

CHAPTER 166

ZONING ORDINANCE

BOARD OF ADJUSTMENT

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166.01 ORGANIZATION. The Board of Adjustment consists of five (5) members, appointed by the Mayor and confirmed by the Council, to serve for staggered terms of five (5) years. Any vacancy shall be filled by the Mayor and confirmed by the Council for any unexpired term. Members of the Board may be removed by the Mayor, with consent of the Council, for cause after written charges have been filed and a public hearing has been held. The Board shall elect officers from its membership as deemed necessary.

166.02 GENERAL PROCEDURES; MEETINGS, RECORDS, RULES. The Board shall adopt rules of procedure in accordance with the provisions of this Code of Ordinances and the Code of Iowa. Meetings of the Board shall be held at the call of the Chairperson and at such other times as the Board may determine. The Chairperson or, in the absence of the Chairperson, the acting Chairperson may administer oaths and compel the attendance of witnesses. 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. 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 upon any relief granted or work or use authorized shall be specifically set forth. A copy of every rule or regulation, order, requirement, decision or determination of the Board shall be filed immediately in the office of the Building Inspector and shall be a public record.

166.03 FINALITY OF DECISION AND NECESSARY VOTE. All decisions and findings of the Board on any appeal or conditional use, after a public hearing, shall in all instances be the final administrative decision and shall be subject to judicial review as by law may be provided. All decisions and findings of the Board on any application for variance shall be reviewed by the Council at its next regularly scheduled meeting or a special meeting called for the purpose of reviewing said variance. Upon the review of the granting of said variance, the Council may remand the decision to grant a variance to the Board for further study. The effective date of any variance so remanded shall be delayed for thirty (30) days from the date of remand during which time the Board shall meet to further study the granting of said variance. The granting of any variance not so remanded shall be affirmed. The decisions and findings of the Board on the application for the variance shall be the final administrative decision and shall be subject to judicial review as by law may be provided upon the happening of either of the following:

1. The review of the granting of said variance by the Council, which decision is not remanded to the Board;

2. The 31st day following the decision by the Council to remand the decision on the granting of a variance to the Board for further study. The concurring vote of three (3) members of the Board shall be necessary to reverse an order, requirement, decision or determination of the Building Inspector or to decide in favor of the applicant on any matter upon which it is required to pass under this Zoning Ordinance or to effect any variance in such Zoning Ordinance.

166.04 APPEALS TO THE BOARD. An appeal may be taken to the Board by any person or by any office, department, board or bureau affected by any decision of the Building Inspector and where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of this Zoning Ordinance. Such an appeal shall be taken within a reasonable time, as may be provided by the rules of the Board, by filing with the Building Inspector and with the Board a notice of appeal specifying the grounds of such appeal. The Building Inspector shall forthwith transmit to the Board all of the papers constituting a record upon which the action appealed from was taken. The Board shall make no finding except to a specific case and after a public hearing is conducted. A nonrefundable fee shall be paid by the applicant to the City at the time an application for an appeal, variance or conditional use is filed. The fee shall help defray necessary costs and shall be in an amount established by resolution, from time to time, by the Council.

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

166.06 NOTICE OF HEARING. Notice of the time and place of public hearings to be conducted by the Board shall be published in a publication of general circulation within the City not less than seven (7) days or more than twenty (20) days before the date of hearing. In addition to the above, the notice shall also 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 explanation regarding the nature of the request.

166.07 JURISDICTION AND POWERS.

1. Appeals. The Board shall hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the Building Inspector in the enforcement of this Zoning Ordinance.

2. Exceptions. The Board shall hear and decide by granting or denying the following exceptions to this Zoning Ordinance, provided all exceptions shall by their design, construction and operation adequately safeguard the health, safety and welfare of the occupants of adjoining and surrounding property and shall not impair or diminish the established property values in surrounding areas:

A. Extend a district where the boundary line of a district divides a lot of record held in single ownership.

B. Interpret the provisions of this Zoning Ordinance in such a way as to carry out the intent and purposes of the official zoning district map where the existing street layout in fact varies from the street layout as shown on the map.

C. Permit the construction and use of a building or the use of premises for railroads or public utility purposes.

D. Permit the reconstruction of a nonconforming building which has been damaged by fire, explosion or act of God to the extent of more than sixty percent (60%) 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.

E. 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 property as contrasted with merely granting an advantage or convenience.

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

G. Permit the construction and use of a building or the use of premises for public buildings and for public purposes.

3. Variances. The Board, upon appeal in specific cases and after a public hearing, may vary the regulations of this Zoning Ordinance when the following are made to appear by the property owner:

A. A strict application of the terms of the Zoning Ordinance will impose upon the property owner unusual and practical difficulties or particular hardship.

B. The variance granted is in harmony with the general purpose, intent and spirit of this Zoning Ordinance.

C. 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 this Zoning Ordinance.

D. The surrounding property will be protected.

E. By granting the request for a variance, substantial justice will be done.

4. Conditional Uses. The Board may authorize the granting of conditional uses as provided in this Zoning Ordinance.

166.08 STANDARDS FOR REVIEW. In considering all requests for appeals, variances, exceptions or conditional uses, the Board, prior to rendering any decision in a specific case, shall first determine that:

1. 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 Zoning Ordinance, in the zoning district in which a property is located, or any use expressly or by implication prohibited from the district.

2. It will not materially diminish or impair an adequate supply of light and air to adjacent property.

3. It will not materially increase the congestion in public streets.

4. It will not materially increase the danger of fire or to the public safety.

5. It will not unreasonably diminish or impair established property values within the surrounding area.

6. 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.

166.09 CONDITIONAL USES. Conditional uses are those uses having certain special or unique characteristics which require a careful review of their location, design, configuration and special impact 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 purposes of this Zoning Ordinance.

1. Application for Conditional Use. An application for a conditional use shall be filed with the Building Inspector 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:

A. A written petition containing the applicant's name and address and legal interest in the subject property; the titleholder's name and address (if different from the applicant); the street address or common description and complete legal description of the property; the zoning district classification of the property; and a general description of the proposed conditional use.

B. 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. Said map shall also identify existing zoning districts within 600 feet of the subject property.

C. A site plan at an appropriate scale containing the existing and proposed lot lines and property dimensions; location of physical site conditions such as water courses, floodplains and unique natural features; the location and dimensions of existing and proposed principal and accessory buildings and structures on the site including identification of building types by usage, floor area, and number of units (if for residential purposes); the location and dimensions of driveways, access points, off-street parking and loading areas, walkways and screening areas; and such other information as may be requested by the Board to perform the review of the request.

2. Application Review Procedure. The Building Inspector shall forward copies of the conditional use application to the Board and City Planning and Zoning Commission. 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 conditions as set forth in this section. After receiving the report from the Commission and after conducting the public hearing on the application, the Board shall consider the application and either grant the conditional use, grant it subject to conditions or modifications or deny the conditional use. In their review, the Board shall consider each of the standards of review of conditional use requests as set forth in this section.

3. 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. Conditions imposed shall be expressly set forth in the approval of the conditional use and violations thereof shall be deemed to be a violation of this Zoning Ordinance.

4. 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 that:

- A. The conditional use applied for is permitted in the zoning district within which the property is located.
 - B. The proposed use and development will be in accord with the intent and purpose of this Zoning Ordinance and the comprehensive City plan.
 - C. 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.
 - D. The proposed use or development 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.
 - E. 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.
5. **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 Zoning Ordinance.
6. **Preexisting Uses.** Any building or structure or use of land in existence prior to the effective date of the ordinance codified herein which is classified as a conditional use under the provisions of this Zoning Ordinance shall be considered a lawful conditional use, and may continue without approval by the Board. However, any expansion or extension of such preexisting use, or a change in use to another conditional use, shall be considered as a conditional use and shall comply with the provisions of this Zoning Ordinance.
7. **Limitation to Successive Applications.** Whenever any application requesting approval of a conditional use has been (a) denied by the Board or (b) withdrawn after the Commission recommendation and prior to action by the Board, an application requesting the same conditional use shall not be accepted during the succeeding twelve or six months, respectively.

166.10 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.

166.11 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 deemed a violation of this Zoning Ordinance.

166.12 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 this Code of Ordinances and the Code of Iowa, other permits and approvals shall be obtained.

166.13 FAILURE TO ACT. In case an appellant or applicant does not exercise his or 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, appeal or permit shall become null and void.

166.14 APPEALS FROM THE BOARD. Any person or persons, jointly or severally, aggrieved by any decision of the Board under the provisions of the Zoning Ordinance or any taxpayer or any officer, department, Board or bureau of the City may present to a court of record a petition, 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 decision by the Board.

166.15 LIMITS OF AUTHORITY. Nothing herein contained shall be construed to give or grant to the Board of Adjustment the power or authority to alter or change the Zoning Ordinance or the zoning map, such power and authority being reserved to the Council.