



January 6, 2025

Lori Roling, Zoning Administrator  
Jackson County Zoning Department  
201 West Platt Street  
Maquoketa, IA 52060

**RE: Zoning Ordinance Update – Initial Draft of Chapter 4. Board of Adjustment**

Dear Lori,

Attached is information regarding the initial draft of Chapter 4. Board of Adjustment for review and approval by the Zoning Commission at their January 20, 2025 meeting.

**Discussion**

The Board of Adjustment is given a separate Chapter 4 with its 2017 rules and procedures, current regulations, and additional regulations taken from Iowa Code. The attached REDLINE version outlines the proposed changes with commentary. The green text is existing language that has been moved. The CLEAN version shows the resulting restructure.

Major updates proposed are as follows:

- Section 4.2 is based on the Board’s established rules and procedures; text in yellow highlight is added language that is used in the Zoning Commission’s rules.
- Several sections are moved into a new section 4.4 Appeals, which has expanded procedures.
- Section 4.6 Variances has new standards for review that reflect Iowa Code and Iowa court decisions.

**Recommendation**

The Commission is asked to review the initial draft of Chapter 4. Board of Adjustment, and then to provide direction to staff for moving forward with the proposal.

Please let me know if you have any questions. Thank you.

Sincerely,

Laura Carstens  
Senior Planner

Attachment

## CHAPTER 4. BOARD OF ADJUSTMENT

**2.114.1** **Board of Adjustment Created.** In accordance with Iowa Code Section 335.10, aA Board of Adjustment, hereinafter referred to as the Board, is hereby established by the Jackson County Board of Supervisors. The Board shall consist of five (5) members to be appointed by the Board of Supervisors for a term of five (5) years, except that when the Board shall first be created one (1) member shall be appointed for a term of five (5) years, one for a term of four (4) years, one for a term of three ~~93~~(3) years, one for a term of two (2) years and one for a term of one (1) year. Members of the Board ~~of Adjustment~~ may be removed from office by the Board of Supervisors for cause upon written charges and after public hearing. Vacancies shall be filled by the Board of Supervisors for the unexpired term of the member.

**2.124.2** **Proceedings ~~o~~Of ~~t~~The Board of Adjustment.** The Board ~~of Adjustment~~ shall adopt rules necessary to the conduct of its affairs and in keeping with the provisions of this ~~O~~rdinance. The rules and procedures adopted in 2017 are set forth below.

**A. General Governing Rules.** The Board shall be governed by the provisions of Iowa Code Chapter 335, as amended. No rule herein shall be changed or waived without the affirmative vote of three (3) members of the Board and concurrence of the Board of Supervisors.

### **B. Officers and Committees.**

1. The Board shall elect a chair and a vice-chair, who shall be acting chair in the absence of the chair, annually at the first meeting of the year. The chair may not succeed themselves.
2. The chair, or in their absence the vice-chair, shall preside at all meetings and hearings of the Board and decide all points of order and procedure. The chair shall appoint any committees which may be found necessary to perform the duties of the Board.
3. A secretary (who need not be a member of the Board) shall be designated by the Board. The secretary shall conduct all correspondence of the Board and shall carry out such other official duties as may be assigned by the Board. The secretary shall also keep records of appeals, examinations and hearings and other official action and shall carry out such other official duties as may be assigned by the Board. ~~The Board~~secretary of Adjustment shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be a public record and be immediately filed in the office of the Board.

### **C. Meetings.**

1. *Regular Meetings.* The regular meeting of the Board shall be held each month unless there is no cause for holding such meetings. If there is to be a regular meeting, the

secretary shall inform the members of the Board at least twenty-four (24) hours in advance.

2. Special Meetings. Special meetings may be called by the chair and at such other time as the Board may determine, provided that at least twenty-four (24) hours' notice of such meeting is given each member. If for any reason an announced meeting of this Board fails to occur on the date announced, a special meeting is hereby called, to be held seven (7) days after the time and date of the original announced meeting time and date and at the same place, to take up the original announced meeting agenda. However, if the resulting meeting date falls on a county government holiday, the special meeting referred to above is hereby scheduled fourteen (14) days from the original announced meeting time and date.
3. Quorum. A quorum shall consist of three (3) members of the five (5) appointed members for the transaction of all business. The concurring vote of three (3) members of the Board shall be necessary to reverse any order, requirement, decision or determination of the the Zoning Administrator, or to decide in favor of the applicant on any matter upon which it is required to pass.
4. Representation, Personal Interest. Neither the secretary nor any member of the Board shall appear for or represent any person in any matter pending before the Board. No member of the Board shall hear or vote upon any appeal in which they have any personal or financial interest, directly or indirectly.
5. Conduct of Meetings. Meetings shall be held at the call of the chairperson and at such other times as the Board may determine. The chairperson, or in the absence of the chairperson, the acting chairperson, may administer oaths and compel attendance of witnesses. All meetings shall be open to the public. The order of business at meetings shall be as follows:
  - a. Roll call
  - b. Approval of minutes of the previous meeting
  - c. Reports of committees
  - d. Unfinished business
  - e. Hearing of cases, or appeals or referrals
  - f. New business
  - g. Reading of correspondence other than that related to new or old business or hearing scheduled
6. Voting. The chair or presiding officer shall have equal voting power with the other members of the Board and may vote on all questions before the Board unless otherwise limited herein.

7. *Adjourned Meetings.* The Board may adjourn a regular meeting if all business cannot be disposed of on the day set and no further public notice shall be necessary for such a meeting if the time and place of its resumption are stated at the time of adjournment and are not changed after adjournment.

**D. Vacancies.** In the event vacancies occur in the Board's membership, the chair shall inform the Board of Supervisors as promptly as possible so that the Supervisors may appoint a replacement to fill out the unexpired term.

**E. Public Hearings.**

1. At public hearings held by the Board on any matter as may be required by law or as may be set by the Board upon its own motion, any person may appear on their own behalf or be represented by agent or by attorney.

2. The order of the hearing shall be:

a. Statement of case by the chair or, the vice-chair in their absence, or the chair's assignee.

b. The following statement will be read: "Because of any personal or financial interest, either directly or indirectly, do any Board members wish to recuse themselves from proceedings?"

c. Supporting argument by the applicant or their agent or attorney.

d. Supporting arguments by others at the hearing.

e. Opposing arguments by persons at the hearing.

f. Rebuttals by those supporting the applicant other than the applicant.

g. Rebuttals by those opposed to the application.

h. Final rebuttal by the applicant.

**F. Decisions.** Hearings on all applications shall be held within forty-five (45) days of receipt thereof. Decisions on all cases shall be voted upon by the Board within thirty (30) days after the date of hearing or if acceptable to the applicant, the continuation of such meeting.

If no motion either to approve or deny the action requested receives three (3) or more aye votes, then the case will be placed as old business on the agenda of each regular or special meeting of the Board until a motion either to approve or deny does receive three (3) or more aye votes.

The decision shall be promptly transmitted in writing to the applicant by the secretary stating the Board's action, the vote thereon and the reasons therefore, and any recommendations or modifications or conditions to which the Board's decision is subject. One (1) copy of the Board's action shall be filed in the official files of the Board and one (1) copy forwarded to the Board of Supervisors.

~~Meetings shall be held at the call of the chairperson and at such other times as the Board may determine. The chairperson, or in the absence of the chairperson, the acting chairperson, may administer oaths and compel attendance of witnesses. All meetings shall be open to the public.~~

~~The Board of Adjustment shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be a public record and be immediately filed in the office of the Board.~~

~~**2.13 — Hearings, Appeals, Notice.** Appeals to the Board of Adjustment concerning interpretation or administration of this ordinance may be taken by any person aggrieved or by any officer or bureau of the governing body of the County affected by any decision of the Administrator. Such appeals shall be taken within a reasonable time, not to exceed sixty (60) days or such lesser period as may be provided by the rules of the Board, by filing with the Administrator and with the Board of Adjustment a notice of appeal specifying the grounds thereof. The Administrator shall forthwith transmit to the board all papers constituting the record upon which the action appealed from was taken.~~

~~The Board of Adjustment shall fix a reasonable time for the hearing of appeal, give public notice thereof as well as due notice to the parties in interest, and decide the same within a reasonable time. At the hearing any party may appear in person or by agent or attorney.~~

~~A fee as established by rule of the Jackson County Board of Supervisors shall be paid to the Administrator at the time the notice of appeal is filed which the Administrator shall forthwith pay over to the credit of the general fund of the County.~~

~~**2.14 — Stay Of Proceedings.** An appeal stays all proceedings in furtherance of the action appealed from, unless the Administrator from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal is filed with the Administrator, that by reason of facts stated in the certificate, a stay would, in the Administrator's opinion, cause imminent peril to life and property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application and notice to the Administrator from whom the appeal is taken and on due cause shown.~~

**2.154.3**      **The Board of Adjustment: Powers and Duties:** In accordance with Iowa Code Section 335.11, ~~The Board of Adjustment~~ shall have the following powers and duties:

A. ~~1-Administrative Review~~**Appeals.** To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Administrator in the enforcement of this ~~O~~rdinance.

**B. ~~2-Special Exceptions: Conditions Governing Applications: Procedures.~~**

1. To hear and decide only such special exceptions as the Board ~~of Adjustment~~ is specifically authorized to pass on by the terms of this ~~O~~rdinance; to decide such questions as are involved in determining whether special exceptions should be granted; and to grant special exceptions with such conditions and safeguards as are appropriate under this ~~O~~rdinance and to deny special exceptions when not in harmony with the purpose and intent of this ordinance.

~~1.2.~~ Additionally, the Board ~~of Adjustment~~ shall have the power to modify by special exception any quantitative requirements under the same conditions and using the same procedures as set out in this section for listed special exception uses, providing the modification is less than fifty percent (50%) of the requirement, or, in situations involving setbacks from public roads, the County Engineer has determined that the interests of government entities in safety, engineering, and potential cost factors are negligible.

~~C. 3.~~ ~~Variances: Conditions Governing Applications: Procedures.~~ To authorize upon appeal in specific cases such variance from the terms of this ordinance as will not be contrary to the public interest where, owing to the special conditions, a literal enforcement of the provisions of this ordinance would result in unnecessary hardship.

~~2.134.4~~ ~~Hearings; Appeals; Notice.~~ Appeals to the Board ~~of Adjustment~~ concerning interpretation or administration of this ~~O~~rdinance may be taken by any person aggrieved or by any officer or bureau of the governing body of the County affected by any decision of the Administrator.

~~2.14~~ ~~A. Stay oOf Proceedings.~~ An appeal stays all proceedings in furtherance of the action appealed from, unless the Administrator from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal is filed with the Administrator, that by reason of facts stated in the certificate, a stay would, in the Administrator's opinion, cause imminent peril to life and property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application and notice to the Administrator from whom the appeal is taken and on due cause shown.

~~B. Procedures.~~ Such appeals shall be taken within a reasonable time, not to exceed ~~sixty~~ (60) ~~forty-five~~ (45) days or such lesser period as may be provided by the rules of the Board, by filing with the Administrator and with the Board of Adjustment a notice of appeal specifying the grounds thereof. The Administrator shall forthwith transmit to the board all papers constituting the record upon which the action appealed from was taken.

The Board of Adjustment shall fix a reasonable time for the hearing of appeal, give public notice thereof as well as due notice to the parties in interest, and decide the same within a reasonable time. At the hearing any party may appear in person ~~or appear virtually~~, or by agent or attorney.

1. A written application indicating the administrative decision or the section of this Ordinance being appealed.
2. A fee as (established by rule of the Jackson County Board of Supervisors) shall be paid to the Administrator at the time the notice of appeal is filed which the Administrator shall forthwith pay over to the credit of the general fund of the County.
- ~~2.3.~~ The public hearing shall be held. Any party may appear in person or appear virtually, or by agent or attorney. A complete record of the hearing shall contain the following:
  - a. The original application.
  - b. The records of any action on the appeal by an administrative official.
  - c. Proof of notice sent at least ten (10) and no more than twenty (20) days prior to the hearing date to the applicant by mail for the purpose of a courtesy notice of the hearing.
  - d. All relevant information, including but not limited to, maps, drawings, and/or photographs.
  - e. Minutes of the public hearing.

**C. Final Decision.** The final decision shall include the findings of fact and the conclusions reached by the Board. The decision must be in writing and include all conditions that may be associated with the decision. The decision should not be a mere conclusion or statement. Each decision shall be accompanied by specific findings of fact related to the specific appeal.

**4.5 Special Exception.** Any person may submit to the Board an application requesting a special exception in accordance with Section 4.5.B. and the regulations of this Ordinance.

~~a. In granting any special exception, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the special exception is granted, shall be deemed a violation of this ordinance and punishable under Section 2.4 of this ordinance. The Board of Adjustment shall prescribe a time limit within which the action for which the special exception is required shall be begun or completed, or both. Failure to begin or complete, or both, such action within the time limit set shall void the special exception.~~

**A. Procedures.** ~~b.~~ A special exception shall not be granted by the Board of Adjustment unless and until:

1. A written application for a special exception is submitted indicating the section of this Ordinance under which the special exception is sought and stating the grounds on which it is requested.

2. Notice shall be given at least ten (10) but no more than twenty (20) days in advance of the public hearing by publication in a newspaper of general circulation in the country.
  3. The public hearing shall be held. Any party may appear in person or appear virtually, or by agent or attorney.
- B. ~~c.~~ Standards for Review.** In reviewing an application for a special exception, the Board ~~of Adjustment~~ shall consider the following:
1. The Jackson County Land Use Policy Statement;
  2. Other policy statements adopted by the Board of Supervisors including Resolution #184-12-07-99 addressing the preservation of ancient burial mounds;
  3. The purpose and intent of the Ordinance and of its specific districts;
  4. The most appropriate use of the land;
  5. The conservation and stabilization of property values;
  6. Adequate open spaces for light and air;
  7. Concentration of population;
  8. Congestion of public streets;
  9. The promotion of the public safety, health, convenience and comfort;
  10. The general welfare of the persons residing or working in the general area.
- C. ~~d.~~ Findings.** Before any special exception is granted, the Board shall make the following written findings regarding the case in question:
1. The Board is empowered under the section of this Ordinance described in the application to grant the special exception.
  2. It complies with any specific regulations governing individual special exceptions.
  3. Satisfactory provision has been made concerning the following, where applicable:



- a. Vehicular access to property with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe;
  - b. Off-street parking, loading and service areas where required;
  - c. Economic, noise, dust, heat, glare or odor effects of the special exception on surrounding properties;
  - d. Utilities, with reference to locations, availability, adequacy and compatibility;
  - e. Screens and buffers with reference to type, dimensions, character and adequacy;
  - f. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with surrounding properties;
  - g. Required yards and other open spaces;
  - h. General compatibility with surrounding properties.
4. It is in harmony with the Land Use Policy Statement.
  5. It will not adversely affect the public interest.

~~D. a. **Conditions.** In granting any special exception, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the special exception is granted, shall be deemed a violation of this ordinance and punishable under Section 2-43.4 of this ordinance. The Board of Adjustment shall prescribe a time limit within which the action for which the special exception is required shall be begun or completed, or both. Failure to begin or complete, or both, such action within the time limit set shall void the special exception.~~

~~**3. Variances: Conditions Governing Applications: Procedures.** To authorize upon appeal in specific cases such variance from the terms of this ordinance as will not be contrary to the public interest where, owing to the special conditions, a literal enforcement of the provisions of this ordinance would result in unnecessary hardship.~~

**4.6 Variance.** Any person may submit to the Board an application requesting a Variance in accordance with Section 4.5.C. of this Ordinance.

- A. Procedures.** A variance from the terms of this ~~O~~rdinance shall not be granted by the Board of Adjustment unless and until:
1. A written application for a variance is submitted demonstrating:
    - a. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same district.

- b. That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance;
- c. That the special conditions and circumstances do not result from the actions of the applicant;
- d. That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structures or buildings in the same district. No nonconforming use of neighboring lands, structure or buildings in other districts shall be considered grounds for the issuance of a variance.

2. Notice shall be given at least ten (10) but no more than twenty (20) days in advance of the public hearing by publication in a newspaper of general circulation in the country.

~~2. Notice of public hearing shall be given as in Section 2.15.2(b) above.~~

3. The public hearing shall be held. Any party may appear in person or appear virtually, or by agent or by attorney.

**B. Standards for Review.** In reviewing an application for a variance, the Board shall consider the following. In order to be granted a variance, the applicant carries the burden of proving to the Board that strict enforcement of the terms of this Ordinance will inflict an “unnecessary hardship” on the property owner. No variance shall be granted unless the applicant shall show and the Board shall find the following:

1. The Iowa courts have set out specific criteria that must be satisfied before the Board may find that an “unnecessary hardship” exists, sufficient to grant a property owner a variance. The property owner must satisfy all three (3) criteria to be granted a variance:

a. The land in question cannot yield reasonable return if used only for a purpose allowed in that zoning district,

b. The plight of the property owner is due to unique circumstances and not to general conditions in neighborhood, and

a.c. The use to be authorized by variance will not alter essential character of the locality.

1.2. The Iowa courts have established the following guidelines for assessing whether the above-listed criteria have been met:

a. Failure to yield a “reasonable return” may be shown by proof that the property owner has been deprived of all beneficial use of the land. All

beneficial use is said to have been lost where the land is not suitable for any use permitted by this Ordinance.

- i. It is not sufficient to show that the value of land merely has been depreciated by the zoning regulations, or that a variance would permit a property owner to maintain a more profitable use.
- ii. It is not sufficient to show mere inconvenience to the applicant.

b. Problems common to several properties do not constitute “unique circumstances.” The condition or situation is not of so general or recurring a nature as to make reasonably practical a general regulation to be adopted as an amendment of this Ordinance.

c. This disadvantage of “unique circumstances” does not exist as a result of conditions created by the owner or previous owners of the property.

a-d. A variance that alters the “essential character of the area” is beyond the authority of the Board to grant. The Board cannot grant a variance that, in effect, constitutes a rezoning or zoning ordinance amendment. Factors to consider in determining whether a variance will alter the “essential character of the neighborhood” include the degree of variation from district regulations, the size of the parcel, and the parcel’s size and character in relation to the size of the district.

3. In granting a variance, the Board shall not consider prospective financial loss or gain to the applicant.
4. Under no circumstances shall the Board grant a variance to allow a use not permissible under the terms of the Ordinance regulations in the district involved, or any use expressly or by implication prohibited by the terms of the regulations in said district.
5. No non-conforming use of neighboring lands, structures, or buildings in the same district and no permitted or non-conforming use of lands, structures, or buildings in other districts shall be considered grounds for the granting of a variance.

C. Findings. Before any variance is granted, the Board shall make the following written findings regarding the case in question:

1. The Board is empowered under the section of this Ordinance described in the application to grant the special exception.
- 1.2. The Board shall make findings that the requirements of Section 2.15.3(a)4.8.B. of this Ordinance have been met by the applicant for a variance.
- 2.3. The Board of Adjustment shall further make a finding that the reasons set forth in the application justify the granting of the variance and that the variance is the

minimum variance that will make possible the reasonable use of the land, building or structure.

~~3.4.~~ The ~~Board of Adjustment shall further make a finding that the~~ granting of the variance will be in harmony with the general purpose and intent of this ~~O~~rdinance and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

- D. **Conditions.** In granting any variance, the Board ~~of Adjustment~~ may prescribe appropriate conditions and safeguards in conformity with this ordinance. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this ~~O~~rdinance and punishable under Section ~~2.43.4~~ of this ~~O~~rdinance. Under no circumstances shall the Board ~~of Adjustment~~ grant a variance to allow a use not permitted in the district involved or any use expressly or by implication prohibited by the terms of this ~~O~~rdinance in said district. The effective date of variances granted shall be twenty-one (21) days from the date of granting, except that when a variance has been reaffirmed, with or without modification, after being remanded by the Board of Supervisors under the Provisions of section 2.17 below, the variance shall be effective immediately or as specified in the motion to reaffirm.

~~2.164.7~~ **Decisions ~~o~~f ~~t~~he Board of Adjustment.** In exercising the ~~above mentioned~~~~above-mentioned~~ powers, the Board ~~of Adjustment~~ may, so long as such action is in conformity with the terms of this ~~O~~rdinance, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination as ought to be made and to that end shall have powers of the Administrator from whom the appeal is taken. The concurring vote of three (3) members of the Board shall be necessary to reverse any order, requirement, decision or determination of the Administrator or to decide in favor of the applicant on any matter upon which it is required to pass under this ordinance or to effect any variation in application of this ordinance.

~~2.174.7~~ **Remanding of Variances by the Board of Supervisors.** Under the authority of Iowa Code Section 335.10, the Board of Supervisors shall have the power to remand any variance granted by the Board ~~of Adjustment~~. Accordingly, the following ~~p~~rovisions shall apply:

A. ~~1.~~ ~~1.~~—A written report of all actions taken by the Board ~~of Adjustment~~ shall be provided promptly by its secretary to the applicant and to the Board of Supervisors, to include also the effective date of any variances granted.

B. ~~2.~~ ~~2.~~—Upon considering the report of actions and any other information available, the Board of Supervisors may choose to remand any decision to grant a variance, so long as it acts by official motion and before the effective date of the variance. The remanding of a variance will automatically delay its effective date for thirty (30) days from

the date of the remand, or until the Board ~~of Adjustment~~ has taken an official action on the remand, as required by subsection ~~four (4)~~4.10.D. below, whichever comes first.

C. ~~3.~~— Upon notice of such remand, the Board ~~of Adjustment~~ shall schedule a special public hearing, to occur before the new effective date of the variance, to hear any new testimony available on the matter. Notice of this hearing shall be provided in the customary manner and to all persons who commented on the request, either at the original hearing or in writing to the Board ~~of Adjustment~~.

D. ~~4.~~— Upon holding such special hearing, the Board ~~of Adjustment~~ shall make findings and take action to affirm its original decision, or to modify it by the placement of conditions on the variance, or by denying the variance.

E. ~~5.~~— If the Board ~~of Adjustment~~ fails to act before the effective date of a variance, the variance stands and any further redress of grievances shall come from a court of record as noted below.

**2.184.9** **Appeals ~~f~~From ~~t~~The Board of Adjustment:** Any person or persons or any board, taxpayer, department, board or bureau of the county aggrieved by any decision of the Board ~~of Adjustment~~ may seek review by a court of record of such decision in the manner provided by the laws of the State and particularly by Iowa Code Chapter 358A, ~~Code of Iowa~~.

## CHAPTER 4. BOARD OF ADJUSTMENT

**4.1 Board of Adjustment Created.** In accordance with Iowa Code Section 335.10, a Board of Adjustment, hereinafter referred to as the Board, is hereby established by the Jackson County Board of Supervisors. The Board shall consist of five (5) members to be appointed by the Board of Supervisors for a term of five (5) years, except that when the Board shall first be created one (1) member shall be appointed for a term of five (5) years, one for a term of four (4) years, one for a term of three (3) years, one for a term of two (2) years and one for a term of one (1) year. Members of the Board may be removed from office by the Board of Supervisors for cause upon written charges and after public hearing. Vacancies shall be filled by the Board of Supervisors for the unexpired term of the member.

**4.2 Proceedings of the Board of Adjustment.** The Board shall adopt rules necessary to the conduct of its affairs and in keeping with the provisions of this Ordinance. The rules and procedures adopted in 2017 are set forth below.

**A. General Governing Rules.** The Board shall be governed by the provisions of Iowa Code Chapter 335, as amended. No rule herein shall be changed or waived without the affirmative vote of three (3) members of the Board and concurrence of the Board of Supervisors.

**B. Officers and Committees.**

1. The Board shall elect a chair and a vice-chair, who shall be acting chair in the absence of the chair, annually at the first meeting of the year. The chair may not succeed themselves.
2. The chair, or in their absence the vice-chair, shall preside at all meetings and hearings of the Board and decide all points of order and procedure. The chair shall appoint any committees which may be found necessary to perform the duties of the Board.
3. A secretary (who need not be a member of the Board) shall be designated by the Board. The secretary shall conduct all correspondence of the Board and shall carry out such other official duties as may be assigned by the Board. The secretary shall also keep records of appeals, examinations and hearings and other official action and shall carry out such other official duties as may be assigned by the Board. The secretary shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be a public record and be immediately filed in the office of the Board.

**C. Meetings.**

1. *Regular Meetings.* The regular meeting of the Board shall be held each month unless there is no cause for holding such meetings. If there is to be a regular meeting, the secretary shall inform the members of the Board at least twenty-four (24) hours in advance.
2. *Special Meetings.* Special meetings may be called by the chair and at such other time as the Board may determine, provided that at least twenty-four (24) hours' notice of such meeting is given each member. If for any reason an announced meeting of this Board fails to occur on the date announced, a special meeting is hereby called, to be held seven (7) days after the time and date of the original announced meeting time and date and at the same place, to take up the original announced meeting agenda. However, if the resulting meeting date falls on a county government holiday, the special meeting referred to above is hereby scheduled fourteen (14) days from the original announced meeting time and date.
3. *Quorum.* A quorum shall consist of three (3) members of the five (5) appointed members for the transaction of all business. The concurring vote of three (3) members of the Board shall be necessary to reverse any order, requirement, decision or determination of the the Zoning Administrator, or to decide in favor of the applicant on any matter upon which it is required to pass.
4. *Representation, Personal Interest.* Neither the secretary nor any member of the Board shall appear for or represent any person in any matter pending before the Board. No member of the Board shall hear or vote upon any appeal in which they have any personal or financial interest, directly or indirectly.
5. *Conduct of Meetings.* Meetings shall be held at the call of the chair and at such other times as the Board may determine. The chair, or in the absence of the chair, the acting chair, may administer oaths and compel attendance of witnesses. All meetings shall be open to the public. The order of business at meetings shall be as follows:
  - a. Roll call
  - b. Approval of minutes of the previous meeting
  - c. Reports of committees
  - d. Unfinished business
  - e. Hearing of cases, or appeals or referrals
  - f. New business
  - g. Reading of correspondence other than that related to new or old business or hearing scheduled

6. *Voting.* The chair or presiding officer shall have equal voting power with the other members of the Board and may vote on all questions before the Board unless otherwise limited herein.
7. *Adjourned Meetings.* The Board may adjourn a regular meeting if all business cannot be disposed of on the day set and no further public notice shall be necessary for such a meeting if the time and place of its resumption are stated at the time of adjournment and are not changed after adjournment.

**D. Vacancies.** In the event vacancies occur in the Board's membership, the chair shall inform the Board of Supervisors as promptly as possible so that the Supervisors may appoint a replacement to fill out the unexpired term.

**E. Public Hearings.**

1. At public hearings held by the Board on any matter as may be required by law or as may be set by the Board upon its own motion, any person may appear on their own behalf or be represented by agent or by attorney.
2. The order of the hearing shall be:
  - a. Statement of case by the chair or, the vice-chair in their absence, or the chair's assignee.
  - b. The following statement will be read: "Because of any personal or financial interest, either directly or indirectly, do any Board members wish to recuse themselves from proceedings?"
  - c. Supporting argument by the applicant or their agent or attorney.
  - d. Supporting arguments by others at the hearing.
  - e. Opposing arguments by persons at the hearing.
  - f. Rebuttals by those supporting the applicant other than the applicant.
  - g. Rebuttals by those opposed to the application.
  - h. Final rebuttal by the applicant.

**F. Decisions.** Hearings on all applications shall be held within forty-five (45) days of receipt thereof. Decisions on all cases shall be voted upon by the Board within thirty (30) days after the date of hearing or if acceptable to the applicant, the continuation of such meeting.

If no motion either to approve or deny the action requested receives three (3) or more aye votes, then the case will be placed as old business on the agenda of each regular or special meeting of the Board until a motion either to approve or deny does receive three (3) or more aye votes.



The decision shall be promptly transmitted in writing to the applicant by the secretary stating the Board's action, the vote thereon and the reasons therefore, and any recommendations or modifications or conditions to which the Board's decision is subject. One (1) copy of the Board's action shall be filed in the official files of the Board and one (1) copy forwarded to the Board of Supervisors.

**4.3 The Board of Adjustment: Powers and Duties:** In accordance with Iowa Code Section 335.11, the Board shall have the following powers and duties:

- A. Appeals.** To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Administrator in the enforcement of this Ordinance.
- B. Special Exceptions.**
  - 1. To hear and decide only such special exceptions as the Board is specifically authorized to pass on by the terms of this Ordinance; to decide such questions as are involved in determining whether special exceptions should be granted; and to grant special exceptions with such conditions and safeguards as are appropriate under this Ordinance and to deny special exceptions when not in harmony with the purpose and intent of this ordinance.
  - 2. Additionally, the Board shall have the power to modify by special exception any quantitative requirements under the same conditions and using the same procedures as set out in this section for listed special exception uses, providing the modification is less than fifty percent (50%) of the requirement, or, in situations involving setbacks from public roads, the County Engineer has determined that the interests of government entities in safety, engineering, and potential cost factors are negligible.
- C. Variances.** To authorize upon appeal in specific cases such variance from the terms of this ordinance as will not be contrary to the public interest where, owing to the special conditions, a literal enforcement of the provisions of this ordinance would result in unnecessary hardship.

**4.4 Appeals.** Appeals to the Board concerning interpretation or administration of this Ordinance may be taken by any person aggrieved or by any officer or bureau of the governing body of the County affected by any decision of the Administrator.

- A. Stay of Proceedings.** An appeal stays all proceedings in furtherance of the action appealed from, unless the Administrator from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal is filed with the Administrator, that by reason of facts stated in the certificate, a stay would, in the Administrator's opinion, cause imminent peril to life and property. In such case, proceedings shall not be stayed

other than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application and notice to the Administrator from whom the appeal is taken and on due cause shown.

- B. Procedures.** Such appeals shall be taken within a reasonable time, not to exceed forty-five (45) days as provided by the rules of the Board, by filing with the Administrator and with the Board of Adjustment a notice of appeal specifying the grounds thereof. The Administrator shall forthwith transmit to the board all papers constituting the record upon which the action appealed from was taken.

The Board of Adjustment shall fix a reasonable time for the hearing of appeal, give public notice thereof as well as due notice to the parties in interest, and decide the same within a reasonable time. At the hearing any party may appear in person or appear virtually, or by agent or attorney.

1. An application indicating the administrative decision or the section of this Ordinance being appealed.
  2. A fee ( established by rule of the Board of Supervisors) shall be paid to the Administrator at the time the notice of appeal is filed which the Administrator shall forthwith pay over to the credit of the general fund of the County.
  3. The public hearing shall be held. Any party may appear in person or appear virtually, or by agent or attorney. A complete record of the hearing shall contain the following:
    - a. The original application.
    - b. The records of any action on the appeal by an administrative official.
    - c. Proof of notice sent at least ten (10) and no more than twenty (20) days prior to the hearing date to the applicant by mail for the purpose of a courtesy notice of the hearing.
    - d. All relevant information, including but not limited to, maps, drawings, and/or photographs.
    - e. Minutes of the public hearing.
- C. Final Decision.** The final decision shall include the findings of fact and the conclusions reached by the Board. The decision must be in writing and include all conditions that may be associated with the decision. The decision should not be a mere conclusion or statement. Each decision shall be accompanied by specific findings of fact related to the specific appeal.

**4.5 Special Exception.** Any person may submit to the Board an application requesting a special exception in accordance with Section 4.5.B. and the regulations of this Ordinance.

**A. Procedures.** A special exception shall not be granted by the Board unless and until:

1. A written application for a special exception is submitted indicating the section of this Ordinance under which the special exception is sought and stating the grounds on which it is requested.
2. Notice shall be given at least ten (10) but no more than twenty (20) days in advance of the public hearing by publication in a newspaper of general circulation in the country.
3. The public hearing shall be held. Any party may appear in person or appear virtually, or by agent or attorney.

**B. Standards for Review.** In reviewing an application for a special exception, the Board shall consider the following:

1. The Jackson County Land Use Policy Statement;
2. Other policy statements adopted by the Board of Supervisors including Resolution #184-12-07-99 addressing the preservation of ancient burial mounds;
3. The purpose and intent of the Ordinance and of its specific districts;
4. The most appropriate use of the land;
5. The conservation and stabilization of property values;
6. Adequate open spaces for light and air;
7. Concentration of population;
8. Congestion of public streets;
9. The promotion of the public safety, health, convenience and comfort;
10. The general welfare of the persons residing or working in the general area.

**C. Findings.** Before any special exception is granted, the Board shall make the following written findings regarding the case in question:

1. The Board is empowered under the section of this Ordinance described in the application to grant the special exception.
2. It complies with any specific regulations governing individual special exceptions.

3. Satisfactory provision has been made concerning the following, where applicable:
  - a. Vehicular access to property with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe;
  - b. Off-street parking, loading and service areas where required;
  - c. Economic, noise, dust, heat, glare or odor effects of the special exception on surrounding properties;
  - d. Utilities, with reference to locations, availability, adequacy and compatibility;
  - e. Screens and buffers with reference to type, dimensions, character and adequacy;
  - f. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with surrounding properties;
  - g. Required yards and other open spaces;
  - h. General compatibility with surrounding properties.
4. It is in harmony with the Land Use Policy Statement.
5. It will not adversely affect the public interest.

**D. Conditions.** In granting any special exception, the Board may prescribe appropriate conditions and safeguards in conformity with this ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the special exception is granted, shall be deemed a violation of this ordinance and punishable under Section 3.4 of this ordinance. The Board of Adjustment shall prescribe a time limit within which the action for which the special exception is required shall be begun or completed, or both. Failure to begin or complete, or both, such action within the time limit set shall void the special exception.

**4.6 Variance.** Any person may submit to the Board an application requesting a Variance in accordance with Section 4.5.C. of this Ordinance.

**A. Procedures.** A variance from the terms of this Ordinance shall not be granted by the Board of Adjustment unless and until:

1. A written application for a variance is submitted demonstrating:
  - a. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same district.

- b. That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance;
  - c. That the special conditions and circumstances do not result from the actions of the applicant;
  - d. That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structures or buildings in the same district. No nonconforming use of neighboring lands, structure or buildings in other districts shall be considered grounds for the issuance of a variance.
2. Notice shall be given at least ten (10) but no more than twenty (20) days in advance of the public hearing by publication in a newspaper of general circulation in the country.
  3. The public hearing shall be held. Any party may appear in person or appear virtually, or by agent or by attorney.

**B. Standards for Review.** In reviewing an application for a variance, the Board shall consider the following. In order to be granted a variance, the applicant carries the burden of proving to the Board that strict enforcement of the terms of this Ordinance will inflict an “unnecessary hardship” on the property owner. No variance shall be granted unless the applicant shall show and the Board shall find the following:

1. The Iowa courts have set out specific criteria that must be satisfied before the Board may find that an “unnecessary hardship” exists, sufficient to grant a property owner a variance. The property owner must satisfy all three (3) criteria to be granted a variance:
  - a. The land in question cannot yield reasonable return if used only for a purpose allowed in that zoning district,
  - b. The plight of the property owner is due to unique circumstances and not to general conditions in neighborhood, and
  - c. The use to be authorized by variance will not alter essential character of the locality.
2. The Iowa courts have established the following guidelines for assessing whether the above-listed criteria have been met:
  - a. Failure to yield a “reasonable return” may be shown by proof that the property owner has been deprived of all beneficial use of the land. All beneficial use is said to have been lost where the land is not suitable for any use permitted by this Ordinance.

- i. It is not sufficient to show that the value of land merely has been depreciated by the zoning regulations, or that a variance would permit a property owner to maintain a more profitable use.
    - ii. It is not sufficient to show mere inconvenience to the applicant.
  - b. Problems common to several properties do not constitute “unique circumstances.” The condition or situation is not of so general or recurring a nature as to make reasonably practical a general regulation to be adopted as an amendment of this Ordinance.
  - c. This disadvantage of “unique circumstances” does not exist as a result of conditions created by the owner or previous owners of the property.
  - d. A variance that alters the “essential character of the area” is beyond the authority of the Board to grant. The Board cannot grant a variance that, in effect, constitutes a rezoning or zoning ordinance amendment. Factors to consider in determining whether a variance will alter the “essential character of the neighborhood” include the degree of variation from district regulations, the size of the parcel, and the parcel’s size and character in relation to the size of the district.
3. In granting a variance, the Board shall not consider prospective financial loss or gain to the applicant.
  4. Under no circumstances shall the Board grant a variance to allow a use not permissible under the terms of the Ordinance regulations in the district involved, or any use expressly or by implication prohibited by the terms of the regulations in said district.
  5. No non-conforming use of neighboring lands, structures, or buildings in the same district and no permitted or non-conforming use of lands, structures, or buildings in other districts shall be considered grounds for the granting of a variance.

**C. Findings.** Before any variance is granted, the Board shall make the following written findings regarding the case in question:

1. The Board is empowered under the section of this Ordinance described in the application to grant the special exception.
2. The requirements of Section 4.8.B. of this Ordinance have been met by the applicant for a variance.
3. The reasons set forth in the application justify the granting of the variance and that the variance is the minimum variance that will make possible the reasonable use of the land, building or structure.

4. The granting of the variance will be in harmony with the general purpose and intent of this Ordinance and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

**D. Conditions.** In granting any variance, the Board may prescribe appropriate conditions and safeguards in conformity with this ordinance. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Ordinance and punishable under Section 3.4 of this Ordinance. Under no circumstances shall the Board grant a variance to allow a use not permitted in the district involved or any use expressly or by implication prohibited by the terms of this Ordinance in said district. The effective date of variances granted shall be twenty-one (21) days from the date of granting, except that when a variance has been reaffirmed, with or without modification, after being remanded by the Board of Supervisors under the Provisions of section 2.17 below, the variance shall be effective immediately or as specified in the motion to reaffirm.

**4.7 Decisions of the Board of Adjustment.** In exercising the above-mentioned powers, the Board may, so long as such action is in conformity with the terms of this Ordinance, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination as ought to be made and to that end shall have powers of the Administrator from whom the appeal is taken. The concurring vote of three (3) members of the Board shall be necessary to reverse any order, requirement, decision or determination of the Administrator or to decide in favor of the applicant on any matter upon which it is required to pass under this ordinance or to effect any variation in application of this ordinance.

**4.8 Remanding of Variances by the Board of Supervisors.** Under the authority of Iowa Code Section 335.10, the Board of Supervisors shall have the power to remand any variance granted by the Board. Accordingly, the following provisions shall apply:

- A. A written report of all actions taken by the Board shall be provided promptly by its secretary to the applicant and to the Board of Supervisors, to include also the effective date of any variances granted.
- B. Upon considering the report of actions and any other information available, the Board of Supervisors may choose to remand any decision to grant a variance, so long as it acts by official motion and before the effective date of the variance. The remanding of a variance will automatically delay its effective date for thirty (30) days from the date of the remand, or until the Board has taken an official action on the remand, as required by subsection 4.10.D. below, whichever comes first.
- C. Upon notice of such remand, the Board shall schedule a special public hearing, to occur before the new effective date of the variance, to hear any new testimony available on the matter. Notice of this hearing shall be provided in the customary manner and to all

persons who commented on the request, either at the original hearing or in writing to the Board.

- D. Upon holding such special hearing, the Board shall make findings and take action to affirm its original decision, or to modify it by the placement of conditions on the variance, or by denying the variance.
- E. If the Board fails to act before the effective date of a variance, the variance stands and any further redress of grievances shall come from a court of record as noted below.

**4.9 Appeals from the Board of Adjustment:** Any person or persons or any board, taxpayer, department, board or bureau of the county aggrieved by any decision of the Board may seek review by a court of record of such decision in the manner provided by the laws of the State and particularly by Iowa Code Chapter 358A.