

ADMINISTRATION AND ENFORCEMENT

11.01 Administration and Enforcement

A. Generally

1. Requests for Enforcement

Whenever a violation of this ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaints stating fully the causes and basis thereof shall be filed with the Zoning Officer. The Zoning Officer shall immediately record such complaint, investigate, and take action thereon as provided by this resolution.

2. Penalties for Violation

- a. Any person who fails to perform an act required by this ordinance or who commits an act prohibited by this ordinance shall be guilty of a county infraction punishable by a civil penalty as provided by Section ____ County Infractions of Chapter _____ - Code of Ordinances for Washington County, Iowa.
- b. The owner or tenant of any building, structure, premises, or part thereof, any architect, builder, contractor, agent, or other person who commits, participates in, assists in, or maintains such violation may each be found guilty of a separate offense and suffer the penalties herein provided.
- c. Nothing herein contained shall prevent the County from taking such other lawful action as is necessary to prevent or remedy any violation.

3. Enforcement

- a. If any building, structure or sign is erected, constructed, reconstructed, altered, repaired, converted or maintained or if any building, structure, sign or land is used in violation of this ordinance, the legal department, in addition to other remedies, shall institute any proper action or proceedings in the name of the county to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use; to restrain, correct or abate such violation; to prevent the occupancy of the building, structure or land; or to prevent any illegal act, conduct, business or use in or about the premises.

B. **Zoning Officer**

1. Position Created; Appointment; Supervision

There is created the position of Zoning Officer who shall be appointed by the Board of Supervisors.

2. Powers and Duties

The Zoning Officer shall exercise the following powers and duties:

- a. The Zoning Officer or the officer's designees shall exercise all enforcement powers under Section 11.01, including but not limited to the investigation of complaints of zoning violations, issuance of notices and county infraction citations to violators, and the preparation and submission to the legal department of reports of those zoning violations which continue unabated after exhaustion of reasonable administrative remedies toward their abatement, for such legal action as the facts of each report may require.
- b. The Zoning Officer shall determine the use type for any use pursuant to Section 3.02 A.
- c. In all cases in which the county commences court action, the Zoning Officer shall cooperate with the county attorney by performing such additional investigative work as the county attorney shall require.
- d. The Zoning Officer or the officer's designee shall attend the meetings of the Planning and Zoning Commission and the Zoning Board of Adjustment as requested by those bodies, shall investigate and review all cases presented to the Zoning Board of Adjustment, and shall advise that body on those cases upon request.
- e. If the legal department, after analysis of the report, institutes legal proceedings, the Zoning Officer will cooperate fully with the legal department in the perfecting of such proceedings.

C. **Certificates of Zoning Compliance**

1. Administration and Enforcement

If the Zoning Officer finds that any of the provisions of these regulations are being violated, the officer shall notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. The Zoning Officer shall order discontinuance of illegal use of land, buildings, or structures; removal of illegal buildings or structures or of illegal additions, alterations, or structural changes; discontinuance of any illegal work being done; or shall take any other action authorized by these regulations to ensure compliance with or to prevent violation of its provisions.

2. Certificates of Zoning Compliance for New, Altered or Nonconforming Uses

a. Required for Land and Buildings

No land shall be occupied or used and no building erected or structurally altered shall be occupied or used in whole or in part for any purpose whatsoever until a Certificate of Zoning Compliance is issued by the Zoning Officer, stating that the building and use comply with the provisions of this ordinance.

b. Required for Change of Use

No change of use shall be made in any building or part thereof erected or structurally altered without a Certificate of Zoning Compliance being issued therefore by the Zoning Officer. No permit shall be issued to make a change unless the changes are in conformity with this ordinance.

c. Fee

Prior to the issuance of a Certificate of Zoning Compliance, the applicant shall pay to the County Auditor a fee in the amount set forth in the schedule of fees adopted by the Board of Supervisors by resolution.

d. Fee Exemption for Federal Property

Application for a Certificate of Zoning Compliance for property wholly owned by the federal government may be made without paying the fee described in this section.

e. Nonconforming Uses

- 1) Nothing in this division shall prevent the continuance of a nonconforming use as authorized, unless discontinuance is necessary for the safety of life or property.
- 2) A Certificate of Zoning Compliance shall be required of all nonconforming uses. Application for Certificate of Zoning Compliance for nonconforming uses shall be filed with the Zoning Officer, accompanied by affidavits of proof that such nonconforming use was established legally prior to the establishment of this ordinance.

f. Time Limits; Records

Certificates of Zoning Compliance shall be applied for prior to the construction or occupancy of a building or property and shall be issued within ten days after the lawful erection or alteration of the building is completed. A record of all certificates shall be kept on file and available for public inspection in the office of the Zoning Officer.

g. Issuance

No permit for excavation for or the erection or alteration of any building shall be issued before the application has been made for Certificate of Zoning Compliance, and no building or premises shall be occupied until that certificate and permit is issued.

D. **Construction and Use to be as Provided in Applications, Plans, Permits, and Certificates of Zoning Compliance**

Certificates of Zoning Compliance issued on the basis of plans and applications approved by the administrative officials authorize only the use, arrangement, and construction set forth in such approved plans and applications, and no other use, arrangement or construction. Use, arrangement, or construction at variance with that authorized shall be deemed violation of the County Code, and punishable as provided by Section 11.01 A2 hereof.

E. **General Procedural Requirements**

1. Decision Maker and Administrative Bodies

The Zoning Officer, the Planning and Zoning Commission, and/or the Zoning Board of Adjustment will consider, review and decide all development applications for permitted uses according to the provisions of this Zoning Code.

F. **Amendments**

1. Authority

The Board of Supervisors may, from time to time, on its own action or upon application, after public notice and hearings as provided by law and after report by the Planning and Zoning Commission, amend the boundaries or regulations established under this ordinance, provided that any such amendment shall not become effective except by the favorable vote of a majority of all the members of the Board of Supervisors.

2. Procedures

Amendment procedures shall be as follows:

- a. Whenever any person desires to amend zoning boundaries as to any property in the county, an application requesting such amendment and clearly describing the property and its boundaries as to which the amendment is desired shall be filed with the Planning and Zoning Commission. The Planning and Zoning Commission shall make a timely report to the Board of Supervisors of such applications filed. The Planning and Zoning Commission shall forward such application, with report and recommendations to the Board of Supervisors for vote thereon, within a reasonable time after the filing of the application. Reasonable notice of the proposed amendment to zoning boundaries, as established by the Planning and Zoning Commission, shall be given to the owners and occupants of the property included in the area of the proposed amendment and within 250 feet of the exterior boundaries of the property proposed for amendment. If the applicant owns other land adjoining the property proposed for amendment, then notice shall also be given to the owner of the next property beyond the applicant's property. The notice required by this paragraph is a courtesy notice and any failure of such notice to be given or received shall not affect the validity of the amendment.
- b. Whenever any application for an amendment to zoning boundaries shall have been denied by the Board of Supervisors, no new application seeking the same relief covering the same property or the same property and additional property shall be filed with or considered by the Board of Supervisors until one year shall have elapsed from the date of filing the first application.

3. Filing Fees for Zoning District and Text Amendments

Fees for filing amendments shall be charged as follows:

- a. The owner of the property affected by a proposed change in zoning text, district classification or boundaries shall pay to the County Auditor a fee in the amount set in the schedule of fees adopted by the Board of Supervisors by resolution.
- b. Where an amendment is initiated by application by any person, the required fee and notice costs shall be paid at the time the application is filed with the county. Where an amendment is initiated by the Board of Supervisors on behalf of one or more owners of affected property, the required fee and notice costs shall be paid prior to consideration of the amendment by the Planning and Zoning Commission. No further action shall be taken as to any proposed amendment for which a fee and notice costs are required until the fee and notice costs have been paid. Under

no conditions shall the required fee and notice costs be refunded upon failure of a proposed amendment to be enacted into law.

- c. The fee described in this subsection shall not be required when the amendment is initiated at the request of the federal government for property wholly owned by the federal government. This exemption shall not apply to the notification costs as established by the Planning and Zoning Commission.

G. **Nonconforming Development and Uses**

1. Purpose

The purposes of the Nonconforming Development regulations are:

- a. To allow for reasonable use of legally created lots of record which do not meet current minimum requirements for their respective zoning districts.
- b. To provide for reasonable use of legally constructed structures which do not meet current site development regulations for their respective zoning districts.
- c. To allow for the reasonable continuation of legally established uses which do not meet current use regulations for their respective zoning districts.
- d. To limit the continuation and provide for the gradual replacement of nonconforming uses.

2. Regulations Additive

Regulations for nonconforming uses are in addition to regulations for nonconforming structures. In the event of a conflict, the most restrictive regulation shall apply.

3. Nonconforming Lots

a. Pre-Existing Lots of Record

Nonconforming lots of record existing at the time of the adoption of this chapter shall be exempt, unless otherwise provided, from the minimum lot area and lot width requirements of each zoning district. Such lots may be developed with any use allowed by the regulations for the district and must comply with all other site development regulations set forth by the Zoning Regulations.

b. Reductions Due to Public Acquisition

If a portion of a legally existing lot in any district is acquired for public use, the remainder of this lot shall be considered a conforming lot.

4. Nonconforming Structures

These regulations apply to buildings and structures which were constructed legally under regulations in effect before the effective date of these Regulations.

a. Continuation

A lawful nonconforming structure existing on the effective date of this section may be continued, repaired, maintained, or altered, subject to the provisions of this section.

b. Additions or Enlargements to Nonconforming Structures.

- 1) A lawful nonconforming structure may be added to or enlarged if the addition satisfies one or more of the following conditions:
 - a) The enlargement or addition, when considered independently of the existing building, complies with all applicable setback, height, off-street parking, and landscaping requirements.
 - b) The nonconforming building and impervious surface coverages on the site are not increased and the building, after the addition, conforms to height and off-street parking regulations applicable to its zoning district.
 - c) The addition projects no further into a required side yard setback than the existing building; the length of the side wall of the addition is the smaller of 25 feet or 50 percent of the length of the existing nonconforming side wall; and the enlarged building complies with building and impervious coverage, front and rear yard setbacks, and height regulations applicable to its zoning district.
- 2) No permitted addition to a nonconforming structure may place a wall within ten feet of a window of an adjacent pre-existing residential structure.
- 3) Nonconforming buildings shall be limited to one addition or enlargement pursuant to these regulations.

c. Moving of Nonconforming Structures

A lawful nonconforming building or structure shall not be moved in whole or in part to another location on its lot unless every part of the structure conforms to all site development regulations applicable to its zoning district.

d. Repair of Nonconforming Structures

A lawful nonconforming building damaged by fire, explosion, storm or other calamity, except flood damages, may be repaired and reconstructed provided there is no increase in the degree of nonconformity

e. Conversion of a Conforming Building

A conforming building shall not be changed in any way that will result in a nonconforming development.

f. Applicability of Landscaping and Screening Regulations

A pre-existing structure, building, or development shall be exempt from Article Eight, Landscaping and Screening Standards. However, any expansion of such structure, building, or development or any adjacent new development onto property that is or becomes vacant on or after the effective date of these Regulations shall be subject to Article Eight.

g. Amortization of Nonconforming Development

The following nonconformances must be brought into compliance with the provisions of this ordinance within specified periods.

- 1) Fences, walls, and foliage which violate the vision clearance provisions of this ordinance shall be made conforming within one year of the effective date of the ordinance.
- 2) Nonconforming storage operations, including vehicle storage, salvage services, or similar uses made conforming within two years of the effective date of the ordinance.

5. Nonconforming Uses

a. Continuation of Nonconforming Uses

- 1) Any nonconforming use lawfully existing on the effective date of these regulations may continue, subject to the limitations of this section.
- 2) Whenever the use of a premise becomes nonconforming through a subsequent change in the zoning ordinance or zoning district boundaries, such use may be continued or changed to another nonconforming use of the same or lesser intensity with the approval of the County Board of Supervisors, following a public hearing and recommendation of the Planning and Zoning Commission.

b. Change and Amortization of Nonconforming Uses

- 1) A nonconforming use may be changed to another nonconforming use of the same or lesser intensity, as measured by the category of use type. For the purpose of measuring nonconforming use rights, the intensity of uses ascends from agricultural to residential to office to commercial to industrial and transportation. For example, a nonconforming commercial use in a residential district may be converted to another commercial use permitted in all of the same zoning districts as the original use. However, the use may not be converted to another use that is more restricted in the Use Matrix, Table 4.02.

c. Enlargement of Nonconforming Uses

A building or structure housing a lawful nonconforming use may not be added to or enlarged.

d. Abandonment of Nonconforming Use

- 1) If any structure or property used as a lawful nonconforming use becomes vacant or unused for a continuous period of twelve months, any subsequent use must conform to all use regulations applicable to the property's zoning district.
- 2) If a structure housing a nonconforming use converts to a conforming use, it forfeits any further claim to nonconforming use rights.

e. Allowance for Repairs

Repairs and maintenance of a structure occupied by a nonconforming use may be made, provided that no structural alterations are made other than those required by law.

f. Damage or Destruction of Structures

Should a structure occupied by a lawful nonconforming use be damaged to the extent that the cost of restoration exceeds 60 percent of the replacement cost of the structure, the nonconforming use shall no longer be permitted.

g. Nonconforming Uses and Conditional Use Permits

A lawful pre-existing use which would require a Conditional Use Permit in its zoning district shall be presumed to have the appropriate Permit and shall be considered a conforming use. The use shall be subject to the regulations governing lapses or revocation of Permits, set forth in this Article.

H. **Zoning Board of Adjustment**

1. Established; Composition; Terms

A Zoning Board of Adjustment is established, which shall consist of five members. The terms of office of the members of the Zoning Board of Adjustment and the manner of their appointment shall be as provided by statute. A majority of the members of the Zoning Board of Adjustment shall be persons representing the public at large and shall not be involved in the business of purchasing or selling real estate.

2. Meetings

The meetings of the Zoning Board of Adjustment shall be held at the call of the chair and at such other times as the board may determine. Such chair, or in the chair's absence the acting chair, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member on each question, or if absent or failing to vote, indicating that fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record. The presence of four members shall be necessary to constitute a quorum.

3. Procedure for Appeals

- a. Appeals to the Zoning Board of Adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the county affected by any decision of the Zoning Officer or of any other administrative officer in the enforcement of this ordinance. Each appeal shall be taken within a reasonable time as provided by the rules of the board. The Zoning Officer and any other officer whose decision is the subject of the appeal shall forthwith transmit to the board all papers constituting the record upon which the action appealed from is taken.
- b. An appeal stays all proceedings in furtherance of the action appealed from, unless the Zoning Officer certifies to the board, after notice of appeal shall have been filed, that, because of the facts stated in the certificate, a stay would, in the Zoning Officer'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 or by a court of record on application on notice to the Zoning Officer and on due cause shown.
- c. The board shall fix a reasonable time for the hearing on the appeal, shall give public notice thereof as well as due notice to the parties in interest, and shall decide the appeal within a reasonable time. At the hearing any party may appear in person or by agent or by attorney. Before an appeal is filed with the Zoning Board of Adjustment, the appellant shall pay a fee to the County Auditor in the amount set forth in the schedule of fees adopted by the Board of Supervisors by resolution.

4. Powers and Duties

The Zoning Board of Adjustment shall have the power and duty to:

- a. Hear and decide appeals taken pursuant to Section 11.01 H3.
- b. Grant a variance in the regulations of this ordinance that will not be contrary to the public interest, where owing to special conditions a literal enforcement of the regulations will result in unnecessary hardship, and so that the spirit of this ordinance shall be observed and substantial justice done. To establish unnecessary hardship a property owner must show all of the following elements:
 - 1) The land in question cannot yield a reasonable return from any use permitted by the regulations of the district in which the land is located. 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 land in question. It is not sufficient merely to show that the value of the land has been

depreciated by the regulations or that a 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 land in question and not to general conditions in the neighborhood.
- 3) The use to be authorized by the variance will not alter the essential character of the locality of the land in question.

No appeal for a use variance shall be considered by the board unless a proposed amendment to rezone the subject property to a district classification permitting such use has been considered and denied by the Board of Supervisors within the preceding year, provided that this requirement shall not apply to appeals for area variances.

- c. Permit the exceptions to the district regulations set forth in subsection 11.01 4d. of this section, provided all exceptions granted by the Zoning Board of Adjustment shall be found to meet the following standards:
 - 1) Exceptions shall by their design, construction, and operation adequately safeguard the health, safety and welfare of the occupants of adjoining and surrounding property;
 - 2) Exceptions shall not impair an adequate supply of light and air to adjacent property;
 - 3) Exceptions shall not unduly increase congestion in the public streets;
 - 4) Exceptions shall not increase public danger of fire and safety; and
 - 5) Exceptions shall not diminish or impair established property values in surrounding areas.
- d. The Zoning Board of Adjustment may permit:
 - 1) Exceptions to any setback, area, length, width, height, yard, size or projection limitation or to the minimum required number of off-street parking or loading spaces; provided such an exception may be granted only where:
 - 2) Such exception does not exceed 50 percent of the particular limitation or number in question; or such exception is from a

yard requirement to permit an addition to an existing legal nonconforming building and such addition extends no further into the required yard than the existing building;

- 3) The 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;
 - 4) The exception is reasonably necessary due to practical difficulties related to the land in question;
 - 5) Such practical difficulties cannot be overcome by any feasible alternative means other than an exception; and
 - 6) The exception is in harmony with the essential character of the neighborhood of the land in question.
- e. Hear and decide applications for special use permits in accordance with Section 4.10 of this ordinance. In order to approve a special use permit, the Zoning Board of Adjustment must find that any structure or use of land to be allowed by the special permit shall by its design, construction and operation adequately safeguard the health, safety and welfare of the occupants of adjoining and surrounding property; shall not unduly increase congestion in the public streets; shall not increase public danger of fire and safety; and shall not diminish or impair established property values in surrounding areas, and shall have no significant detrimental impact of the use and enjoyment of adjoining properties. The Board may make approval of special permits subject to revisions or alterations of submitted plans as it deems appropriate to address these considerations.

5. Appeals from the Zoning Board of Adjustment

Any person or persons, or any board, taxpayer, officer, department, board or bureau of the county aggrieved by any decision of the Zoning Board of Adjustment may seek review of such decision by the Washington County District Court in the manner provided by the laws of the State and particularly by I.C. §414.15, and amendments thereto.

6. Decisions; Review of Use Variance

- a. In exercising the powers mentioned in Section 11.01 H4, the Zoning Board of Adjustment may, in conformity with the provisions of law, reverse or affirm, wholly or partly, or modify the order, requirement, decision or determination appealed from and may make such order,

requirement, decision or determinations as it believes proper, and to that end shall have all the powers of the Zoning Officer. The concurring vote of three of the members of the board shall be necessary to reverse any order, requirement, decision or determination of the Zoning Officer or to decide in favor of the applicant on any matter upon which it is required to pass under this ordinance; provided, however, that the action of the board shall not become effective until it has filed a written decision in the board office describing the action taken, the vote of each member participating therein and the reasons for such action, specifying the manner in which the applicant either satisfied or failed to satisfy each of the applicable standards, conditions or elements set forth in this Section. Decisions shall be filed promptly following the board's action and shall be open to public inspection.

- b. Every variation and exception granted or denied by the Zoning Board of Adjustment shall be supported by a written testimony or evidence submitted in connection therewith. In granting any appeal, variance, exception or other relief within its jurisdiction, the board may prescribe appropriate conditions and safeguards in conformity with this ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the relief is granted, shall be deemed a violation of this ordinance subject to enforcement under Sections 11.01 A2 and 11.01 A3.
- c. If any application for a variance or exception shall have been denied by the Zoning Board of Adjustment, no new application for the same relief shall be considered for two years by the board unless the board shall find that conditions have changed.
- d. Any taxpayer or any officer, department, board or bureau of the county or any persons jointly or severally aggrieved by any decision of the board may present to a court of record a petition for writ of certiorari, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. The petition shall be presented to the court within 30 days after the filing of the decision in the office of the board. All decisions of the board, except decisions granting use variances shall be final immediately upon filing. Each decision granting a use variance shall be referred to the Board of Supervisors for review pursuant to I.C. § 414.7. The Board of Supervisors shall review such decision within 30 days after the decision is filed. After such review, the Board of Supervisors may remand the decision to the board for further study. If the Board of Supervisors does not act to review the decision within 30 days after it is filed, the decision shall become effective on the 31st day. If the Board of Supervisors declines to remand a decision, that decision shall become final on the

date of the Board of Supervisors' action. If the Board of Supervisors remands a decision to the board, the effective date of the decision is delayed for 30 days from the date of remand.

- e. Upon remand of a decision from the Board of Supervisors, the matter shall be placed on the agenda for further study at the first board meeting after such Board of Supervisors action. If, for any reason, the board does not hold a regularly scheduled meeting during such 30-day period, it shall be required to hold a special meeting and consider an act upon the remanded decision within such 30-day period. At such meeting the board shall act to either affirm its earlier decision or grant a rehearing. A rehearing shall be treated in the same manner as an original appeal, except that no fee shall be payable. If the board grants a rehearing, its initial decision shall be deemed to have been withdrawn. The board decision on rehearing is not reviewable by the Board of Supervisors and shall be final upon filing.