County Zoning in Iowa: An Explanation of Chapter 335 of the Iowa Code

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County Zoning in Iowa: An Explanation of Chapter 335 of the Iowa Code

Counties that contain or adjoin major urban areas find that they need to direct and control development that occurs on the urban fringe. Less populated counties also have concerns. Generally, their primary land use goal is to protect prime agricultural land. This is a top priority interest because of the high quality and productivity of much of Iowa’s farmland. Just as it is necessary to protect the quality of prime agricultural land through the control of erosion, it is also necessary to protect the quantity of prime agricultural land through the control of development.

The primary tool that counties have to deal with all of these issues is zoning. Chapter 335 of the Iowa Code delegates zoning authority to counties. This power, together with the authority that is possessed by all Iowa counties because of their home rule status, gives counties broad discretion in directing development and controlling future growth.

Within this framework, counties are free to choose whether or not to have zoning. Counties that adopt zoning have the freedom needed to structure their local zoning ordinances in the most suitable way to meet individual local needs.

Through their comprehensive plans and their zoning ordinances, counties can control development so that schools, roads, health facilities, and utilities keep pace with the needs of the population.

This publication is a resource for Iowa county officials and interested citizens. The text is arranged so that the entire law, as enacted by the Iowa Legislature, is presented in the center columns. A discussion of each section of the law appears in the outside columns, directly opposite the section being explained.
335.1 Where applicable. The provisions of this chapter shall be applicable to any county of the state at the option of the board of supervisors of any such county.

335.2 Farms exempt. Except to the extent required to implement section 335.27, no ordinance adopted under this chapter applies to land, farm houses, farm barns, farm outbuildings, or other buildings or structures which are primarily adapted, by reason of nature and area, for use for agricultural purposes, while so used. However, the ordinances may apply to any structure, building, dam, obstruction, deposit, or excavation in or on the flood plains of any river or stream.

335.3 Powers. Subject to section 335.2, the board of supervisors may exercise any or all of the powers that follow. These powers are applicable only in areas outside the limits of cities and towns. Unincorporated villages are subject to county zoning regulations. The board of supervisors may regulate or restrict:
1. The height, number, and size of structures or buildings to be placed on a lot.
2. The percent of a lot that may be occupied by buildings.
3. The size of yards, courts, and other open spaces (width of side yard, depth of front or rear yards).
4. The density of population. This is accomplished by regulating the minimum size of lots.
5. The location and use of buildings, structures, and land for purposes of trade, industry, residences, or other purposes.
6. Tents, trailers, or portable structures for residential purposes. This does not apply in any way to agricultural land or buildings.

335.4 Areas and districts. For any and all of said purposes the board of supervisors may divide the county into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this chapter; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures or land. All such regulations and restrictions shall be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts.
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335.5 Objectives. The regulations shall be made in accordance with a comprehensive plan and designed to preserve the availability of agricultural land; to consider the protection of soil from wind and water erosion; to encourage efficient urban development patterns; to lessen congestion in the street or highway; to secure safety from fire, flood, panic, and other dangers; to protect health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to promote the conservation of energy resources; to promote reasonable access to solar energy; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. However, provisions of this section relating to the objectives of energy conservation and access to solar energy shall not be construed as voiding any zoning regulation existing on July 1, 1981, or to require zoning in a county that did not have zoning prior to July 1, 1981.

Such regulations shall be made with reasonable consideration, among other things, as to the character of the area in the district and the peculiar suitability of such area for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such county.

335.6 Public hearings. The board of supervisors shall provide for the manner in which such regulations and restrictions and the boundaries of such districts shall be determined, established, and enforced, and from time to time amended, supplemented, or changed. However, no such regulation, restriction, or boundary shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen days’ notice of the time and place of such hearing shall be published in a paper of general circulation in such county. Such notice shall state the location of the district affected by naming the township and section, and the boundaries of such district shall be expressed in terms of streets or roads wherever possible.

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335.5 Zoning cannot be unreasonable or capricious and must be based on a comprehensive planning study so that reasonable regulations and districts can be developed for the community welfare. The goals of zoning, as outlined below, must be the basis for the zoning plan. The goals of zoning are:
1. To preserve agricultural land.
2. To consider the protection of soil from wind and water erosion.
3. To encourage efficient urban development patterns.
4. To lessen congestion in the street or highway.
5. To secure safety from fire, panic and other dangers.
6. To protect health and the general welfare.
7. To provide adequate light and air.
8. To prevent the overcrowding of land.
9. To avoid undue concentration of population.
10. To promote the conservation of energy resources.
11. To provide reasonable access to solar energy.
12. To facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

Goals numbered 10 and 11 should not be interpreted as voiding any zoning regulation existing on July 1, 1981, or requiring zoning in any county. In preparing the regulations, due consideration must be given to:
1. The character of the area in the district and the suitability of the area for the uses proposed by zoning.
2. Conserving the value of buildings.
3. Encouraging the most appropriate use of land throughout the county.

335.6 The board of supervisors determines where the boundaries of districts shall be located and the form and content of the regulations that apply to each district. The board shall also provide the method whereby changes and amendments to the regulations and district boundaries may be made. The board must hold a public hearing before any part of the zoning regulations or zoning districts becomes effective. Any citizen, organization, or firm may attend the hearing to express views concerning the zoning ordinance. A notice must be published in a newspaper of general circulation in the county stating the time and place of the hearing. The notice must also state the location of the affected district(s) by naming the township(s) and section(s) and, if possible, by describing the roads and streets that form boundaries of the affected area. The hearing cannot be held until at least 15 days after publication of the notice.
335.7 Changes and amendments. Such regulations, restrictions, and boundaries may, from time to time, be amended, supplemented, changed, modified, or repealed. In case, however, of a protest against such change signed by the owners of twenty percent or more either of the area included in such proposed change, or of the area immediately adjacent thereto and within five hundred feet of the boundaries thereof, such amendment shall not become effective except by the favorable vote of at least sixty percent of all of the members of the board of supervisors. The provisions of section 335.6 relative to public hearings and official notice shall apply equally to all changes or amendments.

335.8 Commission appointed. In order to avail itself of the powers conferred by this chapter, the board of supervisors shall appoint a commission, a majority of whose members shall reside within the county but outside the corporate limits of any city, to be known as the county zoning commission, to recommend the boundaries of the various original districts, and appropriate regulations and restrictions to be enforced therein. Such commission shall, with due diligence, prepare a preliminary report and hold public hearings thereon before submitting its final report; and the board of supervisors shall not hold its public hearings or take action until it has received the final report of such commission. After the adoption of such regulations, restrictions, and boundaries of districts, the zoning commission may, from time to time, recommend to the board of supervisors amendments, supplements, changes, or modifications. The zoning commission, with the approval of the board of supervisors, may contract with professional consultants, regional planning commissions, the Iowa development commission, or the federal government, for local planning assistance.

335.9 Administrative officer. The board of supervisors is required to appoint an administrative officer authorized to enforce the resolutions or ordinances adopted by the board of supervisors. The administrative officer may be a person holding other public office in the county, or in a city or other governmental subdivision.
within the county, and the board of supervisors is authorized to pay to the officer compensation as it deems fit.

335.10 Board of adjustment. The board of supervisors shall provide for the appointment of a board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of this chapter shall provide that the said board of adjustment may, in appropriate cases, and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinances or regulations in harmony with its general purpose and intent and in accordance with the general or specific rules therein contained, and provide that any property owner aggrieved by the action of the board of supervisors in the adoption of such regulations and restrictions may petition the said board of adjustment direct to modify regulations and restrictions as applied to such property owners.

335.11 Membership of board. The board of adjustment shall consist of five members, a majority of whom shall reside within the county but outside the corporate limits of any city, each to be appointed for a term of five years, excepting that when the board shall first be created one member shall be appointed for a term of five years, one for a term of four years, one for a term of three years, one for a term of two years, and one for a term of one year. Members shall be removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired terms of any member whose term becomes vacant.

335.12 Rules. The board shall adopt rules in accordance with the provisions of any regulation or ordinance adopted pursuant to this chapter. Meetings of the board shall be held at the call of the chair and at such other times as the board may determine. Such chair, or in his or her absence, the acting chair, may administer oaths and compel the attendance of wit-

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following responsibilities:
1. To issue permits for urban uses and collect any fees that may be established for said permits.
2. To carry out administrative duties for the zoning commission and board of supervisors.
3. To enforce the ordinance and stop all violations.
4. To explain the ordinance when citizens desire information on zoning.

335.10 A board of adjustment is necessary because it is impossible to write an ordinance that will fit all cases when hundreds of parcels of land are involved. The purpose of the board of adjustment is to alleviate cases of hardship that are created by a literal enforcement of the law and to provide a method for citizens to be heard when they disagree with the interpretation and application of zoning as it affects their property.

335.11 The board of supervisors appoints members to the board of adjustment as provided in this section. The terms of the members are staggered so that only one term may expire in any given year. This provides a continuity to the board of adjustment. The board of supervisors may also remove members for good reason, but these charges must be in writing and a public hearing held. Any board of adjustment position that becomes vacant shall be filled by the board of supervisors’ appointee for the rest of the term of the original appointment.

335.12 Because cases heard by the board of adjustment may be appealed to the civil courts, it is essential that complete records of all proceedings be kept. The rules of procedure must be adopted and followed, and all evidence must be carefully documented. The vote of each member in each case must be recorded. These records must be filed immediately in the office of the board of adjustment.
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335.13 The right of appeal is unlimited. However, the board frequently receives appeals over which it has no jurisdiction. When an appeal is made to the board, all records involving the case must be transferred to the board from the office of the zoning administrator. The appellant must state in the appeal on what grounds the appeal is made. The board shall establish the limit, such as 30 days, within which an appeal must be filed.

335.14 When an appeal is filed with the board, no further action may be taken in the proceedings until the board has rendered a decision. If, however, waiting for a decision from the board might be perilous to life or property, corrective action may be taken unless restrained by an order from the board or a court of record.

335.15 The board of adjustment has three basic powers as outlined in this section. These powers are as follows:
1. If a citizen feels there is an error in the action of the enforcing officer, a decision may be requested from the board of adjustment. The board may decide against the applicant, in favor of the applicant, or may modify the decision of the enforcing officer. The board’s decision is final.
2. The zoning ordinance may state that certain exceptions to the ordinance may be granted by the board. An

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board is required to pass under such ordinance.

3. To authorize upon appeal, in specific cases, such variance from the terms of the ordinance as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done.

335.16 Decision. In exercising the above mentioned powers such board may, in conformity with the provisions of this chapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

335.17 Vote required. The concurring vote of three members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance or to affect any variation in such ordinance.

335.18 Petition to court. Any person or persons jointly or severally aggrieved by any decision of the board of adjustment under the provisions of this chapter, or any taxpayer, or any officer, department, board, or bureau of the county may present to a court of record a petition duly verified, setting forth that such decision is illegal in whole or in part specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the filing of the decision in the office of the board.

335.19 Review by court. Upon the presentation of such petition, the court may allow a writ of certiorari directed to the board of ad-

example of such an exception is the location of a building or premises for use by a public service corporation such as a water, gas, or power company when the board believes it to be necessary for the public welfare.

3. If unusual conditions or circumstances cause a hardship when the provisions of zoning are applied, the board is permitted to vary the law so that a reasonable use of the property is allowed. Such conditions or circumstances might result from extreme topography or the shape of the property. For example, if zoning requires that a building be set back 50 feet from the street, but such a requirement would place the building in a ravine, the board may reduce the requirement so that a reasonable building site is available on the lot.

335.19 Any disagreement with a decision of the board may be appealed to the civil courts. A petition to the court must be filed within 30 days after the decision of the board. This petition shall declare that the decision of the board was illegal and shall specify the grounds on which the decision was found to be illegal. If a petition is not filed within 30 days, the courts have no authority to hear the case and the board’s decision shall stand.

335.19 Upon the filing of a petition by an aggrieved party, the court may require the board of adjustment to forward all records pertaining to the case to the court
for review. The appellant’s case must be presented within 10 days, but this period may be extended by the court. Such an appeal shall not act as a stay on proceedings based on the decision of the board. The court may grant a staying order, however, if the appellant requests and can show adequate cause for issuing the restraining order.

335.20 The board of adjustment is not required to forward to the court its original record of the appeal but must submit certified or sworn copies. These copies of the record must contain all facts and evidence pertaining to the case and evidence showing the grounds upon which the decision was based.

335.21 The court’s hearing shall be considered a new hearing. The court may require testimony or may appoint a referee to take evidence. The referee shall report the finding of fact to the court and any conclusions of the law which may be established by the referee. Such fact and conclusions shall be made a part of the court proceedings. The court may reverse, approve, or modify the board’s decision.

No court costs may be assessed against the board unless it is apparent that the board acted with negligence, in bad faith, or with malice in rendering its decision.

335.22 A petition of appeal concerning a decision of the board shall have priority over all other civil actions and proceedings before the courts.

335.23 Power is granted to the board of supervisors to stop, prevent, or correct violations of the zoning ordinance. The supervisors may take any appropriate action including prosecution against any violators of the ordinance.

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justment to review such decision of the board of adjustment and shall prescribe therein the time within which a return thereto must be made and served upon the realtor’s attorney, which shall not be less than ten days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board, and on due cause shown, grant a restraining order.

335.20 Record advanced. The board of adjustment shall not be required to return the original papers acted upon by it but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

335.21 Trial to court. If upon the hearing which shall be tried de novo it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take evidence. The referee shall report the finding of fact to the court and any conclusions of the law which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse, approve, or modify the board’s decision.

Cost shall not be allowed against the board unless it is apparent that the board acted with negligence, in bad faith, or with malice in rendering its decision.

335.22 Precedence. All issues in any proceedings under the foregoing sections shall have preference over all other civil actions and proceedings.

335.23 Restraining Order. In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained; or any building, structure, or land is used in violation of this chapter of any ordinance or other regulation made under authority conferred thereby, the board of supervisors, in addition to other remedies, may institute any appropriate action or proceedings to prevent...
such unlawful erection, construction, reconstruction alteration, repair, conversion, maintenance, or use to restrain, correct or abate such violation to prevent the occupancy of said building, structure, or land or to prevent any illegal act, conduct, business, or use in or about such premises.

335.24 Conflict with other regulations. If the regulations made under this chapter require a greater width or size of yards, courts, or other open spaces, or require a lower height of building or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the regulations made under this chapter govern. If any other statute or local ordinance or regulation requires a greater width or size of yards, courts or other open spaces, or requires a lower height of building or a less number of stories, or a greater percentage of lot to be left unoccupied, or imposes other higher standards than are required by the regulations made under this chapter, the other statute or local ordinance or regulation governs. If a regulation proposed or made under this chapter relates to any structure, building, dam, obstruction, deposit, or excavation in or on the flood plains of any river or stream, prior approval of the department of water, air, and waste management is required to establish, amend, supplement, change, or modify the regulation or to grant any variation or exception from the regulation.

335.25 Zoning for family homes.
1. It is the intent of this section to assist in improving the quality of life of developmentally disabled persons by integrating them into the mainstream of society by making available to them community residential opportunities in the residential areas of this state. In order to implement this intent, this section shall be liberally construed.

2. a. “Developmental disability” or “Developmentally disabled” means a disability of a person which is one of the following:
   (1) Attributable to mental retardation, cerebral palsy, epilepsy, or autism.
   (2) Attributable to any other condition found to be closely related to mental retardation.

335.25 This portion of the zoning law is intended to allow developmentally disabled people to reside in residential areas in “family homes” of not more than eight disabled people. Such homes must be licensed as residential care facilities or child foster care facilities. Family homes are to be treated as permitted uses in all residential districts and may not be subject to any special permit or variance procedure. A new family home must be at least one-fourth mile away from existing family homes. Family homes may not house any resident:
   a. who is dangerous to himself or herself or others,
   b. who is in an active or acute stage of alcoholism, drug addiction, mental illness, or communicable disease.
   c. whose condition or conduct is such that he or she would be unduly disturbing to other residents, or
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d. who is in need of medical procedures or services that cannot be carried out in the facility. Restrictive covenants cannot be used to inhibit family homes.

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tion because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of mentally retarded persons or requires treatment and services similar to those required for the persons.

(3) Attributable to dyslexia resulting from a disability described in either sub-paragraph (1) or (2).

(4) Attributable to a mental or nervous disorder.

b. “Family home” means a community-based residential home which is licensed as a residential care facility under chapter 135C or as a child foster care facility under chapter 237 to provide room and board, personal care, habilitation services, and supervision in a family environment exclusively for not more than eight developmentally disabled persons and any necessary support personnel.

However, family home does not mean an individual foster family home licensed under chapter 237.

c. “Permitted use” means a use by right which is authorized in all residential zoning districts.

d. “Residential” means regularly used by its occupants as a permanent place of abode, which is made one’s home as opposed to one’s place of business, and which has housekeeping and cooking facilities for its occupants only.

3. Notwithstanding the optional provision in section 335.1 and any other provision of this chapter to the contrary, a county, county board of supervisors, or a county zoning commission shall consider a family home a residential use of property for the purposes of zoning and shall treat a family home as a permitted use in all residential zones or districts, including all single-family residential zones or districts of the county. A county, county board of supervisors, or a county zoning commission shall not require that a family home, its owner, or operator obtain a conditional use permit, special use permit, special exception, or variance. Section 135C.23, subsection 2 shall apply to all residents of a family home.

4. A restriction reservation, condition, exception, or covenant in a subdivision plan, deed, or other instrument of or pertaining to the transfer, sale, lease or use of property in a county which permits residential use of prop-
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335.26 Repealed by 81 Acts, ch 117.1097; see 331 302(2).

335.27 Agricultural land preservation ordinance. If a county adopts an agricultural land preservation ordinance under this chapter which subjects farmland to the same use restrictions provided in section 93A.6 for agricultural areas, section 93A.10 to 93A.12 and section 472.3, subsection 6, shall apply to farms and farm operations which are subject to the agricultural land preservation ordinance.

335.30 Manufactured home. A county shall not adopt or enforce zoning regulations or other ordinances which disallow the plans and specifications of a proposed residential structure solely because the proposed structure is a manufactured home. However, a zoning ordinance or regulation shall require that a manufactured home be located and installed according to the same standards for a foundation system, setback, and minimum square footage which would apply to a site-built, single family dwelling on the same lot. A zoning ordinance or other regulation shall not require a foundation system for a manufactured home which is incompatible with the structural design of the manufactured home structure. When units are located outside a mobile home park, requirements may be imposed that ensure visual compatibility of the foundation sys-

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335.26 Section on penalties was repealed. This is now a matter of county home rule. However, a county may not provide penalties in excess of a $100 fine or more than 30 days imprisonment

335.27 If a county adopts an agricultural land preservation ordinance, the use of farmland is restricted just as it is in an agricultural area. That is, the land may be used only for farm operations, farm houses, necessary utilities, and other farm oriented uses. Certain benefits also apply. The farm operations covered by the agricultural land preservation ordinance are protected from special tax assessments for such purposes as sewer, water, lights, and non-farm drainage improvements. Farmers in these areas also have some protection from nuisance suits and are given priority for water permits. The law also indicates that subsequent state agency rules will not be considered discriminatory if they are less restrictive concerning farm operations inside areas protected by an agricultural land preservation ordinance. Finally, if such land is condemned by the state, a statement must disclose if any of the land is class I or class II land, and if it is, that the condemnation of this land is necessary. (For more information refer to Extension Publication Pm-1079, Iowa Land Use Law Explained.)

335.30 Counties may not refuse to accept manufactured housing only on the grounds that it is manufactured housing. Counties can apply the same foundation standards, set-backs, and minimum square footage regulations that apply to other types of housing. A mobile home is considered a "manufactured home" only if it has been converted to real property by removing the wheels and placing it on a foundation. It also must be taxed on the same basis as a site-built dwelling.
335.31 Elder family homes are considered family homes and are subject to the same zoning regulation. Their proximity to one another may be limited.

335.32 Homes for physically disabled persons are considered family homes and are subject to the same zoning regulations.

335.33 The county board of supervisors shall consider an elder group home a family home and can limit the proximity of one group home to another.