

CHAPTER TWO - GENERAL PROVISIONS

I. JURISDICTION

The Mercer County Zoning Ordinance shall apply to the area of Mercer County exclusive of the Fort Berthold Indian Reservation and the zoning jurisdictions of the incorporated cities of Mercer County.

II. INTENT

It is the intent of the corporate limits of this Ordinance that the area within three (3) miles adjacent to the municipality shall be a zone of coordination for development between the Planning Commissions of the County and of the municipality within the County. Before taking action on an application for zoning authorization in a zone of coordination, the County Planning Commission may request a statement of acknowledgement and recommendation from the municipality in whose zone of coordination the zoning authorization is sought.

III. EROSION AND SEDIMENT CONTROL PLAN

An erosion and sediment control plan may be requested by the Planning Commission for those uses requiring substantial land modification or earth movement, or for non-agricultural uses on those soils identified by the Mercer County Soil Conservation District as belonging to wind erosion groups 1 or 2, or for uses on steep slopes (9 percent or greater) or for other types of critical erosion. This plan is to be made by the land user, and is to have written approval by the Soil Conservation District.

A compliance bond may be required by the Board of County Commissioners, the amount thereof being based on the complexity of control measures as determined by the Soil Conservation District. The bond shall be filed with the County Auditor prior to the issuance of a Certificate of Zoning Compliance.

IV. COMPLIANCE AND EFFECTIVE DATE

- A. The regulations set by the provisions of this Ordinance shall apply uniformly within each district to each class or kind of structure of land.
- B. Both the Planning Commission and the Board of County Commissioners may require reasonable information deemed necessary.
- C. From the 3rd day of June, 1975, each new use shall be in compliance with the provisions of this Ordinance.

V. AMENDMENTS

The Mercer County Planning Commission, the Board of County Commissioners or any person may initiate an amendment to the Mercer County Zoning Ordinance in the manner herein set forth.

VI. PROCEDURE FOR MAKING AMENDMENTS

- A. Applications for amendments shall be submitted to the Land Use Administrator. Applications shall include:
 1. Name and address of the applicant.
 2. Date of the application.
 3. The applicant's statement of interest and a description of the proposed amendment.
- B. Upon receipt of such application, the Land Use Administrator shall immediately file such application with the County Auditor, shall set a date for a public hearing on the proposed amendment, and shall notify both the applicant and the Planning Commission of the date of such public hearing.
- C. Notice of the hearing shall be the responsibility of the applicant. Notice of the hearing shall be published once a week for two consecutive weeks prior to the hearing, in the official county newspaper. Notice shall include the time, place and purpose of the amendment, and shall also state the times at which it shall be available to the public for inspection and copying in the office of the County Auditor. The notice of hearing for a change of zoning shall also include a boundary line legal description of the site for which the change of zoning is sought. Proof of publication of the notice shall be filed by the applicant with the County Auditor and a copy thereof shall be presented to the Land Use Administrator.
- D. At the public hearing, the applicant and other persons with an interest in the amendment will be allowed to present information to the Planning Commission.
- E. Following the public hearing, the Planning Commission shall submit its recommendation to the Board of County Commissioners for a decision.
- F. Upon receipt of the recommendation of the Planning Commission, the Board of County Commissioners may request such further additional information from the Planning Commission as the Board of County Commissioners deems advisable, and upon receipt of such information, the Board of County Commissioners may either reject the amendment or adopt same with such changes as it deems advisable. Each amendment

involving a change of zoning district classification shall be made by written resolution of the board of County Commissioners and the written resolution shall contain a description of the change of zoning district classification and a legal description of the land subject of said change. Any amendment adopted shall be published and shall take effect in the manner provided by Chapter 11-33 of the North Dakota Century Code.

VII. GRIEVANCE

Any person aggrieved by any amendment to the Mercer County Zoning Ordinance may petition for a separate hearing thereon before the Board of County Commissioners, pursuant to and in the manner provided by Section 11-33-10 of the North Dakota Century Code.

VIII. NONCONFORMING USE

Any parcel of land, structure, use of land or use of structures which are lawful before this Ordinance was passed, but would be prohibited, regulated or restricted under the terms of this Ordinance or future amendments, shall be known as non-conforming uses. It is further the intent of this Ordinance that nonconformities shall not be enlarged upon, expanded or extended. (Reference 5.4.3 (5).).

If a nonconforming use of land or structure ceases for a period of twenty-four (24) consecutive months, any subsequent use of such land or structure shall conform to the regulations of the district in which it is located.

If a nonconforming structure is damaged or deteriorated, and the cost of repairs is greater than fifty (50) percent of the replacement cost, the use shall be discontinued.

IX. PROCEDURE FOR APPROVAL OF A CONDITIONAL USE.

Applications for approval of a conditional use shall be submitted to the County Auditor or the Land Use Administrator. Included in the application shall be:

- A. Applicant's name and address.
- B. Date of application.
- C. Description and map of the site and its relationship to the surrounding area.
- D. Sketch showing size and shape of the site.
- E. Preliminary map showing location of structures to be developed on the site.
- F. Topographic map showing existing site contours. Where applicable to mining activities, a map showing proposed post mining site contours is also required.

- G. General soils of the site.
- H. Location of all existing and any proposed utilities.
- I. Parking plan showing off-street parking areas, loading.
- J. A timing schedule indicating the anticipated starting and completion dates of the development.
- K. Written approval of respective highway authority regarding status of public access road(s), private approaches, etc., where applicable.
- L. Names and addresses of adjacent property owners.
- M. Written approval from the appropriate School District regarding school bus routes and the suitability of school bus access, where applicable.
- N. Any reasonable information the Planning Commission deems necessary.

X. HEARING - CONDITIONAL USE AND VARIANCE APPLICATIONS

The Planning Commission shall hold a public hearing on all conditional use applications before action is taken on an application for approval by the Planning Commission and the County Commission.

The County Commission may elect to act on a variance without a public hearing or recommendation from the Planning and Zoning Commission. The County Commission may also elect to forward a variance application to the Planning Commission for the purpose of holding a public hearing before taking final action.

Notice of the public hearing shall be published in the official newspaper of the County at least one week prior to the hearing. This notice is the responsibility of the applicant. In addition to time, place and purpose of the hearing, the notice of hearing shall also include a description of the conditional use or variance applied for. A boundary line legal description of the site under consideration for approval of a conditional use may also be required. Proof of publication of the notice shall be filed by the applicant with the County Auditor and a copy thereof shall be provided to the Land Use Administrator, prior to the public hearing.

Prior to recommending approval or disapproval of a conditional use or variance, the Planning Commission may hold further hearings and work sessions on the applications as the Planning Commission deems necessary.

In recommending approval of a conditional use or variance, the Planning Commission may set specific conditions to such approval in addition to those applicable thereto as stated in this Ordinance and recommend to the Board of County Commissioners that the same specific conditions be attached by the Board to any approval of such conditional use or variance. The recommendation may state which of the conditions should be met prior to final approval of the applications.

Upon completion of all hearings and work sessions, the Planning Commission shall recommend to the Board of County Commissioners approval or disapproval of the conditional use or variance.

If the applicant is not present at a hearing or meeting, the Land Use Administrator shall notify the applicant in writing of Planning Commission action. The Land Use Administrator shall also notify the Board of County Commissioners of Planning Commission recommendations including conditions that are forwarded to the Board for final action.

XI. COUNTY COMMISSION CONSIDERATION, CONDITIONS, CERTIFICATE OF APPROVAL OF A CONDITIONAL USE OR VARIANCE.

Upon receiving the recommendation of the Planning Commission regarding an application for approval of a conditional use or variance, the Board of County Commissioners shall consider such application at its next regular meeting, to the extent practicable, and, upon the completion of such consideration, shall deny or approve an application. Prior to denying or approving the conditional use or variance, the County Commission may request further information and/or assistance from the Planning Commission, or other persons, as it deems appropriate.

The Land Use Administrator shall furnish the applicant a copy of conditional use or variance approval. If the application is denied, the Land Use Administrator shall notify the applicant in writing of a denial of an application for approval of a conditional use or variance.

Prior to final action on an application, the Board of County Commissioners may require a boundary survey and plat of the site. The survey and plat, if required, must be made and filed in accordance with North Dakota Century Code 40-50.1-01. The Board may attach other specific conditions to such use as the Board deems necessary and in addition to those applicable thereto as stated in this Ordinance.

The Board may require and specify that certain or all of such conditions be met prior to the issuance of a Certificate of Approval of a Conditional Use.

In order for zoning authorization and approval for a conditional use to continue, each condition applying to such use as stated in this Ordinance or attached to such use by the Board of County Commissioners shall be met within the time period prescribed by the specific condition or by the Certificate of Approval of a Conditional Use for such use.

Upon approval of a conditional use, the Board may issue to the applicant a Certificate of Approval of a Conditional Use and, if such Certificate of Approval specifies that certain of the conditions must be met prior to the issuance of a Certificate of Zoning Compliance for such use, the Board shall indicate the following procedures be followed for the applicant to obtain such Certificate of Zoning Compliance:

- A. The applicant shall present evidence to the Board of County Commissioners that those certain conditions required have been met. Upon its satisfaction that such conditions have been met, the Board of County Commissioners shall issue to the applicant a Certificate of Zoning Compliance for such conditional use.

XII. ACCESSORY USES

- A. Shall be clearly incidental and customarily associated with the operation of a permitted use or conditional use in a zoning district.
- B. Shall be operated and maintained under the same ownership and on the same lot or site approved for such permitted or conditional use.
- C. Shall not contain structures or structural features inconsistent with such permitted or conditional use.
- D. May include residential occupancy only with the written approval of the Board of County Commissioners.
- E. May be allowed once such permitted or conditional use is present or under construction.
- F. Shall comply with the district regulations of the zoning district; and
- G. May be allowed only if such use is not set forth in this Ordinance as a permitted, conditional or temporary use.

An accessory use may be allowed only if the Board of County Commissioners first determines that all the requirements of this section are met.

Each Certificate of Zoning Compliance issued pursuant to this section shall particularly describe the nature, type and size of the accessory use which is approved by the issuance of said Certificate.

XIII. USES NOT SPECIFIED

All uses of land, buildings or structures not specified in this Ordinance as permitted, conditional, temporary, are prohibited in Mercer County unless deemed to be accessory or specifically approved by the Board of County Commissioners.

XIV. SCHOOL BUS ACCESS

Upon approval of a non-farm residence conditional use permit, or upon issuing a certificate of zoning compliance for a farm residence in an agricultural zone, it shall become the responsibility of the applicant, and all subsequent owners, to provide suitable turn around, frontage roads or other bus access to the residence, as determined by the school district serving the non-farm residence.

XV. COUNTY ROAD and HIGHWAY POLICY

Road maintenance, including snow removal, places top priority on major collector roads; followed by minor collector roads; followed by rural collector roads; and followed by other rural roads. A copy of a county map identifying these roads is available at the offices of County Auditor and County Highway Superintendent.

Emergency road maintenance will only be for medical emergencies, fire response, and other life threatening situations. School busing, mail service, fuel needs, and other services are declared to be outside of life threatening emergencies. Road maintenance and snow removal services that are not life threatening emergencies will be billed to the party making the request according to the county fee schedule.

The cost of road construction needed for rural development including commercial, industrial, recreational, and residential uses are the responsibility of the applicable company, individual, or developer.