

Nance County, Nebraska

Planning & Zoning Procedures

Adopted by Nance County, Nebraska

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PLANNING AND ZONING PROCEDURES

INTRODUCTION

The purpose of the Planning and Zoning Procedures is to assist Nance County in the implementation of the Comprehensive Plan, Zoning Regulations, and Subdivision Regulations. The County Board of Supervisors, Planning Commission, Zoning Administrator, and the Zoning Board of Adjustment are responsible for the enforcement of the plan and its implementation through utilization of the Zoning Regulations and Subdivision Regulations.

The procedures provided in this section are to be used as a tool or means of assisting the county, local officials, and commission members. It should be noted, however, that the procedures and processes described in this section are models and are subject to change due to modifications, alterations and additional requirements through legislative action and/or judicial rulings by courts of law. It is therefore necessary to monitor potential legislative actions and judicial rulings. Several resources are available to assist the county in this task, including the County Attorney, County Clerk, Nebraska Association of County Officials, Nebraska Planning and Zoning Association, American Planning Association – Nebraska Chapter, Nebraska Department of Economic Development – Community Affairs Division, and local state senator(s). All of these resources should be utilized, particularly to maintain up-to-date and enforceable Zoning Regulations and Subdivision Regulations.

GOVERNING BODY

One of the primary governmental organizations involved in the planning and zoning process is the governing body of the county. For the purpose of zoning administration, the governing body for Nance County is the duly elected County Board of Supervisors.

Responsibilities

The governing body has the following responsibilities for zoning administration:

1. Appoint members to the Planning Commission.
2. Officially adopt the Comprehensive Plan, Zoning Regulations, and Subdivision Regulations.
3. Hold public hearings prior to adoption or amendment of the Comprehensive Plan, Zoning Regulations, and Subdivision Regulations.
4. Create the Zoning Board of Adjustment.
5. Consult with the Planning Commission prior to official action by governing body on the adoption or amendment of Zoning Regulations and Subdivision Regulations.
6. Approve or disapprove subdivision plats.
7. Grant waivers to the provisions of the Subdivision Regulations.
8. Approve expenditure of funds for zoning administration.

PLANNING COMMISSION

A Planning Commission is a group of county residents, appointed by the County Board of Supervisors. The Planning Commission carries out planning activities and serves in an “advisor” capacity to the County Board. State statutes require that planning commissions must be consulted by the governing body on matters concerning county planning before the elected officials can take formal action. The Planning Commission must therefore develop the capabilities which will enable it to provide sound and knowledgeable advice to those who seek it.

State Enabling Legislation

Nebraska legislation gives any county the power to create by resolution a Planning Commission. The Planning Commission of a county shall be designated County Planning Commission. Planning commissions have jurisdictions over the unincorporated areas of the county.

Duties and Powers of the Planning Commission

1. To make and adopt plans for the physical development of the county which can include the following: Comprehensive Plan, Building Codes, Zoning Regulations, and Subdivision Regulations.
2. Consult and advise with public officials and agencies, public utilities, civic organizations, educational institutions, and citizens with relation to the adoption and implementation of the Comprehensive Plan.
3. To delegate authority to any such group to conduct studies and make surveys for the Commission.
4. Make recommendations to the County Board on the adoption or amendment of the Comprehensive Plan, Subdivision Regulations, or Zoning Regulations.
5. Make and enter into contracts with public or private bodies, with the consent of the County Board.
6. May conduct or sponsor special studies or planning work for any public body or appropriate agency.
7. May receive grants, remuneration, or reimbursement for studies conducted.
8. Summon witnesses, administer oaths, and compel the giving of testimony at public hearings.
9. Make recommendation on the approval or denial of special permits to the County Board.

Meetings

The Commission shall hold one regular meeting in each month unless the Chairperson determines that a postponement is called for. It shall adopt rules for the transaction of business and keep a record of its resolutions, transactions, findings, and determinations. The Planning Commission meetings shall adhere to the Public Meetings Law and the minutes of such meetings shall be a public record.

Nebraska Public Meeting Statutes

Every meeting of a public body shall be open to the public in order that citizens may attend and speak at such meetings. The Public Meeting Law is broadly interpreted and liberally construed to obtain the objectives of openness in favor of the public, and provisions permitting closed sessions must be narrowly and strictly construed (Ref. 84-1408 R.S. NE). Public meetings shall also adhere to the rules and regulations authorized by Sections 84-1409 through 84-1414 of the Revised Statutes of Nebraska.

ZONING ADMINISTRATOR

The Zoning Administrator is the central figure in zoning administration. All zoning and subdivision cases are coordinated through the office of the Zoning Administrator and the administrator is the first and last person who has contact with developers and builders with regard to zoning and approval of subdivisions.

As the name implies, the Zoning Administrator is not a policy maker nor does the administrator establish the Zoning Regulations or subdivision requirements. If there is any question about whether or not to grant approval of a Zoning Permit or subdivision plat, the Zoning Administrator will immediately begin routing the application to the appropriate governmental organization for action.

Specific duties include:

1. Issue Zoning Permits and Certificates of Occupancy.
 - a. Receive application from anyone who is erecting any structure within the zoning jurisdiction.
 - b. Explain to the applicant what the requirements are in the Zoning Regulations or any codes adopted by the governing body.
 - c. Check the Zoning Regulations to see if land is properly zoned and if plans meet the legal requirements. If in conformance, then issue permit.
 - d. Make final inspection at that time to determine if structure meets all legal requirements.
 - e. Issue Certificate of Occupancy / Zoning Compliance.
2. Receive Applications for Variance.
 - a. Inform applicant of legal procedures.
 - b. Prepare report for Board of Adjustment which describes property and special conditions.
 - c. Transmit report to Zoning Board of Adjustment.
 - d. Keep complete records on application.
3. Receive applications for Conditional Use Permits.
 - a. Inform applicant of zoning requirements and codes and of legal process.
 - b. Advertise public hearing 10 days prior to Planning Commission meeting. Notify area residents as prescribed by law.
 - c. Maintain records.
4. Receive requests for rezoning.
 - a. Inform applicant of legal process.
 - b. Prepare report for Planning Commission which describes property and area.
 - c. Advertise public hearing 10 days prior to Planning Commission hearing. Inform school board(s), municipalities, and/or counties within three miles of property affected by such action of proposed rezoning at least 10 days before public hearing. Notify area residents as prescribed by law.
 - d. Keep minutes of public hearing.
 - e. Advertise public hearing before governing body at least 10 days prior to meeting.
 - f. Keep minutes of public hearing held by governing body.
 - g. If rezoning is granted, make the appropriate change on the Official Zoning Map.

5. Prepare proposals for amending Zoning Regulations.
 - a. Upon request from Planning Commission or governing body, prepare zoning amendment to the regulations.
 - b. Present proposal to Planning Commission and governing body.
 - c. Advertise for public hearing before Planning Commission at least 10 days prior to hearing. Inform school board(s) and municipalities and/or counties located within three miles of property affected by such action of proposed amendment at the same time.
 - d. Keep minutes of public hearing.
 - e. Advertise for public hearing before governing body at least 10 days prior to hearing.
 - f. Keep minutes of public hearing held by governing body.
 - g. If amendment is approved, make the appropriate change in all official copies of Zoning Regulations.
6. Receive application for subdivision plat.
 - a. Receive application from anyone who is subdividing any parcel of land into two or more parcels.
 - b. Explain to applicant what the requirements are in the Subdivision Regulations or related regulations effecting the subdivision of land in the political jurisdiction.
 - c. Make arrangements for conferences between the subdivider and the Planning Commission or governing body.
 - d. Receive and review pre-plat sketch, preliminary plat, and final plat.
 - e. Submit comments and plat review remarks to the Planning Commission or governing body where appropriate.
 - f. Inform subdivider of plat approval or denial by governing body.
 - g. Keep records of all subdivisions and incorporate appropriate changes to the official base map for the political jurisdiction resulting from approval of subdivision.
7. Receive application for waiver to the provisions of the Subdivision Regulations.
 - a. Receive application for waiver from subdivider.
 - b. Inform subdivider of the required procedures.
 - c. Prepare report for the Planning Commission describing the waiver and applicable information relating to the waiver.
 - d. Transmit recommendations of the Planning Commission to the governing body with appropriate comments regarding approval or denial of the request for a waiver.
 - e. Notify subdivider of action by the Planning Commission and the governing body.
 - f. Keep records of all applications for waivers.
8. Prepare proposals for amending the subdivision regulations.
 - a. Upon request from Planning Commission or governing body, prepare amendment to the regulations.
 - b. Present proposal to Planning Commission and governing body.
 - c. Advertise for public hearing before Planning Commission at least 10 days prior to hearing. Inform school board(s) and communities and/or counties within three miles of the property

- affected by such action of proposed amendment at the same time.
- d. Keep minutes of public hearing.
 - e. Advertise for public hearing before governing body at least 10 days prior to hearing.
 - f. Keep minutes of public hearing held by governing body.
 - g. If amendment is approved, make appropriate changes in all official copies of the subdivision regulations.

As the above-mentioned duties indicate, the Zoning Administrator equally serves both the residents of the county who apply for permits or submit plats and the County Board of Supervisors.

ZONING BOARD OF ADJUSTMENT

The Zoning Board of Adjustment has important duties. Its functions, partly administrative and partly judicial, are defined and limited by state enabling legislation and by provisions of the county Zoning Regulations. This quasi-judicial body's powers include hearing and deciding appeals, map interpretations, and granting variances from the Zoning Regulations. Under Nebraska statutes, the Zoning Board of Adjustment is not a policy making body, nor is it intended to be. The Board is the body which provides flexibility in the administration of the Zoning Regulations.

State Enabling Legislation

Under Chapter 23, Article 1, Section 23-168.01 of the Nebraska State Statutes, the local legislative body creates Zoning Boards of Adjustment by resolution. Statutory references for county Zoning Boards of Adjustment are Section 23-168.01 through 23-168.04.

Meetings

1. Meetings of the Board shall be held at such times as the governing body may designate or at the call of the chairperson.
2. All meetings of the Board shall be open to the public and adhere to the provisions of the state Public Meetings Law.
3. The Board 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 immediately filed in the office of the Board and shall be a public record.
4. The Board must hold a public hearing before deciding upon applications for variances.
5. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of any county official, or to decide in favor of the applicant to effect any variance from the Zoning Regulations.

Duties and Powers

The Zoning Board of Adjustment has the following powers as authorized by state legislation and county resolution:

1. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by a county official based on the Zoning Regulations.
2. To hear and decide, in accordance with the provisions of the Zoning Regulations, request for interpretation of any map.
3. To hear and decide Applications for Variance from the Zoning Regulations.
4. Summon witnesses, administer oaths, and compel the giving of testimony at public hearings.

Criteria for Granting Variances

The criteria and conditions which must exist for granting a variance are identified by state statute and in the Nance County Zoning Regulations. The variance is intended as a device for adjustment where the regulations create unnecessary hardship in unusual cases, to give affected property owners rights as nearly equal as possible to those of others in the same district.

A heavy case load on variances may indicate that the regulations are, or one specific regulation is, not appropriate, that the Board is malfunctioning, or both. The need for variances should be minor, and variances should be granted sparingly.

Under no circumstances can the Board grant a variance to permit a use not generally or by special permit allowed in the zoning district.

A variance is granted for the property and not for the owner of the property. The variance is thus in effect perpetually and remains with the property and whatever structure may be constructed in the future.

The following are general guidelines which can be used by the Board in deciding upon Applications for Variances. These general guidelines are to be used in conjunction with the criteria and conditions specified in the Zoning Regulations.

1. A variance is not the appropriate remedy for a general condition. If this is the case, a change in the Zoning Regulations would be the appropriate action.
2. Self-inflicted hardships are not grounds for a variance. For example, a request for a variance that is based upon some action of the applicant such as the selling of a portion of a lot which does not comply with the existing district regulations, as opposed to a case where the area or width of a lot was reduced because land was taken for street widening.
3. Personal hardship is not grounds for a variance. The hardship must relate to the physical character of the property.
4. Economic hardship in itself is not grounds for a variance. It may be considered as an element, but there must be other compelling considerations. In general, the law guarantees that police power measures will not prevent a property owner from obtaining some reasonable return on his/her land, however that may be defined. One of the most common statements in variance law is that purely financial hardship, i.e., restriction to a less profitable use, is not sufficient to justify a variance. The granting of such variance must be based upon a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant.

PROCEDURE FOR ZONING PERMIT ISSUANCE

Purpose: A Zoning Permit shall be obtained from the Zoning Administrator prior to construction of any structure to insure the protection of owner, municipality, and adjacent property owners.

Procedure: The following steps should be taken to insure proper compliance with the Zoning Regulations:

Step 1. The applicant shall obtain a Zoning Permit from the Zoning Administrator by contributing the necessary information and meeting all requirements.

Step 2. The Zoning Administrator shall open a file for applicant's Zoning Permit.

Step 3. The Zoning Administrator may issue a Zoning Permit providing:

- a. All zoning requirements are met.
- b. Permit fee is paid.
- c. Evidence of available utilities.

Step 4. The Zoning Permit may be revoked at any time during construction and utility service denied when applicant is in violation of zoning requirements.

Step 5. A Certificate of Zoning Compliance shall be issued upon verification that all items are in conformance.

If at Step 3 the Zoning Administrator determines that he or she must deny granting the Zoning Permit, the Zoning Administrator should advise the applicant of the following options:

1. Revise plans to conform to Zoning Regulations and resubmit Zoning Permit application.
2. Apply to Zoning Administrator for a variance to be approved by Board of Adjustment.
3. Apply to Zoning Administrator for a Conditional Use Permit to be approved by the Zoning Commission and the governing body.
4. Apply to Zoning Administrator for an interpretation of the Zoning Regulations by the Board of Adjustment.
5. Apply to Zoning Administrator for a change of zoning or an amendment to the Zoning Regulations to be granted by the governing body.
6. Applicant may wish to discontinue project.

PUBLIC HEARING PROCEDURES FOR ZONING CHANGE (AMENDMENT)

- Purpose: A public hearing shall be held by the Planning Commission for the adoption of Zoning Regulations or amendments to the Zoning Regulations.
- Procedure: A public hearing held for the purposes of informing citizens of a suggested change in the Zoning Regulations should encompass the following elements:
- Step 1. The secretary of the Planning Commission shall cause a notice of public hearing to be published at least ten (10) days prior to the date set for the hearing. Notice shall also be given in a legal newspaper of general circulation in any county which has territory within three (3) miles of the property affected by such action of the County Board, one time at least ten (10) days prior to such hearing. Notice of the time and place of such hearing shall also be given in writing to the chairperson of any municipal, county, or joint planning commission which has jurisdiction over land within three (3) miles of the property affected by such action. In the absence of a planning commission, such notice shall be given to the clerks of units of local government having jurisdiction over land within three (3) miles of the property affected by such action.
 - Step 2. The notice of public hearing shall fix the time and place and describe in general terms the regulations and zoning districts proposed and a brief statement regarding the purpose thereof.
 - Step 3. The chairperson of the Planning Commission shall call the hearing to order at the prescribed time and identify the purpose of said hearing. (It is acceptable to read the Notice of Public Hearing.)
 - Step 4. The chairperson or other members of the Planning Commission shall describe the order of the hearing and present a complete but brief summary of the proposed zoning change. The hearing should then be open to the discussion by attending citizens. A record of proceedings of the hearing should be maintained by the secretary. The hearing may be adjourned from time to time upon discretion of the chairperson.
 - Step 5. Upon conclusion of the hearing, the Planning Commission shall prepare and adopt its recommendations in the form of a proposed zoning amendment. This may be done immediately following adjournment of the hearing or at the next meeting of the Commission.
 - Step 6. A copy of the proposed amendment shall be submitted to the governing body with a record of the hearing proceedings.

