

RESOLUTION

No. 2021-____

A RESOLUTION AMENDING THE ZONING ORDINANCE OF CERRO GORDO COUNTY
(Ordinance No. 15), REGARDING PROVISIONS PERTAINING TO THE BOARD OF
ADJUSTMENT

WHEREAS, the Zoning Ordinance of Cerro Gordo County regulates land use within its jurisdictional boundaries; and,

WHEREAS, from time to time, it is necessary and prudent to make updates to said ordinance for proper regulation; and,

WHEREAS, this amendment updates the Zoning Ordinance regarding powers of the Board of Adjustment to ensure appropriate review of certain land uses and promote the public health, safety, and general welfare; and,

WHEREAS, the Cerro Gordo County Planning and Zoning Commission, after study and public hearing, has recommended amendments to the Zoning Ordinance be made, upon the application of the Zoning Administrator; and,

WHEREAS, the final public hearing has been held with notice as required by law.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of Cerro Gordo County, Iowa, that the following amendments are hereby made to the Cerro Gordo County Zoning Ordinance:

1. **Article 4, Definitions**, shall be amended as follows:

Repeal the definition of BOARD OF ADJUSTMENT and replace with the following definition of

BOARD OF ADJUSTMENT

The Board of Supervisors shall provide for the appointment of a Board of Adjustment, and in the regulations and restrictions adopted pursuant to the authority of Chapter 335 (or as amended), Code of Iowa, shall provide that the said Board of Adjustment may, in appropriate cases, and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinances or regulations in harmony with its general purpose and intent and in accordance with the general or specific rules therein contained, and provide that any property owner aggrieved by the action of the Board of Supervisors in the adoption of such regulations and restrictions may petition the Board of Adjustment direct to modify regulations and restrictions as applied to such property owners.

Repeal the definition of Through Lot under LOT LINES and replace with the following:

Through Lot: (See “Double Frontage Lot” under “Lot Types”). The front property line of a through lot, also referred to herein as double frontage lot, shall be that line which obviously is the front by reason of the prevailing custom of other buildings on the block. Where such front property line is not obviously evident, the Zoning Administrator shall determine the front property line. Such a lot over three hundred (300) feet deep shall be considered for the purpose of this definition as two (2) lots, each with its own frontage.

Repeal the definition of SPECIAL EXCEPTION and replace with the following:

A minor modification or variation of a setback, frontage, height, or bulk requirement or other allowance provided specifically by a provision of this ordinance as applied to a specific lot, as distinct from a variance (See also “Special Use”).

Repeal the definition of SPECIAL USE and replace with the following:

A type of special exception for uses or structures to which specific conditions, limitations, or restrictions apply and which is subject to review by the issuing department and Board of Adjustment, as applicable.

2. **Article 5.4, Interpretation of District Boundaries**, shall be amended as follows:

Repeal **Section 5.4(G)** and replace with the following:

G. Where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map, or in other circumstances not covered by Subsections A through F above, the Zoning Administrator shall interpret the district boundaries and take further action or make recommendation as may be deemed appropriate and necessary in accordance with this Ordinance.

3. **Article 5.6, Environmental Resources Overlay District**, shall be amended as follows:

Repeal **Section 5.6(D) , Conformance Required**, and replace with the following:

D. Special Exception and Appeals

The Board of Adjustment may grant a special exception from any standards or requirements imposed by this Article as provided for under Article 24 of this Ordinance. Any special exception granted shall conform to the requirements and recommendations of the Cerro Gordo County Department of Public Health.

4. **Article 6.2, Conformance Required**, shall be amended as follows:

Repeal Section 6.2, Conformance Required, and replace with the following:

6.2 Conformance Required

Except as hereinafter specified, no land, building, structure, or premises shall hereafter be used, and no building or part thereof or other structure shall be located, erected, reconstructed, extended, enlarged, or altered except in conformity with the regulations herein specified for the district in which it is located.

However, a building that is nonconforming, as to setback requirements only, may be enlarged upon application and grant of a special exception by the Board of Adjustment. Said special exception may be granted if the particular setback requirement in question is not reduced beyond the existing yard dimension if closer than 50 percent of the applicable setback requirement and all other standards established under Section 24.4(A)(2)(a) of this ordinance are satisfied.

5. **Article 6.4, Nonconforming Uses or Buildings**, shall be amended as follows:

Repeal Section 6.4(A), and replace with the following:

Discontinuance

- A. If a nonconforming use is discontinued for one (1) year or more, it shall not be re-established.

Repeal Section 6.4(C):

Repeal Section 6.4(D):

6. **Article 6.22, Sale of Lots Below Minimum Space Requirements**, shall be amended as follows:

Repeal Section 6.22, Sale of Lots Below Minimum Space Requirements, and replace with the following:

6.22 Conformance Required

No parcel of land which has less than the minimum width or area requirements for the district in which it is located may be cut off from another parcel of land for the purpose, whether immediate or future, of building or development as a lot unless a special exception is granted by the Board of Adjustment. Said special exception shall only be granted if all resultant lots conform or are less non-conforming to the respective district requirements in which the lots are located.

7. **Article 6.27, Structures Permitted Above Height Limits**, shall be amended as follows:

Repeal Section 6.27(A), and replace with the following:

- A. Chimneys, cooling towers, elevators, bulkheads, fire-towers, monuments, stacks, tanks, water towers, ornamental towers and spires, commercial radio or television towers or necessary mechanical appurtenances may be erected to the height with a special exception granted by the Board of Adjustment.

Repeal Section 6.27(C), and replace with the following:

- C. Flag poles, light poles, and similar single pole structures may be established within the required front yard setback but may not be established in the required side and rear yard setbacks. The height of such a structure shall not exceed thirty (30) feet in height without a special exception granted by the Board of Adjustment.

Repeal Section 6.27(D), and replace with the following:

- D. Private communication towers, including base and guyed wires, may not be established in the required yard setbacks, and may not be established in the front of the front line of the principal building. The height of such a structure shall not exceed sixty (60) feet in height, as measured to the highest point of the structure including the antenna, unless a special exception is granted by the Board of Adjustment. Private radio tower and antennas not exceeding sixty (60) feet in height may be permitted in any agricultural or residential district.

E. *Repeal Section 6.27(E)(2)*, and replace with the following:

2. The base of the wind energy system shall be located a distance equal to the height of the tower measured from its base to the height of the blade at its apex from any property line or road right-of-way line. A lesser setback may be authorized with a special exception granted by the Board of Adjustment if a structural engineer, licensed in the State of Iowa, certifies in writing that the collapse of the system will occur within a lesser distance under all foreseeable circumstances. Guy wire anchors shall be set back from lot lines a distance equal to the setbacks required in the zoning district in which the wind energy system is located.

8. **Article 13, C-1 Local Commercial District** shall be amended as follows:

Repeal Section 13.3 and replace with the following:

All uses allowed and as regulated in the R-4 District and any retail business or service establishments supplying commodities or performing services such as the following:

A. Business Service

Bank
Funeral homes, including crematoriums
Interior decorating shop
Loan office
Messenger service
Professional or commercial office
Real estate office
Travel bureau

B. Clothing Service

Apparel Shop
Personal laundry and dry-cleaning establishment
Shoe sales or repair
Tailor

C. Equipment Service

Household appliances and repair
Phono-record shop
Photographic studio

D. Food Service

Cafe
Caterer
Drugstore
Meat market
Restaurant

E. General Retail Service

Bakery, retail sales only
Book store
Cigar store
Florist shop
Furrier
Hardware
Hobby shop
Paint and wallpaper store
Toy shop
Variety store

F. Personal Service

Beauty parlor

Barber shop
Cosmetics
Masseur salon
Tanning salon

G. Any of the following uses subject to a special exception being granted by the Board of Adjustment:

1. Assembly hall or auditorium.
2. Bars and cocktail lounges.
3. Laboratory, clinical or research.
4. Radio and television broadcasting studios, but not including outside towers or other devices used in transmitting and receiving.

H. Any use which is interpreted by the Zoning Administrator to be a use similar to one of the above-named uses, and in his opinion, conforms to the intent of this Article.0

9. **Article 14, C-2 General Commercial District** shall be amended as follows:

Repeal Section 14.2(C) and replace with the following:

C. The outside display of merchandise is permissible only if a special exception is granted by, and subject to any limitations or restrictions imposed by, the Board of Adjustment, unless such outside displays are specifically permitted by this Article.

10. **Article 15, C-3 Planned Shopping Center District** shall be amended as follows:

Repeal Section 15.3(C).

11. **Article 16, M-1 Light Industrial District** shall be amended as follows:

Repeal Section 16.2(B) and replace with the following:

B. Subject to being granted a special exception by the Board of Adjustment, one dwelling unit may be maintained for a watchman or a caretaker and his family.

12. **Article 24, Board of Adjustment** shall be amended as follows:

Repeal Section 24.3(C), and replace with the following:

C. Hearings

Upon the filing with the Board of Adjustment of an appeal, an application for a Special Exception or a request for variance, the Board shall hold a public hearing as

provided in this Article and the Board of Adjustment's Rules of Procedure. The Board may require the appellant or applicant to provide such information as is reasonably deemed necessary and may request the technical assistance and/or evaluation of a professional engineer or other expert person or agency, including the Iowa Department of Natural Resources.

The Board of Adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof as well as due notice to the parties in interest, and decide the same within a reasonable time after it is submitted.

Each application for variance from a requirement of the Zoning Ordinance or appeal of an order, requirement, decision, or determination by the Zoning Administrator shall be accompanied by a payment of \$200.00 to cover the cost of the procedure. Each application requesting a special exception shall be accompanied by a payment of \$200.00 to cover the cost of the procedure, except that an application for special use as regulated under Article 20 of this ordinance shall be accompanied by a filing fee of \$300.00 and a site plan fee as required for uses as specified under Article 6.33 of this ordinance to cover the cost of the procedure. At the hearing, any party may appeal in person or by attorney. Any taxpayer or any officer, department, board or bureau of Cerro Gordo County, or any person or persons jointly or severally aggrieved by any decision of the Board of Adjustment may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within thirty (30) days after the filing of the decision in the office of the Board of Adjustment.

Upon the presentation of such petition, the court may allow a writ of certiorari directed to the Board of Adjustment to review such decision of the Board of Adjustment and shall prescribe therein the time within which a return thereto shall be made which shall be not less than ten (10) days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may on application and upon notice to the Board of Adjustment and on due cause shown, grant a restraining order.

The Board of Adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from, and shall be verified. If upon the hearing, which shall be tried de novo, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take such evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or in part, or may modify the decision brought up for review. Costs shall not be allowed against the Board of Adjustment unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

Repeal Section 24.4(A)(2), and replace with the following:

2. To hear and decide special exception to the terms of this Ordinance upon which such Board of Adjustment is required to pass under this Ordinance.
 - a. In addition to the specific conditions provided elsewhere in the Ordinance, the following shall be considered. The Board of Adjustment in reviewing an application for a special exception shall only be granted if they conform to the provisions under the applicable standards under its respective section established herein under this ordinance. In reviewing an application for special exception in regard to yard requirements, frontage, height, or other bulk provisions of this Ordinance, the Board of Adjustment shall only grant such exception if all of the following criteria are met:
 - (1) Strict compliance with the standards governing setback, frontage, height, or other bulk provisions of this ordinance would result in a practical difficulty upon the owner of such property and only where such exception does not exceed 50 percent of the particular limitation or number in question;
 - (2) The exception relates entirely to a permitted use (principal, special, or accessory) classified by applicable district regulations, or to a permitted sign or off-street parking or loading areas accessory to such a permitted use;
 - (3) The practical difficulty is due to circumstances unique to the property and prohibits the use of the subject property in a manner reasonably similar to that of other property in the same district. Such circumstance may include:
 - (a) Topographical conditions;
 - (b) Surroundings;
 - (c) Size and shape of the property;
 - (d) Location of public utilities or improvements on or adjacent to the subject property;
 - (e) Shoreline and bank conditions (lake lots);
 - (f) Other extraordinary or exceptional situations.
 - (4) A grant of the special exception applied for, or a lesser relaxation of the restriction than applied for, is reasonably necessary due to practical difficulties related to the land in question and would do substantial justice to an applicant as well as to other property owners in the locality;
 - (5) Such practical difficulties cannot be overcome by any feasible alternative means other than an exception; and
 - (6) Relief can be granted in a manner that will not alter the essential character of the locality.

The Board of Adjustment may attach conditions to any such exception granted which it finds are necessary to carry out the purpose of this Ordinance.

- b. The Board of Adjustment in reviewing an application for a special exception regulated as a special use under Article 20 of this ordinance may consider the following:
- (1) Whether the proposed use is harmonious with and in accordance with the general principles and proposals of zoning ordinance for Cerro Gordo County.
 - (2) That the use be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such a use will not change the essential character of the area in which it is proposed.
 - (3) That the use will not be hazardous or disturbing to existing or future uses in the same general vicinity and will be a substantial improvement to the property in the immediate vicinity and to the community as a whole.
 - (4) That the proposed use will be served adequately by essential public facilities and services such as highways, streets, police, fire protection, drainage structures, refuse disposal, water and sewage facilities, or schools.
 - (5) That the proposed use will not create an excessive additional requirement at public cost for public facilities and services.
 - (6) That the proposed use will not involve uses, activities, processes, materials, and equipment, or conditions of operations that will be detrimental to any person, property, or general welfare by reasons of excessive production of traffic, noise, smoke, fumes, glare, or odors.
 - (7) That the proposed use is consistent with the intent and the purpose of the zoning district in which it is proposed to locate such use.

In addition to the general requirements of this Ordinance, in granting a special use permit, the Board of Adjustment may attach conditions which it finds are necessary to carry out the purpose of this Ordinance, in conformance with what is provided in Article 20 of this Ordinance, and where reasonable and necessary may increase the required lot or yard, control the location and number of vehicular access points to the property, limit the number of signs, limit coverage or height of buildings because of obstruction to view and reduction of light and air to adjacent property, and require screening and landscaping to reduce noise and glare and maintain the property in character in keeping with the surrounding area. A special use shall ordinarily comply with the standards of the district concerned for principal uses which are permitted therein, except as modified by the Board of Adjustment in granting a special use permit.

Repeal Section 24.4(D), and replace with the following:

D. Special exceptions, special use permits, and variances which have been granted in accordance with the provisions of this Ordinance shall be null and void at the end of six (6) months from the date of grant if substantial action has not been taken to accomplish the purpose for which the Special Use Permit was issued or the special exception or variance granted. Completion must be within a reasonable length of time.

NOW, THEREFORE, BE IT RESOLVED by the Cerro Gordo County Board of Supervisors that Ordinance No. 15 is hereby amended and that this Amendment shall be in full force and effect from and after its passage.

Motion was made by Supervisor _____ and seconded by Supervisor _____ that the foregoing Resolution be adopted.

Ayes –

Nays –

Absent/Not Voting –

Date of First Consideration:

Date of Second Consideration:

Date of Third Consideration:

Resolution adopted this ___ day of _____, 2021.

Chairman, Board of Supervisors
Cerro Gordo County, Iowa

I hereby certify that the foregoing is a full, true, and complete copy of Resolution as full, true, and complete as the same remains on file and of Record in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the Auditor's Office in Mason City, Iowa, this ___ day of _____, 2021.

Adam V. Wedmore, Auditor
Cerro Gordo County, Iowa