restrictions and safeguards, upon the proposed conditional use as considered necessary to prevent or minimize adverse effects upon other properties in the vicinity or upon public facilities and services. Such conditions shall include a requirement that development be in accord with a site development plan approved by the Board. Such conditions shall be expressly

set forth in the approval of the conditional use. Violations of such conditions shall be a violation of this chapter.

E. Standards for Review of Conditional Use Requests - In addition to the standards for review applicable to all requests under consideration by the Board, approval of a conditional use shall be granted only if the Board first determines:

(1) That the conditional use applied for is provided in the zoning district within which the property is located.

(2) That the proposed use and development will be in accord with the intent and purpose of the Zoning Ordinance and the Comprehensive Community Plan.

(3) That the proposed use and development will not have a substantial adverse effect upon adjacent property; the character of the neighborhood; traffic conditions; parking; utility and service facilities; and other factors affecting the public health, safety, and welfare.

(4) That the proposed development or use will be located, designed, constructed, and operated in such a manner that it will be compatible with the immediate neighborhood and will not interfere with the orderly use, development and improvement of surrounding property.

(5) That adequate measures have been or will be taken to assure adequate access designed to minimize traffic congestion and to assure adequate service by essential public services and facilities including utilities, storm water drainage, and similar facilities.

F. Conformance to Other Regulations - Conditional uses shall in all respects conform to the applicable regulations of the zoning district in which they are located and all other applicable regulations provided in this chapter.

G. Revisions to Approved Site Development Plans:

(1) Minor changes from the approved Site Development Plan in the location and siting of buildings and structures may be authorized by the Zoning Official if required by engineering or other circumstances not foreseen at the time the Site Development Plan was approved. No change authorized by this section may cause any of the following:

a. A change in the use of the development.

b. A 10% increase in the overall coverage of structures.

c. A change in the location of any building or structure by more than ten feet.

d. An increase in the intensity of use.

e. A reduction in approved open space.

f. A reduction in approved off-street parking spaces.

(2) All proposed revisions not classified as minor shall be submitted for approval in accordance with the provisions set forth in paragraph C of this subsection.

H. Pre-Existing Uses - Any building or structure, or use of land, in existence prior to the effective date of the Zoning Ordinance which is classified as a conditional use under the provisions of such ordinance shall be considered a lawful conditional use, and may continue without approval of the Zoning Board of Adjustment. However, any expansion or extension of such pre-existing use, or a change in use to another conditional use, shall be considered as a conditional use and shall comply with the provisions of the Zoning Ordinance.

7. Relief Less Than Requested. An appeal, variance, exception, or conditional use different than that requested may be granted when the record supports the applicant's right to some relief but not to the relief requested.

8. Conditions Imposed. The Board may impose such conditions, including restrictions and safeguards, upon the property benefited from the appeal, variance, exception, or conditional use granted as considered necessary to prevent or minimize adverse effects upon other property in the vicinity or upon public facilities and services. Such conditions shall be expressly set forth in the grant of appeal, variance, exception, or conditional use. Violation of such conditions shall be a violation of this chapter.

9. Permits And Approvals Still Necessary. The granting of an appeal, variation exception, or conditional use by the Board shall not necessarily authorize immediate action. As appropriate and as required by the codes and ordinances of the City and State, other permits and approvals shall be obtained.

10. Failure To Act. In case an appellant or applicant does not exercise his/her rights, act, begin construction or operation or occupancy, as the case may be, in accordance with any appeal variance or permit granted by the Board within six (6) months after the matter has been acted upon by the Board, such variance or permit shall become null and void.

11. Appeals. Decisions of the Board may be appealed to the District Court within thirty (30) days by anyone objecting the decision.

*(Ord. 15-19 – Aug. 15 Supp.)*