

## BOARD OF ADJUSTMENT

The basis for all authority pertaining to a board of adjustment is found in Chapter 414 of the Code of Iowa. Although a city is not required to have a zoning code, Section 414.1 grants a city the authority to regulate and restrict the size of buildings, the percentage of a lot that may be occupied by buildings, the size of yards and open spaces, the density of population, and the location and use of buildings and land for commerce, industry, residence, or other purposes. The city may create these regulations for the purpose of promoting the health, safety, morals, or the general welfare of the community.

Section 414.2 states that a city may accomplish these purposes by establishing districts for these purposes. The council is to establish the districts by providing for the number, shape and area as it deems best suited to carry out the purposes mentioned.

All regulations for these districts shall be in accordance with a comprehensive plan and design to preserve the availability of agricultural land, to lessen congestion in streets, to secure safety from fire and other dangers, to promote health and general welfare, to provide adequate light and air, to prevent the overcrowding of land, to avoid undue concentration of population, to promote the conservation of energy resources, and to facilitate the adequate provision for transportation and other city utilities. This authority is granted in Section 414.3

Other provisions of Chapter 414 allow the city council to change boundaries of districts and amend the zoning regulations. Furthermore, if a city has zoning regulations, then it is to establish a planning and zoning commission, and a board of adjustment.

The authority to establish a board of adjustment is found in Section 414.7 of the Code of Iowa. This section states that the board of adjustment may in appropriate cases and subject to appropriate conditions and safeguards make special exceptions to the terms of the zoning ordinances. Any such special exceptions are to be in harmony with the general purposes of the zoning regulations. Also, any property owner may petition the board of adjustment to modify regulations and restrictions as applied to such property owners. The city council is to establish ordinances for the appointment of a board of adjustment and to establish its regulations and restrictions.

Article 8 of the Postville Zoning Code provides for the creation of a board of adjustment consisting of five (5) members. The Code of Iowa requires that any such board established with five members shall not carry out its business without having three (3) members present; and the concurring vote of three members of a five member board shall be necessary to reverse any order or decision of any administrative official or to decide in favor of an applicant seeking a variance in any city ordinance. These requirements are found in Section 414.8 and 414.14 of the Code of Iowa.

Section 802 of the Postville Zoning Code sets forth the rules of procedure for the Postville Board of Adjustment. Because the board of adjustment is a public body, it must hold open meetings, and the vote of the board members must be noted individually. That is, votes are to be recorded on the basis of a roll call.

The first person with whom most applicants will meet under the Postville code is the administrative officer. Most matters which will be presented to the board of adjustment will be appeals from decisions made by the administrative officer. The following are the three areas which may require board action:

1. Section 805.1 Administrative Review. The board may need to interpret the application of a zoning code regulation. This may arise if an applicant alleges that the administrative officer is incorrect in his enforcement of provisions of the zoning code.

2. Section 805.2 Special Exceptions. Each of the zoning district destinations sets forth permitted principal uses and structures for that district. Although not specifically authorized, it is recognized that other uses and structures could be allowed in that particular district and not adversely affect the nature of the district. These particular uses and structures are designated special exceptions. A list of special exceptions will usually be found in the provisions for each zoning district. Some special exception uses and structures are specifically described; but each district designation also allows those special exception uses and structures deemed appropriate by the planning and zoning commission and the board of adjustment.
3. Section 805.3 Variances. A variance is defined as a relaxation of the terms of the zoning ordinance where such relaxation will be contrary to the public interest and where, owing to the conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the ordinance would result in unnecessary and undue hardship. As used in the Postville Zoning Ordinance, a variance is authorized only for height, area and size of a structure, or the size of yards and open spaces. If a variance is to be granted, it must be for one or more of the eight (8) reasons designated in Section 805.3.

Each member of the board of adjustment should read Article 8 of the Postville Zoning Code. This article sets forth the provisions establishing the board and setting forth its procedures and authority.

Section 802 sets forth the rules of procedure. The board is to have a chairman who is to be elected at the first meeting of the board each year. A secretary for the board may be appointed by the chairman. All votes are to be by roll call and recorded by the secretary. If any member abstains from voting, then he or she is to state the reason for abstaining; and this is to be noted in the minutes of the board.

Section 803 sets forth the manner in which appeals may be made to the board of adjustment. Most matters presented to the board will first have been decided by the administrative officer. The administrative officer has authority to only grant construction permits that obviously are allowed or qualify under the Postville Zoning Code. If something does not obviously comply, then the zoning administrator must deny the application; and the affected party has the right to appeal this decision to the board of adjustment.

In matters involving a request for a special exception, the matter being appealed is first presented to the planning and zoning commission for its recommendation before it is presented to the board of adjustment for consideration.

The board of adjustment should never feel under pressure that its decisions will be the final determination in the matter. Any person who does not feel that a decision of the board of adjustment was correct has the remedy to appeal this decision according to the provisions set forth in the Code of Iowa, Chapter 414. The intention of the Postville City Code and the Code of Iowa is to establish a board of adjustment that can operate independently and without influence from special interests or the city council. If members of the board of adjustment have questions about procedures or interpretations of various provisions, then they may ask the city attorney for an opinion, or they may ask the city clerk for information.

Prepared for the board of adjustment on October 1, 1999.

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