



CITY OF ATLANTIC
23 East 4th Street
Atlantic, Iowa 50022
City Hall: (712) 243-4810
Fax: (712) 243-4407
www.cityofatlantic.com

CITY OF ATLANTIC STAFF REPORT

Topic: Comprehensive Zoning Ordinance Update 2016
Prepared For: Planning & Zoning Commission Members, Mayor, Members of the City Council, Media
Date: September 9, 2016
Staff Contact: John Lund (712-243-4810) johnlund@cityofatlantic.com

Executive Summary, History and Purpose

The State of Iowa grants planning and zoning authority to municipalities under Code 414.1 stating:

“For the purpose of promoting the health, safety, morals, or the general welfare of the community or for the purpose of preserving historically significant areas of the community, any city is hereby empowered to regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes.”

A Zoning Ordinance can make or break a City over its lifetime. A legacy of poor planning decisions can make neighborhoods unlivable, commercial areas unnavigable and a community unsightly. Accordingly, when I was given the responsibility of managing the Zoning Ordinance when I joined the City in March, 2011, I took it very seriously. During this time, I found a number of inconsistencies, totally undefined terms and unnecessarily restrictive regulations that punished residents depending on which areas of town they lived. In my opinion, the City’s Zoning Ordinance was a cookie-cutter template that did not account for our land development history nor our rural community culture and disposition. Instead of continuing a practice of regularly issuing variances to deal with a bad Ordinance, I chose to build a good ordinance where variances were a rarity.

I began to my research into updating the Zoning Ordinance in April of 2012 by looking at the Zoning Ordinances in the Iowa communities of Pella, Perry, Carroll, Sergeant Bluff, Washington, Alburnette and Fairbank and began review sessions of each of the 31 chapters with the Planning & Zoning Commission in July of 2012. Review was completed in the late summer of 2014, with the final draft review being done in October and then presented to the Council in November. I was appointed as the Interim City Administrator that October, however, and my focus shifted to the larger concerns of the City. Having our major affairs in order, I am now ready to finish this long process.

The following is the comprehensive overall of the City of Atlantic Zoning Ordinance, the last major update occurring June 7, 1995, 21 years ago. The document has been entirely reformatted to give it a uniform and professional appearance. Basic structure and the order of articles remains the same. Four new chapters have been added.

The following is the comprehensive overall of the City of Atlantic Zoning Ordinance, the last major update occurring June 7, 1995, 21 years ago. The document has been entirely reformatted to give it a uniform and professional appearance. Basic structure and the order of articles remains the same. Four new chapters have been added: Wireless Communication Facilities, Solar Energy Systems, Wind Energy Systems and Landscaping and Screening Standards. These four chapters represent the biggest developments in zoning issues since the Ordinance was last updated. Definitions were greatly expanded to provide a solid footing in which to execute and enforce our regulations with transparency. Where ambiguity exists, there are openings for selective administrative application, which in my opinion is a professional abuse of authority.

One of the biggest changes will make it unique and progressive in the State of Iowa. When the Iowa State Supreme Court made their ruling in *City of Johnston v. Christenson*, the footnotes of the ruling revealed an expanded discussion on the differences between use and dimensional variances. These are common outside of Iowa, but have no presence in Iowa case law. According to Professor Gary Taylor, Iowa State University's specialist on community & regional planning:

“courts have been known to advance new legal theories and standards in footnotes as a “heads up” that change may be coming (or welcomed if offered by a city in its zoning ordinance). If the court follows through in a later case by recognizing different standards for use and area variances, it would be bringing Iowa in line with the majority of states. In reality, this change would also bring the stated law more in line with the actual practice of boards of adjustment around the state.”

In keeping with the Dillon Rule, this new distinction, as outlined in the Zoning Ordinance will supply Iowa's Justices with the foundation in which to relax our incredibly strict standards on the applicability of variances.

Beyond the expanded definitions, new chapters and refined variance process, select changes were made based on my experiences in working with this Ordinance for five and a half years. Each of those changes are outlined in the following section.

Following my initial review, I contacted Mr. Derek Partridge, a former colleague of mine who was a Planning Technician for the City of Clive and a City Planner for Tempe, Arizona (Population 168,228). I worked with him on developing the new chapter additions, reviewing all my proposed changes and requesting his input on changes he saw that I did not, adding an additional professional layer and higher expertise and skillset to the development of the updated Ordinance.

Following changes have all been proposed and adopted by the Planning & Zoning Commission

Article Review and Changes

Article 1

General Provisions

General provisions remained largely unchanged. The old purpose was replaced with something more detailed and reflective of Atlantic.

Four new sections were added. Compliance with State and Federal Regulations; Severability Provision; Consistency with the Comprehensive Plan; and Publication. [A time limit on the effectiveness of building permits](#) was placed to prevent semi-completed construction projects for existing in perpetuity.

Article 2

Definitions

Definitions had many additions. Definitions are the lifeblood of the Zoning Ordinance. I have enjoyed many nuanced arguments with our more creative residents on topics ranging from the difference between a shed and a mobile home to what is a repair versus reconstruction. The definitions give the Ordinance teeth when people try to play games with the City. In my opinion, the greatest update needed for the Zoning Ordinance is a significant expansion of our definitions.

Article 3

Establishment of District and Boundaries

The only change of this chapter was to add the word “principal” to 3.040(4). Without this, it would suggest that no lot in Atlantic would be allowed a shed or garage unless it met yard requirements, which is simply not logical.

Article 4

R-1 Residential/Agriculture/Open Space

The two biggest changes to our agricultural zone was the expansion on regulations for commercial feedlots and an elimination of setbacks and lot size. I base this recommendation on reviewing the Planning Commission minutes and personal experience. Property owners in this zone would most likely contend that the regulations in this zone are too strict and place a burden on unobtrusive uses. Also, last year I lost a couple who wanted to develop a large storage facility for their tractors because the setbacks on their lot were too restrictive. Without the setbacks, this couple would have invested dollars into construction within City limits that would have made their farming operations more convenient, which is better for them and the community. Agricultural areas by their very nature should be the most relaxed regarding zoning regulations and standards due to the large amounts of space separating buildings from one another. Another minor change was the removal of the words “non-commercial” regarding allowed stables as an accessory use. [Single family homes are now a specified permitted use.](#)

Article 5

“R-2” Low Density Single Family Residential District

Generally, few changes are suggested for our low density residential zone. The current regulations have not proved to be a burden on property owners, nor ambiguous to myself or the City Attorney.

Development in these zones has been orderly and attractive. I do not see any reason to make the zone more restrictive. We could decrease the required setbacks; this would allow more flexibility for new subdivisions, home construction or expansion. However, I have not any issues or experiences which would lead me to encourage or discourage the idea.

The biggest changes are the addition of communications towers and solar energy systems as conditional uses. Other communities have integrated these uses into their ordinances. While solar energy has not become an issue, it could in the future and warrants discussion. The City dealt with issues regarding a proposed communications tower at the high school, in the past five years and the current Ordinance proved to poorly address the situation.

Article 6

“R-3” High Density Single Family Residential District

Unlike our low-density single family district, I have had many difficulties with property owners in this zone. Their requests are not radical, but many parts of our community were platted prior to 1920, when Planning Regulations started to become standard for local governments. Because of this, many homes have inadequate setbacks or do not meet minimum lot requirements, which then reclassify their homes and garages as nonconforming. This prevents homeowners from making additions and structural changes to their properties due to circumstances beyond their control. Overall, I think our older neighborhoods are still attractive and wonderful places to live.

I encourage the Planning Commission to give some thought to making zoning regulations for this district less strict. Additionally, I intend to propose that setbacks for this district be variable, pending a conditional use permit by the Board of Adjustment. The Board has shown great latitude with property owners being prevented from improving the property and have granted variances for this purpose, as requested. My primary concern with this is historic precedent of Iowa Courts to strike down variances that fail to meet the very strict legal tests imposed by the Courts. I am concerned many variances granted, if challenged in Court, would not be upheld. On the other hand, the Courts have shown more flexibility with conditional use permits and the State Supreme Court recently acknowledged that violating the setback is not comparable with an unpermitted use. Attorneys have speculated that this footnote in the Court's decision was a signal that the Court would be receptive to local governments showing more flexibility with setbacks and dimensional aspects of the Ordinance, while remaining restrictive for uses. However, the distinction must be made in the Ordinance. I think listing setbacks as conditional uses is a reasonable compromise and offers little risk to the community. This allows for the City to keep some of our necessary regulations while giving the Board of Adjustment the authority to allow a review each property on a case-by-case basis.

For comparative purposes. I have enclosed a sheet that compares our zoning regulations with those from four other Iowa communities: Washington, Perry, Carroll and Pella. You will note that our current regulations are the most restrictive concerning building height and minimum lot size for duplexes. Our front yard setbacks are not the most restrict but are still stricter than Washington and Perry. Our regulations for interior side yards are the least restrictive.

The street side yard was reduced from 25 feet to 14 feet for corner lots.

Article 7

“R-4” Multiple Family Residential District

Generally, few changes are suggested for our low density residential zone. The current regulations have not proved to be a burden on property owners, nor ambiguous to myself of the City Attorney.

Article 8

“R-5” High Density Affordable Family Residential District.

Generally, few changes are suggested for our low density residential zone. The current regulations have not proved to be a burden on property owners, nor ambiguous to myself of the City Attorney.

Article 9

“R-6” – Mobile Home Park District

Generally, few changes are suggested for our low density residential zone. The current regulations have not proved to be a burden on property owners, nor ambiguous to myself of the City Attorney.

The biggest change is the permit fee. I propose increasing it from \$1,000.00 to \$10,000.00. While this is a sizable increase, I believe it is warranted. In the event the City were to zone future land for a second mobile home park in Atlantic, it would be a sizable piece of property and generate a small amount of annual revenue through property taxes and require considerable time for zoning review the entirety of the project. The following is information on our only R-6 zone, Sycamore Village.

- Sold on February 2, 2015 to new owner for \$2,042,400.00.
- 20.45 acres or 890,802 square feet of land.
- Total assessed value of \$562,240.00

- Taxable value of \$485,082.00.
- Largest residential, taxable lot in Atlantic.

Technical correction: “f100 amperes” was changed to “100 amperes”.

Article 10

“C-1” – Highway Commercial District

The most notable changes in the Highway Commercial District are the reduction of 77 explicit permitted uses down to 7. This is modeled after the Zoning Ordinance from the City of Perry. We are not limiting permitted uses, simply using broad language to be more concise and flexible in our permitted uses. Out of Pella, Perry, Carroll and Washington, only Atlantic states each and every variation of business permitted in our Zones. I see this as a victory for common sense and the elimination of unnecessary red tape.

Article 11

“C-2” – Administrative Professional District

Generally, few changes are suggested for our Administrative Professional Zone. The current regulations have not proved to be a burden on property owners, nor ambiguous to myself of the City Attorney. The word Eleemosynary was eliminated. Perhaps this was a commonplace word before my time, but the only time I ever seen reference of this word was as a starship in science fiction novel. I think replacing it with the more direct “charitable” will enhance understanding. Conditional Uses were slightly restructured for the sake of brevity. Other changes were to remove redundancies and correct obvious errors.

Article 12

“C-3” – Central Business District

Like our Highway Commercial District, the biggest changes were to reduce permitted uses from 87 to 4. The only other major changes are formatting and structure.

Article 13

“I-1” Light Industrial District

Yet again, we are eliminating unnecessary verbiage by reducing our permitted uses from 28 to 8. The inclusion of cellular towers, solar and wind energy devices will be regulated under independent chapters.

Article 14

“I-2” Heavy Industrial District

This chapter has taken an entirely different approach to development. It allows for any use, excluding those specifically listed conditional uses that must be approved by the Board of Adjustment. This is modeled again after the City of Perry, except their Ordinance has conditional uses approved by the City Council. This is understandable as these are the most controversial uses one can permit. However, I felt that superseding the Board of Adjustment in favor of the City Council is a glaring political move that I do not feel would be viewed favorably by the State Courts.

Article 15

F-Flood Plain District (Overlay District)

As the City’s designated “Flood Plain Manager” by the State of Iowa, I made it a point to visit with Jason Conn, the Iowa Department of Natural Resources (IDNR) State Flood Coordinator for Municipalities. I went to the Wallace building in Des Moines and met with him going over our regulations. I pointed out Atlantic has two Flood Codes, Article 15 in the Zoning Ordinance and Chapter 160 in the Code of Ordinances. Jason reviewed

both and stated Chapter 160 is less complex, has been updated much more recently than Article 15, and closely reflects the regulations set forth by FEMA, the Flood Insurance Program and the IDNR. He recommended the repeal of Article 15 and a few minor updates to Chapter 160. That is reflected in my changes.

Article 16

“PUD” Planned Unit Development Overlay District

The changes made in this section reflect the need for our Ordinance to acknowledge that there are large commercial lots in the community that have multiple parcels. The Noddle Development that includes Hy-Vee, Rumors and the Salvation Army. Our Ordinance does not comprehend this so I have had to find ways to “make it work.” My changes reflect this and also reduce some bureaucratic red tape while expanding the flexibility of the Planning & Zoning Commission and City Council to engage with developers on new and innovative property development concepts.

Article 17

Accessory Uses

The majority of changes made to the accessory uses chapter involved either the addition of common sense uses or adjustment. Specifically uses added included: Tree homes, communal services for multi-family and trailer park residents, garage sales, living quarters for employees and pet kennels/homes.

The only other major changes were to the maximum allowed accessory building height and the addition of an 8 foot fence for properties abutting the railroad.

I changed the height of accessory buildings from 12 to 15 feet or in the instance of garages, a height equal to or less than the principal building. This was done because I have had many instances where home owners in the R-3 High Density Single Family Residential District where we had to be particularly creative in making sure their garage site plans met the twelve foot maximum. I even had a contractor tell me once that it would not be possible to construct a two car garage that remained only twelve feet in height. By loosening this restriction, we are allowing residents equal access to amenities that are enjoyed by residents in the R-2, Low-Density Single Family District.

The fence height for railroad properties was added as a reasonable measure for security and for the reduction of noise pollution.

All of these are in addition to the formatting and style changes made throughout the Article.

Article 18

Nonconforming Uses

The City has been emphasizing on redevelopment and filling in empty lots in the historic areas of Atlantic. However, most of these areas were platted and the homes built prior to 1932, when the first Zoning Ordinance was enacted in Iowa. Just because someone lives in these areas does not mean that they should not be allowed to improve on their homes. The areas where we have rezoned for industrial development can do so anyway, but for many of our R-3, or “High-Density Single Family” lots, the homeowner has no idea they live on a nonconforming lot and are banned from making home additions or even accessory structures, which has been approximately 90% of the cases brought before the Board of Adjustment. The striking of certain portions of the existing Article will make redevelopment possible and fair in the parts of town where it is most needed.

I have recently found two instances where the existing ordinance prevents interested buyers in a property from securing a mortgage or insurance. Unless the Commission and Council are fully committed to removing all the

homes in the area to make way for industrial development, I recommend that we remove 18.030 "Nonconforming Uses to be discontinued" from the ordinance. In the final draft of this document, that section has been removed.

18.020(5) was added stating

"5. Residential properties in industrial zones shall not be considered nonconforming uses and may be completely rebuilt if destroyed."

Article 19

Home Occupations

Generally, few changes are suggested for this chapter. Pella does not recognize home occupations. Perry has home occupations but it is very brief and not useful. Carroll's section was smaller to ours but contained two provisions I appropriated. The City of Washington's Home Occupations Ordinance is nearly identical to ours. The most controversial change recommended was the inclusion of guns and similar items as a conditional use. This reflects a decision made by the Board of Adjustment earlier this year. This was included to allow for fairness and to ensure that exactly the same federal regulations are followed and safety precautions are taken. Massage therapy was added as a new profession as this was agreed as falling under the permitted uses but was not specified.

Article 20

Off – Street Parking and Loading

This ordinance was completely reformatted and restructured by Mr. Partridge.

Article 21

Signs

Mr. Partridge completely redid this ordinance to align it with modern planning standards. The section limiting the time in which political signs can be posted had been stuck. In 1994, the Supreme Court ruled on *City of Ladue v. Gilleo* stating such ordinances were unconstitutional. In reviewing other cases and precedent, outside of outright pornography, it appears cities have very little power to control the actual content of signage.

Article 22

Supplemental Development Standards

Maximum dwelling occupancy standards or the new Section 22.060 was inserted to deal with density issues in our residential zones and public safety. Some of the language was borrowed from the City of Ames. It was wise for the Commission to use an objective, square footage based standard as the Iowa House of Representatives passed House File 184 out of subcommittee in 2014. This bill would make it illegal to control occupancy based on familial language, which our proposed Ordinance largely avoids.

Since the entire ordinance is moving towards broader language concerning permitted uses that relies more on common sense than legal technicalities, I shifted the day-to-day interpretation of Zoning Ordinance from the Commission to the Office of Zoning Administrator. This will ensure fast and expedient answers to basic questions. As always all major projects in Atlantic, outside of City facilities are reviewed by the Planning & Zoning Commission before the project commences. With this said, I have included necessary oversight in creating a process in which appeals to the Zoning Administrator's decisions are sent to the Board of Adjustment and the ruling of the Board sent via letter of transmittal to the Planning & Zoning Commission.

Language concerning the triggering commercial architectural design standards on principal structures when an addition is added was removed. This subsection places a considerable cost burden on small businesses going through an expansion stage. The Commission may wish to retain this language so the building remains uniform. In my opinion, I would not want to force the relocation of an existing business or force them to borrow extraordinary amounts of money to comply with our design standards.

The Section concerning Historic Preservation was removed as this Commission has been inactive for some time. There is no need to make reference to an obsolete Commission.

Article 23

Exceptions and Modifications Sections

The only changes here were to expand exceptions for our R-3 district to make them more flexible for existing homes. The front yard shall apply to 60% of the frontage building line, this will allow for extensions or additions to portions of the building front for enclosed entryways. Additionally, 23.020(2) “100 feet” was replaced by “within sight distance of the property in question” and “15 feet” was reduced to “10 feet.”

In the R-3 zone, expansion may be allowed on buildings and structures not in conformance to the yard requirements and setbacks, provided a written and signed document is provided by the building permit applicant from the affected abutting property owner.

Article 24

Amendments

The only change made to this article was to draw a distinction between amending the Zoning Map (rezoning) and amending the Zoning Ordinance, itself. The language in Section 24.050 was borrowed from the City of Indianola.

Language requiring a sign of a specific size be placed on the property being rezoned was removed. This is bureaucratic tedium and not required under Iowa Code 414.

Article 25

Administration and Enforcement

A number of significant changes have been proposed for this Article. They are as follows.

- Refinement and reduction of the number of structures requiring building permits.
- Expansion of duties reflects actual requirements on the Zoning Administrator.
- Punctuation, grammar and spacing corrections.
- Increase in penalties for violating the Ordinance.
- Projects can no longer go on forever (St. Martin House)
- Inclusion of gender pronouns beyond the masculine. My position could be held by either sex.
- Votes by the Board of Adjustment will be recorded individually, *as required*.
- Removal of structural alternations from non-conforming uses.
- The biggest change is the division of the basic variance into two kinds, the dimensional and use variance. This was subtly encouraged by the Supreme Court of the State of Iowa through their footnotes regarding their ruling on the *Christensen vs. City of Johnston* Case . We will be the first City in the State if Iowa to make this division and in the event of litigation, can refer back to the Court’s own words. As the adjudicators of Iowa Code, they would not make such a recommendation if they did not believe it to be legal.

Article 26
Site Plan Requirements

It is my understanding that the Planning Commission desired additional information on the site plans provided at the last meeting. This provides a catalyst for us to review our site plan requirements.

For comparative purposes. I have enclosed a sheet that compares our site plan requirements with those from four other Iowa communities: Pella, Clear Lake, Sioux Center and Washington. There is great variability amongst Iowa communities in what they require for site plans. The City of Washington for example only has six requirements, two of which are totally unique. Pella on the other hand has very strict requirements for submission, all the way down to the scaling on the plans.

Since the site plan regulations are designed to inform the Commission of proposed construction, our requirements should reflect what the Planning Commission desires. Accordingly, I have made only a few minor additions to our requirements. I am prepared to resubmit this section to the Commission if they would like to see the article further restructured or would like to see significant additions or changes.

Article 27 NEW ARTICLE
Solar Energy

This new Article is needed as alternative energy sources are becoming more prevalent in the United States. While the City has not dealt with this issue, I would like for us to be prepared. I had these first reviewed by our consultant, Mr. Partridge. Made adjustments where he thought appropriate. I also had this Article reviewed by Atlantic Municipal Utilities General Manager, Steve Tjepkes and he stated "These looked fine to us. The zoning rules look like some good common sense things to have in ordinance."

Article 28 NEW ARTICLE
Wind Energy

Much like solar energy, this proposed article is needed as alternative energy sources are becoming more prevalent in the United States. While the City has not dealt with this issue, I would like for us to be prepared. I had these first reviewed by our consultant, Mr. Partridge. Made adjustments where he thought appropriate. I also had this Article reviewed by Atlantic Municipal Utilities General Manager, Steve Tjepkes and he again stated "These looked fine to us. The zoning rules look like some good common sense things to have in ordinance."

Article 29 NEW ARTICLE
Communication Towers

This is an important section that needs to be added to the Zoning Ordinance. To date, the most controversial and most time-consuming projects I have managed for the City concerned the Monopole Tower to be built on the grounds of the High School by i-Wireless. The City was not armed with an Ordinance to protect or guide the development of communication towers. This Ordinance will ensure we are not placed in this decision.

Article 30 NEW ARTICLE
Landscape Guidelines

This article is proposed to enhance the beauty and aesthetic attractiveness of Atlantic towards our residents and visitors. This was given more consideration due to the lower cost burden placed on property owners as opposed to specific design standards.

Article 31
Schedule of Fees

Permit fees are a mixture of old and new. The majority of fees and how they are calculated remain unchanged. However, new fees have been added and some structures people used to require permits for are now exempted.

In determining this scale I kept in mind three things:

1. How much time will this permit or site plan consume of the City Administrator's time that could be devoted to other tasks?
2. Who is paying for the fee? Being sensitive to family budgets and not overly generous to national industries need to be balanced.
3. The impact on General Fund Revenues. There is growing pressure on the General Fund in rising costs and in state-mandated adjustments to taxable property. These fees are an important part of keeping the City going.

Monopole towers are an example of the new fees. These towers are critical infrastructure for the cellular community but can be very technical and controversial. I spent more time on the iWireless Tower variance application than I did the Southern Heights Third Addition proposal for Cohen-Esrey or the Southern Heights II Rezoning for Don Sonntag. During the iWireless hearings, it was found they intended to lease the ground from the High School for \$1,000.00 a month! Accordingly, I think the time these towers consume of myself, the Board of Adjustment and the Planning & Zoning Commission justify a relatively high building permit.

Wind systems are also a schedule of new fees. Wind turbines are massive, visually unattractive structures that are likely to generate controversy if located in City Limits. I think the time these turbines would consume of myself, the Board of Adjustment and the Planning & Zoning Commission justify a relatively high building permit.

Home occupations now have a small fee. These are business uses in residential areas and can become problematic. The development of the Home Occupation License for each business does take a little time and provides the business owner with the security they are operating under City Code.

Swimming pools are regulated by our Ordinance and have more safety requirements that may need inspection, justifying a special and higher fee.