

RULES OF PROCEDURE

CERRO GORDO COUNTY BOARD OF ADJUSTMENT

ADOPTED NOVEMBER 30, 2021

IN COMPLIANCE WITH SECTION 335.12 OF THE STATE CODE OF IOWA AND THE CERRO GORDO COUNTY ZONING ORDINANCE, WHICH REQUIRE THAT THE BOARD OF ADJUSTMENT ADOPT RULES TO CARRY OUT THE PROVISIONS OF THE ZONING ORDINANCE, THE FOLLOWING RULES OF PROCEDURE ARE HEREBY ADOPTED BY THE CERRO GORDO COUNTY BOARD OF ADJUSTMENT.

SECTION 1. OFFICERS

The Board of Adjustment shall select from its membership a Chairperson and Vice Chairperson, who shall perform the usual duties pertaining to such offices.

- 1.1 Selection. At the first meeting of each year, the Board will pick its officers from its membership. All officers are eligible for re-election.
- 1.2 Tenure. The Chairperson and Vice Chairperson shall take office immediately following their selection and shall hold office for a term of one year or until their successors are selected and assume office.
- 1.3 Duties.
 - (A) Chairperson
 - (1) Shall preside at all meetings and hearings of the Board.
 - (2) Shall decide all points or order or procedure.
 - (3) Shall appoint any committees that may be found necessary.
 - (4) Shall sign all adopted resolutions of the Board.
 - (B) Vice Chairperson
 - (1) Shall assume the duties of the Chairperson in the absence of the Chairperson.
- 1.4 Secretary. The Secretary will be appointed by the Board of Adjustment and may be a member of the Board, an employee of the Board or a regular employee of the County. The Secretary shall conduct all official correspondence subject to these rules at the direction of the Board, shall send out all notices required by these Rules of Procedure, keep the minutes of the Board's proceedings and keep a file on each case which comes before the Board. For all appeals and applications, the Secretary shall issue the proper forms; see that information, maps, and plats are compiled and ready for Board's review; notify any adjacent property owner and other interested parties by mail of the time and place of the hearing; and any other duties as determined by the Board.

SECTION 2. MEETINGS

Meetings may be called by the Chairperson, or at the request of three members of the Board of Adjustment. Notice of the special meeting shall be given by the Secretary to the members of the Board at least 48 hours prior to such meeting and shall state the purpose and time of the meeting.

- 2.1 Quorum. A quorum of the Board shall consist of three members. A meeting may be held by electronic means pursuant to Iowa Code Section 21.8.
- 2.2 Public. All regular, special and subcommittee meetings, public hearings, records and accounts shall be open to the public under Iowa Code Chapter 21.

2.3 Order of Business. The Secretary shall prepare an agenda for each meeting and send it to each Board member as a part of the notification process. The order of business shall be as follows:

- (a) Roll call
- (b) Approval of minutes of the previous meeting
- (c) Approval of resolutions
- (d) Old business
- (e) New Business (**SEE 2.4 "VOTING"**)
- (f) Items from the floor
- (g) Adjournment

2.4 Voting. The concurring vote of three members of the Board is required to reach a decision (no matter how many Board members are present). Voting will be by roll call and will be recorded by "yeas" and "nays." All members of the Board, including the Chairperson, are required to cast a vote for each motion. Minutes will show members absent for each vote.

NOTE: A member may abstain if he/she feels there is a conflict of interest, particularly if the conflict is of a financial nature. If a member elects to abstain from voting, he/she is required to state so **before** the issue is discussed and recuse him/herself from the Board's discussion.

2.5 Unfinished Business. Where all appeals or applications cannot be disposed of on the day set (due to length of meeting or extenuating circumstances), the Board may adjourn from day-to-day until the next meeting, as the Board may decide.

2.6 Board Action. The Board may not vote on an appeal or application until all required information has been set forth on the forms and until the hearing has been conducted.

2.7 Parliamentary Procedure. Robert's Rules of Order, Revised, will govern the Board meetings.

SECTION 3. CASES TO BE DECIDED BY THE BOARD

The following cases shall be made before the Board of Adjustment on forms provided by the Board Secretary.

- 3.1 Appeals where it is alleged there is error in any order, requirement, decision or determination made by the Zoning Administrator in the enforcement of the Zoning Ordinance;
- 3.2 Special exception to the terms of the Zoning Ordinance upon which the Board is required to act under the Ordinance
- 3.3 Special exception regulated as special uses listed in Section 20.2 of the Zoning Ordinance upon which the Board is required to act under the Ordinance;

3.4 Variances to a zoning district requirement where there are unusual conditions or circumstances which cause a hardship when the provisions of zoning are strictly applied.

SECTION 4. PROCEDURE FOR HEARING CASES

The following rules will apply to all appeals or applications before the Board.

4.1 Appeals to the Board may be taken by any person, group or by any officer or department of the County affected by any decision of the Zoning Administrator and by applicants for a special exception, special use, or variance.

4.2 The Zoning Administrator shall tell the applicant or interested party the following:

- (a) Why the Zoning Permit was denied or why the application is necessary;
- (b) Shall inform the applicant or interested party of the right to apply or appeal to the Board and that it be made within 30 days;
- (c) Such appeal shall be filed with the Zoning Administrator on the forms provided by the Board of Adjustment;
- (d) Will inform the applicant or interested party of the right to be represented by an attorney at their own expense;
- (e) Will inform the applicant or interested party that they may have a copy of the Rules of Procedure;
- (f) Will transmit the completed appeal form along with all papers constituting the record upon which the Board shall act.

4.3 The applicant shall complete the required forms, providing all information requested by the form and any additional information as requested by the Zoning Administrator.

4.4 The Secretary of the Board shall reject any such application or appeal which is not filed within 30 days of the Zoning Administrator's decision. Also, the Secretary shall reject any such application or appeal unless same are made on prescribed forms properly filled out, with all required data attached.

4.5 An application or appeal filed according to the above procedure shall be given a case number within 5 working days from the date filed. Applications or appeals will be assigned to the agenda in the order in which they are received.

4.6 The Secretary of the Board shall notify the parties of interest (owners of record of property immediately adjacent to the applicant's lot lines or further property owners as deemed appropriate due to the potential impact that may directly result from a particular request) by mail of the time; place, and purpose of the public hearing and give public notice in a newspaper of general circulation as prescribed by the Zoning Ordinance.

- 4.7 Hearings shall normally be held by the Board of Adjustment at the Courthouse and open to the public. A meeting held away from the Courthouse will be posted in accordance with Iowa Code Chapter 21 and these rules.
- 4.8 At the time of the public hearing, the applicant may appear on his/her own behalf or be represented by agent or counsel. In the absence of any personal appearance on behalf of the applicant, the Board will proceed to dispose of the matter on the forms and information provided before. Such disposition may include tabling the request to a later date. The Board shall declare the public hearing open prior to consideration of any application or appeal.
- 4.9 The Order of the Hearing on each matter to be considered shall be as follows:
- (a) The applicant's or appellant's side of the case
 - (b) Zoning Administrator's side of the case, including correspondence received
 - (c) Interested property owners' opinions
 - (d) Applicant's rebuttal
 - (e) At the conclusion of any presentation, the Board may permit interested parties to ask questions
 - (f) The Board will rule questions out of order that are argumentative, repetitious, or not related to inquiry regarding facts of the case
- 4.10 At the conclusion of the hearing, the Board shall declare the record closed to further input from the public. The Board may, if any member should wish, continue to discuss, ask questions about, and to deliberate the matter in the open meeting until a motion is made and the question is called.
- 4.11 The applicant or appellant may withdraw his/her application or appeal at any time prior to the decision by the Board of Adjustment.
- 4.12 Final decision of an appeal of the Zoning Administrator's decision shall be made in the form of a resolution by anyone on the Board of Adjustment. The resolution may affirm, modify, or reverse the refusal of a permit by the decision of the Zoning Administrator. In the case of an application for special use, the resolution shall set forth that the application is granted or denied and said resolution shall specifically set forth what special uses are permitted and what conditions, if any, shall be complied with, along with the specific factual findings upon which the decision is based. In the case of a variance or special exception, the decision shall be made in the form of a motion, approving, or modifying, or denying the request, and setting forth any conditions to be complied with.
- 4.13 A rehearing of any decision of the Board of Adjustment may be made at the request of an applicant or the Zoning Administrator if the following occur:
- (a) The motion to reconsider is made by a member of the Board and carried by not less than three affirmative votes;
 - (b) New evidence is submitted which could not have been reasonably presented at the original meeting.

If a re-hearing is approved, the procedures in Section 4 of these rules shall be complied with.

SECTION 5. **RECORDS**

The Secretary shall keep books showing the status of all cases and minutes as part of the records of the Board of Adjustment. In addition, the Secretary shall keep a file of all cases including forms and additional information as a part of the legal records. Any tape-recording made shall be kept for a period of one year from the date of decision.

- 5.1 All records of the Board shall be a public record. Records of the Board's official actions shall be immediately filed in the office of the Zoning Administrator.
- 5.2 Copies of Board records can be obtained by any person at the current rate established by the Zoning Administrator.
- 5.3 The transcript for a tape-recorded hearing can be obtained by any person at the current rate established by the Zoning Administrator. Transcripts are done by an employee of the County who is not bonded and therefore will not be certified.

SECTION 6. **AMENDMENTS**

A majority vote of all the members of the Board shall be necessary to amend these procedural rules. Such proposed amendments shall be presented in writing at any meeting of the Board.

SECTION 7. **INFORMAL ADVICE**

The Board will not consider a request (informal or not) for advice on theoretical or actual situations which potentially may later come before the Board as an appeal or application.

HEARING PROCEDURE

1. The meeting should be opened precisely at the time advertised in the notice.
2. The presiding officer should conduct the meeting and exercise all authority in order to keep the meeting running smoothly and to the point.
3. The presiding officer should present an opening statement stating the purpose of the meeting and laying general ground rules for the conduct of the meeting.

SUGGESTED OPENING STATEMENT

The public hearing, as advertised, is now in session. In order to conduct the hearing within a reasonable time and to keep it on the subject at hand, you are asked to observe the following rules:

1. Any one who wishes may present his or her views to the board.
2. Those in favor will be heard first and those opposed will be heard last.
3. Please refrain from repeating what has been said before you and please do not involve personalities.
4. Be as factual as possible.
5. The Board reserves the right to question any speaker and the Chair reserves the right to swear any or all of those to be heard.
6. You may petition the District Court within 30 days of our decision if you wish to challenge the decision or believe the Board acted improperly.
7. When necessary, in the interest of conducting the hearing in an efficient and timely manner, the Board reserves the right to limit each speaker to a 5 minute speaking time.

ORDER OF BUSINESS

1. Roll call
2. Approval of minutes of previous meeting
3. Approval of resolutions
4. Old business
5. New Business
6. Items from the floor
7. Adjournment

PROCEDURAL GUIDELINES

The Board of Adjustment realizes it is not bound by the Iowa Administrative Procedure Act or the Iowa Rules of Evidence. However, we voluntarily adopt the following procedures to provide notice and assistance to parties that wish to present facts to the Board of Adjustment.

1. The Board of Adjustment will base its findings on the kinds of evidence which reasonably prudent persons are accustomed to rely upon as they make major decisions. The findings of the Board may be based on such evidence even if such evidence is inadmissible in jury trial.
2. The Board of Adjustment may receive into evidence reports from the Zoning Administrator and other staff members in written form without calling the individual that made the report or memorandum as a witness provided that the report or memorandum identifies the individual or individuals responsible for compiling the information in the report or memorandum.
3. If an interested party objects to the Board of Adjustment considering a report or memorandum described in paragraph 2 on the basis of hearsay or inability to confront or cross examine the author of the report, then the Board of Adjustment shall allow the interested party an opportunity to move for a continuance to enable the interested party to subpoena the individuals they desire to cross-examine. Granting of the continuances is within the discretion of the Board but shall not unreasonably be denied.
4. The Board of Adjustment may, either individually or collectively as a Board, view the property in question prior to making a finding. However, the Board of Adjustment members, either individually or collectively, shall not discuss the merits of the application it is considering while viewing the premises.
5. All objections to evidence offered shall be noted in the record.
6. The Board of Adjustment may take judicial notice of matters which are common knowledge within Cerro Gordo County. When judicial notice is taken of a matter, this shall be noted in the record.
7. The Board of Adjustment members shall not communicate with any interested party unless notice is given to all interested parties with an opportunity for all parties to participate.
8. The Iowa Rules of Evidence do not apply to Board of Adjustment proceedings. Proceedings shall be conducted in an informal manner in accordance with the Rules and Procedures adopted by the Board of Adjustment to allow the orderly presentation of matters for the Board of Adjustment's decisions.
9. Parties may subpoena witnesses to testify at the Board of Adjustment hearing.