



PLANNING AND ZONING

Cerro Gordo County Courthouse

220 N Washington Ave Mason City, IA 50401-3254

John Robbins, Planning and Zoning Administrator

Michelle Rush, Executive Assistant

(641) 421-3075

plz@cgcounty.org

cgcounty.org/planning

September 24, 2021

TO: Cerro Gordo County Planning and Zoning Commission

FROM: John Robbins

SUBJECT: Next Meeting – *Thursday, October 7, 2021; 4:00 p.m.; Boardroom*

Ladies and Gentlemen:

The next meeting of the Cerro Gordo County Planning and Zoning Commission is scheduled for **October 7, 2021 at 4:00 p.m., in the Boardroom at the Courthouse.** You will be considering a rezoning request and two proposed amendment to the Zoning Ordinance.

If you have concerns with attending in person due to COVID-19, the option to attend the hearing via web conference will be made available. Social distancing will be practiced. You may join the web conference by using the following web address or by calling the phone number and entering the conference ID when prompted. Please let me know if you have any questions or if you are not able to attend in advance of the hearing.

BY COMPUTER

Web Conference: <https://bit.ly/3tBhKFn>

BY PHONE (AUDIO ONLY)

Conference phone: (641) 351-6385

Conference ID: 462 122 499#

1. Donald J. Mousel & John P. Mousel 15494 220th Street (SE¹/₄ of the SW¹/₄, Section 33, Mason Township)

This 9.00-acre parcel is located in the SE¹/₄ of the SW¹/₄, Section 33, Mason Township. A rezoning from A-1 Agricultural to A-2 Agricultural residence because the resulting parcel will be under 10 acres.

The parcel has a house, a detached garage, a couple shed, and a pool with surrounding deck onsite (See Figures 1-4). There are no non-conforming structures.

The property is surrounded by fields in agricultural production. The fields can be accessed to the west of the property via 220th Street.

The rezoning request is in general compliance with the comprehensive plan: it is an existing building site, no agricultural land will be taken out of production, and there are no access issues. I recommend the request be forwarded to the Board of Supervisors for approval.

2. Zoning Amendment: Updating Board of Adjustment provisions

This proposed amendment (included in your packets) provides a holistic update to provisions related to the Board of Adjustment throughout the Zoning Ordinance. The intent of the amendment is to clean up the language within the ordinance, clarify proper procedure and roles, and ensure applicable provisions are consistent with the provisions in Iowa Code, Chapter 335 establishing Board of Adjustment powers.

Under the state code, the powers granted to a Board of Adjustment are:

1. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this chapter or of any ordinance adopted pursuant thereto.
2. To hear and decide special exceptions to the terms of the ordinance upon which such board is required to pass under such ordinance.
3. To authorize upon appeal, in specific cases, such variance from the terms of the ordinance as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done.

In particular, the powers of deciding special exceptions has been unclear in the ordinance. A special exception is a specific allowance specified in a zoning ordinance that can be granted by the Board of Adjustment under certain provided standards. The most obvious special exceptions provided under the ordinance are special uses under Article 20. But also scattered throughout the ordinance are references to types of approvals or variances that may be granted by the Board of Adjustment. All reference of approvals have been revised to explicitly be special exceptions, and in a few instances, the ordinance currently allows for “variances” with approval from the Board of Adjustment where it should more properly be a special exception.

Additionally, the proposed amendment adds a special exception for bulk requirements, such as yard, area, or height requirements, in Article 24.4(A). The proposed additional special exception establishes specific criteria that must be met in order to be approved. It uses a standard of practical difficulty created by independent factors (e.g. lot size) that a literal enforcement of all zoning requirements would not otherwise allow along with other specified standards. Such a statute is needed within the ordinance due to, in particular, the nature of lots around the south shore area that would not otherwise meet the high standard of hardship for a variance request. Any request not meeting such standards would need to meet the standards for a variance otherwise. The intent is to allow only special exceptions for such bulk requirements if they are within the spirit of the ordinance, such as maintaining the character of neighborhoods, and such exceptions go through a proper review and public hearing.

In addition to special exceptions matters, the proposed amendment revises the following:

- Updates an Iowa Code reference under the definition of “Board of Adjustment.”
- Revises the definitions of “Special Use” and “Special Exception.”
- Places code interpretation responsibilities under the Zoning Administrator where it was previously placed under the Board of Adjustment, specifically under the definition of

“through lot” and Section 5.4(G). This is not a power listed in Iowa Code for Boards of Adjustment. Interpretation of a zoning code should be firmly under the purview of the individuals responsible for enforcing an ordinance. The Board of Adjustment is granted the power by the state to hear appeals from an interpretation or determination made by the Zoning Administrator where a party believes an error was made.

- Under Section 5.6(D), the language has been updated to properly specify that it is a special exception that may be granted. The amendment also adds a standard that any special exception granted must meet all requirements and recommendations of CG Public Health for septic systems. Additionally, the language has been updated to make clear that the Board of Adjustment may only grant a special exception in the Zoning Ordinance and not any rules under the jurisdiction of the Clear Lake Sanitary District.
- Under Article 6.4(A) of the ordinance, the ordinance currently allows for a non-conforming use that has been discontinued for more than one year to be re-established with a special exception granted by the Board of Adjustment. This is against the spirit of the Zoning Ordinance, and bringing non-conforming uses into compliance should be the goal. The proposed amendment removes this special exception as a result. Additionally, the language has been updated to properly specify that it is a special exception that may be granted. The amendment adds a standard that a non-conforming setback may not be exacerbated and otherwise must meet the standards for a special exception for bulk requirements under Section 24.4(A).
 - The proposed amendment also repeals Section (C) and (D) of the same Article. These sections require certain types of non-conforming uses to be discontinued within a certain amount of time under the rules of the ordinance. Staff believes these section to be unconstitutional under the Iowa Constitution, as property owners have a vested right to expect to continue a use that was legal prior to rules being adopted that made it non-conforming in the first place. While this has not been an issue in the past, these sections should be removed because they are unenforceable.
- The special exception for specific uses in the C-3 Planned Shopping District (Section 15.(C)) has been transferred to the C-1 Local Commercial District (Section 13.3(G)) in the proposed amendment. The C-3 District is a type of planned unit development district, which is typically a site plan review process that is reviewed by the Planning and Zoning Commission. The permitted uses in the C-3 District are generally those in the C-1 District, and the particular uses under this special exception generally seem appropriate for the C-1 District. Procedurally, this special exception seems more appropriate in the C-1 District and in line with the purpose of the district, which is designed by neighborhood-type retail and customer service uses near residential areas.
- The fees for a special exception under Article 24.4 that is not for a Special Use Permit has been revised to be \$200.00 due to less review being needed, which will be a similar time needed as a variance request.

Due to the type of amendment being procedural or technical in nature, the Comprehensive Plan is silent and does not provide any guidance for the proposal. A zoning ordinance is a tool for implementation of a comprehensive plan, so the procedural construction of the ordinance will not be addressed by such.

3. Zoning Amendment: Revising A-2 District standards

This proposed amendment lowers the minimum lot area for the A-2 Agricultural zoning district to one acre in size from the current two-acre minimum requirement. The intent of the proposal is to help with the preservation of agricultural farmland and be more in line with the stated purpose of the A-2 District.

The stated purpose of the A-2 District is, “to serve the agricultural community and guide urban land use in rural areas.” The district has traditionally been practically applied as zoning for acreages split from farm fields and to organize development along the urban fringe. Compared to other counties, it is a cross between a district between rural building sites and suburban residential/civic uses. In practice, the two-acre minimum size seems to be somewhat too large for the stated purpose of the district.

This has resulted in some farmland having to be included with a rural acreage splits and contributed to farmland being taken out of production to meet the minimum size requirement. It is usually only less than an acre of farmland on any individual request, but requests get approved because the amount of land being taken out of production is deemed nominal. The Comprehensive Plan has a clear goal for ag-land preservation. This appears to be a simple fix to further those goals and policies, even in small amounts.

Additionally, the district is intended to guide development at the urban fringes. Residential lot sizes in the county’s cities tend to be about one acre or smaller in size around these areas. Reducing the minimum size requirement of the A-2 District will be more in line with existing development of cities and provide further flexibility at the urban fringe as well. Encouraging density is also encouraged within the Comprehensive Plan, and the added flexibility for smaller lot sizes would help with this goal at the urban fringes. However, larger lot sizes would still be allowable in the district as the amendment is constructed.

Staff also considered the requirements of CG Public Health for septic systems, particularly soil absorption systems, in determining the proposed size. Overall, one acre is considered plenty of space to accommodate a septic system, along with separation distances and setback requirements factored in, on a typical acreage by health officials. Some geographic features, lot shapes, or other factors may contribute to needing a larger area but will not be without options if ever needed.

Overall, the recommended one-acre size appears to be consistent with urban development near the fringes of cities, be large enough for things such as septic system considerations, reduce pressure on taking ag-land out of production, and be better in line with the stated intent of the A-2 District.