

City of Ashby, County of Grant, State of Minnesota

Ordinance 151

An Ordinance Establishing a Zoning Code

This Ordinance shall replace Ordinance 5A “An Ordinance Establishing a Zoning Code for the City of Ashby and Providing for the Administration Thereof.”
Section

General Provisions

- 151.01 Authorization, intent and purpose
- 151.02 Title
- 151.03 Interpretation of terms
- 151.04 Definitions
- 151.05 Zoning map
- 151.06 Annexed land
- 151.07 Compliance with ordinance

Zoning Districts

- 151.20 Classification of zoning districts
- 151.21 R-1 Single-Family Residential District
- 151.22 R-2 Multiple-Family Residential District
- 151.23 Commercial Business Districts
- 151.24 Industrial Districts
- 151.25 Ag/Residential Districts

Permits and Requirements for Fences, Walls or Hedges

- 151.45 Application
- 151.46 General requirements
- 151.47 Residential regulations
- 151.48 Variance

Administration and Enforcement

- 151.49 Consistency with state law
- 151.50 Applications
- 151.51 Public notice and hearings
- 151.52 Final actions
- 151.53 Notice of decision
- 151.54 Land use permit required
- 151.55 Conditional use permits
- 151.56 Board of Appeals and Adjustments
- 151.57 Variances
- 151.58 Nonconforming uses
- 151.59 Amendments
- 151.60 Appeals
- 151.61 Record of decisions
- 151.62 Fees

151.99 Enforcement

GENERAL PROVISIONS

151.01 AUTHORIZATION, INTENT AND PURPOSE.

(A) This ordinance is enacted pursuant to the authority granted by the Municipal Planning Act, M.S. 462.351 et seq. The intent of this ordinance is to ensure public health, safety and general welfare in accordance with the adopted development goals, plans and policies as stated hereto. This plan for the city is to ensure that the land uses of the city are properly situated in relation to one another, providing for adequate space for each type of development; to control the density of development in each area of the city so that the property can be adequately serviced by such governmental facilities as streets, schools, recreation and utilities systems; to direct new growth into appropriate areas; to protect existing property by requiring that the development afford adequate light, air and privacy for persons living and working within the city; to improve the quality of the physical environment of the city; to protect and maintain property values, and to preserve and develop the economic base of the city.

151.02 TITLE.

This Ordinance shall be known as the “City Zoning Ordinance” except as referred to herein, where it shall be known “this Ordinance” or “this section.”

151.03 INTERPRETATIONS OF TERMS.

Unless specifically defined below, words or phrases used in this Ordinance shall be interpreted so as to give them the same meaning as they have in common usage and so as to give this ordinance its most reasonable application. For the purpose of this Ordinance, the words “must” and “shall” are mandatory and permissive. All distances, unless otherwise specified, shall be measured horizontally. For the purpose of this ordinance, the terms in 151.04 have the meanings given them.

151.04 DEFINITION OF TERMS.

For the purpose of this ordinance, the following definitions shall apply, unless the context clearly indicates or requires a different meaning.

ACCESSORY STRUCTURE OR FACILITY. Any building or improvement subordinate to a principal use which, because of the nature of its use, can reasonably be located at or greater than normal structure setbacks.

ACCESSORY USE. A use on the same lot with and incidental and subordinate to the principal use of the structure.

BUILDING LINE. A line parallel to a lot line or the ordinary high water level at the required setback beyond which a structure may not extend.

COMMERCIAL USE. The principal use of land or buildings for the sale, lease, rental or trade of products, goods and services.

CONDITIONAL USE. A land use or development as defined by ordinance that would not be appropriate generally but may be allowed with appropriate restrictions as provided by official controls upon a finding that certain conditions as detailed in the zoning ordinance exist, the use or development conforms to comprehensive land use plan of the community, and the use is compatible with the existing neighborhood.

DECK. A horizontal, unenclosed platform with or without attached railings, seats, trellises, or other features, attached or functionally related to principal use or site and at any point extending more than three feet above ground level.

DWELLING, DUPLEX, TRIPLEX and QUAD. A dwelling structure on a single lot, having two, three, and four units respectively, being attached by common walls and each unit equipped with separate sleeping cooking, eating, living and sanitation facilities.

DWELLING, MULTIPLE. A building or portion thereof used for occupancy by three or more families living independently of each other.

DWELLING, ONE-FAMILY. A building used exclusively for occupancy by one family.

DWELLING, TWO-FAMILY. A building used exclusively for occupancy by two families living independently of each other.

DWELLING SITE. A designated location for residential use by one or more persons using temporary or movable shelter, including camping and recreational vehicle sites.

DWELLING UNIT. Any structure or portion of a structure or other shelter designed as short or long-term living quarters for one or more persons, including rental or time-share accommodations, such as motel, hotel and resort rooms and cabins.

HOME OCCUPATION. A lawful occupation customarily carried on by a resident of a dwelling as an accessory use within the same building.

INDUSTRIAL USE. The use of land or buildings for the production, manufacture, warehousing, storage or transfer of goods, products, commodities or other wholesale items.

JUNK YARD. Land and structures used for the storage or keeping of junk, including scrap metals, or for the dismantling or wrecking of automobiles or other machinery, other than the storage of materials which is incidental or accessory to any business or industrial use on the same lot.

LIGHT INDUSTRIAL. The assembly, fabrication or processing of goods and materials using processes that ordinarily do not create noise, smoke, fumes, odors, glare or health or safety hazards outside the building or lot where the assembly, fabrication or processing takes place, where the processes are housed entirely within a building, or where the outdoor storage of goods and materials used does not exceed 25% of the floor area of all buildings on the lot.

LOT. A parcel of land designated by plat, metes and bounds, registered land survey, auditors plot, or other accepted means, and separated from other parcels or portions by that description for the purpose of sale, lease or separation. A lot must be situated and have its principal frontage on a public street.

LOT, CORNER. A lot situated at the intersection of two or more streets, or bounded on two or more adjacent sides by street lines.

LOT, INTERIOR. A lot other than a corner lot.

LOT WIDTH. The shortest distance between lot lines measured at the midpoint of the building line.

NONCONFORMING STRUCTURE OR USE. A structure or use lawfully in existence on the effective date of this ordinance or any amendment thereto, and not conforming to the regulations for the district in which it is situated.

NONCONFORMITY. Any legal use, structure or parcel of land already in existence, recorded, or authorized before the adoption of official controls or amendments thereto that would not have been permitted to become established under the terms of the official controls as now written, if the official controls had been in effect prior to the date it was established, recorded or authorized.

PLANNED UNIT DEVELOPMENT, COMMERCIAL. Typically include uses that provide transient, short-term lodging spaces, rooms or parcels, and their operations are essentially service-oriented. For example: hotel/motel accommodations, resorts, recreational vehicle and camping parks, and other primarily service-oriented activities are Commercial Planned Unit Developments.

PLANNED UNIT DEVELOPMENT, RESIDENTIAL. A use where the nature of residency is non-transient, and major or primary focus is not service-oriented. For example: residential apartments, manufactured home parks, townhouses and full-fee ownership residences would be considered as Residential Planned Unit Developments. To qualify as a Residential Planned Unit Development, a development must contain at least five dwelling units or sites.

151.05 ZONING MAP.

This ordinance has no effect until the boundaries of the use districts are delineated on an Official Zoning Map, which, once it is adopted by ordinance after notice and hearing as provided in M.S. 462.359, as it may be amended from time to time, and after a certified copy is filed with the County Recorder as required by M.S. 462.36, as it may be amended from time to time, is hereby adopted by reference and declared to be a part of this ordinance. This map shall be on permanent file and available for public inspection in the City Office. It shall be the responsibility of the Clerk or other person appointed by the City Council to administer this ordinance, to maintain and keep the map up to date, and to record each amendment thereto with the County Recorder within 30 days after official publication of the ordinance adopting the amendment.

151.06 ANNEXED LAND.

Any land hereafter annexed to the city shall be considered to be in the district that is delineated on the adjacent areas than are designated for orderly annexation, unless otherwise reclassified.

151.07 COMPLIANCE WITH ORDINANCE.

No structure or land shall hereafter be used or occupied and no structure shall hereafter be erected, constructed, reconstructed, moved or structurally altered, except in conformity with the regulations specified in the Zoning Ordinance for the district in which it is located.
Penalty, see section 151.99

ZONING DISTRICTS

151.20 CLASSIFICATION OF ZONING DISTRICTS.

- (A) R-1 Single Family Residential District
- (B) R-2 Multi-Family Residential District
- (C) Industrial and Commercial Business Districts
- (D) Ag/Residential

151.21 R-1 SINGLE-FAMILY RESIDENTIAL DISTRICT.

(A) *Purpose.* The purpose of the R-1 Single Family Residential District is to provide for moderate density one and two-family dwelling units and directly related, complementary uses.

(B) *Permitted uses and structures.*

- (1) (a) One and two-family dwelling units.
- (b) Public parks, playgrounds, athletic fields and other recreational uses.
- (c) Churches, public and private schools and publicly-owned buildings and facilities.
- (d) Agricultural and forestry.

(C) *Accessory uses.*

(1) Customary accessory uses incidental to the principal uses such as private garages, screen porches, play equipment and signs, as set forth in division (D)(1) of this ordinance.

(2) The renting of rooms by a resident family for lodging purposes only, and for not more than two rooms in a one-family dwelling.

(D) *Conditional uses.*

(1) Customary home occupations in a residence, provided that such occupation shall be carried on in the main building or any building located on the same premises, and provided further than not more than 25% of the floor space of the residence, and outbuilding combined, is used for this purpose, and no articles for sale be displayed so as to be visible from the street. Also the conduct of the home occupation shall result in no change in the outside appearance of the building or land, or other visible evidence of the conduct of the home occupation, other than one sign, not exceeding three square foot in area, non-illuminated and mounted flat against the wall of the dwelling. No traffic shall be generated by such home occupation in greater volume than would normally be expected in a residential neighborhood.

(2) Hospitals and nursing homes, day care centers and cemeteries.

(3) Accessory buildings other than private garages, screen houses, signs (as set forth in division (D)(1) of this section) and play equipment.

(E) *Lot requirements and setbacks.* The following minimum requirements shall be observed in an R-1 District, subject to additional requirements, exceptions and modifications set forth in this ordinance:

(1) *Lot area.* 10,000 square feet (100 x 100).

(2) *Lot width.* 75 feet.

(3) *Setbacks.*

(a) *Front yards.* Not less than 30 feet; except in the case of existing structures, the front set-back will be determined to be in-line with those existing structures on that same street.

(b) *Side yards.* Minimum of 6 feet on one side and 8 feet on the other from outer edge of eaves to lot line.

(c) *Rear yards.* 15 feet.

(4) *Detached accessory building setback requirements.* At least 18 inches from edge of eaves to lot line-this applies to the side yard and back yard. Accessory building in the front yard must follow the 30 foot setback requirement.

- (5) *Access.* All lots shall front on and have ingress and egress by means of a public right-of-way.

151.22 R-2 MULTIPLE FAMILY RESIDENTIAL DISTRICT.

(A) *Purpose.* The purpose of the R-2 Multiple Family Residential District is to provide for medium density housing in multiple family structures and directly related complementary uses.

(B) *Permitted uses and structures.*

- (1) Any use permitted in a Single-Family Residential District.
- (2) Multiple-family dwelling.

(C) *Accessory uses.* Any use permitted in Single-Family Residential District.

(D) *Conditional uses.* Any use permitted in Single-Family Residential District.

(E) *Lot requirements and setbacks.* The following minimum requirements shall be observed in R-2 Districts, subject to additional requirements, exceptions and modifications set forth in this ordinance:

- (1) *Lot area.* 10,000 square feet for one and two-family dwellings and 3,000 square feet per dwelling unit for multiple-family dwellings.
- (2) *Lot width.* 75 feet for one and two-family dwellings, and 100 feet for multiple family dwellings.
- (3) *Setbacks.*
 - (a) *Front yards.* Not less than 30 feet.
 - (b) *Side yards.* Minimum of 6 feet on one side and 8 feet on the other side from outer edge of eave to lot line.
 - (d) *Rear yards.* 15 feet.
- 4) *Detached accessory building setback requirements.* At least 18 inches from edge of eaves to lot line-this applies to the side yard and back yard. Accessory building in the front yard must follow the 30 foot setback requirement.
- (5) All lots shall front on and have ingress and egress by means a public right-of-way.

151.23 C-1 COMMERCIAL BUSINESS DISTRICTS.

(A) *Purpose.* The purpose of the Commercial Business District is in recognition of the existing commercial business and the need for its future expansion, rehabilitation and redevelopment.

(B) *Permitted uses and structures.*

- (1) Business and commercial establishments including but not limited to the following:
 - (a) Retail establishments, including grocery, hardware, drug, clothing, variety and furniture stores; eating and drinking places, auto dealers, automobile service stations, farm implement dealerships, farm supply stores, farm services and meat locker shops.
 - (b) Personal services, including laundries, beauty shops, barber shops, funeral homes, shoe repair shops, printing and publishing shops and photographic studios.
 - (c) Professional services, including medical and dental clinics and attorney's offices.
 - (d) Repair services, including automobile, jewelry, radio and television repair shops, appliance repair shops, farm and implement repair shops, plumbing contractor's shop and electrical contractor's shop.
 - (e) Entertainment and amusement services, including motion picture theatres, recreation halls and bowling alleys.
 - (f) Lodging services, including hotels and motels.
 - (g) Finance, insurance, real estate and tax services.
- (2) Public and semi-public buildings, including post office, fire hall and city hall.
- (3) Private clubs.
- (4) Apartments, provided they are located above the first floor level.
- (5) Automobile parking lots.
- (6) Essential services.

(7) Other such uses which in the determination of the City Council and as formally documented will be compatible and will not be detrimental to uses allowed in this or contiguous districts.

(C) *Accessory uses.* Uses incidental to the foregoing principal uses, such as off-street parking and loading and unloading areas, signs, indoor storage of merchandise and wholesaling and manufacturing, when incidental to a permitted use.

(D) *Conditional uses.*

- (1) One and two-family dwellings and multiple-family dwellings.
- (2) Nonresidential day care facilities.

(E) *Lot requirements and setbacks.* The following minimum requirements shall be observed in C-1 Districts, subject to additional requirements, exceptions and modifications set forth in this ordinance:

- (1) *Lot area.* None.
- (2) *Lot width.* None.
- (3) *Setbacks.*
 - (a) *Front yards.* None.
 - (b) *Side yards.* None.
 - (c) *Rear yards:* None
- (4) All lots shall front on and have ingress and egress by means of a public right-of-way.

(F) *Building requirements; height.* No structure shall exceed 3 stories or 45 feet, whichever is less. This requirement would not apply to grain elevators or grain storage facilities which have no outside access.

151.24 INDUSTRIAL.

(A) *Purpose.* The purpose of the Industrial District is to provide for industrial development outside of the other districts authorized by this ordinance.

(B) *Permitted uses and structures.* There are no permitted uses and structures within this district.

(C) *Conditional uses.* Production, processing, cleaning, servicing, testing, repair or storage of material, goods or products and other industrial uses. All storage within 500 feet of any other district or special area or within 500 feet of any public right-of-way shall be within a completely enclosed building or effectively screened by appropriate landscaping or a wall or fence of sufficient density to form an effective screen, including entrance and exit gates. The fence and gates shall be not less than six feet in height.

(D) *Lot requirements, setbacks, building requirements and parking requirements.* Because of the variety of industrial activities that may occur in this district, reasonable lot requirements, setbacks, building requirements and parking requirements may be established by the City Council in the conditional use permit. Penalty, see 151.99

151.25 AG/RESIDENTIAL DISTRICT

(A) *Purpose*-The purpose of the Ag/Residential District is to provide for agricultural use within the city limits with the possibility of future residential use.

(B) *Permitted use* – Permitted use is primarily for agricultural uses with the future possibility of residential use.

(C) *Lot requirements, setbacks, and building requirements*– There are no lot requirements, setbacks, and building requirements if it is used for agricultural purposes. If the land is used for residential purposed, it will follow the same guidelines as R-1 Single-Family Residential District.

PERMITS AND REQUIREMENTS FOR FENCES, WALLS OR HEDGES

151.45 APPLICATION.

The requirements of this subordination shall apply to all new or replacement fences, walls, or shrubbery erected or installed from and after the effective date of this ordinance, but shall not apply to the mere repair of existing fences.

151.46 GENERAL REQUIREMENTS.

- (A) All fences of more than 30 inches in height shall require a permit.
- (B) No fence shall contain barbed wire.
- (C) No fence shall be charged with electric current.

(D) No fence, wall or other obstruction to vision above a height of 30 inches from the established street grades shall be permitted within the triangular area formed at the intersection of any street right-of-way lines by a straight line drawn between the right-of-way lines at a distance along each line of 25 feet from their point of intersection.

(E) Fences must be maintained so as not to endanger life or property and any fence which, through lack of repair, type of construction or otherwise, that imperils health, life or property or the well-being of a neighborhood shall be deemed a nuisance.

(F) All fences must be located on the private property of the person, firm or corporation constructing the fence.

(G) All fences must comply with all other requirements of law or this ordinance as it applies to fence installation and materials.
Penalty, see ordinance 151.99

151.47 RESIDENTIAL REGULATIONS.

(A) *Prohibited material.* No fence or wall shall be constructed of any electrically charged element or barbed wire.

(B) *Approved material.* All fences in residential districts shall be constructed of stone, brick, finished wood, chained link or vinyl. The finished side of the fence, or that side of the fence without exposed support or posts, shall face the neighboring property or streets. Fences constructed of metal or any other material will be considered by the Planning Commission.

(C) *Side and rear yard requirements.* No fence or wall located in a side or a rear yard shall be of height exceeding six feet, measured from its top edge to the ground at any point.

(D) *Front yards* Fences will be allowed in the front yard with prior council approval and will be allowed for unique situations.

(E) *Maintenance.* Every fence or wall shall be maintained in a good and safe condition at all times. Every damaged or missing element of any fence or wall shall be prepared or replaced immediately.

(F) No setbacks will be required for the installation of a fence but it must be installed on the property owner's property. No fence, wall, hedge or other screening device shall be permitted to encroach on any public right-of-way.
Penalty, see ordinance 151.99

151.48 VARIANCE.

Any deviation from the provisions of this ordinance shall require a variance. If a variance is requested, the variance shall be considered in accordance with the zoning variance procedures and fees for this variance will be in accordance with the zoning variance fee.

ADMINISTRATION AND ENFORCEMENT

151.49 CONSISTENCY WITH STATE LAW.

Notwithstanding anything in this ordinance to the contrary, the provisions of M.S. 15.99 as it may be amended from time to time, and the following sections shall govern the process for making decisions under this ordinance. To the extent to which these sections conflict with the provisions of M.S. 15.99, as it may be amended from time to time, the provisions of that statute shall apply.

151.50 APPLICATIONS.

(A) Notwithstanding anything to the contrary in this ordinance, all applications for any site plan, conditional use permit, land use permit, variance, or for any other city approval required by this ordinance, or to amend this ordinance, shall be made in writing on a form provided by the city to the City Clerk. Every application shall contain the legal description of the property and a statement of the specific permit or action being sought. Nothing in this ordinance shall be deemed to prevent the city from requesting additional information from the applicant upon which to base a decision.

151.51 PUBLIC NOTICE AND HEARINGS.

A public hearing shall be held by the City Council before any conditional use permit, variance, or zoning amendment may be granted. A notice of the time, place and purpose of the hearing shall be published in the official newspaper of the city at least ten days prior to the day of the hearing. In the case of an amendment to the zoning ordinance which involves changes in district boundaries affecting an area of five acres or less, and in the case of an application for a conditional use permit or a variance, a similar notice shall be mailed at least ten days before the day of the hearing to each owner of affected property and property situated wholly or partly within 100 feet of the property to which the zoning ordinance amendment, conditional use or variance relates. The Clerk may use any appropriate records to determine the names and addresses of owners. A copy of the notice and a list of the owners and addresses to which the notice was sent shall be attested to by the Clerk and shall be made a part of the records of the proceedings. The failure to give mailed notice to individual property owners, or defects in the notice shall not invalidate the proceedings, provided a bona fide attempt to comply with the mailed notice requirements has been made.

151.52 FINAL ACTIONS.

(A) As required by M.S. 15.99, as it may be amended from time to time, the following provisions apply to the process for approving or denying applications for a zoning amendment, site plan, conditional use permit, land use permit, variance or any other application which requires a city approval under this ordinance.

(B) The city shall take final action to approve or deny an application described above within 60 days of receiving an application, unless the application is not accepted under 151.50. If the city cannot take action to approve or deny the application within 60 days of receiving the application, the City Clerk is authorized before the end of the initial 60-day period to make a one-time extension of the time for taking action by providing written notice by first-class mail to the applicant of the extension, the reasons for the extension, and its anticipated length, which may not exceed an additional 60 days unless approved by the applicant in writing.

(C) When the final action to approve or disapprove an application is to be taken by the City Council, if a vote on a resolution or properly made motion to approve the application fails for any reason, the failure shall constitute a denial of the application, provided that those voting against the motion state on the record the reasons

why they oppose the application. A denial of an application because of a failure to approve a resolution or motion does not preclude an immediate submission of a same or similar application

(D) Except as provided in division (C) of this section, if the application is denied by the City Council, it must state the reasons for denial on the record and provide the applicant in writing a statement of the reasons for the denial. If this written statement is not adopted at the same time as the denial, it must be adopted at the next meeting following the denial of the application, but before the expiration of the time allowed for making a decision under this section. The written statement must be consistent with the reasons stated in the record at the time of the denial. The written statement must be provided to the applicant upon adoption.

151.53 NOTICE OF DECISION.

As soon as practicable after a decision is made, but within the 60-day period, or the extended 60-day period, as provided for in 151.52, the Council shall cause written notice of its decision, including the reasons for its decision and any findings upon which the decision is based, to be mailed to the applicant.

51.54 LAND USE PERMIT REQUIRED.

No structure shall be constructed until a land use permit has been obtained from the City Clerk. Land Use Permits will be required for all new construction, whether it is residential or commercial; including, but not limited to accessory structures. Land Use Permits will be required for residential remodeling, on existing buildings, that changes the size of the structure. Regular maintenance and replacement will not require a permit for residential structures. Land Use Permits will be required for any type of commercial remodeling. The application shall contain a plan showing the location of the structure on the property that demonstrates that all requirements of this ordinance will be met. The application shall also contain the plans for the structure to be built that demonstrates that the structure will meet all of the standards established by this zoning ordinance. No land use permit shall be issued by the Clerk until any application for a zoning amendment, conditional use permit or variance has been acted upon by the City Council. A decision by the Clerk not to issue a land use permit may be appealed to the Board of Appeals and Adjustments as provided for in 151.60. No residential contractor who is required to be licensed by the state, and no person employing a residential contractor who is required to be licensed, shall be issued a land use permit unless that contractor is licensed. Any person applying for a permit who is required to have a state license, but who does not have a state license, shall be reported to the State Commissioner of Commerce.

151.55 CONDITIONAL USE PERMITS.

Conditional uses may be approved by the City Council by a showing by the applicant that the standards and criteria stated in this zoning ordinance, and any conditions imposed by the City Council, will be satisfied. A public hearing on the granting of a conditional use permit shall be held in the manner provided in section 151.51. A conditional use permit shall remain in effect as long as the conditions agreed upon are observed, but the Council may enact or amend the zoning ordinance to change the status of conditional uses. A certified copy of any conditional use permit shall be filed by the Clerk with the County Recorder, and shall include the legal description of the property included.

151.56 BOARD OF APPEALS AND ADJUSTMENTS.

The City Council shall be the Board of Appeals and Adjustments for this city, and have the powers granted under M.S. 462.357, Subd. 6 and 462.359, Subd. 4, as they may be amended from time to time.

151.57 VARIANCES.

The City Council, acting as a Board of Appeals and Adjustments, may issue variances from the provisions of this zoning ordinance. A variance is a modification or variation of the provisions of this zoning ordinance as applied to a specific piece of property. A variance from the literal provisions of this zoning ordinance may be granted by the Board of Appeals and Adjustments only where the strict enforcement of these provisions would cause undue hardship because of circumstances unique to the individual property under consideration. A variance may be granted only when it is demonstrated that the granting of the variance will be in keeping with the spirit and intent of this zoning ordinance. A variance may be granted only in cases of undue hardship. **UNDUE HARDSHIP** as used in connection with the granting of a variance means the property in question cannot be put to a reasonable use if used under conditions allowed by the official controls, the plight of the landowner is due to circumstances unique to the property not created by the landowner, and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone shall not constitute an undue hardship if reasonable use for the property exists under the terms of this zoning ordinance. **UNDUE HARDSHIP** also includes but is not limited to inadequate access to direct sunlight for solar energy systems. Variances shall be granted for earth sheltered construction as defined in M.S. 216C.06, Subd. 2, as it may be amended from time to time, when in harmony with this zoning ordinance. A use that is not permitted under this zoning ordinance for property in the zone where the affected person's land is located shall not be permitted by the granting of a variance. The temporary use of a one-family dwelling as a two-family dwelling may be permitted by a variance. Conditions may impose in the granting of variances to ensure compliance and to protect adjacent properties. A certified copy of any variance shall be filed by the Clerk with the County Recorder, and shall include the legal description of the property included.

151.58 NONCONFORMING USES.

Any nonconformity, including the lawful use or occupation of land or premises existing at the time of the adoption of these zoning regulations, may be continued, including through repair, replacement, restoration, maintenance or improvement, but not including expansion, unless the nonconformity or occupancy is discontinued for a period of more than one year, or any nonconforming use is destroyed by fire or other peril to the extent of greater than 50% of its market value, and no building permit has been applied for within 180 days of when the property is damaged. In this case, the City Council may impose reasonable conditions upon a building permit in order to mitigate any newly created impact on adjacent property. A subsequent use or occupancy of the land or premises shall be a conforming use or occupancy.

151.59 AMENDMENTS.

(A) The clerk may inspect any property that is the subject of any application under this ordinance, with either the permission of the owner, resident or other person in control of the property, or after first obtaining an administrative search warrant as provided for under Ordinance 10.20.

(B) An amendment to this zoning ordinance may be initiated by the City Council or by petition of affected property owners. The requirements for public notice and hearing contained in 151.51 shall be followed. The zoning ordinance may be amended by a majority vote of all of the members of the City Council. The adoption of an amendment which changes all or part of the existing classification of a zoning district from residential to either commercial or industrial requires a two-thirds majority vote of all members of the City Council.

151.60 APPEALS.

Appeals to the City Council, acting as the Board of Appeals and Adjustments, may be taken by any affected person where it is alleged that there is an error in any order, requirement, decision, or determination made by an administrative officer of the city in the enforcement of the zoning ordinance. No mailed or published notice of the hearing on the appeal is required, but a public hearing shall be held on each appeal.

151.61 RECORD OF DECISIONS.

The Council shall provide that a record be made of its proceedings concerning its actions on any application for a permit, zoning ordinance amendment, or appeal. This record shall include the minutes of the meeting, the findings of the Council and the action taken.

151.62 FEES.

As provided by M.S. 462.353, Subd. 4, as it may be amended from time to time, fees may be established as follows:

(A) The Council may in a separate ordinance, or in the Ordinance Establishing Fees and Charges, prescribe fees sufficient to defray the costs incurred in reviewing, investigating, and administering applications for an amendment to the provisions of this ordinance and to all official maps, and applications for a permit, a variance or for some other approval required under this ordinance.

(B) These fees must be fair, reasonable and proportionate to the actual cost of the service for which the fee is imposed. The city shall adopt management and accounting procedures to ensure that fees are maintained and used only for the purpose for which they are collected.

(C) If a dispute arises over a specific fee imposed by a city, the amount of the fee must be deposited and held in escrow, and the person aggrieved by the fee may appeal to district court as provided by M.S. 462.361, as it may be amended from time to time. The application shall proceed as if the fee had been paid, pending a decision by the court.

151.99 ENFORCEMENT.

A notice of a violation shall be mailed by the Clerk to any person who in the opinion of the Council is in violation of the provisions of the zoning ordinance. The City Council may direct the Clerk to send a notice of violation. The notice shall state the nature of the violation and the penalty for the violation. If the person to whom the notice of violation is directed fails to comply with the applicable provisions of the zoning ordinance, that person is guilty of a misdemeanor and shall be punished as provided by in Ordinance 10.99. Each day the violation continues is a separate offense. The city may also enforce any provision of this zoning ordinance by mandamus, injunction, or any other appropriate remedy in any court of competent jurisdiction. A person who is issued a notice of violation may appeal the issuance to the City Council under the provisions of section 151.60.

*Passed by the Ashby City Council on this date April 18, 2005.
Amended on September 15, 2008.
Amended on July 9, 2009
Amended on May 10, 2012
Amended on April 24, 2013
Amended on September 18, 2013*

Mayor

Clerk