

Title 10 – Zoning
Chapter 22 – Administration

SECTION:

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10-22-1 Conditional Uses. Application for conditional permits for uses specifically authorized for consideration in the district use regulations shall be filed with the Building and Zoning Administrator, together with the appropriate application fee, and upon such filing, the Building and Zoning Administrator shall immediately refer the application to the Board of Adjustment for hearing after publication of a public notice as provided by law.

Before authorizing the issuance of such a conditional use permit, the Board of Adjustment may impose such conditions as will, in the Board's judgment, ensure that:

- A. The establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public's health, safety, morals, comfort, or general welfare.
- B. The conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted.
- C. The conditional use will not substantially diminish and impair property values within the neighborhood.
- D. The conditional use will be compatible with and will not impede adjoining development and the proposed character of the zoned district where it is to be located.
- E. Adequate utilities, access roads, drainage, and/or other necessary facilities will be provided.
- F. Adequate off-street parking and loading are provided and ingress and egress are so designed as to minimize traffic congestion in the public street.
- G. The conditional use shall in all other respects conform to the applicable regulations of the district in which it is located and all other applicable regulations provided in the Zoning Ordinance.
- H. The Zoning Board of Adjustment shall find that there is a public benefit for the conditional use.

10-22-2 Board of Adjustment.

- A. A Board of Zoning Adjustment consisting of five (5) members, all of whom shall be residents and all of whom shall be persons with knowledge of construction, architecture, fine arts, engineering, landscape architecture, or law shall be appointed by the Council. The terms of all members shall be five (5) years and not more than two (2) members of the Board shall be members of the Planning and Zoning Commission. Each member shall serve until his or her successor is appointed. Members of the Board shall be removable for nonperformance of duty, misconduct in office, or other cause by the Council upon written charges having been filed with the

Council and after a public hearing has been held regarding such charges, a copy of the charges having been served upon the member so charged at least ten (10) days prior to the hearing, either personally, by registered mail, or by leaving the same at his usual place of residence. The member shall be given an opportunity to be heard and answer such charges. Vacancies shall be filled by the Council and shall be for the unexpired term.

- B. The Board shall organize and adopt rules in accordance with the provisions of this Ordinance and with the Iowa Statutes. Meetings of the Board shall be held at the call of the chairman and at such other times as the Board may determine. The chairman, or in his or her absence, the acting chairman, may administer oaths and the Board may compel the attendance of witnesses. All meetings of the Board shall be open to the public. All business of the Board shall be transacted at such meetings. The Building and Zoning Administrator shall keep minutes of its proceedings showing the vote of each item in question, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the Office of the Building and Zoning Administrator and shall be a public record.
- C. Appeals to the Board may be taken by any person aggrieved. Such appeal shall be taken within twenty (20) days after the decision by filing with the officer from whom the appeal is taken and with the Board a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken. The Board shall fix a reasonable time for the hearing of the appeal, given seven (7) days' notice to the parties in interest by publication of notice of hearing, and decide the same within a reasonable time after it is submitted. Upon the hearing, any party may appear in person or by attorney. The appropriate fee as established by resolution in Section 5-15-2 of this Code shall be paid to the Building and Zoning Administrator at the time the notice of appeal is filed, which the Building and Zoning Administrator shall forthwith pay over to the Clerk to the credit of the General Revenue Fund.
- D. The powers of the Board are:
 - 1. To interpret the Ordinance, being:
 - a. To hear and decide appeals where it is alleged there is an error in any order, requirement, decision, or determination made by the Building and Zoning Administrator in the enforcement of this ordinance.
 - b. To permit the extension of a district where the boundary line of a district divides a lot held in a single ownership at the time of the passage of this Ordinance.
 - c. To interpret the provisions of this Ordinance in such a way as to carry out the intent and purpose of the plan, as shown upon the map fixing the several districts accompanying and made a part of this Ordinance where the street layout on the ground varies from the street layout as shown on the map aforesaid.
 - 2. To permit the following three (3) exceptions:
 - a. Use of premises for public utility.
 - b. Reconstruction of a nonconforming building that would otherwise be prohibited by Section 10-18-5 where such action would not constitute continuation of a monopoly.
 - c. Authorize upon appeal, whenever a property owner can show that a strict application of the terms of this Ordinance relating to the use, construction, or alterations of buildings or structures or the use of land will impose upon him unusual and practical difficulties or particular hardship, such variations of the strict application of the terms of this Ordinance as are in harmony with its general purpose and intent, but

only when the Board is satisfied that a granting of such variation will not merely serve as a convenience to the applicant, but will alleviate some demonstrable and unusual hardship or difficulty so great as to warrant a variation from the Comprehensive Plan as established by this Ordinance, and at the same time, the surrounding property will be properly protected.

3. To permit the following two (2) variations:
 - a. Vary the yard regulations where there is an exceptional, unique, or unusual physical condition of a lot, and which condition, when related to the yard regulations of this Ordinance, would prevent a reasonable or sensible arrangement of buildings on the lot.
 - b. Vary the parking regulations where an applicant demonstrates conclusively that the specific use of a building would make unnecessary the parking spaces required by this Ordinance, but providing that such a reduction not be more than fifty percent (50%) of the usual requirement.
4. Exceptions. Interpretations, exceptions, and variations involving the Flood Plain or Flood Channel Districts shall be referred to the Iowa Natural Resources Council.
5. To allow conditional uses pursuant to the provisions of Section 10-22-1 of the City Code.

10-22-3 Enforcement of Ordinance.

A. Building and Zoning Administrator:

1. Duties. It shall be the duty of the Building and Zoning Administrator to enforce this Ordinance. He or she shall receive applications required by this Ordinance, issue permits, and furnish the prescribed certificates. He or she shall examine premises for which permits have been issued and shall make necessary inspections to see that the provisions of law are complied with. He or she shall enforce all laws relating to the construction, alteration, repair, removal, demolition, equipment, use, occupancy, location, and maintenance of buildings and structures, except as may be otherwise provided for. He or she shall, when requested by the City Administrator, or when the interests of the Municipality so require, make investigations in connection with matters referred to in this Ordinance and render written reports on the same. For the purpose of enforcing compliance with law, he or she shall issue such notices or orders as may be necessary.
2. Records. The Building and Zoning Administrator shall keep careful and comprehensive records of minutes, of applications or permits issued, of certificates issued, of inspections made, of reports rendered, and of notices or orders issued. He or she shall retain on file copies of all papers in connection with building work so long as any part of the building or structure to which they relate may be in existence. All such records shall be open to public inspection at reasonable hours, but shall not be removed from the Office of the Building and Zoning Administrator.
3. Cooperation of Other Officials. The Building and Zoning Administrator may request and shall receive, so far as may be necessary in the discharge of his or her duties, the assistance and cooperation of the Engineer in fixing grades, of the Chief of Police in enforcing orders, of the Attorney in prosecuting violations, and of other officials.

10-22-4 Permits.

- A. When Required. It shall not be lawful to construct, alter, repair, remove, or demolish or to commence the construction, alteration, removal, or demolition of a building or structure, without first filing with the Building and Zoning Administrator an application in writing and obtaining a formal permit.
- B. Form. An application for a permit shall be submitted in such form as the Building and Zoning Administrator may prescribe. Such application shall be made by the owner or lessee, or agent of either, or the architect, engineer, or builder employed in connection with the proposed work. If such application is made by a person other than the owner in fee, it shall be accompanied by a duly verified affidavit of the owner in fee, or the person making the application that the proposed work is authorized by the owner in fee and that the person making the application is authorized to make such application. Such application shall contain the full names and addresses of the applicant and of the owner, and, if the owner is a corporate body, of its responsible officers. Such application shall describe briefly the proposed work and shall give such additional information as may be required by the Building and Zoning Administrator for an intelligent understanding of the proposed work. Such application shall be accompanied by payment of such fees as the Council may determine from time to time.
- C. Plans. Application for permits shall be accompanied by such drawings of the proposed work, including such floor plans, sections, elevations, and structural details as the Building and Zoning Administrator may require.
- D. Plat Diagram. There shall also be filed one (1) copy of a plat diagram in a form and size suitable for filing permanently with the permit record, with all dimensions figured, showing accurately the size and exact location of all proposed new construction or, in the case of demolition, of such construction as is to be demolished and of all existing buildings.
- E. Amendments. Nothing in this Section shall prohibit the filing of amendments to an application or to a plan or other record accompanying the same at any time before the completion of the work for which the permit was sought. Such amendments, after approval, shall be filed with and be deemed a part of the original application.
- F. Completion of Existing Buildings. Nothing contained in this Ordinance shall require any change in the plans, construction, size, or designated use of a building for which a valid permit has been issued or lawful approval given before the effective date of this Ordinance; provided, however, construction under such permit or approval shall have been started within six (6) months and the ground story framework, including structural parts of the second floor, shall have been completed within one (1) year and the entire building completed within two (2) years after the effective date of this Ordinance.
- G. Action on Application. It shall be the duty of the Building and Zoning Administrator to examine applications for permits within a reasonable time after filing. If, after examination, he or she finds no objection to the same and it appears that the proposed work will be in compliance with the laws and ordinances applicable thereto, he or she shall approve such application and issue a permit for the proposed work as soon as practicable. If his or her examination reveals otherwise, he or she will reject such application noting his or her finding in a report to be attached to the application and delivering a copy to the applicant.
- H. Approval in Part. Nothing in this Section shall be construed to prevent the Building and Zoning Administrator from issuing a permit for the construction of part of a building or structure before the entire plans and detailed statements of said building or structure have been submitted or approved, if adequate plans and detailed

statements have been presented for the same and have been found to comply with this Ordinance.

- I. Condition of the Permit. All work performed under a permit issued by the Building and Zoning Administrator shall conform to the approved application and plans and approved amendments thereof. The location of all new construction as shown on the approved plot diagram, or an approved amendment thereof, shall be strictly adhered to. It shall be unlawful to reduce or diminish the area of a lot or plot of which a plot diagram has been filed and has been used as the basis for a permit, unless a revised plot diagram showing the proposed change in conditions shall have been filed and approved; provided that this shall not apply when the lot is reduced by reason of a street opening or widening or other public improvement.
- J. Signature to Permit. Every permit issued by the Building and Zoning Administrator under the provisions of this Ordinance shall have his or her signature affixed thereto; but this shall not prevent him or her from authorizing a subordinate to affix such signature.
- K. Limitation. A permit under which no work is commenced within one (1) year after issuance shall expire by limitation.
- L. Posting of Permit. A copy of the permit shall be kept on the premises open to public inspection during the prosecution of the work and until the completion of the same. The Building and Zoning Administrator may require a certified copy of the approved plans to be kept on the premises at all times from the commencement of the work to the completion thereof. The Building and Zoning Administrator shall be given at least twelve (12) hours' notice of the starting of work under a permit.
- M. Revocation. The Building and Zoning Administrator may revoke a permit or approval issued under the provisions of this Ordinance in case there has been any false statement or misrepresentation as to a material fact in the application or plans on which the permit or approval was based.
- N. Certificate of Occupancy for a Building. No building shall be occupied before a Certificate of Occupancy has been issued. A Certificate of Occupancy for a new building or the reconstruction or alteration of an existing building shall be applied for coincident with the application for a building permit and said Certificate shall be issued with three (3) days after the request for the same shall have been made in writing to the Building and Zoning Administrator after the erection or alteration of such building or part thereof shall have been completed, and in the case of new subdivisions, when all public improvements, including sewers, streets, and utilities, have been accepted in accordance with the provisions of this City Code. Pending the issuance of a regular Certificate, a temporary Certificate of Occupancy may be issued by the Building and Zoning Administrator for a period not exceeding one (1) year during the completion of alterations or during partial occupancy of a building pending its completion. Such temporary Certificate shall not be construed as in any way altering the respective rights, duties, or obligations of the owners or of the tenants relating to the use or occupancy of the premises or any other matter covered by this Ordinance, and such temporary Certificate shall not be issued, except under such restrictions and provisions as will adequately insure the safety of the occupants.

The process of issuing this Certificate of Occupancy shall be considered the minimum enforcement requirement for the protection of the public health, safety, and welfare of the residents of the City of Muscatine. However, if in the case of a new subdivision, all public improvements are not acceptable prior to request for a regular Certificate of Occupancy, the subdivider or his agent may request a waiver from the City Council of this provision. The developer or his agent must clearly demonstrate that due to peculiar conditions pertaining to his subdivision, the literal enforcement of one or more steps of this process is impractical or will exact undue hardship. The

City Council may waive the requirement for completion of the public improvements prior to issuance of a regular Certificate of Occupancy for a reasonable period of time until the deficiency is corrected by the subdivider or his agent. In allowing a waiver due to a specific situation, the City Council shall not release the performance bond and also shall notify the bonding company of the deficiency and a reasonable period of time for correction to the satisfaction of the City Council. (Any action taken by the City Council under the terms of this process shall give primary consideration to the welfare of the entire community.)

- O. Content of Certificate of Occupancy. A Certificate of Occupancy shall state that the building or proposed use of the building complies with all the building and health laws and ordinances and with the provisions of these regulations. A record of all certificates shall be kept on file in the Office of the Building and Zoning Administrator and copies shall be furnished on request to any person having a proprietary or tenancy interest in the building affected. (Note Subdivision Regulations, Title 11.)
- P. Building Permit. No permit for construction of any building shall be issued before application has been made for a Certificate of Occupancy.

10-22-5 Boundaries of Districts. Where uncertainty exists with respect to the boundaries of the various districts as shown on the District Map accompanying and made a part of this Ordinance, the following rules apply:

- A. The district boundaries are either streets or alleys, unless otherwise shown, and where the districts designated on the map accompanying and made a part of this Ordinance are bounded approximately by street or alley lines, the street or alley shall be construed to be the boundary of the district.
- B. Where the district boundaries are not otherwise indicated and where the property has been or may hereafter be divided into blocks and lots, the district boundaries shall be construed to be the lot lines, and where the districts designated on the District Map accompanying and made a part of this Ordinance are bounded approximately by lot lines, the lot lines shall be construed to be the boundary of the districts, unless the boundaries are otherwise indicated on the Map.
- C. In unsubdivided property, the district boundary lines on the Map accompanying and made a part of this Ordinance shall be determined by use of the scale appearing on the Map.

10-22-6 Interpretations. In interpreting and applying the provisions of this Ordinance, they shall be held to be the minimum requirements for the promotion of the public safety, health, convenience, comfort, morals, prosperity, and general welfare. It is not intended by this Ordinance to interfere with or abrogate or annul any easements, covenants, or other agreements between parties, except that if this Ordinance imposes a greater restriction, this Ordinance shall control.

10-22-7 Amendments of Ordinance.

- A. The Council may, from time to time, on its own motion or on petition, after public notice and hearing as provided by law and after report by the Commission, amend, supplement, or change the boundaries or regulations herein or subsequently established. In case the Commission disapproves the proposed change or in case of a protest against such change signed by the owners of twenty percent (20%) or more, either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof or directly opposite thereto extending the depth of one (1) lot or not to exceed two hundred feet (200') therefrom or two

hundred feet (200') from the street frontage of opposite lots, such amendment shall not be passed except by the favorable vote of three-fourths (3/4) of all members of the Council. If no report is received from the Commission in sixty (60) days, it may be assumed that said Commission has approved the amendment.

- B. Before any action shall be taken as provided by this Section, the party or parties proposing or recommending a change in the district boundaries or district regulations shall file with the Planning Administrator a petition or application accompanied by the appropriate filing fee as established by resolution in Section 5-15-2 of this Code to cover the approximate cost of this procedure and under no condition shall said sum or any part thereof be refunded for failure of said change to be adopted by the City Council.
- C. Change in Flood Plan or Flood Channel District boundaries shall be referred to the Iowa Resources Council.