A Guide to Common Planning and Zoning Procedures

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The planning and zoning process directly affects the lives of more than 85 percent of all Iowans because they live in cities or counties that have prepared comprehensive plans and/or adopted zoning ordinances. Yet it is easy for people who encounter this process to become confused by the labyrinth of terms and procedures. This is equally true for local elected officials, those appointed to serve on boards of adjustment or the planning and zoning commissions, or citizens with concerns about planning and zoning. This guide is designed to explain the planning and zoning puzzle and to describe some common zoning procedures.

Every Iowa jurisdiction that adopts planning and zoning does so according to the state enabling legislation which passes the state’s authority for planning and zoning to the local level. This legislation may be found in Chapter 335 (county enabling legislation) and Chapter 414 (Municipal enabling legislation) of the Iowa Code. So, while the provisions of local planning and zoning regulations vary widely according to local desires and conditions, the procedures should be similar in all Iowa cities and counties.

Understanding Planning and Zoning

Community planning is not much different from the planning that all of us do in the course of our daily lives. We plan for our future careers, we plan ahead for vacations and other important events and we make plans that involve friends and family. When we plan with other people, however, things become more complex. There is a need to check with all those who will be affected by these plans. Doubtless some conflicts will arise and need to be resolved.

People have hopes and dreams for their communities just as they do for their individual lives. These aspirations can be formulated into a written plan for the community. But care must be taken to involve all interested citizens and use open processes so that competing interests and points of view may be heard and accommodated. Important background data about the local population and economy must also be considered. The final document resulting from this planning process is usually referred to as the comprehensive plan. Such a plan acts as a guide for future development of the community.

Zoning is the most important tool to implement the comprehensive plan. Zoning works by regulating various aspects of how land may be used.

Its name derives from dividing the community into zones (also called districts). Certain uses of land are permitted in each zone according to specific standards. There are a number of objectives that may be achieved through zoning. These include:

- conserving and protecting property values by preventing incompatible land uses from locating in a given area;
- encouraging efficient and orderly development patterns to facilitate adequate and economical provision of public improvements;
- limiting overcrowding of land and congestion of population, transportation systems and other public facilities;
- facilitating the adequate provision of transportation, water, sewage disposal, schools, parks, and other public requirements; and
- preserving the availability of agricultural land and protecting the soil from wind and water erosion.
Zoning helps to achieve these objectives by controlling land uses, population density, building height and bulk, lot sizes, yards and open spaces, setbacks, and accessory uses. A variety of regulations may be established to carry out the specific purposes stated for each zone, although within each zone all properties receive similar treatment.

A zoning ordinance consists of two distinct parts—the district map and a written text. The text sets out the purposes, uses, and regulations for each district and the standards for special land uses and for administration of the ordinance. The map graphically depicts the location of all zoning districts within the city or county.

Zoning typically seeks to achieve its objectives by grouping compatible uses within a district and thereby separating incompatible uses. Uses of land are typically incompatible if one use results in negative consequences for adjacent property. This may occur if residential use adjoins a land use that produces large amounts of noise, dust, odors, traffic, or smoke.

Together the community plan and related zoning ordinance should establish an orderly land use pattern for residential areas, business districts, transportation facilities, utilities, other public facilities, and services. An appropriate balance of various land uses within the community is typically sought. Likewise, grouping land uses with similar needs or direct relationships to each other helps maximize efficiency and minimize friction, while protecting land values and reducing public service costs. For example, schools and parks are good neighbors for residential areas; intensive commercial or industrial developments may not be.

Although zoning regulations restrict how property owners may use land, zoning protects each property owner from the uncontrolled actions of others. Without zoning, uses of land such as junk yards and asphalt batch-tag plants could be developed adjacent to homes. While these land uses provide valuable services to the community, their appropriate location is not adjacent to residential areas.

Zoning is based upon local goals and helps ensure that the future which is embodied in community plans is built, piece by piece. Thus, zoning controls are a means to an end and not an end in themselves.

Summary

Planning is . . .

a process of developing goals and objectives by which a city or county decides what kind of future it wants and then establishes the policies and management tools to help in reaching that future.

A comprehensive plan is . . .

a document that sets forth long-range goals intended to guide the growth and development of the community or region. It includes analysis, recommendations and proposals for the future direction of the locality’s population, economy, housing, transportation, community facilities, and land use.

Zoning is . . .

• a means for avoiding land use conflicts between one neighbor and another.
• a tool used to ensure that new uses and structures will have characteristics generally compatible with others in the area.
• a way of promoting the welfare of the community by guiding its growth along orderly lines.
• a method of implementing the comprehensive plan.
• a legal and enforceable document that is prepared by the planning and zoning commission and adopted by the legislative body (board of supervisors or city council).

Zoning can only be effective if it is . . .

• based on a sound understanding of the community’s needs and reflects citizens’ desires and concepts of what the community should be;
• used with competent legal and other technical assistance as needed;
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- based on a properly structured and enacted zoning ordinance;
- consistently, fairly, and impartially administered and enforced;
- administered in strict compliance with procedures required by statutes and all procedures specified in the zoning ordinance;
- periodically reviewed and updated;
- understood and supported by the public; and
- an integral part of the mechanisms adopted by the community to implement community plans and growth management programs.

Zoning cannot . . .

- cure all local ills;
- be used to support any economic, racial, or religious group;
- enforce private deed restrictions;
- solve all neighborhood feuds;
- guarantee an Eden untouched by machines, wandering dogs, or other noisy participants on the local scene;
- be used as a device for enforcing narrowly parochial views of style, color, texture, or shape;
- totally restrict the location of group homes for the “developmentally disabled;” or
- completely prohibit mobile homes or manufactured housing.

Zoning is not a weapon to be used in the political arena to assist supporters or punish opponents. Neither is it a scale on which the thumb rests in favor of friends and to the detriment of strangers.

Zoning isn’t a popularity contest. Where well-considered planning requires an action, it should be taken even in the face of anguished outcries at public hearings. Head counts don’t help; reasonable debate does.

"Stating the facts"
There are generally three broad phases through which all zoning requests must pass: application or submission; investigation–evaluation (fact-finding and analysis); and final action. Throughout each phase in the process, proper and defensible zoning administration requires (1) responsible communication, (2) diligent record keeping, and (3) consistent adherence to all specific procedural requirements and standards found in the local zoning ordinance and the state enabling legislation.

**Zoning Amendments**

When a property owner or local official seeks a change in the provisions, rules, or requirements of the zoning ordinance (text change), or a change in the mapping of district boundaries (rezoning), a zoning amendment is required. Amendments, as legislative actions, must follow the same route required for the adoption of the original ordinance. This means that the proposed amendment should be considered carefully in view of adopted local land use policies and plans. The review should establish the compatibility of the proposal with adopted community policies, plans, and existing and future land use.

**General Procedural Steps**

The general procedural steps for proposing zoning changes are as follows:

1. The applicant:
   a) inquires of the zoning administrator how one must proceed and obtains the application form.
   b) completes and files the application form along with any required fee (and other supporting documentation) to the zoning administrator.

2. The zoning commission:
   a) reviews the amendment application and studies the appropriateness of the proposed amendment. Study is based on established planning and zoning criteria, as set forth in the zoning ordinance and community plans.
   b) schedules a public hearing on the request. (This is optional under the Code of Iowa.)
   c) transmits the application and a summary report to the governing body. The report should include:
      1) a summary of the comments received
from the public either presented in written form or at a public hearing, if one was held.

2) detailed findings concerning the application based on planning and zoning criteria and any other concerns that have been raised.

3) a recommendation for action that is supported by the above findings and concerns.

2. For amendment applications to add a new use or to change or add additional regulations or standards to the district, it is appropriate to determine:

a) Does the proposed rule change or addition help reinforce the land use plan?

b) Is the proposed rule change or addition in keeping with the spirit and intent of the ordinance and with the objectives of the zoning district, or does it go excessively beyond the intent and objectives?

c) What is the problem or issue that the change is intended to address? Can this be accomplished in another, more appropriate fashion? Is it a new response to new problems not addressed in the zoning ordinance?

3. The governing body (the board of supervisors or the city council):

a) must hold a public hearing so that the views of interested citizens may be heard.

b) following the required public hearing, may adopt or reject the proposed amendment, or refer it back to the zoning commission for further study and a new recommendation.

Checklist

In order to help zoning commissions and governing bodies objectively determine whether a proposed zoning amendment is appropriate, the following questions could be considered:

1. For amendment applications to add additional uses to a zoning district classification, it is appropriate to determine:

a) Is the proposed use already provided for elsewhere in the ordinance?

b) Is the proposed use compatible with uses already permitted in that district?

c) Does the proposed use relate well to the comprehensive plan? Does the proposed use contribute to the character of development envisioned in the plan?

d) Does the proposed use relate well to the spirit and intent of the ordinance and to the objectives of the zoning district?

e) Is the proposed use appropriate throughout the district?

f) Is the proposed use most appropriate in the district if permitted as a special exception?

g) Is there a need to add the proposed use at all?

2. For amendment applications to add a new use or to change or add additional regulations or standards to the district, it is appropriate to determine:

a) Does the proposed rule change or addition help reinforce the land use plan?

b) Is the proposed rule change or addition in keeping with the spirit and intent of the ordinance and with the objectives of the zoning district, or does it go excessively beyond the intent and objectives?

c) What is the problem or issue that the change is intended to address? Can this be accomplished in another, more appropriate fashion? Is it a new response to new problems not addressed in the zoning ordinance?

3. For rezoning requests to change, create, extend or reduce a mapped zoning district, it is appropriate to determine:

a) Is the use more appropriately handled as a special exception in that district? Does the district already provide for this use as a special exception?
b) Are there substantial reasons why the property cannot be reasonably used as zoned?

c) Is the proposed zone change supported by the adopted land use plan?

d) Would the change of present district boundaries be consistent in relation to existing uses?

e) Would the change severely impact traffic, public facilities and the natural characteristics of the area or significantly change population density? Is the change consistent with the purposes for which zoning is adopted?

f) Would the rezoning constitute a “spot zone,” granting a special privilege to one landowner not available to others?

g) Is the change contrary to the established land use pattern? Will it adversely affect property values?

h) Has there been a change of conditions in the area supporting the proposed rezoning?

i) Are adequate sites, properly zoned, available elsewhere to accommodate the proposed use?

j) Is the proposed change out of scale with the needs of the community?

k) If the change is approved, what will be the probable effect on stimulating similar zoning requests in the vicinity? Would this secondary effect negatively impact community plans and public services?

l) Is the proposed change precedent setting?

m) Is the proposed boundary appropriate?

n) Was there a mistake in the original zoning classification?

As a general rule, most of these concerns are embodied in the following question when rezonings or district use changes are at issue: Is the proposed class of use appropriate in the proposed location (district)?

If these factors are carefully considered and sufficient data are available for evaluation, a sound recommendation will result. In some cases, it may be necessary for special studies and surveys to be made in order to obtain enough information to answer these questions. When this is true, the commission should not hesitate to investigate, making certain that professional technical assistance is used whenever possible.
In the case of a major amendment, such as for a shopping mall, an environmental impact assessment is a good technique for ensuring that these points are thoroughly explored. Large scale zoning changes can have far-reaching environmental, social, fiscal, and public utility implications. These may greatly affect the community and should be evaluated very carefully.

Zoning Excuses

Excuses offered for granting rezonings include:

- What is proposed is better than what is there.
- The lot is only a weed patch, this will clear it up.
- You can’t keep a person from using his/her land.
- This will bring in more revenue.
- The owner of the land can get more money for the land if it is rezoned to commercial.
- There are more vehicles on the street than when he built there or bought the property.
- I promised the people if I were elected I would keep taxes down.
- They are too big an outfit, we can’t deny the rezoning.
- He is just an old man trying to make a living, this won’t really hurt anyone.
- Service stations provide quick urban renewal.
- We have to bring commerce and industry in today, and not worry about a plan for tomorrow.
- I promised the people if I were elected I would bring commerce and industry into our city and this will be a start.
- We approved the commercial rezoning for the other fellow, how can we deny this one?
- We don’t have any right to say where commercial or industrial developments should go.
- He invested a lot of money in this land and these proposals thinking the rezoning would be granted, how can we deny it?
- There is commercial zoning on the other corner, how can we deny it on this corner?
- Like his attorney said, it’s probably “unconstitutional,” and we don’t know for sure.
- We don’t want to have to go to court, after all it really doesn’t look so bad.

Zoning Approval

Unless a particular use or structure is specifically exempted, zoning approval, usually in the form of a zoning permit, is necessary:

1. prior to construction of a new structure or addition to either a principal structure or to an accessory structure.
2. prior to changing from one use of land to a different use.
3. prior to moving a prebuilt structure onto a parcel.
4. prior to changing certain accessory uses of land such as parking areas or signs.

Note: A change in occupancy or ownership of a parcel or structure where the same land use is to be maintained in the same fashion and to the same extent, does not usually require a zoning permit.

**General Procedural Steps:**

1. The applicant:
   a) meets with the zoning administrator to inquire about the ordinance requirements pertaining to his/her proposed use of land and to obtain the proper application forms.
   b) completes and submits application along with fee and other supporting documentation to the zoning administrator.
   c) submits the site plan if site plan approval is required by the zoning ordinance.

2. The zoning administrator:
   a) reviews the application:
      1) to make sure that it is the proper application for the zoning action requested;
      2) to see that all required information is submitted; and
      3) to determine zoning compliance.
   b) takes one or more of the following preliminary actions:
      1) Requests that the applicant submit any omitted or pertinent and necessary information.
      2) If necessary, requests the board of adjustment to interpret an unclear ordinance provision.
      3) Reviews site plan (if required) according to site plan review standards set forth in the zoning ordinance.
   c) takes final action:
      1) Approves application (and site plan) if the proposed use complies with all ordinance requirements and if no special review procedure is required. A zoning permit is issued.
      2) Disapproves and rejects application (and site plan) with reasons given in writing.

**Checklist**

When reviewing an application for a use or structure, the zoning administrator will consider how a number of physical aspects relate to the zoning ordinance. However, because the review generally involves a simple check for zoning compliance and no discretion is involved (except if there is a requirement for site plan review), the zoning administrator will look particularly at certain key elements.

Many administrators, especially those in urbanizing areas, have developed these key elements into a standardized or systematic review format. Here are some of the common key considerations contained in such a format.

All proposed uses and structures to be developed within any zoning district shall be reviewed to ensure compliance with each of the following ordinance requirements:

1. the proposed use is permitted either by right or by special exception in the district in which the proposed use is to be located;
2. minimum site area requirements of the district (lot size, lot width, lot coverage, required yard setbacks from water bodies and streams, maximum building height, etc.)
3. minimum building requirements, if any (required area);
4. minimum dimensions of parking space and required number of parking spaces;
5. sign requirements;
6. required lighting, fencing, screening, or buffer strips, if any;
7. all public structural or development easements where such exist;
8. all special standards and conditions applicable to the proposed uses or structures that are specifically provided for in the ordinance; and
9. all general provisions of the zoning ordinance applicable to the proposed use or structures.

Site Plans

Some ordinances require that a site or plot plan or at least a sketch be submitted as part of the application for a particular use. The site plan is used to ensure ordinance compliance and to study general (on-site) impacts from proposed development. These impacts include ingress/egress, interior/exterior traffic flow, storm drainage, erosion, grading of land, landscaping or lighting and parking. A site plan can vary in detail, depending upon the size and complexity of the project, and the administrative needs of the local governmental structure. Some site plans are highly detailed blueprints, while other site plans may be nothing more than simple sketches affixed to the zoning permit forms.

The importance to the zoning administrator of having a site plan (or sketch) to review cannot be overstated. The final site plan in effect documents that the applicant is knowledgeable of the regulations and is in compliance with them. Also, once a permit is granted based upon the final site plan, the approved site plan then serves as an enforcement tool.

Site plan review is most often not a separate zoning procedure, but instead is a part of another review process, such as review to receive a zoning permit, to obtain a special land use permit, or in relation to a request for a variance.

Procedural steps in reviewing site plans vary tremendously. The zoning ordinance should specify the procedures and requirements for the submission and approval of site plans. Decisions rejecting, approving, or conditionally approving a site plan must be based upon requirements and standards stated in the ordinance. If a site plan complies with the ordinance requirements, it must be approved. Once approved, the site plan becomes a part of the record of approval and subsequent actions relating to the activity authorized must be consistent with the approved site plan, unless a change conforming to the zoning ordinance receives the mutual agreement of the landowners and the individual or body that initially approved the site plan.

Checklist

In making rational, defensible decisions and in setting forth conditions for permit approval, uniform review criteria should be employed. The following is an example of typical criteria currently in use. These criteria presume that an ordinance contains standards, similar to those cited, that must be complied with to gain zoning approval.

The site plan is reviewed in order to determine:
1. that the proposed use conforms to the uses permitted in that zoning district;
2. that the dimensional arrangement of building
and structure conform to the required yards, setbacks and height restrictions;

3. that the proposed use conforms to all use and design provisions and requirements (if any) as found in the zoning ordinance for specified uses;

4. that there is a proper relationship between the existing and proposed streets and highways within the vicinity in order to assure the safety and convenience of pedestrian and vehicular traffic;

5. that the proposed on-site buildings, structures and entry ways are situated and designed to minimize adverse effects (upon owners and occupants of adjacent and surrounding properties) by providing for adequate design of ingress/egress, interior/exterior traffic flow, storm drainage, erosion, grading, lighting, and parking as specified by the zoning ordinance or state law;

6. that natural features of the landscape are retained where they can enhance the development on the site, or where they furnish a barrier or buffer between the project and adjoining properties (used for dissimilar purposes) or where they assist in preserving the general safety, health, and appearance of the neighborhood, e.g., controlling erosion or the discharge of storm waters, etc.;

7. that adverse effects of the proposed development and activities upon adjoining residents or owners are minimized by appropriate screening, fencing, or landscaping (as provided or required in the zoning ordinance);

8. that all buildings and structures are accessible to emergency vehicles; and

9. that the site plan as approved is consistent with the intent and purposes of the zoning ordinance which are to promote the public health, safety and general welfare, to encourage the use of lands in accordance with their character and adaptability, to avoid the overcrowding of population, to lessen congestion on the public roads and streets, to reduce hazards of life and property, and to facilitate existing local land use and development plans.

Zoning Violations

There will come a time in every community when the zoning ordinance is violated. Whether this is intentional or unintentional is of little importance. The credibility of successful zoning lies not only in the ability to administer it reasonably and fairly, but also in the ability to enforce zoning requirements. Many violations of zoning are voluntarily reported by alarmed residents, concerned citizens, or public officials. The following is a discussion of methods of enforcing zoning and handling violators.

Zoning Enforcement. This section discusses two alternative approaches to dealing with zoning violations. The first is an example of a general approach; while the second exemplifies a zoning summons approach that can be used by some communities where violations may be too numerous or too costly to prosecute to the full extent of the law. In any case, the primary purpose is to gain compliance with local ordinances. All those charged with enforcement responsibilities should first try to achieve compliance through inspection, notification, and granting of reasonable time to comply. Only when all reasonable efforts have failed and all administrative remedies have been exhausted should enforcement officials take stronger measures.

**General approach**

1. A suspected zoning violation is reported or
identified.

2. The zoning administrator:
   a) makes a preliminary visit to the site to identify a zoning violation. If no violation is found, the matter is documented and the case closed. The person contacting the city or county about the supposed violation should be informed of the outcome.
   b) if a violation is found, documents it and the facts supporting this conclusion. A photo showing date, time, place, and signed by the observer can be very helpful.
   c) meets with the landowner to discuss the violation.
      1) The zoning violation is explained.
      2) Remedial measures to correct violation are concretely identified for the landowner.
   d) issues a notice of violation (after the meeting) to the violator with one copy to be filed. The notice documents:
      1) the zoning violation,
      2) the meeting,
      3) measures to be taken to correct violation, and
      4) a (uniform) period of time given within which to correct the violation.
   e) reinspects the site, upon expiration of the time period. If compliance is shown, the zoning administrator so signifies on the file copy and on the violator’s copy of the notice of violation. The matter is resolved.
   f) schedules a hearing to be held by the city council or board of supervisors.
   g) issues a second notice of violation to the violator. The notice:
      1) advises that a hearing before the governing body had been scheduled,
      2) gives the date of the hearing,
      3) requires that the violator or his/ her agent appear in order to show cause as to why the governing body should not proceed in court to prosecute the violation, and
      4) states that correction of the violation prior to the hearing date will automatically void the requirement of a hearing before the governing body.

The “Traffic Ticket” Approach

A code enforcement approach is available to Iowa cities and counties. The Iowa Code authorizes local communities to treat violations as a civil offense punishable by a civil penalty (fine) and to establish an infraction citation approach (sometimes referred to as the traffic ticket approach). The law allows civil penalties not to exceed $100 for the first offense and penalties not to exceed $200 for each repeat offense.

The zoning administrator, any employee, or any other official authorized by a community may issue an infraction citation to a person who violates an ordinance. This approach is useful because it allows, in the same action before the Magistrate Division of the District Court, the collection of a fine and/or alternative relief that may include an order for abatement or injunctive relief.

Through implementation of this system, code enforcement can be streamlined. This approach is more efficient and economical than the traditional method of enforcement through costly litigation. Consistency in enforcement can be improved because of the ease and directness of the process. Enforcement can be more immediate and timely.

The citation approach has been shown to be an effective way of “getting the attention of the violator so that correction can be accomplished.
In order to establish this local legislation, substantial preparation must occur. In particular, that preparation should include the following steps:

1. Review the local code to identify those violations that warrant the infraction citation approach.
2. Amend the existing code to allow for the civil penalties approach.
3. Establish and adopt a set of specific procedures and forms for administration and processing of infraction citations. These forms and procedures must be accepted by the magistrate court.
4. Train personnel to implement and administer the new approach.
5. Inform the public of the new approach.

**Special Exceptions**

Special exceptions are typically described as those uses of land that may be appropriate and compatible with existing or permitted land uses in a particular zoning district if care is taken to assure that characteristics of the use under consideration are compatible with adjacent land uses, the natural aspects of the site, and the general character of the area, including availability of public services and facilities.

Examples of uses often treated as special exceptions might include hospitals, radio stations, and other uses that may have special requirements and which are only infrequently requested. The Code of Iowa stipulates that the board of adjustment hear and decide special exceptions. Such uses must be listed in the text of the ordinance.

**General Procedural Steps**

1. The person (or public agency or official) who makes the appeal:
   a) inquires to the local zoning administrator as to how one must proceed and obtains the appeal form.
   b) completes and files the necessary form with any required fee to the board of adjustment or official responsible for receiving such applications. On some matters this might be done within a specified time, as prescribed by ordinance or the rules of the board of adjustment.

2. The board of adjustment:
   a) reviews the form:
      1) to make sure that it is the proper form for the requested action, and
      2) to see that all required information is submitted.
   b) schedules a hearing within a reasonable period and gives notice thereof to the parties affected in accord with ordinance procedures and any adopted rules.
   c) formulates a decision. The board of adjustment considers the merits for the individual appeal based on standards and considerations established in the statute and as may be embodied in the ordinance.

3. The board of adjustment takes final action.

The board of adjustment has all the powers of the officer or body from whom the appeal was taken and may issue or direct the issuance of a permit. The board of adjustment either:
   a) grants the appeal wholly or partly;
   b) grants the appeal wholly or partly with conditions attached; or
   c) denies the appeal.

The board of adjustment must state the facts supporting its reasons for any decisions made. These must be written in the record. A concurring vote of a majority of the members of the board of adjustment is necessary in order to take an action on a matter properly before the board.
Variances

The most common appeals deal with requests for a variance from specific ordinance standards such as dimensional requirements of the ordinance including: yard requirements, setback lines, lot coverage, frontage requirements, and density regulations.

When a board of adjustment considers a variance request, it is important that board members keep in mind that the variance authority is designed to provide relief to a property owner from an ordinance requirement that is uniquely affecting him/her. It is not designed as a technique to grant special favors to some persons.

Almost always people will claim that a variance will allow them to make more money from the property. However, this is not a legitimate argument, since zoning is not designed to permit the most profitable use of land, although reasonable use of property must be permitted. Where a number of property owners are facing the same problem and seek a variance to relieve their practical difficulty or unnecessary hardship, the appropriate remedy is amendment of the ordinance by the governing body, and not a great number of variances by the board of adjustment.

Where there are practical difficulties or an unnecessary hardship preventing a property owner from conforming with the strict letter of the ordinance, the board of adjustment has the power in passing on appeals, to vary or modify any of its rules, regulations, or ordinance provisions by granting variances.

Typically, the following conditions must exist for a variance request to be granted:

1. Dimensional zoning requirements cannot be physically met by an existing lot due to narrowness, shallowness or irregular shape, or topography or natural characteristics of the site inhibit lawful location of a structure or its accessories (such as septic system, garage, shed).

2. The physical hardship is unique and is not shared by neighboring properties in the same zone. If the board of adjustment finds that the hardship is not unique, but common, amending the ordinance or a rezoning should be pursued.

3. The hardship or practical difficulty was not created by an action of the applicant and existed at the time of adoption of the requirement from which the variance is requested or is necessary as the result of governmental action such as a road widening.

4. The appellant must show that a variance

   a) will not be contrary with the intent and purpose of the zoning ordinance;

   b) will not cause a substantially adverse effect upon adjacent properties;

   c) will relate only to the property under control of the appellant;

   d) will not jeopardize the preservation of a substantial right, although the spirit of the ordinance shall be observed, public safety secured and substantial justice done;

   e) will not essentially alter the character of the surrounding area;

   f) will not increase the hazard from fire, flood, or similar dangers;
g) will not increase traffic congestion;

h) will not produce nuisance conditions to occupants or nearby premises, whether by reason of dust, noise, fumes, odor, vibrations, smoke, or lights; and

i) will not otherwise impair public health, safety, comfort, or general welfare of the residents of the city or county.

5. The variance is the minimum necessary to permit reasonable use of the land and buildings.

The burden of showing that a variance is warranted falls on the applicant. If the board of adjustment finds the ordinance requirements can be met or that the criteria for getting a variance have not been met, then a variance is not warranted.

Interpretations

In addition to its powers to grant variances and special exceptions, the Iowa Code grants the board of adjustment the power of interpretation. For example, if a disagreement should arise between the zoning administrator and a citizen or group of citizens, the board must determine who is right. The board, in effect must interpret the meaning of the law as it applies to each case where differences occur. This responsibility could be described as settling arguments with respect to the application of zoning.

Public Hearings

One of the most important steps in amendment procedures is the public hearing. Public hearings provide specific opportunity for citizens to be heard on zoning matters that may affect their interests. It is absolutely essential that required notices of public hearings be published / distributed as specified in the zoning ordinance and the state enabling legislation. At public hearings, it is very important that every interested person be given the opportunity to be heard.

But this does not mean the process is spontaneous. A hearing should be conducted in a consistent and orderly fashion. The hearing body should not have its decisions governed by the public applause meter. The hearing body should not be interested in whether neighbors are in favor or opposed to a given proposal, but rather in why they feel that way and what relevant information they offer within the context of ordinance requirements to assist in making a decision. The primary purpose of the hearing is, of course, to gather facts and information. Thus, a hearing process must be established to ensure that an open, objective atmosphere exists for orderly presentations. It need not be one of paralyzing formality; it is not a court proceeding.

The need for public confidence in the honesty and integrity of the hearing body dictates that if any member of the body has even a remote interest in the outcome of a proceeding, he or she should disqualify him-or-herself from participation in the hearing. Obvious conflicts of interest would include a financial interest in the outcome or a close business or family relationship with the applicant, his/her attorney or any expert witness. The member with a conflict of interest should disqualify him/ herself at the outset of the hearing or sooner if the conflict is identified. It is not sufficient to participate in the hearing and merely refrain from voting. If there is a doubt about a conflict of interest, step down.
General Hearing Procedure

The following generalities are suggested as a guide to developing a specific hearing procedure. Whatever procedure is developed, the procedure should be made clear to all in attendance and consistently followed. A simple handout sheet or large board visibly displayed with the hearing procedure will serve this purpose well. Hearings should begin precisely at the time advertised in the notice although they may simply be one element of the agenda.

1. The chairperson shall announce the subject of the public hearing, as advertised.

2. The public hearing procedures are summarized for all present by the chairperson. A suggested opening statement might be:

   This public hearing to receive public comment on the following matter ___________ in accordance with the official notice, is now open. The (name of hearing body) would like to make it clear that it is bound by rules and laws and that these are the determinants when weighing the case. In order to conduct the hearing within a reasonable time and to keep to the subject at hand, you are asked to observe the following rules:

   • After the staff presentation, the applicant will state his or her case fully and furnish the (name of hearing body) with pertinent information concerning the property.

   • Those who favor the proposed change will be heard first, and those opposed will be heard last.

   • Each person making a statement will be asked to state his or her name and address.

   • Please refrain from repeating what has been said before you, and please do not involve personalities.

   • Be as factual as possible. It is important that you state the reason that you have taken a position for or against this proposal.

   • The (name of hearing body) reserves the right to question any speaker.

   • All statements or questions must be directed to the chairperson. The (name of hearing body) will or will not make a decision on this matter at today’s meeting.

3. The staff is then asked to present the substance of the application and any staff reports and to answer technical questions of the hearing body.

4. Individuals wishing to speak in support of the subject of the hearing shall be recognized by the chairperson beginning with the applicant(s) or their representative.

5. Individuals wishing to speak in opposition of the subject of the hearing are recognized by the chairperson. (If there are numerous people in the audience who would like to speak on the issue, and all represent the same opinion, it is advised that a speaker be selected to speak for the entire group. A representative will thus have the opportunity of speaking for a reasonable length of time and of presenting a complete case. If this arrangement cannot be made, it may be necessary for the chairperson to restrict each speaker to a limited time in order that all may be heard.) The hearing body must permit comments from all interested or affected individuals and organizations, and it should be stressed that consideration will be given to all comments or suggestions made. Irrelevant and off-the-subject comments should be ruled out of order.
6. The chairperson may, within reasonable limits, upon request, allow cross-examination or rebuttal. All comments should be addressed to the hearing through the chairperson and not directed to any other individuals. The hearing body should refrain from debating or arguing with persons commenting. The function of the hearing is to gather facts—not to carry on an adversary relationship.

7. The chairperson should upon his/her motion or the motion of any member, announce the close of the public hearing or announce the continuation of the public hearing to another specified time and date if the hour is late or additional pertinent information must be obtained.

**Hearing Records**

A hearing record is an absolute necessity. The question is how such a record should be made. Obviously, the most complete record can be obtained by using a court stenographer. However, this is very costly. Many communities have adopted the practice of tape recording each meeting. This low-cost method is usually satisfactory when accompanied with a brief written summary of the public hearing comments. It is essential that speakers identify themselves in order to determine at a later time who said what. Of lesser value are the extensive notes taken by a secretary or clerk to the hearing body. Such notes should be made a formal part of the record, after their review and correction if necessary, by a vote of the hearing body.

A complete record of the hearing will typically contain the following:

1. The applicants’ request on a properly completed form.

2. The records of any action on this request by an administrative official or body including all past records regarding the property such as an earlier request for variance, special land use approval, or a record or nonconforming status.

3. Records that verify due notice to the appropriate parties and to neighboring property owners have been given. Any newspaper notice and the affidavit of publishing thereof must also be retained.

4. Any relevant maps, drawings, or photographs presented as evidence, or as a part of the application and copies of any correspondence received or sent out with regard to this request.

5. A complete record of all public input made at the hearing.

6. A record of what the hearing body saw on any visit it made to the property in question and a summary of any conversations between the hearing body and parties with an interest in the application.

7. A copy of reference to relevant ordinance requirements.

8. The findings of fact, the conclusions reached and the recommendation or decisions made by the hearing body on the request.

9. A copy of any other correspondence to or from the petitioner regarding the decision. The crucial element of this record is, of course, the findings, conclusions, and decision (or recommendation) of the hearing body. The decision must be in writing and include all conditions that may be associated with the decision. The decision or recommendation should not be a mere conclusion or a statement. Each decision should be accompanied by specific findings of fact. These findings should be related to the specific standards stated in the ordinance that the applicant must satisfy.

It is not sufficient, for example, for a board of adjustment to merely parrot the general statutory requirements that a practical difficulty or unnecessary hardship exists—this is not a finding, it is a conclusion. The facts that led the board to reach this conclusion consistent with ordinance and statutory standards must be identified to support the conclusions reached.

These decisions run the chance of having to stand up in district court, where detailed findings of fact must be presented, and the conclusions of law based upon those facts must follow.
It is important that careful consideration be given to all matters. Clear and uniform hearing procedures assist a hearing body in properly carrying out its responsibilities. On occasion, however, the assistance of the city or county attorney is needed. It should be sought when needed. Likewise, before adopting any rules of procedure or public hearing rules, the advice of the attorney should be sought.
Common Zoning Problems

Among typical kinds of problems growing out of lax zoning administration, improper granting of variance, and inappropriate amendments are the following:

1. There are many spot zones, comprising only one or two lots, whose location is not in accordance with a land use plan and inconsistent with adjacent land uses.

2. The board of adjustment grants too many variances without adequate scrutiny.

3. The zoning administrator has issued permits for uses that do not meet ordinance requirements or has failed to make use of occupancy permits to regulate changes in use, or has failed to carry out an active program to detect and prosecute zoning violations.

4. The zoning administration and board of adjustment tend to rely on complaints or the consent of neighboring property owners as the principal basis for action.

5. A community haphazardly copies another community’s ordinance.

6. A community prepares or adopts the ordinance or amendments without obtaining or consulting the “public pulse” (the prevailing values and attitudes of the public).

7. The community fails to utilize available technical assistance in making rational decisions in the development of zoning regulations and districts.

8. The zoning administrator, zoning commission, legislative body, and board of adjustment fail to make uniform and consistent decisions on similar matters.

9. The zoning map is made to look just like a 20-year master plan, rather than reflecting a land use pattern appropriate to just the next three to five years of expected development in a manner consistent with the plan.

10. The zoning decision bodies fail to adequately state the facts that substantiate the conclusions they have reached in the record on the matter.

Before any action is taken by an official or body responsible for carrying out a specific zoning function, the following guidelines should be kept clearly in mind:

1. Is the application or request before the right body or official at this time?

2. Are other alternatives available to the applicant that may more appropriately serve his/her needs as well as the public interest?

3. Have you checked relevant provisions of the ordinance, the Iowa Code, and applicable local plans for their guidance on the matter before you?

General reminders to aid decision making:

1. When in doubt, check it out.

2. Don’t delay when the decision can be made.

3. Remember that permits, approvals, and zoning districts apply to property and not the owner.

4. When all standards stated in the ordinance have been met, the permit must be issued.

5. Consistency is very important, but mistakes should not be perpetuated.

6. Permits are of little value if there is not monitoring to ensure continued ordinance compliance.

7. At least one member of the body on which you serve should be an expert on the ordinance requirements and on past decisions made.

8. The body on which you serve should adopt and keep current rules of procedure to guide its actions.

9. A simple public hearing procedure should be adopted, clearly pointed out to citizens at each public hearing, and consistently followed.

10. Good records of all meetings of the body on which you serve should be maintained.
11. All decisions must be documented. The facts uncovered in the process of reviewing the application, making the analysis, and from presentations at the public hearing should be explicitly related to ordinance standards and documented along with the conclusion reached on the matter.

12. If a procedural requirement such as newspaper or individual notice to appropriate persons is missed, stop the process and begin again.

13. No decision should be made by a vote of less than a majority of the total membership of the body, not just a majority of those present.

14. When technical assistance of a planner, attorney, or other professional is needed, get it.

15. Remember your job is to protect the public interest as embodied in the zoning ordinance. Required procedures and standards must be adhered to.

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The Need for Periodic Assessment

A land use plan and zoning ordinance begin to grow old and dated from the time of adoption. In rapid growth community plans and ordinances often become outdated sooner than expected. How does a community keep the land use plan and zoning ordinance from becoming obsolete? The best way is through periodic assessment every three to five years by the planning and zoning commission. At that time, the following questions should be asked.

1. To what extent is the land use plan being actively implemented . . .
   
   • through zoning?
   
   • through public improvement?
   
   • through other efforts?

2. Is implementation taking place as scheduled? If not, why?

3. Does the settlement pattern of recent development actively coincide with the land use plan map and the recommended land use intensities? If not, why? What should be done—change map or increase enforcement of the law?

4. Do the goals and policies still reflect major local concerns? If not, what should be changed? Is change realistic?

5. Are items identified in the land use plan as desirable protected adequately by zoning?

6. Are unexpected land use conflicts being created by the zoning ordinance that are not addressed by the land use policies?

Based on the answers to the above questions, the planning commission must decide if there is a need to revise the land use plan. If the plan needs to be revised, then after the revision is made, the zoning ordinances and/or map should also be reviewed and amended as needed. However, many land use plans and zoning ordinances are updated and amended on a “stop-gap” basis when faced with what appears to be a “crisis.” Periodic reassessment will reduce the need to react in this manner and provide a mechanism whereby a community can maintain control of its future.
Summary

Each zoning function or activity has its own statutory and ordinance procedures that are followed to ensure that the rights of citizens are protected as the community regulates the use of land. Most of these procedures have very similar characteristics, but the details and the differences are very important. Equally important is the basic issue of which body or official is responsible for acting on certain zoning functions and what standards or guides should be used in making decisions. The key to understanding zoning is related to the old adage: There is a place for everything and everything must be in its place.

A zoning ordinance clearly identifies which uses of land are permitted in which zoning districts. But it goes further when those districts are mapped, because then particular land uses have location characteristics that may be described generally in the ordinance but that assume specific characteristics once mapped. A zoning ordinance should reflect the whole host of land uses reasonably expected and needed within the city or county and should adequately provide for them.

Planning and zoning, properly used, can help the community to achieve many public objectives while enhancing the use and enjoyment of private property. With appropriate use of planning and zoning, most cities and counties should be able to find a place for everything.

Planning and zoning are jobs worth doing. The benefits can be substantial and enduring. But it is critically important that everyone involved in planning and zoning decisions be knowledgeable about their responsibilities and about procedures. Keep planning and zoning current in your city or county. Be sure that new planning and zoning appointees and newly elected officials receive orientation on the planning and zoning process and the importance of their particular role. When technical planning or legal assistance is needed, it should be sought. Planning and zoning can help build a future that local residents can be proud of.

Credits

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