

Chapter 134. Zoning

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134-6.1 Common Procedural Provisions¹

6.1.1 APPLICABILITY

The common procedural provisions of this section apply to all of the procedures in this article unless otherwise expressly stated.

6.1.2 REVIEW AND DECISION-MAKING AUTHORITY

Table 6.1-1 provides a summary of the review and approval procedures of this article. In the event of conflict between Table 6.1-1 and the detailed procedures contained elsewhere in this article, the detailed procedures govern.

| TABLE 6.1-1. REVIEW AND DECISION-MAKING | | | | |
|---|-----|-----|-----|-----|
| Procedure | CDD | BoA | P&Z | CC |
| Zoning Text/Map Amendment | R | - | R* | DM* |
| Conditional Use Permit | R | DM* | - | - |
| Type 1 Zoning Exception | DM | - | - | - |
| Type 2 Zoning Exception | R | DM* | - | - |
| Zoning Variance | R | DM* | - | - |
| Appeal of Administrative Decision | - | DM* | - | - |

Table notes:

CDD = community development director

BoA = board of adjustment

P&Z = plan and zoning commission

CC = city council

R = review/recommendation

DM = decision-maker

* = public hearing

6.1.3 PREAPPLICATION MEETINGS

A. Purpose. Preapplication meetings provide an early opportunity for staff and applicants to discuss applicable procedures and regulations.

B. Applicability. Preapplication meetings are required whenever the provisions of this zoning ordinance expressly state that they are required. They are encouraged in all cases.

C. Scheduling. Preapplication meetings must be scheduled with the community development director.

D. Guidelines. The community development director is authorized to establish guidelines for preapplication meetings, including information that should be provided and any available alternatives to face-to-face meetings, such as telephone conversations and email correspondence.

¹ This is a new section, although unless indicated, the provisions within are not thought to represent a significant change in practice.

6.1.4 APPLICATIONS AND FEES

A. Owner-initiated Applications. Whenever the provisions of this zoning ordinance allow the filing of an application by the owner of the subject property, that application must be signed by all record titleholders or contract buyers of record of the real properties that are the subject of the application.

B. Form of Application. Applications required under this zoning ordinance must be submitted in a form and in such numbers as required by the community development director. Applications must include materials and information to assist authorized review and decision-making bodies in their consideration of the application, including at least the following:

1. A list of the names, email addresses and street addresses of all titleholders and contract purchasers of record of the property that is the subject of the application; and
2. Maps, plats, surveys, dimensioned site plans, engineering documents, environmental reports, traffic studies, and other materials and information, as required by this zoning ordinance or application checklists established by the official responsible for accepting the application. Application forms and submittal requirements must be made available to the general public.

C. Application Filing Fees and Notification Costs.

All property owner-initiated applications must be accompanied by fees amounts established in section 82-3. Applications filed by the city council do not require payment of a fee. Applications filed by the state or federal government are exempt from application filing fees, but not from the requirement to pay notification fees.

D. Application Completeness, Accuracy and Sufficiency²

1. An application will be considered complete and ready for processing only if it is submitted in the required number and form, is accompanied by all required information, including a traffic study if such a study is required by staff at the preapplication meeting, and is accompanied by the required application filing and notification fees.
2. If an application is determined to be incomplete, the official responsible for accepting the application must provide notice to the applicant along with an explanation of the application's

² New section

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deficiencies. Notice of an incomplete application may be provided by electronic mail or regular mail.

3. No further processing of incomplete applications will occur and incomplete applications will be pulled from the processing cycle. When the community development director determines that the deficiencies have been corrected, the application will be placed in the first available processing cycle.
4. Applications deemed complete will be considered to be in the processing cycle and will be reviewed by staff and other review and decision-making bodies in accordance with applicable review and approval procedures of this zoning ordinance.
5. The community development director is authorized to require that applications or plans be revised before being placed on an agenda for possible action if the community development director determines that:
 - a. The application or plan contains one or more significant inaccuracies or omissions that hinder timely or competent evaluation of the plan's/application's compliance with zoning ordinance requirements or other regulations;
 - b. The application contains multiple minor inaccuracies or omissions that hinder timely or competent evaluation of the plan's/application's compliance with zoning ordinance requirements or other regulations; or
 - c. The decision-making body does not have legal authority to approve the application as it was submitted.

6.1.5 APPLICATION PROCESSING CYCLES

The community development director is authorized to promulgate reasonable cycles and timelines for processing applications, including deadlines for receipt of complete applications.

6.1.6 NEIGHBOR COMMUNICATIONS³

A. Purpose. Neighbor communication requirements are intended to ensure that applicants make a good faith effort to:

³ New section, with relaxed requirements; can easily be replaced with reference to existing "guidelines for neighborhood meetings," although existing process received some negative feedback during early listening sessions.

1. Educate applicants and neighbors about one another's interests;
2. Resolve issues in a manner that respects those interests; and
3. Identify unresolved issues before initiation of public hearings.

B. Applicability. Neighbor communications activities are required whenever the provisions of this zoning ordinance expressly state that they are required. They are encouraged in all cases.

C. Neighbor Communications Summary.

When neighbor communications are required, applicants must submit a summary of their neighbor communication activities before the first required public hearing. Neighbor communications summaries must include at least the following information:

1. Efforts to notify neighbors about the proposal (how and when notification occurred, and who was notified);
2. How information about the proposal was shared with neighbors (mailings, workshops, meetings, open houses, fliers, door-to-door handouts, etc.);
3. Who was involved in the discussions;
4. Suggestions and concerns raised by neighbors; and
5. What specific changes (if any) were considered and/or made as a result of the neighbor communications.

6.1.7 REQUIRED PUBLIC HEARING NOTICES

A. Newspaper Notice

1. Whenever the procedures of this article require that newspaper notice be provided, the notice must be published in a newspaper of general circulation within the City of Des Moines that is published at least weekly.
2. The newspaper notice must be published at least once, at least 7 days no more than 20 days before the date of the public hearing. Following publication of the notice, the public hearing may not be held earlier than the next regularly scheduled meeting date of the review or decision-making body holding the hearing.⁴

⁴ This provision is intended to track the Iowa Code. The city's practice seems to be to provide more than 7 days' notice. Notice timing requirements are not currently stated in the ordinance.

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Zoning Ordinance Text Amendments

6.1.8 COURTESY PUBLIC HEARING NOTICES⁵

- A. General.** Courtesy notice of public hearings and notices of proposed actions under this zoning ordinance are not required by law, but are routinely provided by the city or required of applicants as a way of increasing public awareness, transparency and participation in planning and development matters.
- B. Mailed Notice.** Whenever the procedures of this article call for the provision of courtesy mailed notices, the notices must be sent by United States Postal Service regular mail. Addresses must be based on property ownership information from the county assessor's office.
- C. Other Courtesy Notices.** In addition to other forms of courtesy notice, the community development director must endeavor to provide one or more of the following forms of additional courtesy notice of public hearings required under this zoning ordinance:
1. Mailing notices to recognized neighborhood and resident organizations whose boundaries include or are abutting the subject property;
 2. Posting notices in city hall or in other government buildings; or
 3. Publishing notice on the city's website.

6.1.9 HEARING PROCEDURES

- A.** At required public hearings, interested persons must be permitted to submit information and comments, verbally or in writing. The hearing body is authorized to establish reasonable rules and regulations governing the conduct of hearings and the presentation of information and comments.
- B.** A public hearing may be continued by the hearing body. No re-notification is required if the continuance is set for specified date and time and that date and time is determined at the time of the continuance.
- C.** If a public hearing is continued or postponed for an indefinite period of time from the date of the originally scheduled public hearing, new public hearing notice must be given before the rescheduled public hearing.

⁵ Courtesy notices are those that the city *elects* to provide in addition to the published notice required by state law.

6.1.10 ACTION BY REVIEW AND DECISION-MAKING BODIES

- A.** Review and decision-making bodies may take any action that is consistent with:
1. The regulations of this zoning ordinance; and
 2. Any rules or by-laws that apply to the review or decision-making body.
- B.** Review and decision-making bodies are authorized to continue a public hearing or defer action in order to receive additional information or further deliberate.
- C.** When the procedures of this article authorize approval with conditions, review bodies, including staff, are authorized to recommend conditions and decision-making bodies are authorized to approve the subject application with conditions. Any conditions recommended or approved must be reasonable and imposed to satisfy public needs that are directly caused by the requested change or the proposed use or development.

6.1.11 DECISION-MAKING CRITERIA; BURDEN OF PROOF OR PERSUASION

Applications must address relevant review and decision-making criteria. In all cases, the burden is on the applicant to show that an application or proposal complies with all applicable review or approval criteria.

6.1.12 REQUIRED TIME-FRAMES FOR ACTION

Any time limit specified in this zoning ordinance for any decision or action on behalf of a review or decision-making body may be extended if the applicant agrees to an extension. Unless otherwise expressly stated, if a review or decision-making body does not render a decision or take action within any time period required under this zoning ordinance and the applicant has not agreed to an extension of that time limit, the application is deemed denied.

134-6.2 Zoning Ordinance Text Amendments

6.2.1 AUTHORITY TO FILE

Amendments to the text of this zoning ordinance may be initiated only by the city council, community development director or legal department.

6.2.2 STAFF REVIEW

The community development director must prepare a report and recommendation on the proposed zoning ordinance text amendment. The report must be transmitted to the plan and zoning commission before

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Zoning Map Amendments

its public hearing on the proposed amendment.

6.2.3 REQUIRED NOTICE OF HEARING

Notice of the plan and zoning commission's required public hearing on a zoning ordinance text amendment must be published in accordance with [134-6.1.7](#).

6.2.4 PLAN AND ZONING COMMISSION RECOMMENDATION

The plan and zoning commission must hold a public hearing on the proposed zoning ordinance text amendment. Following the close of the public hearing, the plan and zoning commission must act to recommend that the proposed text amendment be approved, approved with conditions, or denied and transmit its report and recommendations to the city council. Motions to approve, approve with conditions or deny zoning ordinance text amendments may be approved by a simple majority vote of a quorum.

6.2.5 CITY COUNCIL ACTION

Following receipt of the plan and zoning commission's report and recommendation, the city council must hold a public hearing and act to approve the proposed zoning ordinance text amendment, approve the proposed text amendment with conditions or deny the proposed text amendment. Zoning ordinance text amendments may be approved by a majority vote of all members of the city council.

6.2.6 REVIEW AND APPROVAL CRITERIA

The decision to amend the zoning ordinance text is a matter of legislative discretion that is not controlled by any one standard. In making recommendations and decisions about zoning ordinance text amendments, review and decision-making bodies must consider all relevant factors of Iowa Code section 414.3 and the following:

- A. Whether the proposed text amendment is in conformity with the policy and intent of the comprehensive plan; and
- B. Whether the proposed zoning ordinance text amendment corrects an error or inconsistency or is necessary or desirable to meet the challenge of a changed or changing condition and is in the public interest.

134-6.3 Zoning Map Amendments

Figure 6.3-A. Zoning Map Amendment Process



6.3.1 AUTHORITY TO FILE

Amendments to the zoning map may be initiated only by the city council, the community development director or with the consent of all record titleholders or contract purchasers of the real property that is the subject of the proposed zoning map amendment.

6.3.2 PREAPPLICATION MEETING

Property owners proposing a zoning map amendment must attend a preapplication meeting before filing the zoning map amendment application (see [134-6.1.3](#))

6.3.3 APPLICATION FILING

Property owner-initiated applications for zoning map amendments must be filed with the community development director.

6.3.4 NEIGHBOR COMMUNICATIONS

Applicants for zoning map amendments are responsible for conducting neighbor communications activities and providing of a summary of such activities before required public hearings (see [134-6.1.6](#)).

6.3.5 STAFF REVIEW

Following receipt of a complete zoning map

amendment application or initiation of zoning map amendment by the city council, the community development director must prepare a report and recommendation on the proposed zoning map amendment. The report must be transmitted to the plan and zoning commission before its public hearing on the proposed amendment.

6.3.6 NOTICE OF PLAN AND ZONING COMMISSION HEARING

It is the policy of the city to provide courtesy mailed notice to all owners of property included within the area that is the subject of the proposed zoning map amendment and to all owners of property within 250 feet of the subject property. Mailed notice is not provided for city-initiated rezonings when such notice would be impractical because of the size of the area affected.

6.3.7 PLAN AND ZONING COMMISSION RECOMMENDATION

- A.** Following receipt of a complete application for a zoning map amendment or initiation of a zoning map amendment by the community development director or city council, the plan and zoning commission must hold a public hearing on the proposed amendment. Following the close of the public hearing, the plan and zoning commission must act to recommend that the proposed amendment be approved, approved with conditions, or denied.
- B.** All proposed zoning map amendments initiated by the city council or the community development director must be transmitted to the city council within a reasonable time following action by the plan and zoning commission.
- C.** Motions to recommend approval, approval with conditions or denial of zoning map amendments may be approved by a simple majority vote.

6.3.8 NOTICE OF CITY COUNCIL HEARING

Notice of the city council's required public hearing on a zoning map amendment must be published in accordance with [134-6.1.7](#).

6.3.9 CITY COUNCIL ACTION

- A.** Following receipt of the plan and zoning commission's report and recommendation, the city council must hold a public hearing and act to approve the proposed zoning map amendment, approve the proposed zoning map amendment with conditions or deny the proposed zoning map amendment.

- B.** Zoning map amendments may be approved by a majority vote of all members of the city council, except that passage of the zoning map amendment requires a favorable vote of three-fourths of all members of the city council if either of the following occurs:
 1. The plan and zoning commission recommends denial of the zoning map amendment; or
 2. A valid protest is filed in opposition to the zoning map amendment, in accordance with [134-6.3.10](#).

6.3.10 PROTEST OF ZONING MAP AMENDMENTS

- A.** A protest opposing a zoning map amendment will be deemed valid if it is signed by any of the following:
 1. The owners of 20% or more of the area of the lots included in proposed zoning map amendment area;
 2. The owners of 20% or more of the property located within 200 feet of the exterior boundaries of the area included in the proposed zoning map amendment area; or
 3. The owners of 15% or more of the property located within 200 feet of the exterior boundaries of the area included in the proposed zoning map amendment area if 30% or more of the area of the lots within 200 feet of the proposed rezoning area is owned by a governmental entity.
- B.** A protest opposing a zoning map amendment must be filed with the city clerk before the city council's hearing to consider the subject zoning map amendment.

6.3.11 REVIEW AND APPROVAL CRITERIA

The decision to amend the zoning map is a matter of city council discretion that is not controlled by any single standard or criterion. In making recommendations and decisions on zoning map amendments, review and decision-making bodies must consider all relevant factors, including at least the following:

- A.** Whether the proposed zoning map amendment is consistent with the policy and intent of comprehensive plan; and
- B.** Whether the proposed zoning map amendment corrects an error or inconsistency or is necessary or desirable to meet the challenge of a changed or changing condition and is in the public interest.

6.3.12 SUCCESSIVE APPLICATIONS

If a zoning map amendment application has been

Conditional Uses

denied by the city council, no new zoning map amendment application that includes all or part of the same property may be filed or considered by the city council for at least one year from the date of final action by the city council.

134-6.4 Conditional Uses

Figure 6.4-A. Conditional Use Process



6.4.1 AUTHORITY TO FILE

Conditional use applications may be filed only with the consent of all record titleholders or contract purchasers of the real property on which the proposed conditional use is proposed.

6.4.2 PREAPPLICATION MEETING

Property owners requesting approval of a conditional use must attend a preapplication meeting before filing the conditional use application (see [134-6.1.3](#))

6.4.3 APPLICATION FILING

Conditional use applications must be filed with the community development director.

6.4.4 NEIGHBOR COMMUNICATIONS

Applicants for conditional uses are responsible for conducting neighbor communications activities and providing of a summary of such activities before required public hearings (see [134-6.1.6](#)).

6.4.5 STAFF REVIEW

Following receipt of a complete conditional use application, the community development director must

prepare a report and recommendation. The report and recommendation must be transmitted to the board of adjustment before its public hearing on the proposed conditional use.

6.4.6 NOTICE OF HEARING

It is the policy of the city to provide courtesy mailed notice to all owners of property and recognized neighborhood associations within 250 feet of the property for which the zoning map amendment is requested.

6.4.7 BOARD OF ADJUSTMENT DECISION

- A. Following receipt of a complete conditional use application, the board of adjustment must hold a public hearing to consider the application. Following the close of the public hearing, the board of adjustment must act to approve the requested conditional use, approve the conditional use with conditions, or deny approval of the conditional use based on the applicable standards and review criteria of [134-6.4.8](#). Approval of a conditional use requires an affirmative vote of at least 4 members of the board of adjustment and may occur on the consent portion of the board of adjustment's agenda.
- B. In approving a conditional use, the board of adjustment is authorized to impose such conditions and restrictions as the board determines to be necessary to ensure compliance with the standards of [134-6.4.8](#), to reduce or minimize the effect of the conditional use upon other properties in the area, and to better carry out the general purpose and intent of this zoning ordinance.

6.4.8 STANDARDS AND REVIEW CRITERIA

A. General

A conditional use may not be approved unless the board of adjustment determines that the proposed use or activity complies with all applicable use-specific regulations and that the applicant has demonstrated that all of the following general standards and review criteria are met:⁶

1. The proposed location, design, construction, and operation of the use or activity adequately safeguards the health, safety, and general

⁶ These criteria are modeled after the general criteria that apply to some conditional uses, Would it be appropriate/better to use the existing general criteria that now apply to all special uses (note: the special use approval process is proposed for elimination).

welfare of persons residing or working in adjoining or surrounding property;

2. The proposed use will not impair an adequate supply of light and air to surrounding property;
3. The proposed use will not unduly increase congestion in the streets, or public danger of fire, safety or flooding;
4. The proposed use will not diminish or impair established nearby property values; and
5. The proposed use is consistent with the general purpose of this zoning ordinance and the comprehensive plan and any specific purposes established in this zoning ordinance for the subject use.

6.4.9 FILING AND EFFECT OF DECISIONS

- A.** Written decisions of the board of adjustment must be filed promptly following the board's action and be open to public inspection. Written decisions must describe the action taken, the vote of each board member participating and the reasons for such action.
- B.** The board of adjustment's decision on a conditional use becomes final and effective after the board's written decision is filed with the community development department, which serves as the board of adjustment office.

6.4.10 LAPSE OF APPROVAL⁷

- A.** All activity authorized by an approved conditional use must be completed within 2 years of the board's action or the approval lapses and is of no further effect.
- B.** If any use of land or structure approved as a conditional use is discontinued for a period of one year or more, the conditional use approval lapses and is of no further effect.⁸
- C.** If any use or structure approved as a conditional use is destroyed by any means to an extent of 50% or more of its replacement cost at the time of destruction, the approved conditional use lapses and is of no further effect.
- D.** Once a conditional use approval lapses, any subsequent use of such land or structure must

⁷ These provisions are based on those now found in Sec. 134-1297. The provisions governing discontinuance and damage seem particularly punitive

⁸ The existing exception for R-HD can be eliminated since it will be addressed in district and building type regulations.

conform to the regulations of the subject zoning district.

6.4.11 AMENDMENTS

A request for revisions to the specific nature of an approved conditional use or to any conditions attached to an approved conditional use must be processed as a new conditional use application, including all requirements for fees, notices and public hearings.

6.4.12 APPEALS

Appeals of board of adjustment decisions are taken to district court (see [134-8.1.3.G](#)).

6.4.13 SUCCESSIVE APPLICATIONS

If a conditional use has been denied by the board of adjustment, a new conditional use application seeking the same approval may not be considered by the board of adjustment for at least one year from the date of final action by the board of adjustment unless the board finds that the circumstances at the time of the board's previous decision have materially changed so as to effect the reasons that produced and supported that previous decision.

134-6.5 Type 1 Zoning Exceptions

6.5.1 INTENT

Type 1 zoning exceptions are intended to provide a streamlined approval procedure for minor (de minimis) modifications of selected zoning ordinance regulations. Type 1 zoning exceptions are further intended to:

- A.** Allow development and construction that is in keeping with the general purpose and intent of zoning ordinance regulations and the established character of the area in which the development or construction is located; and
- B.** Provide flexibility that will help promote rehabilitation and reuse of existing buildings and new construction when such flexibility will not adversely affect nearby properties or neighborhood character.

6.5.2 AUTHORIZED TYPE 1 ZONING EXCEPTIONS

- A.** Only the following may be approved as type 1 zoning exceptions:
 1. Exceptions to any numerical regulation established in the building type regulations of [Chapter 135, Article 1](#) when the proposed construction is not subject to site plan review under Chapter 135 and when:

Type 1 Zoning Exceptions

- a. The exception does not exceed 15% of the applicable numerical regulation; or
 - b. The exception is from a setback or build-to requirement and would allow an addition to a nonconforming building to extend along the same building line or surface parking lot as the existing building or surface parking lot.
2. Exceptions to minimum bicycle parking ratios and to bicycle parking location and design regulations.
 3. Exceptions to minimum or maximum motor vehicle off-street parking ratios, not to exceed one space or 20%, whichever is greater.
- B.** The type 1 zoning exception procedures may not be used to vary, modify or otherwise preempt a condition of approval or requirement imposed by an authorized decision-making body.

6.5.3 AUTHORITY TO FILE

Type 1 zoning exception applications may be filed only with the consent of all record titleholders or contract purchasers of the real property on which the proposed conditional use is proposed.

6.5.4 APPLICATION FILING

Complete applications for type 1 zoning exceptions must be filed with the community development director.

6.5.5 NOTICE OF FILING/INTENT TO APPROVE

The community development director is responsible for ensuring that written notice of the filing of a type 1 zoning exception application is delivered to all owners of property abutting the subject lot. The written notice must describe the nature of the requested type 1 zoning exception. It must also indicate the date on which the community development director will take action on the application and that the application will be available for review and comment until that date. Any interested party may submit written comments concerning the application to the community development director.

6.5.6 ACTION BY COMMUNITY DEVELOPMENT DIRECTOR

- A.** The community development director must act to approve the type 1 zoning exception application, approve the application with conditions or deny the application based on the approval criteria and standards of [134-6.5.7](#). The community development director is also authorized to refer the application to the board of adjustment for consideration as a type 2 zoning exception.

- B.** If a type 1 zoning exception is denied or approved with conditions unacceptable to the applicant, the applicant is authorized to seek approval of requested zoning exception from the board of adjustment in accordance with the type 2 zoning exception procedures of [134-6.6](#).

6.5.7 STANDARDS AND REVIEW CRITERIA

Type 1 zoning exceptions may be approved only when the community development director determines that the following approval standards and criteria and any other specific criteria established in this zoning ordinance for the authorized type 1 zoning exception have been met:

- A.** The requested type 1 zoning exception is consistent with all relevant purpose and intent statements of this zoning ordinance and with the general purpose and intent of the comprehensive plan;
- B.** The requested type 1 zoning exception will not have a substantial or undue adverse effect upon adjacent property, the character of the surrounding area or the public health, safety and general welfare; and
- C.** Any adverse impacts resulting from the type 1 zoning exception will be mitigated to the maximum extent feasible.

6.5.8 CONDITIONS OF APPROVAL

In granting a type 1 zoning exception, the community development director is authorized to impose conditions upon the subject property that are necessary to reduce or minimize any potentially adverse impacts on other property in the surrounding area, and to carry out the stated purpose and intent of this zoning ordinance.

6.5.9 LAPSE OF APPROVAL

- A.** All activity authorized by an approved type 1 zoning exception must be completed within 2 years of the community development director's action or the approval lapses and is of no further effect.
- B.** If any use of land or structure approved as a type 1 zoning exception is discontinued for a period of one year or more, the approved type 1 zoning exception lapses and is of no further effect.
- C.** If any use or structure approved as a type 1 zoning exception, is destroyed by any means to an extent of 50% or more of its replacement cost at the time of destruction, the approved zoning exception lapses and is of no further effect.
- D.** Once a type 1 zoning exception lapses, any subsequent use of such land or structure must

conform to the regulations of the subject zoning district.

6.5.10 TRANSFERABILITY

Approved type 1 zoning exceptions run with the land and are not affected by changes of tenancy, ownership, or management.

6.5.11 AMENDMENTS

A request for changes in the specific nature of an approved type 1 zoning exception or changes to any conditions attached to an approved type 1 zoning exception must be processed as a new type 1 zoning exception application, including all requirements for fees.

134-6.6 Type 2 Zoning Exceptions⁹

Figure 6.6-A. Type 2 Zoning Exception Process



6.6.1 INTENT

Type 2 zoning exceptions are intended to provide a procedure for the board of adjustment to use in considering requests for regulatory relief from certain specified zoning regulations when such relief is reasonably needed to overcome practical difficulties related to the subject property.

6.6.2 AUTHORIZED TYPE 2 ZONING EXCEPTIONS

A. Only the following may be approved as Type 2 zoning exceptions:¹⁰

⁹ Staff and plan and zoning commission administered “design exceptions” are authorized under chapter 135..

¹⁰ We recommend that authorized exceptions be called out within the respective regulations rather than in the procedures.

1. Exceptions to allow required parking spaces for residential uses to be provided off-site.
2. Exceptions to any numerical regulation established in the building type regulations of [Chapter 135, Article 1](#) when the proposed construction is not subject to site plan review under Chapter 135 and when the exception does not exceed 50% of the applicable numerical regulation.
3. Exceptions of minimum or maximum motor vehicle off-street parking ratios by no more than 50%.
4. Exceptions to the time period within which a use may be resumed after a temporary discontinuance of that use, when:
 - a. Discontinuance of the use was due to unique circumstances not of the property owner’s own making; and
 - b. Resumption of the use will not have a significant adverse impact on the essential character of the surrounding area.
5. Exceptions to allow a pole sign in a location where such a sign would otherwise be prohibited when the board of adjustment determines that there is no feasible location for the placement of a monument sign that is outside of the vision clearance triangle required by municipal code section 114-14 and the proposed sign does not obstruct the vision of drivers entering or exiting the subject or adjoining properties.

B. The type 2 zoning exception procedures may not be used to vary, modify or otherwise preempt a condition of approval or requirement imposed by an authorized decision-making body.

6.6.3 AUTHORITY TO FILE

Type 2 zoning exception applications may be filed only with the consent of all record titleholders or contract purchasers of the real property on which the proposed conditional use is proposed.

6.6.4 APPLICATION FILING

Complete applications for type 2 zoning exceptions must be filed with the community development director.

6.6.5 STAFF REVIEW

Following receipt of a complete application, the community development director must prepare a report on the requested type 2 zoning exception. The

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Type 2 Zoning Exceptions

report must be transmitted to the board of adjustment before the required public hearing.

6.6.6 NOTICE OF HEARING

It is the policy of the city to provide courtesy mailed notice to all owners of property and recognized neighborhood associations within 250 feet of the property for which the type 2 zoning exception is requested.

6.6.7 BOARD OF ADJUSTMENT DECISION

A. Following receipt of a complete application for a type 2 zoning exception, the board of adjustment must hold a public hearing to consider the matter. Following the close of the public hearing, the board of adjustment must act to approve the requested type 2 zoning exception, approve the type 2 zoning exception with conditions, or deny the type 2 zoning exception based on the applicable standards and review criteria of [134-6.6.8](#). Approval of a type 2 zoning exception requires an affirmative vote of at least 4 members of the board of adjustment and may occur on the consent portion of the board of adjustment's agenda.

B. In approving a type 2 zoning exception, the board of adjustment is authorized to impose such conditions and restrictions as the board determines to be necessary to ensure compliance with the standards of [134-6.6.8](#), to reduce or minimize the effect of the type 2 zoning exception upon other properties in the area, and to better carry out the general purpose and intent of this zoning ordinance.

6.6.8 STANDARDS AND REVIEW CRITERIA

Type 2 zoning exceptions may be approved only when the board of adjustment determines that all the following general approval standards and criteria and any other specific criteria established in this zoning ordinance for the authorized type 2 zoning exception have been met:

- A.** The requested exception is reasonably necessary due to practical difficulties related to the subject property;
- B.** The practical difficulties related to the subject property cannot be overcome by any feasible alternative means other than an exception;
- C.** The requested exception will not have a significant adverse impact on the essential character of the surrounding area;
- D.** The requested exception by its design, construction and operation:

1. Will adequately safeguard the health, safety and welfare of the occupants of adjoining and surrounding property;
2. Will not impair an adequate supply of light and air to adjacent property;
3. Will not unduly increase congestion in the public streets;
4. Will not increase public danger of fire and safety; and
5. Will not diminish or impair established property values in the surrounding area.

E. The requested exception relates entirely to a use classified by applicable district regulations as either a principal permitted use, a permitted accessory use, or a permitted sign, or to off-street parking or loading areas accessory to such a permitted use.

6.6.9 LAPSE OF APPROVAL¹¹

- A.** All activity authorized by an approved type 2 zoning exception must be completed within 2 years of the community development director's action or the approval lapses and is of no further effect.
- B.** If any use of land or structure approved as a type 2 zoning exception is discontinued for a period of one year or more, the approved type 2 zoning exception lapses and is of no further effect.
- C.** If any use or structure approved as a type 2 zoning exception,¹² is destroyed by any means to an extent of 50% or more of its replacement cost at the time of destruction, the approved zoning exception lapses and is of no further effect.
- D.** Once a type 2 zoning exception lapses, any subsequent use of such land or structure must conform to the regulations of the subject zoning district.

6.6.10 TRANSFERABILITY

Approved type 2 zoning exceptions run with the land and are not affected by changes of tenancy, ownership, or management.

6.6.11 AMENDMENTS

A request for changes in the specific nature of an approved type 2 zoning exception or changes to any conditions attached to an approved type 2 zoning

¹¹ These provisions are based on those now found in Sec. 134-1297. The provisions governing discontinuance and damage seem particularly punitive

¹² The existing exception for R-HD can be eliminated since it will be addressed in district and building type regulations.

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Zoning Variances

exception must be processed as a new type 2 zoning exception application, including all requirements for fees, notices and public hearings.

6.6.12 APPEALS

Appeals of board of adjustment decisions are taken to district court (see 134-8.1.3.G).

6.6.13 SUCCESSIVE APPLICATIONS

If a type 2 zoning exception application has been denied by the board of adjustment, a new type 2 zoning exception application seeking the same relief may not be considered by the board of adjustment for at least one year from the date of final action by the board of adjustment unless the board finds that the facts and circumstances present at the time of the board's prior decision have materially changed so as to effect the reasons that produced and supported that prior decision.

134-6.7 Zoning Variances

Figure 6.7-A. Zoning (Non-Use) Variance Process



Figure 6.7-B. Zoning (Use) Variance Process



6.7.1 INTENT

A zoning variance is a grant of relief to a property owner from strict compliance with the regulations of this zoning ordinance. The intent of a zoning variance is not to simply remove an inconvenience or financial burden, but rather to alleviate an unnecessary hardship that would result if strict compliance with one or more zoning regulations was required.

6.7.2 AUTHORIZED ZONING VARIANCES

The board of adjustment is authorized to grant a zoning variance to any regulation in this zoning ordinance in accordance with the zoning variance procedures of this section, except that the zoning variance procedures may not be used to do any of the following:

- A. Waive, modify or otherwise vary any of the review and approval procedures of this zoning ordinance; or

Zoning Variances

- B. Waive, vary, modify or otherwise override a condition of approval or requirement imposed by an authorized decision-making body.

6.7.3 AUTHORITY TO FILE

Zoning variance applications may be filed only with the consent of all record titleholders or contract purchasers of the real property on which the proposed conditional use is proposed.

6.7.4 APPLICATION FILING

- A. Complete applications for zoning variances must be filed with the community development director.
- B. An application for a zoning use variance may not be filed or accepted for processing unless a proposed amendment to rezone the subject property to a district that would allow the subject use has been considered and denied by the city council within the preceding 12 months, except this requirement does not apply to requests to vary use separation requirements.

6.7.5 STAFF REVIEW

Following receipt of a complete application, the community development director must prepare a report on the requested zoning variance. The report must be transmitted to the board of adjustment before the required public hearing.

6.7.6 NOTICE OF HEARING

It is the policy of the city to provide courtesy mailed notice to all owners of property and recognized neighborhood associations within 250 feet of the property for which the zoning variance is requested.

6.7.7 BOARD OF ADJUSTMENT DECISION

- A. Following receipt of a complete zoning variance application, the board of adjustment must hold a public hearing to consider the requested zoning variance. Following the close of the public hearing, the board of adjustment must act to approve the requested zoning variance, approve the zoning variance with conditions, or deny the zoning variance request based on the applicable standards and review criteria of [134-6.7.8](#). Approval of a zoning variance requires an affirmative vote of at least 4 members of the board of adjustment and may occur on the consent portion of the board of adjustment's agenda.
- B. In approving a zoning variance, the board of adjustment is authorized to impose such conditions and restrictions as the board determines to be necessary to ensure compliance with the standards

of [134-6.7.8](#), to reduce or minimize the effect of the zoning variance upon other properties in the area, and to better carry out the general purpose and intent of this zoning ordinance.

6.7.8 STANDARDS AND REVIEW CRITERIA

A. General. A zoning variance may only be approved when the variance will not be contrary to the public interest, and where owing to special conditions a literal enforcement of the regulations of this chapter will result in unnecessary hardship, and so that the spirit of this chapter shall be observed and substantial justice done. A zoning variance further may not be approved unless the board of adjustment determines that all of the following facts have been established by the applicant:

1. The subject property cannot yield a reasonable return from any use permitted by the subject zoning regulations. Failure to yield a reasonable return may only be shown by proof that the owner has been deprived of all beneficial or productive use of the subject property. It is not sufficient to merely show that the value of the land has been depreciated by the regulations or that a zoning variance would permit the owner to maintain a more profitable use;
2. The plight of the owner is due to unique circumstances not of the owner's own making, which unique circumstances must relate specifically to the subject property and not to general conditions in the neighborhood; and
3. The use or construction to be authorized by the zoning variance will not alter the essential character of the area in which the subject property is located.

B. Floodplain Variances. No zoning variance from the FH zoning district regulations may be approved unless the board of adjustment determines that the general zoning variance standards and review criteria of paragraph [A](#) of this subsection [134-6.7.8](#) have been met and that all of the following additional following facts have been established by the owner of the subject property:

1. No zoning variance may be granted from the FH zoning district regulations that would result in a significant increase in the 100-year flood level.
2. Zoning variances from the FH zoning district regulations may only be granted upon:
 - a. A showing of good and sufficient cause;

- b. A determination that failure to grant the zoning variance would result in exceptional hardship to the appellant;
- c. A determination that the granting of the zoning variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, creation of nuisances, or victimization of the public;
- d. A determination that the zoning variance is the minimum necessary, considering the flood hazard, to afford relief; and
- e. A showing that the Iowa Department of Natural Resources has been notified of the requested zoning variance.

6.7.9 FILING AND EFFECT OF DECISIONS

- A.** Written decisions of the board of adjustment must be filed promptly following the board's action and be open to public inspection. Written decisions must describe the action taken, the vote of each board member participating and the reasons for such action.
- B.** Except as expressly stated in paragraph C of this subsection (134-6.7.9), the board of adjustment's decision on a zoning variance becomes final and effective after the board's written decision is filed in the board office.
- C.** A decision of the board of adjustment to grant a zoning use variance¹³ must be referred to the city council for review. The city council must then review the board of adjustment's decision within 30 days after the decision is filed. Following the city council's review, the council may remand the decision to the board of adjustment for further study. If the city council does not act to review the decision within 30 days after it is filed, the board of adjustment's decision becomes effective on the 31st day. If the city council declines to remand a decision, the board of adjustment's decision becomes final and effective on the date of the council's action to decline remand. If the city council remands a decision to the board of adjustment, the effective date of the board's decision is delayed for 30 days from the date of city council remand.
- D.** Upon remand of a decision from the city council, the board of adjustment must conduct a rehearing on

the matter for further study and action at a regularly scheduled or special-called board meeting held during the 30-day delay period. Following the close of the rehearing, the board of adjustment must act to either affirm its initial decision on the zoning use variance or withdraw its initial decision and issue a new decision on the zoning use variance. Upon completion of the rehearing process, the board of adjustment's decision is not subject to review by the city council and becomes final and effective upon filing.

6.7.10 LAPSE OF APPROVAL¹⁴

- A.** All activity authorized by an approved zoning variance must be completed within 2 years of the community development director's action or the approval lapses and is of no further effect.
- B.** If any use of land or structure approved as a zoning variance is discontinued for a period of one year or more, the approved zoning variance lapses and is of no further effect.
- C.** If any use or structure approved as a zoning variance is destroyed by any means to an extent of 50% or more of its replacement cost at the time of destruction, the approved zoning variance lapses and is of no further effect.
- D.** Once a zoning variance lapses, any subsequent use of such land or structure must conform to the regulations of the subject zoning district.

6.7.11 TRANSFERABILITY

Approved zoning variances run with the land and are not affected by changes of tenancy, ownership, or management.

6.7.12 AMENDMENTS

A request for changes in the specific nature of an approved zoning variance or revisions to any conditions attached to an approved zoning variance must be processed as a new zoning variance application, including all requirements for fees, notices and public hearings.

6.7.13 APPEALS

Appeals of board of adjustment decisions are taken to district court (see 134-8.1.3G).

6.7.14 SUCCESSIVE APPLICATIONS

If a zoning variance request has been denied by the board of adjustment, a new zoning variance request

¹³ The term "use variance" will be defined to include zoning variances to allow a use that is not permitted in the subject district and a zoning variance from applicable use separation requirements.

¹⁴ These provisions are based on those now found in Sec. 134-1297. The provisions governing discontinuance and damage seem particularly punitive

Requests for Reasonable Accommodation

seeking the same relief may not be considered by the board of adjustment for at least 2 years from the date of final action by the board of adjustment unless the board first finds that conditions have changed. A change in conditions present at the time of the board's prior decision may be such as:

- A. When the appellant or applicant proves the consent of owners who previously objected to the relief sought at the earlier hearing;
- B. When the appellant or applicant proves that land adjacent to the subject property is no longer subject to restrictive covenants that were in effect at the time of the earlier hearing;
- C. When the appellant or applicant presents a new plan that involves substantially greater limitations on the use of the property; and
- D. When the appellant or applicant presents evidence showing that the vicinity of the proposed variance has undergone a material and substantial change since the earlier decision was rendered.

134-6.8 Requests for Reasonable Accommodation

See [Chapter 2, Article VII](#) of the municipal code.

134-6.9 Appeals of Administrative Decisions

6.9.1 AUTHORITY

Except as otherwise expressly stated in this zoning ordinance, the board of adjustment is authorized to hear and decide all appeals where it is alleged there has been an error in any written order, decision or determination made by the community development director or any other administrative official in the administration, interpretation or enforcement of this zoning ordinance.

6.9.2 RIGHT TO APPEAL

Appeals of administrative decisions may be filed by any person claiming to be aggrieved by the administrative official's written decision or action.

6.9.3 APPLICATION FILING

- A. Complete applications for appeals of administrative decisions must be filed with the community development director.
- B. Appeals of written administrative decisions must be filed within 10 days of the date of the decision.¹⁵

¹⁵ Currently says "within a reasonable time, as provided by

6.9.4 EFFECT OF FILING

The filing of a complete notice of appeal stays all proceedings in furtherance of the action appealed, unless the community development director determines that a stay would cause immediate peril to life or property, in which case the proceedings will not be stayed unless by a restraining order, which may be granted by a district court of record based on due cause shown.

6.9.5 RECORD OF DECISION

At or before the board of adjustment's decision, the community development director or other administrative official whose decision is being appealed must transmit to the board of adjustment all papers constituting the record related to the decision being appealed

6.9.6 NOTICE OF HEARING

When an appeal affects a specific property, it is the policy of the city to provide courtesy mailed notice to the subject property owner and to all owners of property and recognized neighborhood associations within 250 feet of the subject property.

6.9.7 HEARING AND FINAL DECISION

- A. The board of adjustment must hold a public hearing on the appeal.
- B. In exercising the appeal power, the board of adjustment has all the powers of the administrative official from whom the appeal is taken. The board of adjustment may affirm or reverse, wholly or in part, or modify the decision being appealed.
- C. In acting on the appeal, the board of adjustment must grant to the official's decision a presumption of correctness, placing the burden of persuasion of error on the appellant.

6.9.8 REVIEW CRITERIA

The decision being appealed may be reversed or wholly or partly modified only if the board of adjustment finds that the community development director or other administrative official erred.

6.9.9 APPEALS

Appeals of board of adjustment decisions are taken to district court (see [134-8.1.3.G](#)).

rules of the board."