

## CHAPTER 165 ARTICLE 7

## ZONING CODE — ADMINISTRATION

7-01 Conditional Use & Special Exception Permits  
 7-02 Board of Adjustments  
 7-03 Amendments  
 7-04 Enforcement- Building & Occupancy Permits  
 7-05 Violation Complaints

7-06 Zoning Administrator  
 7-07 Violations & Penalties  
 7-08 Severability Clause  
 7-09 Repealer  
 7-10 Effective Date

**Section 1. CONDITIONAL USE and SPECIAL EXCEPTION PERMITS.**

Uses not otherwise prohibited by law may be permitted by the Board of Adjustments, after public hearing, provided the conditions and standards set forth in this article are met.

A. Conditions for Granting. In its determination as to the appropriateness of any such use at the particular location requested, the Board shall consider the following conditions:

- 1) That the proposed location, design, construction and operation of the particular use adequately safeguards the health, safety and general welfare of persons residing or working in adjoining or surrounding property.
- 2) That such use shall not impair an adequate supply of light and air to surrounding property.
- 3) That such use shall not unduly increase congestion in the streets or public danger of fire, panic or flood.
- 4) That such use shall not diminish or impair established property value in adjoining or surrounding property; and,
- 5) That such use shall be in accord with the intended purpose and spirit of this ordinance and Mitchellville's Comprehensive Plan.

B. General Conditional Use Permits. The Board of Adjustment may, by Conditional Use Permit after public hearing, authorize the location of any of the following building or uses in the districts specified below:

- 1) Any public building erected and used by any department of the City, township, County, State or Federal government in any district.
- 2) Airport or landing field in "A" or "I" districts.
- 3) Community Centers in any district.

- 4) Hospitals, non-profit fraternal institutions (used solely for fraternal purposes) and institutions of an educational, religious, philanthropic or eleemosynary character in the "R-2" or any less restrictive district.
- 5) Public or private cemetery in any district.
- 6) Private golf courses, country clubs and tennis or swimming clubs in "A" or any "R" districts.
- 7) Preschool, nursery schools or day care center in "C-1" district.
- 8) Two-family (duplex) dwellings in any "R-1" district.

C. Review Process.

In granting any Conditional Use, the Board may prescribe appropriate conditions and safeguards in conformity with this Zoning Ordinance. Violations of such conditions and safeguards, when made a part of the terms under which the Conditional Use Permit is granted, shall be deemed a violation of this Zoning Ordinance and punishable under Chapter 165 Article 7. The Board may prescribe a time limit within the action for which the Conditional Use Permit is began, completed or both. Failure to begin, complete or both the Conditional Use action within this time limit set shall void the Conditional Use Permit.

Applications for a Special Exception Permit under the terms of this section shall be accompanied by evidence concerning the feasibility of the proposed request and its effect on surrounding property and shall include a Site Plan defining the areas to be developed for buildings, parking, sidewalks, driveways (points of ingress/egress), access streets where required, location and height of walls, landscaping, sign and quantity of signs and any other information as may be required by either the Zoning Commission or the Board of Adjustments.

In the event a Conditional Use Permit is granted under the terms of this section, any change thereafter in the approved site plan or use shall be resubmitted and considered in the same manner as the original proposal.

## **Section 2. BOARD of ADJUSTMENT.**

A. Procedures.

- 1) Created. A Board of Adjustment is hereby established which shall consist of five (5) members appointed by the City Council. The terms of office of the members of the Board shall be staggered five (5) year terms as provided in Chapter 414.8 of the Code of Iowa, as amended.

- 2) Meetings. The meetings of the Board shall be held at the call of the chairperson and at such other times as three (3) members of the Board may determine. All meetings of the Board shall be open to the public. The Board shall keep minutes of its official proceedings which a copy shall be filed in the office of the City Clerk as a public record. (Quorum shall be three (3) members)
- 3) Appeal Hearings. Appeals to the Board may be taken by any person aggrieved or by an officer, department or board of the City that may be affected by any decision of the Zoning Administrator. Such appeal shall be taken within ten (10) days by filing with the Zoning Administrator or City Clerk, a notice of appeal specifying the grounds thereof. The Zoning Administrator or City Clerk shall forthwith transmit to the Board all papers constituting the record upon which the action appealed is taken. The Board shall fix, within thirty (30) days, a time for the hearing on the appeal, give public notice thereof as well as due notice to the parties in interest and decide the same. At the hearing, any party may appear in person or by agent or attorney.
- 4) Before an appeal is filed with the Board, the appellant shall pay a fee of Seventy-Five (\$75.00) dollars to the City.

**NOTE\*** *An appeal stays all proceedings in furtherance on the action appealed from, unless the Zoning Administrator certifies to the Board that a stay would 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 Administrator and on due cause shown.*

**B. Powers and Duties.** The Board has the following powers and duties:

- 1) To hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by the Zoning Administrator in the enforcement of this Zoning Ordinance.
- 2) To grant a variance from the terms of this ordinance when a property owner can show that their property was acquired in good faith and where by reason of exceptional narrowness, shallowness or shape of a specific piece of property or where by reason of exceptional topography, conditions or other extraordinary or exceptional situation, the strict application of the terms of this ordinance actually prohibits the use of their property

in a manner reasonably similar to that of other property in the same district and where the Board is satisfied under the evidence before it, that:

- a. The land in question cannot yield a reasonable return if used only for a purpose allowed in the district in which it is located;
  - b. Special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same district;
  - c. The plight of the owner of the land in question is due to the unique circumstances shown to the Board and is not of the owner's making;
  - d. Granting the variance requested will not confer on the appellant any special privilege that is denied to other lands, structures or buildings in the same district by this ordinance;
  - e. The use to be authorized by the variation will not alter the essential character of the district in which the property is located; and,
  - f. All variations granted under this provision are in harmony with the intended spirit and purpose of this ordinance and shall not be injurious to the surrounding property or otherwise detrimental to the public welfare.
- 3) A variance shall not be granted by the Board unless and until a public hearing is held. Notice of said public hearing shall be provided in a newspaper of general circulation in the city at least fifteen (15) days prior to such hearing. The owner (agent) of the property for which the variance is sought and the owners of any other affected property within two hundred (200') feet of said property shall be notified by mail. Further provided that no variance shall be granted unless the Board shall make findings that the requirements of this section have been met by the applicant for the variance and that the reasons set forth in the application justify the granting of the variance.
- 4) In granting any variance, 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 variance is granted, shall be deemed a

violation of this ordinance and punishable under appropriate provisions of this Zoning Ordinance.

- 5) Under no circumstances shall the Board grant a variance to allow a use not permissible under the terms of this ordinance in the district involved, or any use expressly or by implication, prohibited by the terms of this ordinance is said district.
- 6) To permit the following exceptions to the district regulations set forth in this ordinance, provided all exceptions:
  - ❖ Shall be so designed, constructed and operated to adequately safeguard the health, safety and welfare of the occupants of adjoining and surrounding property;
  - ❖ Shall not impair an adequate supply of light and air to adjacent property;
  - ❖ Shall not increase congestion in the public streets;
  - ❖ Shall not increase public danger of fire or flood; and,
  - ❖ Shall not diminish or impair established property value in surrounding areas.
- a. To permit erection and use of a building or the use of a premises or vary the height, yard or area regulations in any location for a public service corporation for public utility purposes, or for purpose of public communication, which the Board determines is reasonably necessary for the public convenience or welfare.
- b. To permit the extension of zoning district where the boundary line of a district divides a lot in single ownership as shown on record or by existing contract or purchase at the time of the passage of this ordinance, but in no case shall such extension of the district boundary line exceed forty (40) feet in any direction.
- c. To hear and decide such other Special Exceptions as the Board is specifically authorized to pass on by the terms of this ordinance; to decide such questions as are involved in determining whether Special Exceptions should be granted; and to grant Special Exceptions with such conditions and safeguards as are appropriate with the purpose and intent of this ordinance. A Special Exception shall not be granted by the Board unless and until:

- 1> A written application for Special Exception is submitted indicating the specific provision of this ordinance under which the Special Exception is sought and stating the grounds on which it is requested.
- 2> Notice of public hearing shall be given in advance of public hearing by publication of such notice in a newspaper of general circulation within the city at least fifteen (15) days prior to such hearing. The owner (or agent) of the property for which the Special Exception is sought and the owners of any other affected property within two hundred (200) feet of said property shall be notified by mail. Notice of hearing may also be posted on the property for which the Special Exception is sought.
- 3> At the public hearing, any party may appear in person or by agent or attorney.
- 4> The Board shall make a finding that it is empowered under the provisions of this Zoning Ordinance on the application for a Special Exception, and that the granting of the Special exception will not adversely affect the public interest.
- 5> To hear and decide only the Conditional Uses specifically authorized in this ordinance and only within the zoning districts where such Conditional Uses are specifically listed.

In granting any Special Exception, the Board may prescribe appropriate conditions and safeguards in conformity with this Zoning Ordinance. Violations of such conditions and safeguards, when made a part of the terms under which the Conditional Use Permit is granted, shall be deemed a violation of this Zoning Ordinance. The Board may prescribe a time limit within the action for which the Special Exception is required shall have be began or completed or both. Failure to begin, complete or both such action within this time limit set, shall void the Special Exception.

### C. DECISIONS OF THE BOARD OF ADJUSTMENTS.

1. In exercising the above mentioned powers, the Board 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 of determinations as it believes to be proper. The concurring vote of three (3) members of the Board shall be necessary to reverse any order, requirement, decision or determination of the Zoning Administrator, or to decide in favor of the applicant on any matter upon which it is required to pass under this ordinance.
2. Every variation and exception granted or denied by the Board may be supported by a written testimony or evidence submitted in conjunction therewith.
3. The minutes of all Board meetings shall be filed with the City Clerk within 7 days. Any person or persons jointly or severally aggrieved by any decision of the Board may present to a court of record, a petition specifying the grounds of the illegality within thirty (30) days after filing the decision of the office of City Clerk.
4. If any application for a variance or exception shall have been denied by the Board, then no new application for the same relief shall be considered by the Board unless the Board shall find that conditions have substantially changed, or one (1) year has passed.

### Section 3. AMENDMENTS.

The City Council may, from time to time, on its own action or on petition, after public notice and hearings as provided by law, and after report by the Planning and Zoning Commission, amend, supplement or change the boundaries or regulations herein or subsequently established, and such amendment shall not become effective except by the favorable vote of a majority of all the members of the City Council.

#### A. Procedures.

1. Whenever any person, firm or corporation desires that any amendment or change be made in this ordinance, including the text and/or map, as to any property in the City, there shall be presented to the Planning and Zoning Commission a petition requesting such change or amendment and clearly describing the property and its

*Publication for P & Z then 4 days less than 20 days*

boundaries as to which the change or amendment is desired, duly signed by the owners of fifty (50%) percent of the area of all real estate included within the boundaries of said tract as described in said petition, and in addition, duly signed by the owners of fifty (50%) percent of the area of all real estate lying outside of said tract but within two hundred-fifty (250') feet of the boundaries thereof and intervening streets and alleys not to be included in computing such two hundred-fifty (250') feet. It shall be the duty of the Commission to report such petition to the City Council within forty-five (45) days after the filing of such petition with the City Administrator, and shall be the duty of the City Council to act on such petition within ninety (90) days after said filing.

*(X)*

2. In case the proposed amendment, supplement of change be recommended for disapproval by the Commission, or a protest be presented, duly signed by the owners of forty (40%) percent of the property within the area or within two hundred (200') feet of the area included in such proposed change. Such amendment shall not become effective except by the favorable vote of at least three-fourths (3/4) of all members of the City Council. Whenever any petition for amendment, supplement of change of the zoning districts or regulations herein contained or subsequently established shall have been denied by the City Council, Then no new petition covering the same property or the same property and additional property shall be filed with or considered by the City Council until one (1) year shall have elapsed from the date of the filing of the first petition.

*(comma) (X)*

**B. Filing Fees.**

Before any action shall be taken as provided in this section, the owner or owners of the property proposed or recommended to be changed in the district regulations or district boundaries shall pay to the City Clerk the sum of seventy-five (\$75.00) dollars to cover the costs of the procedure. Under no circumstances shall this fee or any part thereof be refunded for failure of said amendment to be enacted into law.

**Section 4. ENFORCEMENT – Building Permits, Occupancy Permits and Fees.**

**A. Building Permits.**

1. No building or other structure shall be erected, moved, added to or structurally altered without a permit therefore, issued by the City.

No building permit shall be issued except in conformity with the provisions of this Zoning Ordinance, except after written order by the Board of Adjustments. Permits shall not be required for accessory buildings under sixty (60) square feet and complies with all applicable zoning requirements nor shall permits be required for fences or retaining walls or combination thereof less than two (2) feet in height.

2. Expiration of Building Permits.

- a. If the work described in any building permit has not begun within one hundred-eighty (180) days from the date of issuance, said permit shall expire. It shall be canceled by the Zoning Administrator and a written notice thereof shall be sent to the person affected.
- b. If the work described in any building permit has not been substantially completed within two (2) years of the date of issuance, said permit shall expire. It shall be noted on the permit by the Zoning Administrator and written notice thereof shall be sent to the person affected, together with a notice that further work as described in the canceled permit shall not proceed unless and until a new building permit has been obtained.

B. Occupancy Permits.

1. No land shall be occupied or used, and no building hereafter erected or structurally altered shall be occupied or used in whole or in part for any purpose whatsoever, until a Certificate of Occupancy has been issued by the City, stating that the building and use comply with the provisions of this ordinance and the building and health ordinances of the City.
2. No change of use shall be made in any building or part thereof, no or hereafter erected or structurally altered, without a permit being issued therefore by the Zoning Administrator. No permit shall be issued to make a change unless the changes are in conformity with provisions of this ordinance.
3. Every application for a building permit shall be considered an application for a Certificate of Occupancy. No building shall be occupied until said Certificate is issued.

4. A record of all certificates shall be kept on file in City Hall and copies shall be furnished on request to any person having a proprietary or tenancy interest in the building affected, upon payment of administrative/copying fees.
5. Nothing in this part shall prevent the continuance of a non-conforming use as hereinafter authorized, unless a discontinuance is necessary for the safety of life or property.
6. A temporary occupancy permit may be issued by the Zoning Administrator for a period of not to exceed six (6) months during alterations or partial occupancy of a building pending its completion, provided that such temporary certificate may require such conditions and safeguards as will protect the safety of the occupants and the public.
7. Failure to obtain an Occupancy Permit shall be a violation of this ordinance and punishable as provided by this ordinance.

## **Section 5. COMPLAINTS REGARDING VIOLATIONS.**

Whenever a violation of this ordinance occurs, or is alleged to have occurred, any person or persons may file a written complaint, stating fully the causes and basis thereof with the Zoning Administrator. The Administrator shall record such complaint and immediately cause an investigation and take action thereon as provided by this ordinance.

## **Section 6. ZONING ADMINISTRATOR.**

A. Appointment. The Zoning Administrator shall be appointed by the Mayor, subject to confirmation by the City Council.

B. Powers and Duties.

1. The Zoning Administrator shall issue and the City Clerk shall keep record of all permits and certificates required by this ordinance.
2. The Zoning Administrator shall be responsible for and keep an up-to-date record, to be known as the Zoning Orders Record. This record shall list, with a brief description, all variances, conditional use permits, authorizations for Planned Unit Developments, all non-conforming uses and any termination of any of them, mobile home park licenses/permits and special permits as may be required by this ordinance. Each item shall be assigned a number when entered. The Administrator shall also keep a map of the City, to be known as the

**Zoning Orders Map.** On it shall be recorded the numbers in the Zoning Orders record to indicate the location of various conditional uses, non-conforming uses and special permits. The Zoning Orders Record shall be open to public inspection.

3. The Zoning Administrator shall exercise all enforcement powers under the provisions of this ordinance and investigate all complaints of zoning violations. If it is found that the provisions of this ordinance are being violated, written notification shall be sent to the person(s) responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. The Administrator shall order the discontinuance of illegal use of land, buildings/structures, removal of illegal buildings/structures or of additions, alterations or structural changes thereto, discontinuance of any illegal work being done, or shall take any other action authorized by this ordinance to insure compliance with or to prevent violation of its provisions. If any zoning violation(s) shall continue unabated after exhaustion of reasonable administrative remedies toward their abatement, the Administrator shall prepare and submit reports of said violation(s) to the City Council for such legal action as the facts of each report may warrant.
4. In all cases where the City commences court action, the Administrator shall cooperate with the City Prosecutor by performing such additional investigative work as the City Prosecutor may request.
5. The Administrator shall attend the meetings of the Planning and Zoning Commission and the Board of Adjustment as requested by those bodies, shall investigate and review all cases presented to the Board and shall advise that body on those cases upon request.

## **Section 7. VIOLATIONS and PENALTIES.**

- A. Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance shall be guilty of a misdemeanor, and upon conviction shall be fined as provided with the Municipal Infractions provisions of the City Code, including all costs and expenses involved in the case. Each day that a violation is permitted to exist constitutes a separate offense.
- B. The owner or tenant of any building, structure, premises or part thereof, and any architect, builder, contractor, agents 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 provided.

- C. Nothing herein contained shall prevent the City from taking such other lawful action as is necessary to prevent or remedy any violation.

### **Section 8. SEVERABILITY CLAUSE.**

If any section, provision or part of this ordinance shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of this ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

**Section 9. REPEALER.** All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

\* \* \* Chapter 165, Articles 1-7 and Related Forms:

Date of Final City Council Adoption: **August 4, 2003**

Date of Publication (*Altoona Herald-Mitchellville Index*): **August 13, 2003**

Date of Effectiveness: **September 1, 2003**