This publication sets out the responsibilities of the legislative body (City Council or County Board of Supervisors), the Zoning Commission, and the Zoning Board of Adjustment in zoning administration. Each of these bodies has different responsibilities which are discussed separately in the following paragraphs.

**The Legislative Body**
(City Council or County Board of Supervisors)

The legislative body is that body elected by the people to operate the local government, be it a city or a county. This body has four basic powers with respect to the administration and enforcement of zoning. These powers are as follows:

1. **The power to adopt the comprehensive plan**

   The Iowa code states that, “the (zoning) regulations shall be made in accordance with a comprehensive plan...” All cities and counties that are involved in land use regulations need to have a complete, up-to-date plan to guide area development activities.

2. **The power to adopt zoning**

   Only the legislative body has the power to adopt zoning. Neither the Zoning Commission nor the Board of Adjustment can adopt zoning.

   This power is solely in the hands of the elected representatives of government. Zoning is a local law or ordinance the same as traffic laws, building codes, and the like.

   Before any such law can be adopted by the local government, a public hearing must be held as required by state law. Notice of such a hearing must be advertised in accordance with state law. The notice shall include the time and place of the hearing.

3. **The power to amend and make changes**

   Even after the comprehensive plan and the zoning ordinance have been officially adopted, they can still be changed. Changes can be made in the written documents, or in the boundaries shown on the district zoning map. Changes can only be made by the legislative body (City Council or Board of Supervisors).

   All changes or amendments must follow the same procedures that were required when the documents were originally adopted. A public hearing must be held and notices must be published. The proposed amendment or change must be included as a part of the notice (but the zoning map need not be published in the notice for zoning amendments).
4. The power to appoint members to the zoning commission and board of adjustment

The legislative body appoints the members to both the Zoning Commission and the Zoning Board of Adjustment which are required in the Enabling Act.

Summary

The power to adopt the comprehensive plan and the zoning ordinance, the power to amend or change these documents, and the power to appoint the members who serve on the Zoning Commission and the Zoning Board of Adjustment are all assigned to the legislative body. This follows our governmental philosophy of placing authority in the hands of elected officials.

The Zoning Commission

The zoning commission (Plan and Zoning Commission, in some cases) is appointed by the legislative body and has three basic advisory responsibilities. The legislative body must solicit recommendations from the Zoning Commission, but is not required to follow such recommendations. The three basic responsibilities of the Zoning Commission are:

1. To prepare the comprehensive plan and the zoning ordinance.

While the legislative body has the power to adopt the comprehensive plan and to adopt the zoning ordinance, it cannot prepare the original documents for adoption. That responsibility is given to the Zoning Commission. Once the comprehensive plan is prepared and put in final form, the Zoning Commission forwards it to the legislative body with its recommendation that the plan be adopted. Similarly, the Zoning Commission prepares the zoning ordinance and district map and forwards them to the city council or county board of supervisors for their review and action.

The Zoning Commission can seek assistance in preparing the comprehensive plan, zoning ordinance, and district maps. They can hire planning staff or consultants, or seek assistance from a university planning department or regional planning council. Planning professionals and students can assist, but the Zoning Commission still has the responsibility of preparing these documents.

As stated previously, the legislative body is not bound by the recommendations of the Zoning Commission. The legislative body may adopt the comprehensive plan and the zoning ordinance as submitted, make changes before adoption, or refuse to adopt these documents.

2. To give recommendations on proposed changes in zoning or in the comprehensive plan.

Once these documents have been adopted, they may be changed from time to time. Any proposed change must be submitted to the Zoning Commission for consideration. The commission should study the proposed change and submit a recommendation to the legislative body, approving or disapproving the proposed change. As in the original adoption of the comprehensive plan and the zoning ordinance, the legislative body is not bound by the commission’s recommendation.

3. To review and update planning and zoning documents.

The Zoning Commission should conduct a review of the comprehensive plan and the zoning ordinance from time to time to assure that they still reflect the needs and desires of the community. If such review reveals a need for changes, a recommendation should be forwarded to the legislative body proposing such changes.
Summary

The Zoning Commission has only the power of recommendation. All decisions of the Zoning Commission require approval of the legislative body before they have any effect.

The Zoning Board of Adjustment

The Zoning Board of Adjustment has three basic responsibilities. The board has no power to change zoning, but does have the power to adjust the law as it applies to a specific piece of property. The board has sole and exclusive power to act, and the board’s decision does not require approval of the legislative body. Recourse to a decision of the board is through the district court.

Remand Provision

Recent legislative changes have given boards of supervisors and city councils the power to provide for their own review of variances granted by the board of adjustment. The elected officials may either accept the decision of the board, or remand the decision back to the board for further study. If the variance is returned to the board through this remand process, “the effective date of the variance is delayed for thirty days from the date of the remand” (Code of Iowa 414.7, 368A.10).

Powers of the Board of Adjustment

1. Power of interpretation

If a disagreement should arise between the zoning administrator and a citizen or group of citizens, the board must determine who is right. The board, in effect, must interpret the meaning of the law as it applies to each case where differences occur. This responsibility could be described as settling arguments with respect to the application of zoning.

2. The power to grant exceptions

The board has the power to “except” specific uses from the terms of zoning. An exception is just as its definition implies. In effect, the board says “everything in the community except this specific use” is zoned.

In granting an exception, the board may establish conditions under which the exception will be permitted. For example, the exception may be permitted provided it is screened from view by landscape treatment of screen fences and the like. Specific setback requirements may be established or specific architectural treatment might be specified. The board may require whatever it deems appropriate to reduce the effects of the exception on surrounding property.

Not everything can be “excepted” from zoning, however. In fact, the law requires that the board may legally grant only those exceptions that are specifically listed as possible exceptions in the zoning ordinance. If the proposed use is not listed in the ordinance as a permitted exception, the board has no power to grant it. Also, simply because the exception is listed in the ordinance, the board is not required to grant it. The board may deny any proposed exception if it deems it inappropriate.

3. The power to grant a variance

A “variance” is simply varying the law in a specific instance in order to alleviate a hardship caused by the strict application of zoning. To vary the law means to vary, or change, required regulations such as the front yard requirements, rear yard requirements, or the permitted height of a building. In other words, the board may vary any part of zoning requirements except the use. For example, the board cannot permit a commercial use on a tract of land zoned for residential use. It could, however, permit a house to be located closer to the street than zoning permits.
Before the board can grant a variance, it must find that a hardship would exist if the variance were not granted. In addition, the board must find that the hardship does not apply to other property in the area and that the hardship was not self-created.

If other property in the general vicinity suffers the same problem, the board does not have the power to grant a variance. The solution to this situation is for the Zoning Commission to prepare a zoning classification so that all such properties can meet zoning requirements without hardship. Further, if an owner creates his own hardship, the board has no power to act. For example, if a person builds his or her house too close to the side yard and later decides to add a room to the house on the side which is too close, he or she has created his or her own problem and it is not a hardship.

The board is only required to permit a reasonable use of the property. It is not required to simply exempt the property from the terms of zoning. A hardship might be defined as a situation which “approaches confiscation” of the land. In other words, the literal application of the law would render the property useless and, therefore, of no value. The purpose of a variance is to alleviate this situation while permitting a reasonable use of the property.

Summary
The board’s power to interpret, grant exceptions, and grant variances does not require approval by the legislative body. If the applicant or any other citizen disagrees with a decision of the board, an appeal may be filed with the District Court. The court will decide whether or not the board acted within its assigned powers.

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