

# Chapter 134. Zoning

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# 134-6. REVIEW AND APPROVAL PROCEDURES

## Common Procedural Provisions

### 134-6.1 Common Procedural Provisions

#### 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 134-6.1-1 of this article provides a summary of the review and approval procedures of this article. In the event of conflict between Table 134-6.1-1 of this article and the detailed procedures contained elsewhere in this article, the detailed procedures govern.

TABLE 134-6.1-1. 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.

#### 6.1.4 APPLICATIONS AND FEES

**A. Owner-initiated Applications.** Whenever the provisions of this zoning ordinance allow the filing of an application, 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.

Applications must be accompanied by fees in the amounts established in the schedule of fees approved by city council resolution. Actions initiated 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 Sufficiency

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 in accordance with the city's Traffic Analysis Policy, 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 deficiencies. Notice of an incomplete application

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- 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 or 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 COMMUNICATIONS

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

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 Meetings Summary.** When neighbor meetings are required, applicants must submit a summary of their neighbor meetings at least three days prior to the first required public hearing. Neighbor meetings summaries must include at least the following information:

1. Efforts to notify neighbors about the proposal, including how and when notification occurred, who was notified, and when and where the public meeting was held;
2. Who was involved in the discussions;
3. Suggestions and concerns raised by neighbors; and
4. What specific changes, if any, were considered or made as a result of the neighbor meetings.

### 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 seven days and 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.

### 6.1.8 COURTESY PUBLIC HEARING NOTICES

**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. Failure by the city to provide any courtesy notice does not invalidate proceedings.

**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.

#### **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. The applicant must pay all costs of re-notification.

#### **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 in writing or on the record during the applicable hearing; if a continuance is approved pursuant to section [134-6.1.9 of this article](#); or if the community development director determines that a delay of one meeting is necessary for completion of review.

#### **6.1.13 EFFECT OF FILING**

The filing of a complete application pursuant to this article stays all zoning enforcement proceedings, 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.

#### **6.1.14 PROHIBITED RELIEF**

No relief may be granted by any authorized decision-maker for any of the following:

- A.** Waiver, modification or variation of any of the review and approval procedures of this chapter; or
- B.** Waiver, modification, variation or action to preempt a condition of approval or requirement imposed by an authorized decision-making body; and
- C.** Waiver, modification or variation of any of the definitions set forth in this chapter.

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### **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 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 section [134-6.1.7 of this article](#).

### 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 134-6.3-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 with the consent of all record contract purchasers when applicable, 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 per section [134-6.1.3 of this article](#).

#### 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 a summary of such activities before required public hearings pursuant to section [134-6.1.6 of this article](#).

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## Zoning Map Amendments

### 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 and all recognized neighborhood associations within 250 feet of the subject property. Mailed notice shall not be 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 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 section [134-6.1.7 of this article](#).

### 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 section [134-6.3.10 of this article](#).

### 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 or at 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

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or desirable to meet the challenge of a changed or changing condition and is in the public interest.

### 6.3.12 REVIEW AND APPROVAL - VEHICLE SALES AND RENTAL DISPLAY

A. There exist within the city of Des Moines segments of commercial corridors wherein the concentration of vehicle sales and rental display lots has reached a level that has discouraged investment and reinvestment in other uses in the area. As retail and service businesses close and property values within the affected corridors decline or fail to rise with the overall market, the most profitable use of the vacant properties is often for additional vehicle sales and rental display lots. This further increases the concentration of vehicle sales and rental display lots and their impact on other properties. The creation or expansion of vehicle sales and rental display lots is generally prohibited on such corridors. It is expected that over time the concentration of vehicle sales and rental display lots will decline through attrition and conversion to other uses, and the detrimental impact of the remaining vehicle sales and rental display lots will decline as vehicle sales and rental display lots are upgraded over time to the current landscaping and setback standards.

B. Property should not be rezoned to remove the “-V” extension to allow vehicle sales and rental display lots when the city council has made a determination that at least one of the following conditions exist within the corridor along which the property is located:

1. The corridor or portion thereof to be rezoned contains a high concentration of vehicle sales and rental display lots and the concentration of vehicle sales and rental display lots has reached a level where it is discouraging, or with any increase is likely to discourage, further investment and reinvestment in other uses along the corridor.
2. The use of the required front yard for vehicle sales and rental display is contrary to the predominant character of the corridor or portion thereof to be rezoned, and would detrimentally impact that character and property values along the corridor.

The city council, after review and recommendation by the plan and zoning commission, may consider removal of the “-V” extension designation from a specific parcel, if the council finds that the above conditions no longer exist or that the proposed use

demonstrates provision of exceptional setbacks, landscaping and other site amenities that mitigate the visual impact of the vehicle sales and rental display lot from the corridor.

### 6.3.13 SUCCESSIVE APPLICATIONS

If a zoning map amendment application has been 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 134-6.4-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 with the consent of all record contract purchasers when applicable, of the real property on which the 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 pursuant to section 134-6.1.3 of this article.

### 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 neighborhood meeting(s) and providing a summary of such meeting(s) before required public hearings pursuant to section [134-6.1.6 of this article](#).

**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 of hearing to all owners of property and any applicable recognized neighborhood associations within 250 feet of the property for which a conditional use approval is requested, except;

1. The city will provide courtesy mailed notice of hearing to all owners of property and any applicable recognized neighborhood associations within 300 feet of the property for which a conditional use approval for a wireless telecommunications tower is requested.
2. The city will provide courtesy mailed notice of hearing to all owners of property abutting and diagonally opposite from the subject property and any applicable recognized neighborhood association within the notification area for which a conditional use approval for any wireless telecommunications use, other than related to a tower, 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 section [134-6.4.8 of this article](#). Approval of a conditional use requires an affirmative vote of at least four 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 section [134-6.4.8 of this article](#), 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:

1. The proposed geographic location and operation of the use or activity adequately safeguards the health, safety, and general 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;
5. The proposed use is consistent with the general purpose of this zoning ordinance, the planning and design ordinance, chapter 135 of this code, and the comprehensive plan and any specific purposes established in this zoning ordinance for the subject use;
6. The proposed use in an F zoning district is fully in compliance with chapter 50 of this code;
7. The proposed use shall have no significant detrimental impact on the use and enjoyment of adjoining properties;
8. Adequate setbacks shall be provided to protect adjacent residentially zoned property from non-residential and institutional uses; and
9. No parking should be permitted in a required front yard of an N district unless shown to be compatible with the adjoining land use.

**B. Short-Term Rentals**

A conditional use may not be approved for a short-term rental unless the board of adjustment determines that the proposed use or activity complies with all applicable short-term rental regulations of section [134-3.8.3 of this chapter](#) and

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that the applicant has demonstrated that all of the following general standards and review criteria are met:

1. The proposed geographic location, design, construction and operation of the particular short-term rental adequately safeguards the health, safety and general welfare of persons in the adjoining or surrounding areas.
2. The short-term rental will not unduly increase congestion on the streets in the adjoining area or displace or impede use of parking spaces required by chapter 135 of this code.
3. The operation of the short-term rental will not constitute a nuisance.
4. The short-term rental meets all required occupancy limits set forth in the International Property Maintenance Code.
5. A conditional use for short-term rental can be reconsidered by the board of adjustment if at any time the zoning enforcement officer determines that the conduct of the short-term rental, by its owner, authorized management agent, renter, or others, has become a nuisance, is detrimental to the neighborhood, or does not comply with one or more conditions established in the prior board of adjustment conditional use approval, in the general requirements for short-term rentals, or the conditions set forth in this section.
6. If the short-term rental of a single-household detached structure, a two-household attached structure or a condominium within a structure, is to be undertaken by a tenant-occupant rather than an owner-occupant, then the application for conditional use requires signed consent by the owner of the applicable structure. If such signed consent is not included, the application for conditional use will not be accepted by city staff or submitted to the board of adjustment for consideration.
7. For all multi-household structures and for two-household attached structures, applications for short-term rental that are deemed complete by community development department staff shall be considered and submitted to the board of adjustment in the order of submittal to the community development department.

### 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 signed and filed with the community development department, which serves as the board of adjustment office.

### 6.4.10 LAPSE OF APPROVAL

- A. All activity authorized by an approved conditional use must be completed within two years of the date of signature and filing of the board's decision, or less time if ordered by board decision or in the event of a temporary use, 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 six months or more, the conditional use approval lapses and is of no further effect.
- C. An approved conditional use for a short-term rental shall be in effect only for so long as the subject structure is owned, or controlled through lease, by the applicant.
- D. If any use or structure approved as a conditional use is damaged or destroyed by any means, including damage or destruction by repair, alteration, replacement or upgrade, to an extent of 50% or more of its replacement cost at the time of damage or destruction, the approved conditional use lapses and is of no further effect.
- E. Once a conditional use approval lapses, any subsequent use of such land or structure must 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 required for 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 pursuant to section [134-8.1.2.G of this chapter](#).

### 6.4.13 SUCCESSIVE APPLICATIONS

If a conditional use has been denied by the board of adjustment, a new conditional use application seeking

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## Type 1 Zoning Exceptions

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.

### 6.4.14 CONDITIONS AND SAFEGUARDS

- A. In granting any conditional use under the terms of this division, the board of adjustment may prescribe appropriate conditions and safeguards in conformity with this chapter. Violation of such conditions and safeguards, when made a part of the terms under which the conditional use is granted, shall result in revocation of the conditional use approval.
- B. If the zoning enforcement officer determines at any time that the applicant or property owner or designee exhibits a pattern of violating the conditions set forth in the conditional use approval, the zoning enforcement officer may apply to the board to reconsider the issuance of the conditional use. A copy of such application and notice of the hearing before the board on such application shall be provided to the owner of the property and any other applicable party at least 30 days in advance and shall also be provided to all owners of record of property within 250 feet of the subject property. If the board finds that the operation of the property exhibits a pattern of violating the conditions set forth in the board's conditional use approval, the board shall have the authority to amend or revoke the conditional use approval.

### 134-6.5 Type 1 Zoning Exceptions

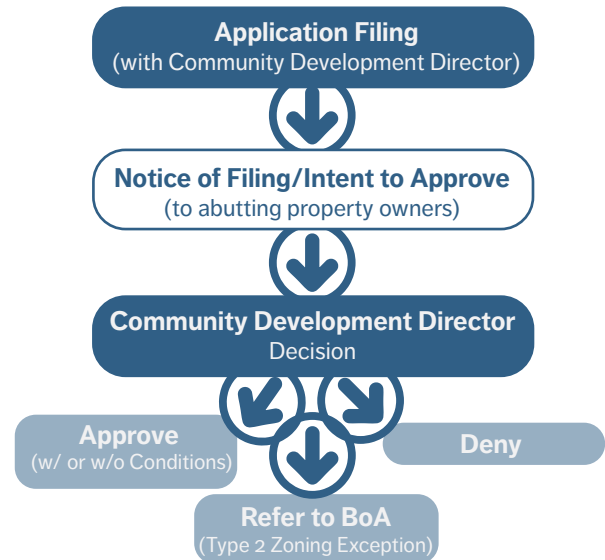


Figure 134-6.5-A. Type 1 Zoning Exception Process

#### 6.5.1 INTENT

Type 1 zoning exceptions are intended to provide a streamlined approval procedure for minor 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. Unless otherwise allowed by this ordinance, only the following may be approved as Type 1 zoning exceptions:
  1. Exceptions to supplemental regulations that apply to household living uses, as set forth in section 134-3.3.1 of this chapter, if such exceptions are determined by the city legal department to be required by federal or state law;
  2. Exceptions to supplemental regulations that apply to family home uses, as set forth in section 134-3.3.2 of this chapter, if such exceptions are

## Type 1 Zoning Exceptions

determined by the city legal department to be required by federal or state law;

3. Exceptions to supplemental regulations that apply to home and community-based services waiver recipient residence uses, as set forth in section [134-3.3.2 of this chapter](#), if such exceptions are determined by the city legal department to be required by federal or state law;
4. Exceptions to allow alternative durable materials for a monument sign base;
5. Exceptions to allow less than or equal to 50% variation in height of a monument sign base;
6. Exceptions to allow signs used on a temporary basis in districts A, N, NM, or NX that are greater than four square feet in total area for all signs used on a temporary basis on one lot but less than or equal to 12 square feet in total area for all signs used on a temporary basis on one lot;
7. Exceptions to allow signs used on a temporary basis in all districts other than A, N, NM, or NX that are greater than 32 square feet in total area for all signs used on a temporary basis on one lot but less than or equal to 100 square feet in total area for all signs used on a temporary basis on one lot; and
8. Other exceptions expressly provided in this chapter.

### 6.5.3 AUTHORITY TO FILE

Type 1 zoning exception applications may be filed only with the consent of all record titleholders, or with the consent of all record contract purchasers when applicable, of the real property on which the Type 1 zoning exception 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 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 section [134-6.5.6 of this article](#).
- 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 section [134-6.6 of this article](#).

### 6.5.6 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.

### 6.5.7 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.

### 6.5.8 LAPSE OF APPROVAL

- A. All activity authorized by an approved Type 1 zoning exception must be completed within two 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 damaged or destroyed by any means, including damage or destruction by repair, alteration, replacement or upgrade, to an extent of 50% or more of its replacement cost at the time of damage or 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.

### 6.5.9 TRANSFERABILITY

Approved Type 1 zoning exceptions run with the land and are not affected by changes of tenancy, ownership, or management, except as provided in this article or by conditions of approval.

### 6.5.10 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 Exceptions



Figure 134-6.6-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.** Unless otherwise allowed by this ordinance, only the following may be approved as Type 2 zoning exceptions:
1. Exceptions to any numerical regulation established in this chapter, when the exception

does not exceed 50% of the applicable numerical regulation, other than separation distance requirements, and other than use requirements set forth in section [134-3.8 of this chapter](#).

2. 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.
3. Exceptions to allow a pole sign 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 section 114-14 of this code and the proposed sign does not obstruct the vision of drivers entering or exiting the subject or adjoining properties.
4. Exceptions to allow signs on a temporary basis in districts A, N, NM, or NX may be requested for approval of signs used on a temporary basis exceeding 12 square feet in total area for all signs used on a temporary basis on one lot.
5. Exceptions to allow signs used on a temporary basis in all districts other than A, N, NM, or NX exceeding 100 square feet total area for all signs used on a temporary basis on one lot.
6. Exceptions to allow a sign with full-motion video display for an events center.
7. Other exceptions expressly provided in this chapter.

### 6.6.3 AUTHORITY TO FILE

Type 2 zoning exception applications may be filed only with the consent of all record titleholders, or with the consent of all record contract purchasers when applicable, of the real property on which the Type 2 zoning exception 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 of hearing to all owners of property abutting and diagonally opposite from the subject property and any applicable recognized neighborhood association within the notification area 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 section [134-6.6.8 of this article](#).

Approval of a Type 2 zoning exception requires an affirmative vote of at least four 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 section [134-6.6.8 of this article](#), 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 of 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 APPROVAL

- A.** All activity authorized by an approved Type 2 zoning exception must be completed within two years of the date of filing of the board's decision or less time if ordered by board decision, 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 six months 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 is damaged or destroyed by any means, including damage or destruction by repair, alteration, replacement or upgrade, to an extent of 50% or more of its replacement cost at the time of damage or destruction, the approved Type 2 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, except as provided in this article or by conditions of approval.

### 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 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 pursuant to section 134-8.1.2.G of this chapter.

### 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 134-6.7-A. Zoning (Non-Use) Variance Process



Figure 134-6.7-B. Zoning (Use) Variance Process

# 134-6. REVIEW AND APPROVAL PROCEDURES

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## Zoning Variances



Figure 134-6.7-C. Zoning (Separation Distances) Variance Process<sup>1</sup>

### 6.7.1 INTENT

A zoning variance is a grant of relief to a property owner from strict compliance with the regulations of this chapter. 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 AUTHORITY TO FILE

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

### 6.7.3 APPLICATION FILING

- A. Complete applications for zoning variances must be filed with the community development director.

<sup>1</sup> Please insert a 3rd chart for Variances to Separation Distances.

- 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.

### 6.7.4 STAFF RECOMMENDATION

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

### 6.7.5 NOTICE OF HEARING

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

### 6.7.6 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 section [134-6.7.7 of this article](#). Approval of a zoning variance requires an affirmative vote of at least four 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 section [134-6.7.7 of this article](#), 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.

### 6.7.7 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 F 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 section have been met and that all of the following additional following facts have been established by the owner of the subject property:

1. Zoning variances from the F zoning district regulations may only be granted upon:
  - a. A showing of good and sufficient cause;
  - b. A determination that the zoning variance is the minimum necessary, considering the flood hazard, to afford relief; and
  - c. A showing that the Iowa Department of Natural Resources and the city engineer has been notified of the requested zoning variance and offers no objection.
  - d. A showing that the proposed variance does not impede emergency access to the subject property or surrounding neighborhood.

#### **6.7.8 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 section 134-6.7.8 of this article, 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 variance or variance from any separation distance requirement 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 signed and 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 signed and 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 variance from any separation distance requirement or withdraw its initial decision and issue a new decision on the applicable 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.

#### **6.7.9 LAPSE OF APPROVAL**

- A.** All activity authorized by an approved zoning variance must be completed within two years of the date of filing of the board's decision, or less time if ordered by board decision, 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

## Requests for Reasonable Accommodation

more, the approved zoning variance lapses and is of no further effect.

- C. If any use or structure approved as a zoning variance is damaged or destroyed by any means, including damage or destruction by repair, alteration, replacement or upgrade to an extent of 50% or more of its replacement cost at the time of damage or 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.

### 6.7.10 TRANSFERABILITY

Approved zoning variances run with the land and are not affected by changes of tenancy, ownership, or management, except as provided in this article or by conditions of approval.

### 6.7.11 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.

### 6.7.12 APPEALS

Appeals of board of adjustment decisions are taken to district court pursuant to section [134-8.1.2.G of this chapter](#).

### 6.7.13 SUCCESSIVE APPLICATIONS

If a zoning variance request has been denied by the board of adjustment, a new zoning variance request seeking the same relief may not be considered by the board of adjustment for at least two 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.

### 6.7.14 RECONSIDERATION OF USE VARIANCE

If the zoning enforcement officer determines at any time that the operation of the property exhibits a pattern of violating the conditions set forth in the use variance, the zoning enforcement officer may apply to the board to reconsider the issuance of the use variance for such property. A copy of such application and notice of the hearing before the board on such application shall be provided to the owner of such property and any other applicable party at least 30 days in advance and shall also be provided to all owners of record of property within 250 feet of the subject property. If the board finds that the operation of such property exhibits a pattern of violating the conditions set forth in the use variance, the board shall have the authority to amend or revoke the use variance.

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## 134-6.8 Requests for Reasonable Accommodation

See [chapter 2, article VII](#) of this code.

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## 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 to the board of adjustment 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 enforcement officer or of any other administrative officer in the enforcement of this chapter or of the state zoning laws.

### 6.9.3 APPLICATION FILING

- A. Complete applications for appeals of administrative decisions must be filed with the community development director including payment of the application fee as provided in the schedule of fees approved by city council resolution.

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## Appeals of Administrative Decisions

- B.** Appeals of written administrative decisions must be filed within 10 days of the date of the decision.

### 6.9.4 EFFECT OF FILING

The filing of a complete notice of appeal stays all proceedings in furtherance of the action appealed from, unless the community development director certifies to the board of adjustment after the notice of appeal shall have been filed with the officer that by reason of facts stated in the certificate a stay would in the director'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 of adjustment or by a court of record on application on notice to the community development director and on due cause shown.

### 6.9.5 RECORD ON APPEAL

At or before the board of adjustment's hearing, 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

It is the policy of the city to provide courtesy mailed notice of the date and time of the hearing on appeal 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 shall fix a reasonable time for public hearing on the appeal and shall decide the appeal within a reasonable time.
- B.** At the hearing, any party may appear in person or by agent or by attorney.
- C.** In exercising the appeal power, the board of adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end has all the powers of the community development director from whom the appeal is taken. The concurring vote of four of the members of the board shall be necessary to reverse any order, requirement, decision or determination of the zoning enforcement officer or of any other administrative officer.
- D.** The decision of the board of adjustment shall be in writing and filed promptly following the board's

action and open to public inspection. The decision shall describe the action taken, the vote of each board member participating, and the reasons for such action. The board of adjustment's decision on an appeal shall be final and effective after the board's written decision is signed and filed with the community development department, which serves as the board of adjustment office.

### 6.9.8 APPEALS

Appeals of board of adjustment decisions are taken to district court pursuant to section [134-8.1.2.G of this article](#). [END OF ARTICLE]

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