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**11.0      Administration**

**11.1      Purpose**

The following sections outline the major zoning and subdivision procedures for implementation of the Development Code.

**11.2      Zoning Administrator**

The office of the zoning administrator is hereby established, for which the County Board may appoint such staff as it may deem proper. The term of office of the zoning administrator shall be indefinite and shall terminate at the pleasure of the County Board.

**11.2.1    Duties**

The zoning administrator shall:

- (a) enforce and administer the provisions of this Ordinance;
- (b) issue permits and maintain records thereof;
- (c) receive and forward to the county planning commission applications for conditional use permits, and forward to the county planning commission and the county board applications for subdivision plats and petitions for ordinance amendments, including rezoning;
- (d) receive and forward applications and petitions for matters to come before the board of adjustment;
- (e) maintain the county zoning map as amended from time to time by ordinance of the county board;
- (f) conduct inspections to determine compliance with the provisions of this Ordinance;
- (g) serve as ex-officio member of the planning commission;
- (h) such other matters and responsibilities as the county board may assign from time to time;
- (i) collect all fees required by this Ordinance;
- (j) file for record with the county recorder or registrar of titles all conditional use permits, variances and appellate orders of the board of adjustment.

**11.2.2    County Recorder  
(Ord. #289, adopted 5/19/98)**

The County Recorder shall provide to the zoning administrator, within 30 days of the date of filing, copies of all instruments filed with the Recorder which convey real estate. The zoning administrator shall review all conveyances to determine their compliance with the Development Code.

**11.3 Planning Commission**

11.3.1 There is hereby created the Benton County Planning Commission.

11.3.2 Membership

The Planning Commission shall be composed of eight (8) voting members, one of whom may be a member of the Benton County Board of Commissioners. Each member shall be appointed by the County Board.

There shall be one member from Commissioner District 5; one member from Commissioner District 4; or, from the county at large; one member from Commissioner District 3; two members from Commissioner District 2; and two members from Commissioner District 1.

Each County Commissioner shall recommend a nominee for Planning Commissioner membership.  
(Ord. 278 adopted 04/15/97) (Ord. #441, adopted 06/15/10)

11.3.3 Term of Office

Commission members shall serve three-year staggered terms. Members may serve a maximum of three consecutive three-year terms. Appointment to the planning commission shall be made at the January meeting of the county board, or as soon thereafter as it is practicable.

11.3.4 Ex-officio Members

The following are appointed as non-voting ex-officio members of the Planning Commission:

The Department of Development Staff.  
A member of the Soil and Water Conservation District staff  
(Ord. 278 adopted 04/15/97) (Ord. #441, adopted 06/15/10)

11.3.5 Removal

Any member of the planning commission may be removed from the commission by majority vote of the County Board for failing to attend three consecutive meetings or five meetings within a calendar year, or for conduct or activity detrimental to or in conflict with the ends and purposes of County planning and zoning. Before removal, such commission member shall be given written notice by the County

Board, and an opportunity to be heard by the County Board. An excused absence for just cause will not be counted when making the above determination.

11.3.6 Vacancy

Any vacancy on the planning commission shall be filled in the same manner as above provided for appointments. Such an appointment shall be limited to the unexpired term of the vacancy.

11.3.7 Officers

The planning commission shall elect a chairman, a vice-chairman from among its members. (Ord. #441, adopted 06/15/10)

11.3.8 Conflict of Interest

Any planning commission member who has a conflict of interest on any issue before the commission shall not be allowed to participate as a commission member on such issue. Any question of whether the particular issue involves a conflict of interest sufficient to disqualify a commission member from acting thereon, shall be decided by majority vote of all commission members present except the member who is being challenged.

11.3.9 Powers and Duties

The planning commission shall have the powers and duties established by law, and in addition thereto, the following:

1. To conduct public hearings concerning the issuance of conditional use permits, interim use permits and the application of this Ordinance pertaining to subdivisions.
2. To conduct such other public hearings as required by law for the administration of this Ordinance except those which are assigned to the Board of Adjustment and County Board.
3. To finally approve all conditional use permits, interim use permits, and order the issuance thereof.
4. To review and report to the County Board on plans for subdivision of land.

Separate written findings of fact shall be made by the planning commission for each conditional use and interim use permit granted or denied.

11.3.10 Compensation

Except as hereinafter provided, the members and ex-officio members of the planning commission may receive a per diem and mileage as determined by separate action of the County Board. No member or ex-officio member who receives compensation or mileage from a government unit, including the County, for attending the planning commission meetings shall be entitled to additional mileage or per diem.

**11.4 Board of Adjustment**

11.4.1 There is hereby created the Benton County Board of Adjustment.

11.4.2 The Board of Adjustment shall consist of five members representing each of the five commissioner districts and shall be appointed by the Board of County Commissioners. At least one member shall be a resident of the unincorporated portion of the county. One member of the Board of Adjustment shall also be a voting member of the planning commission. No elected county officer, nor any employee of the county, shall serve as a member of the Board of Adjustment.

11.4.3 The members of the Board of Adjustment shall be paid a per diem and their mileage in an amount to be determined by separate action of the County Board.

11.4.4 Except for the representative of the planning commission and the first Board of Adjustment, the members shall serve three year terms. The terms of office shall be staggered terms. On the first Board of Adjustment, except for the representative of the Planning Commission, two members shall serve for three years, one member shall serve for two years, and one member shall serve a one year term. The terms of office of the first board shall be determined by said members by lot. The representative of the Planning Commission shall always serve a one year term. The members shall serve until their successors are appointed and have qualified for the office. The members shall be appointed at the January meeting of the Board of Commissioners, or as soon thereafter as practicable. The interim between the appointment of the members of the first Board of Adjustment and the next January shall be in addition to the aforesaid term of office. Members may serve a maximum of three consecutive three-year terms. The County Board of Commissioners shall fill vacancies with new members who shall serve for the unexpired terms. All members shall serve at the pleasure of the County Board of Commissioners.

11.4.5 The Board of Adjustment shall elect a chairman and a vice chairman from among its members and shall appoint a secretary who need not be a member of the Board. It shall adopt rules for the transaction of its business and such rules may include provisions for the giving of oaths to witnesses and the filing of written briefs by the

parties. The Board shall provide for a record of its proceedings which shall include the minutes of its meetings, its findings, and the action taken on each matter heard by it, including the final order.

11.4.6 The meetings of the Board of Adjustment shall be held at the call of the chairman and at such other times as the Board in its rules of procedure may specify.

11.4.7 Appeals. An aggrieved party may appeal to the Board of Adjustment from any order, requirement, decision, or determination made by any administrative official charged with enforcing this Ordinance. Actions of the Planning Commission and the County Board shall not be appealable to the Board of Adjustment.

The appeal shall be taken by filing written notice thereof with the zoning administrator not more than thirty (30) days after the order, requirement, decision or determination appealed from.

The notice of appeal shall be in writing and shall specify the grounds thereof.

The filing fee established by the County Board shall be paid to the zoning administrator at the time of filing the notice of appeal as a condition of perfecting the appeal.

11.4.8 The Board of Adjustment shall have the exclusive power to order the issuance of variances from the terms of any official control, including restrictions placed on non-conformities. Application for a variance shall be made to the Board of Adjustment on forms provided by the zoning administrator by filing such application and paying the filing fee with the zoning administrator. The Board of Adjustment shall fix a reasonable time for the hearing on the application and give notice thereof as required by law.

11.4.9 A certified copy of any order issued by the Board of Adjustment acting upon an appeal from an order, requirement, decision or determination by an administrative official, or a request for a variance, shall be filed for record with the county recorder or the registrar of titles. The order issued by the Board of Adjustment shall include the legal description of the property involved. The zoning administrator shall be responsible for meeting the requirements of this subdivision.

The zoning administrator shall be responsible for giving written notice of the decision or order of the Board of Adjustment to the proper parties having matters before the Board of Adjustment.

11.4.10 The Board of Adjustment shall have such other powers and duties as are assigned to it by law.

11.4.11 Separate written findings of fact shall be made by the Board of Adjustment for each variance granted or denied and for each appellate decision made.

## **11.5 Variances**

### 11.5.1 Criteria for Granting Variances (Ord. #431, adopted 10/7/08)

- (1) The proposed use is not prohibited in the zoning district in which the subject property is located.
- (2) The variance must be in harmony with the general purposes and intent of this ordinance.
- (3) The terms of the variance must be consistent with the comprehensive plan.
- (4) The landowner must show that the variance is necessary to alleviate the practical difficulties in complying with the official control.

"Practical Difficulty" as used in connection with the granting of a variance means:

- a. The property owner proposes to use the property in a reasonable manner not permitted by an official control ;
- b. The plight of the landowner is due to circumstances unique to the property, not created by the landowner;
- c. The variance, if granted, will not alter the essential character of the locality.
- d. The need for the variance involves more than economic considerations.

### 11.5.2 Procedure

- (1) The person applying for a variance shall fill out and submit to the Department of Development a variance application which shall include a statement of the difficulties or particular hardships claimed, along with the filing fee.
- (2) The Department of Development shall refer the application to the Board of Adjustment for review.
- (3) The Board of Adjustment shall hold a public hearing on the proposal in accordance with Minn, Stat. §15.99. Notice of the time, place and purpose of the public hearing shall be as provided by Minn. Stat. §394.26. (Ord. #247 adopted 12-20-94)

- (4) The petitioner or his representative shall appear before the Board of Adjustment in order to present evidence concerning the proposed variance.
- (5) The Board of Adjustment may impose conditions on the granting of variances to insure compliance and to protect adjacent properties and the public interest.
- (6) No resubmission of application for six (6) months will be allowed without new evidence.
- (7) Granted variances become void if applicant does not proceed substantially on the work one year. To proceed substantially means to make visible improvement to the property and to have had applied to the property at least 40% of the man hours which it is reasonably estimated will be necessary for completion of the project. One or more extensions of not more than six months each may be granted by the Board of Adjustment for good cause. (Ord. #373, adopted 02/17/04)
- (8) Applications for variances will not be accepted from anyone who is not an owner of land for which the application is made.

## 11.6

### **Conditional Use Permits**

#### Criteria for Granting Conditional Use Permits

In granting a conditional use permit, the Planning Commission shall consider the effect of the proposed use upon the health, safety, morals, and general welfare of occupants of surrounding lands and water bodies. Among other things, the Planning Commission shall make the following findings where applicable:

- (1) Will the use create an excessive burden on existing parks, schools, streets and other public facilities and utilities which serve or are proposed to serve the area?
- (2) Is the use sufficiently compatible or separated by distance or screening from adjacent agricultural or residentially zoned or used land so that existing homes will not be depreciated in value and there will be no deterrence to development of vacant land?
- (3) Does the structure and site have an appearance that will not have an adverse effect upon adjacent properties?
- (4) Is the use, in the opinion of the Planning Commission, reasonably related to the existing land use?
- (5) Is the use consistent with the purposes of the Development Code and the purposes of the zoning district in which the applicant intends to locate the proposed use?

- (6) Is the use in conflict with the Land Use Plan of the county?
- (7) Will the use cause traffic hazards or congestion?
- (8) Will the use violate the wetland provisions of Minnesota Statutes Chapter 103G?  
(Ord. #373, adopted 02/17/04)

11.6.1 Conditions

In permitting a new conditional use or the alteration of an existing conditional use, the Planning Commission may impose, in addition to these standards and requirements expressly specified by this ordinance, additional conditions which the Planning Commission considers necessary to protect the best interest of the surrounding area or the community as a whole. These conditions may include, but are not limited to, the following:

- (1) Increasing the required lot size or yard dimension.
- (2) Limiting the height, size or location of buildings.
- (3) Controlling the location and number of vehicle access points.
- (4) Increasing the street width.
- (5) Increasing the number of required off-street parking spaces.
- (6) Limiting the number, size, location or lighting of signs.
- (7) Requiring diking, fencing, screening, landscaping or other facilities to protect adjacent or nearby property.
- (8) Designating sites for open space.

Any change involving structural alterations, enlargement, intensification of use, or similar change not specifically permitted by the conditional use permit issued, shall require an amended conditional use permit and all procedures shall apply as if a new permit were being issued. The Zoning Administrator shall maintain a record of all conditional use permits issued including information on the use, location, and conditions imposed by the Planning Commission, time limits, review dates, and such other information as may be appropriate.

11.6.2 Procedure

- (1) Applications for conditional use permits will not be accepted from anyone who is not an owner of land for which the application is made.
- (2) The person applying for a conditional use permit shall fill out and submit to the Zoning Administrator a conditional use application form and filing fee.
- (3) The Zoning Administrator shall refer the application to the Planning Commission for review.
- (4) The Planning Commission shall hold a public hearing on the proposal within 90 days of the submission of an application to the Planning and Zoning Office. Notice of the public hearing shall be as provided by Minn. Stat. §394.26. (Ord #247 adopted 12-20-94)
- (5) The petitioner or his representative shall appear before the Planning Commission in order to present evidence concerning the proposed conditional use.
- (6) If the Planning Commission grants the conditional use permit, it may impose conditions it considers necessary to protect the public health, safety and welfare. Such conditions may include a time limit for the use to exist or operate.
- (7) An amended conditional use permit application shall be administered in a manner similar to that required for a new conditional use permit. The fee shall be as set by separate action of the County Board. Amended conditional use permits shall include requests for changes in conditions and as otherwise described in this Ordinance.
- (8) No application for a conditional use permit shall be resubmitted for a period of six (6) months from the date of said order of denial.
- (9) If a time limit or period review is included as a condition by which a conditional use permit is granted, the conditional use permit may be reviewed at a public hearing with notice of said hearing published at least ten (10) days prior to review; it shall be the responsibility of the Zoning Administrator to schedule such public hearings and the owner of land having a conditional use permit shall not be required to pay a fee for said review. A public hearing for annual review of conditional use permits may be granted at the discretion of the Benton County Planning Commission.
- (10) Granted conditional use permits shall become void if applicant does not proceed substantially on the work within one year of the date the permit is granted. To proceed substantially means to make visible improvement to the property and to have had applied to the property at least 40% of the man

hours which it is reasonably estimated will be necessary for completion of the project. One extension of not more than one year may be granted by the Planning Commission at their discretion.

(Ord. #226 adopted 4/20/93) (Ord. #377 adopted 5/18/04)

- (11) If the land use does not conform to the conditions of the permit, the conditional use permit may be revoked.

### **11.6.3 Interim Uses**

#### **A) Criteria for Interim Use**

No Interim Use Permit shall be approved or recommended for approval by the County Planning Commission unless said Commission shall find:

1. The interim use conforms to the zoning regulations of the County;
2. There will be no additional cost imposed on the public if the interim use is approved if it is necessary for the public to take the property in the future.
3. The interim use will not create an excessive burden on existing parks, schools, streets and other public facilities and utilities which serve or are proposed to serve the area.
4. The interim use will not impede the normal and orderly development and/or improvement of surrounding vacant property.
5. The interim use, including any structures utilized for the use, are sufficiently compatible or separated by distance and/or screening from adjacent land so that existing homes will not be depreciated in value and there will be no deterrence to development of vacant land.
6. The interim use is consistent with the purpose and intent of the Development Code and purposes of the zoning district.
7. The interim use is consistent with the Comprehensive Plan of the County.
8. The interim use will provide adequate access to a public road to not cause traffic hazards or congestion on the adjacent public roads and that there are sufficient off-street parking and loading space to serve the proposed use.
9. The interim use will not create a negative environmental impact, including but not limited to impacts on wetlands and water bodies. Including that adequate measures have been or will be taken to prevent or control offensive odor,

fumes, dust, noise and vibration, so that none of these will constitute a nuisance.

#### B. Conditions

1. The use shall be limited to a specific time or event as identified by the Planning Commission.
2. Any interim use may be terminated by a change in zoning regulations.
3. As a condition of approval of the IUP, the Planning Commission may require an additional annual inspection fee as adopted by the Board.
4. Any use permitted under the terms of any Interim Use Permit shall be established and conducted in conformity with the terms of such permit and of any conditions designated in connection therewith. If the applicant does not abide by the conditions set forth in the permit, the County has the right to either revoke the permit or hold another hearing to investigate and set additional conditions.

#### C. Termination

An Interim Use shall terminate on the happening of any of the following events, whichever comes first:

1. The date or event stated in the permit.
2. Upon violation of conditions under which the permit was issued.
3. Upon change in the County's zoning regulations where the use no longer permitted.
4. The IUP shall expire if the approved use is inactive for one year or longer as determined by the Department of Development and/or tax records indicating the use was inactive.
5. Granted IUPs shall become void if the applicant does not proceed substantially on the work within one year of the date the permit is granted. To proceed substantially means to make visible improvement to the property and to have had applied to the property at least 40% of the man hours which it is reasonably estimated will be necessary for completion of the project. One extension of not more than one year may be granted by the Planning Commission at their discretion.

#### D. Process of Approval

1. A complete IUP application shall comply with the criteria below:  
An application for an Interim Use Permit shall be filed with the Department of Development on a form prescribed by the Department. The applicant shall provide the following written information in order for an IUP application to be complete:
  - a. A complete IUP application form signed and dated by the applicant and property owner(s) and pay all applicable fees.
  - b. Written description of the proposed activities.
  - c. Description of equipment and vehicles to be used for the activity.
  - d. Days and hours of operation
  - e. Number of employees using the property, including sub-contractors (full-time and part-time)
  - f. Site plan, including:
    1. A survey, aerial photograph or site plan showing all existing and proposed buildings, well, septic system (or other restroom facilities), outside storage area(s), and driveway access(s).
    2. Existing and proposed screening.
  - g. A Certificate of Septic Compliance in shoreland or a compliance inspection if in non-shoreland.
  - h. Written description of any maintenance to take place on-site, including how hazardous materials will be stored and disposed of;
  - i. Any additional information required by the Department of Development specific to the IUP request
2. Complete applications shall be reviewed by the Benton County Department of Development in accordance with Mn Statute 15.99 as amended.
3. The petitioner or their representative shall appear before the Planning Commission in order to present evidence concerning the proposed interim use.
4. After a public hearing has been held, the Planning Commission shall approve, deny, or continue an IUP request, with written findings in support of their decision.
5. An amended interim use permit application **shall** be administered in a manner similar to that required for a new interim use permit. The fee shall be as set by

separate action of the County Board. Amended interim use permits may include requests for changes in conditions and as otherwise described in this Ordinance.

6. No application for an interim use permit shall be resubmitted for a period of six months from the date of said order of denial.
7. If a time limit or period review is included as a condition by which a interim use permit is granted, the interim use permit may be reviewed at a public hearing with notice of said hearing published at least ten days prior to review; it shall be the responsibility of the Department of Development to schedule such public hearings. A public hearing for annual review of interim use permits may be granted at the discretion of the Benton County Planning Commission.
8. Any use permitted under the terms of any Interim Use Permit shall be established and conducted in conformity with the terms of such permit and of any conditions designated in connection therewith. If the applicant does not abide by the conditions set forth in the permit, the County has the right to either revoke the permit or hold another hearing to investigate and set additional conditions.
9. The applicant shall pay all IUP and recording fees as determined by the County Board. As a condition of approval of the IUP, the Planning Commission may require an additional annual inspection fee as adopted by the County Board. The annual inspection fee shall cover the cost of County Staff or their agent to inspect the property as required within the IUP's conditions of approval.
10. Granted interim use permits shall become void if applicant does not proceed substantially on the work within one year of the date the permit is granted. To proceed substantially means to make visible improvement to the property and to have had applied to the property at least 40% of the man hours which it is reasonably estimated will be necessary for completion of the project. One extension of not more than one year may be granted by the Planning Commission at their discretion.

## **11.7 Land Use Permits**

11.7.1 Each application for a land use permit shall be accompanied by a plan drawn to scale showing the dimensions of the lot to be built upon, and the size and location of the building and accessory buildings to be erected. The application for land use permit shall contain such other information as may be deemed necessary by the Zoning Administrator for the proper enforcement of the ordinance. The Zoning Administrator shall issue the land use permit only after determining that the application complies with the terms of this ordinance.

11.7.2 No land use permit shall be required for normal maintenance such as painting, siding, roofing and other similar improvements which do not involve exterior structural changes to the building.

11.7.3 The Zoning Administrator may deny a permit for the construction of a dwelling unit upon grounds which, according to the information furnished, is too low for proper drainage, or otherwise deemed unsuitable for building through provisions of this Ordinance.

11.7.4 The work for which a land use permit is issued shall commence within one year after the date thereof. The work shall be completed within one year unless an application for an extension has been submitted to and approved by the Zoning Administrator. (Ord. #373, adopted 02/17/04)

11.7.5 (Repealed by Ord. #344, adopted 06/07/02)

## **11.8 Zoning Amendments**

### Procedure

(1) An amendment to this Ordinance or the zoning map may be initiated by the County Board, the Planning Commission or by application of a property owner. Any amendment not initiated by the Planning Commission shall be referred to the Planning Commission for review and may not be acted upon by the County Board until it has received the Planning Commission's recommendations. Individuals wishing to initiate an amendment to this Ordinance shall fill out a zoning amendment application form and submit it to the Zoning Administrator with a filing fee.

(2) Written notice of public hearings on proposed amendments shall be sent to the governing bodies of all towns and municipalities located within the county. Written notice of public hearings regarding the application of official controls to specific properties, including but not limited to conditional uses, variances, zoning regulations, and subdivision regulations, shall be sent to property owners as follows:

- (a) In the case of variances, to owners of record within 500 feet of the affected property;
- (b) In the case of conditional uses, to owners of record within one-quarter mile of the affected property or to the ten properties nearest to the affected property, whichever would provide notice to the greatest number of owners;
- (c) In the case of all other official controls, including but not limited to zoning regulations and subdivision regulations, to owners of record within one-half mile of the affected property.

Written notice shall also be given to the affected board of town supervisors, and the municipal council of any municipality within two miles of the affected property.

- (3) A public hearing on the rezoning application shall be held by the Planning Commission and the County Board within thirty (30) days after the request for the zoning amendment has been received. Notice of said hearing shall be published in the official newspaper designated by the County Board at least ten (10) days prior to the hearing. The Planning Commission shall make its reports to the County Board at the next regular meeting of the Benton County Board following the hearing for recommending approval, disapproval, or modified approval of the proposed amendment.
- (4) The Benton County Board must take action on the application within sixty (60) days following referral by the Planning Commission. The person making the application shall be notified of the action taken.
- (5) No application of a property owner for an amendment to the text of this Ordinance or the zoning map shall be considered by the Planning Commission within a one-year period following a denial of such request, except the Planning Commission may permit a new application, if in the opinion of the Planning Commission, new evidence or a change of circumstances warrants it.
- (6) Applications for rezoning will not be accepted from anyone who is not an owner of land for which the application is made.

11.8.1 Repealed by Ord. #398 adopted 5/8/06

## **11.9**      **Fees**

- 11.9.1      The fees for permits, rezonings, licenses, variances, amendments, or conditional use permits shall be established by the County Board. The County Board may review and revise the fee schedule periodically. The Administrator shall issue the permit only after the fee has been paid and a determination has been made that the building plans, together with the application, comply with the terms of this Ordinance.
- 11.9.2      Any person doing any work or instituting any action requiring a variance, a permit or license under the terms of this Development Code which was commenced before the permit or license was granted shall be in violation of the Development Code and shall pay an additional fee as set by a separate action of the County Board.  
(Ord. 433, adopted 1/20/09)
- 11.9.3      Any person filing a petition for an amendment to this Ordinance or the zoning map, requesting a variance, conditional use permit or a change in regulations within any use district shall pay the prescribed fees according to the schedule established by the County Board at the time of application. The fee is payable at the time of filing a petition and is not refundable.
- 11.9.4      Municipal corporations and governmental agencies shall be exempt from the fee requirements as prescribed by this Ordinance.
- 11.9.5      Repealed by Ordinance #433 adopted 1/20/09.

## **11.10**      **Violations and Penalties**

- 11.10.1      Violations of this ordinance, including violations of conditions established in connection with the grants of variances, conditional use permits and land use permits, shall be a misdemeanor. Each day that the violation is permitted to exist shall constitute a separate offense.
- 11.10.2      In the event of a violation or a threatened violation of this Ordinance, the County Board, in addition to other remedies, may institute appropriate actions or proceedings to prevent, restrain, correct, or abate such violations or threatened violations and it is the duty of the County Attorney to institute such action.
- 11.10.3      Any taxpayer of the county may institute mandamus proceedings in district court to compel specific performance by the proper official or officials of any duty required by this Ordinance.