

## **SECTION 5**

### **Zoning Administration and Enforcement**

#### **501. Administrator**

The Office of the Zoning Administrator is hereby established; the Zoning Administrator shall be appointed by the County Board and serve at its pleasure.

##### **501.01. Duties**

The Zoning Administrator shall enforce the provisions of this Ordinance as provided herein; in addition to the duties and powers of the Zoning Administrator under this Ordinance express or implied, he shall have the duty and power to:

- 1) Issue zoning and other permits, and make and maintain record thereof;
- 2) Oversee inspections and use of land to determine compliance with the terms of this Ordinance;
- 3) Maintain permanent and current records of this Ordinance, including but not limited to: all maps, amendments and conditional uses, variances, appeals and applications thereof;
- 4) Receive, file and forward all applications for appeals, variances, conditional uses or other matters to the designated official bodies; and
- 5) Review proposed development to assure that all necessary permits have been received from those governmental agencies which approval is required by Federal or State law.

#### **502. Planning Commission**

The Fillmore County Planning Commission is hereby established. The members of the commission shall be appointed and ratified by the County Board.

##### **502.01. Membership and Terms**

- 1) The Planning Commission shall consist of seven (7) members; one member shall be from each of the five (5) commissioner districts; one member shall be recommended from the Fillmore County Township Officers Association; and one member shall be a County Commissioner.
- 2) The county commissioner representing the County Board on the Planning Commission shall be appointed annually by the County Board.
- 3) The term of each member except the county commissioner shall be for four (4) years.

Appointments shall be made so that at least one member shall be appointed at the beginning of each calendar year. Members maybe eligible for reappointment at the discretion of the County Board.

- 4) The Commission may call for the removal of any member for non-performance of duty or misconduct in office. If a member has four consecutive unexcused absences in any one year, the secretary shall certify this fact to the Commission and the Commission shall notify the County Board along with suggested action. The County Board shall appoint a replacement for the unexpired term, as if the member had resigned.
- 5) The members of such Planning Commission may be paid their necessary expenses in attending meetings of the commission and in the conduct of the business of the commission.
- 6) The Planning Commission shall elect a chairperson from among its members. The commission may also select a secretary from its members.

#### **502.02. Functions of the Planning Commission**

- 1) The Planning Commission shall adopt rules for the Transaction of its business and shall keep public record of its transactions, findings, and recommendations.
- 2) The Planning Commission shall cooperate with the Zoning Administrator and other employees of the County in preparing and recommending to the Board for adoption, comprehensive plans and recommendations for plan execution in the form of official controls and other measures, and amendments thereto.
- 3) The Planning Commission shall provide assistance to the County Board and Zoning Administrator in the administration of this ordinance and shall review, hold public hearings, and make recommendations to the County Board on all applications for zoning amendments and conditional use permits using the criteria in Sections 504 and 506.

#### **503. Board of Adjustment**

A Board of Adjustment for Fillmore County is hereby established.

##### **503.01. Membership and Terms**

- 1) The board shall consist of five (5) members, which are the same 5 members of the County Planning Commission that are appointed from each of the Commissioner Districts. Further, at least one (1) member shall be from the unincorporated area of the County. No elected officer of the County or any employee of the Board of Commissioners shall serve as a member of the Board of Adjustment.
- 2) The term of each member shall be for four (4) years, which shall be the same 4-year term held as held as a member of the Planning Commission. Vacancies shall be filled for the

unexpired term of any member whose term becomes vacant.

- 3) The board may remove any of its members for non-performance of duty or misconduct in office.
- 4) The members of such board may be paid their necessary expenses in attending meetings of the board and in the conduct of the business of the board.
- 5) The Board of Adjustment shall elect a chairperson and vice-chairperson from among its members and shall select a secretary. It shall adopt rules for the transaction of its business and shall keep a public record of its transactions, findings, and determinations.

### **503.02. Functions of the Board of Adjustment**

- 1) The Board of Adjustment shall act upon all questions as they may arise in the administration of this Ordinance, including the interpretation of zoning maps, and it shall hear and decide appeals from and review any order, requirement, decision or determination made by such an administrative official charged with enforcing the Ordinance. Such appeal shall be made within 30 days of the administrative officials' decision and may be taken by any person, firm or corporation aggrieved or by any officer, department, board or bureau of the County. The Board of Adjustment shall also have the power to grant variances to the provisions of the Zoning Ordinance under certain conditions. The conditions for the issuance of a variance are as indicated in Section 5, Subdivision 5, of this Ordinance. No use variances (use difference than those allowed in the district) shall be issued by the Board of Zoning Adjustment.
- 2) Hearing by the Board of Adjustment shall be held within such time and upon such notice to interested parties as is provided in this Ordinance and its adopted rules for a reasonable time, make its order deciding the matter and shall serve a copy of such order upon the appellant or petitioner by certified mail. Any party may appear at the hearing in person or by agent or attorney.
- 3) The Board of Adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination, as in its opinion, ought to be made in the premises. The reasons for the board's decision shall be stated.
- 4) All decisions by the Board of Adjustment in granting variances or in hearing appeals from any administrative order, requirement, decision or determination shall be final except that any aggrieved person or persons, or any department, board of commission of the jurisdiction or of the state shall have the right to appeal within 30 days, after receipt of notice of the decision, to the District Court in the county in which the land is located on questions of law and fact.
- 5) In exercising its power, the Board of Adjustment shall take into consideration the Town Board's recommendation when the Board of Adjustment's decision directly affects land within the Town. However, this is only a recommendation and the final decision shall be made by the Board of Adjustment.

## **504. Conditional Use Permits**

### **504.01. Criteria for Granting Conditional Use Permits**

In granting a conditional use permit, the Fillmore County Board shall consider the advice and recommendations of the Planning Commission and the effect of the proposed use upon the health, safety, and general welfare of occupants of surrounding lands. Among other things, the following findings shall be considered.

- 1) The use will not create an excessive burden on existing parks, schools, streets and other public facilities and utilities that serve or are proposed to serve the area.
- 2) The use will be sufficiently compatible or separated by distance or screening from adjacent agricultural or residentially zoned or used land so that existing properties will not be depreciated in value and there will be no deterrence to the development of vacant land.
- 3) The structure and site shall have an appearance that will not have an adverse effect upon adjacent properties.
- 4) The use in the opinion of the County Board is reasonably related to the overall needs of the County and to the existing land use.
- 5) The use is consistent with the purposes of the zoning ordinance and the purposes of the zoning district in which the applicant intends to locate the proposed use.
- 6) The use will not cause traffic hazard or congestion.
- 7) Existing businesses nearby will not be adversely affected because of curtailment of customer trade brought about by intrusion of noise, glare, vibration or other nuisances.
- 8) Adequate utilities, access roads, drainage and necessary facilities have been or will be provided.
- 9) If the Conditional Use Permit is for a use within the shoreland area of a public water, an evaluation of the waterbody and the topographic, vegetative, and soils conditions on the site must be made to ensure:
  - a. the prevention of soil erosion or other possible pollution of public waters, both during and after construction; and
  - b. the visibility of structures and other facilities as viewed from public waters is limited; and
  - c. the site is adequate for water supply and onsite sewage treatment.
- 10) No Conditional Use Permit shall be granted if such permit may have the potential for significant effect to:
  - a. the environment; or
  - b. the protection of the public health, safety, comfort, convenience, and general welfare of the public; or

- c. the County's promotion of the orderly development and/or maintenance of agricultural, residential, recreational and public areas; or
- d. the compatibility of different land uses and the most appropriate use of land throughout the county; or
- e. the value of property.

#### **504.02. Additional Conditions**

In permitting a new conditional use or the alteration of an existing conditional use, the Planning Commission may recommend the imposition, in addition to the standards and requirements expressly specified by this Ordinance, of additional conditions, which the Planning Commission considers necessary to protect the best interest of the surrounding area or the county 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.
- 9) Increased setbacks from the ordinary high water level.
- 10) Limitations on the natural vegetation to be removed or the requirement that additional vegetation be planted.

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 County Board and time limits, review dates, and such other information as may be appropriate.

#### **504.03. Required Exhibits for Conditional Use Permits**

- 1) A preliminary building or structure and site development plan. The site plan shall include, but not be limited to soils information, neighboring land and water uses, existing and proposed structures, architectural plans, driveway locations, parking areas, highway access, traffic generation and circulation, drainage, waste disposal, sewage disposal systems, water supply systems.
- 2) Evidence of ownership or enforceable option or easements on the property.

#### **504.04. Procedures**

The procedure for obtaining a Conditional Use Permit is as follows:

- 1) The property owner or his/her agent shall meet with the Zoning Administrator to explain the situation, learn the procedures and obtain an application form.
- 2) The applicant shall file the completed application form together with the required exhibits with the Zoning Administrator and shall pay a filing fee as established by the County Board.
- 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. Notice of the public hearing shall be published in the official newspaper designated by the County Board at least ten (10) days prior to the hearing. Notice of the hearing shall also be submitted to the governing bodies of all towns and municipalities within two (2) miles of the affected property. In unincorporated areas of the County, property owners of record within one-quarter miles of the affected property or the ten (10) properties nearest to the affected property, whichever is the greatest number of property owners, shall be notified in writing of the public hearing on the request for a conditional use permit. In the case of Feedlots over 500 Animal Units, property owners within 1 mile shall be notified. In incorporated areas of the County, property owners of record within five hundred (500) feet of the property in question shall be notified in writing of the public hearing on the request for a conditional use permit. In the case of rock quarries, notice shall be sent to property owners of record as follows:
  - a. In incorporated areas to all owners of record within five hundred (500) feet of the affected property.
  - b. In unincorporated areas to all residences within one (1) mile of the new or existing quarry or the nearest 10 landowners whichever is greatest.
- 5) The Planning Commission shall hold the public hearing and then shall study the application to determine possible adverse effects of the proposed conditional use and to determine what additional requirements may be necessary to reduce such adverse effects and recommend one (1) of three (3) actions to the County Board at its next regular meeting: approval, denial, or approval with special conditions.
- 6) The County Board shall take action on the conditional use permit application following receipt of the findings and recommendations by the Planning Commission. The person making application for the conditional use permit shall be notified in writing of the Board's action. If it grants the conditional use permit, the County Board may impose conditions (including time limits) it considers necessary to protect the public health, safety and welfare and such conditions may include a time limit for the use to exist or operate.
- 7) All appeals from the decision of the County Board relating to Conditional Use Permits shall be filed within thirty (30) days of the board's decision with a court of competent jurisdiction.
- 8) Revocation of Conditional Use Permits. Where a Conditional Use Permit has been issued

pursuant to the provision of this Ordinance, such permit shall become null and void without further action by the Planning Commission or the County Board unless work thereon is substantially complete within twelve (12) months of the date granting such conditional use. The Conditional Use Permit may be assignable only after the original applicant has begun the use and such transfer shall be reviewed and approved by the Planning Commission and County Board. A Conditional Use Permit shall be deemed to authorize one (1) particular use and shall expire if that use shall cease for more than six (6) consecutive months.

- 9) In the event that the applicant violates any of the conditions set forth in the conditional use permit, or the section of the Fillmore County Zoning Ordinance governing the conditional use, the County Board shall have the authority to revoke the conditional use permit.
- 10) The Planning Commission shall review all Conditional Use Permits at least 1 time within 24 months of permit issuance to monitor compliance with the provisions of the Conditional Use Permit. Any violations of the conditions of the permit shall be cause for consideration for revocation of the permit.
- 11) Conditional Use permits shall be valid until their expiration pursuant to Paragraph 8 above unless a shorter or lesser time is specified in the permit.
- 12) No application of a property owner for a conditional use shall be considered by the Planning Commission within a one (1) year period following a denial for such a request, except the Planning Commission may permit a new application, if in its opinion, new evidence or a change in circumstances warrants it.

#### **504.05. Terms of receiving a permit**

Once an applicant receives a Conditional Use Permit, said permit holder agrees that:

- 1) The permit holder must undertake the project according to plans and specifications submitted to the county with the application.
- 2) If this Conditional Use Permit is not acted upon for the purpose specified in the application within one year, the permit becomes null and void.
- 3) This permit will be periodically reviewed by the county to assure compliance with the permit and permit conditions.
- 4) The county may enter onto the premises at a reasonable time and in a reasonable manner to ensure the permit holder is in compliance with the conditions and all other applicable statutes, rules, and ordinances.

#### **505. Variances**

##### **505.01. Criteria for Granting Variances**

A variance to the provision of the Zoning Ordinance may be issued by the Board of Adjustment to provide relief to the landowner in those cases where the Ordinance imposes undue hardship or practical difficulties to the property owner in the use of this land. No use variances (uses different than those allowed in the district) may be issued. A variance may be granted only in the event that all the following circumstances exist:

- 1) Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity, and result from lot size or shape, topography, or other circumstances over which the owners of property since enactment of this Ordinance have had no control.
- 2) 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.
- 3) That the special conditions or circumstances do not result from the actions of the applicant.
- 4) That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to owners of other lands, structures or buildings in the same district.
- 5) That the variance requested is the minimum variance that would alleviate the hardship. Economic conditions alone shall not be considered a hardship.
- 6) The variance would not be materially detrimental to the purpose of this Ordinance, or to other property in the same zone.
- 7) The Board of Adjustment may impose such restrictions and conditions upon the premises benefited by a variance as may be necessary to comply with the standards established by this Ordinance, or to reduce or minimize the effect of such variance upon other properties in the neighborhood, and to better carry out the intent of the variance.

#### **505.02. Required Exhibits for Variances**

- 1) A preliminary building or structure and site development plan. Requirements for site plan found in Section 504.03 of this Ordinance.
- 2) Evidence of ownership or enforceable option or easement on the property.

#### **505.03. Procedures**

The procedures for obtaining a variance from the regulations of this Ordinance are as follows:

- 1) The property owner or his/her agent shall meet with the Zoning Administrator to explain his situation, learn the procedures and obtain an application form.

- 2) The applicant shall file the completed application form together with the required exhibits with the Zoning Administrator and shall pay a filing fee as established by the County Board.
- 3) The Zoning Administrator shall refer the application to the Board of Adjustment for review.
- 4) The Board of Adjustment shall hold a public hearing on the proposal. Notice of the public hearing shall be published in the official newspaper designated by the County Board at least ten (10) days prior to the hearing. Notice of the hearing shall also be submitted to the governing bodies of all towns and municipalities within two (2) miles of the affected property. In unincorporated areas of the County, property owners of record within five hundred (500) feet of the affected property shall be notified in writing of the public hearing on the request for a variance. In incorporated areas of the County, property owners of record within five hundred (500) feet of the property in question shall be notified in writing of the public hearing on the request for a variance.
- 5) The Board of Adjustment shall hold a public hearing on the proposed variance and shall make a decision within thirty (30) days after the public hearing. It shall take one of three (3) actions: approval, denial or approval with special conditions.
- 6) No application by a property owner for a variance shall be submitted to the Board of Adjustment within a six (6) month period following a denial of such a request, except the board may permit a new application, if in the opinion of the board, new evidence of change or circumstances warrant it.
- 7) All appeals from the decision of the Board of Adjustment relating to variances shall be final except that any aggrieved person or persons, or any department, board or commission, of the jurisdiction or of the State shall have the right to appeal within 30 days, after receipt of notice of the decision, to the district court in which the land is located on question of law and fact.

## **506. Zoning Amendments**

### **506.01. Criteria for Granting Zoning Amendments**

The County Board may adopt amendments to the Zoning Ordinance and zoning map in relation both to land uses within a particular district or to the location of the district lines. Such amendments shall not be issued indiscriminately, but shall only be used as a means to reflect changes in the goals and policies or changes in conditions of the county.

### **506.02. Kinds of Amendments**

- 1) A change in a district's boundary (rezoning).
- 2) A change in a district's regulations.

- 3) A change in any other provision of this Ordinance.

### **506.03. Initiation of Proceedings**

Proceedings for amending this Ordinance shall be initiated by at least one (1) of the following three (3) methods:

- 1) By petition of an owner or owners of property which is proposed to be rezoned, or for which district regulation changes are proposed.
- 2) By recommendation of the Planning Commission.
- 3) By action of the County Board.

### **506.04. Required Exhibits for Rezoning or District Regulation Changes initiated by Property Owners**

- 1) A preliminary building or structure and site development plan. Site plan requirements are listed in Section 504.03 of this Ordinance.
- 2) Evidence of ownership or enforceable option or easement on the property.

### **506.05. Procedures**

The procedure for a property owner to initiate a rezoning or district regulation change applying to this property is as follows:

- 1) An amendment to the text of the Ordinance or 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 Board until it has received the Planning Commission recommendations. Individuals wishing to initiate an amendment to the zoning ordinance shall meet with the Zoning Administrator to explain the situation, learn the procedures and obtain an application form.
- 2) The applicant shall file the completed application form together with the required exhibits with the Zoning Administrator and shall pay a filing fee as established by the County Board.
- 3) Written notice of public hearings on the proposed amendment shall be sent to the governing bodies of all townships and municipalities located within the County. In unincorporated areas, property owners of record within one-half mile of the property in question shall be notified in writing of the proposed zoning amendment. In incorporated areas, property owners within 500 feet of the property in question shall be notified in writing of the proposed zoning amendment.