

A. Board of Adjustment.

1. Creation of Organization.

The Board of Adjustment is hereby established pursuant to SDCL 11-2-49. The Board of Adjustment shall consist of five members, each to be appointed by the Board of County Commissioners. In order to provide for staggered terms and minimize the impact of turnover on the Board of Adjustment, initial appointments shall provide for one member with a one year term, two persons with a two year term and two persons with a three year term. Subsequently, all members shall be appointed for a term of three years and removable for cause by the appointing authority upon written charges and after public hearing. A first alternate and a second alternate shall also be appointed for a term of three years each. If a member is unable to attend a meeting, the first alternate, or second alternate, in turn, shall serve in the member's place. If a member resigns or is removed for cause, the County Commission shall appoint a new member to fill the remainder of that original term. Members shall receive compensation for each meeting attended in an amount determined by the Board of County Commissioners as partial reimbursement for expenses.

2. Meetings and Minutes.

- a. Meetings shall be held at the call of the chairman and at such other times as the board may determine. The chairman or, in his absence, the acting chairman may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. All Conditional Use Permit findings of the Board of Adjustment shall require the approval of a majority of the five members. All other findings by the Board of Adjustment shall require a two thirds majority of the five voting members. A quorum shall consist of four members.
- b. A copy of the Agenda for meetings of the Board of Adjustment shall be provided to the Board of County Commissioners and to the Planning Commission in advance of the meeting.
- c. The board shall keep minutes of its proceedings pursuant to SDCL 11-2-52, which shall be immediately filed in the office of the Zoning Administrator or with the County Finance Officer and shall be a public record. All written findings of the Board of Adjustment shall be recorded in the minutes.

3. Powers and Duties.

The powers and duties of the Board of Adjustment as prescribed by laws (SDCL 11-2-49 thru 11-2-65) and this ordinance are specified as follows:

- a. Interpretation/Appeals.
To hear and decide all appeals from the decisions of the Zoning Administrator involving the interpretation of any regulation of this Ordinance.

b. Conditional Use and Special Use Permits.

To hear and decide, in accordance with the provisions of this Ordinance, requests (i) for conditional uses, or (ii) for decisions upon other special questions upon which the Board of Adjustment is authorized by this Ordinance to pass, or (iii) for the extension of use, as it existed at the time this ordinance went into effect, into a contiguous or more restricted district, but not for any other purpose or use; to decide such questions as are involved in determining whether conditional or special uses should be granted; and to grant conditional or special uses with such conditions and safeguards as are appropriate under this Ordinance, or to deny conditional or special uses when not in harmony with the purpose and intent of this Ordinance. A conditional or special use shall not be granted by the Board of Adjustment unless and until:

- i. Written application for a conditional/special use is submitted, indicating the section of this Ordinance under which the conditional/special use is sought and stating the grounds on which it is requested;
- ii. Notice of public hearing shall be given at least ten (10) days in advance by publication in a legal newspaper of the County;
- iii. The Zoning Administrator or their designee shall notify by mail all owners of abutting property for which action is sought, property within 200 feet, and others identified as having a material interest. Notice shall be given to each owner of record by depositing such notice in the United States Post Office not less than ten (10) days prior to the hearing date;
- iv. The public hearing shall be held. Any party may appear in person, or by agent or attorney;
- v. The Board of Adjustment shall make a finding that it is empowered under the section of this Ordinance described in the application to grant the conditional/special use, and that the granting of the conditional/special use will not be injurious to the neighborhood or detrimental to the public welfare;
- vi. Before any conditional/special use is issued, the Board of Adjustment shall make written findings, certifying compliance with the specific rules governing individual conditional/special uses and that satisfactory provision and arrangement has been made concerning the following, where applicable:
 - (a) Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe,

- (b) Off-street parking and loading areas where required; with particular attention to the items in (a) above and the economic, noise, glare or odor effects of the conditional use on adjoining properties and properties generally in the district,
- (c) Refuse and service areas, with particular reference to the items in (a) and (b) above,
- (d) Utilities, with reference to locations, availability, and compatibility,
- (e) Screening and buffering with reference to type, dimensions, and character,
- (f) Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with properties in the district,
- (g) Required yards and other open spaces, and
- (h) General compatibility with adjacent properties and other property in the district.

c. Variances.

To vary or adapt any regulation of this ordinance when any such regulation results in practical difficulty or unnecessary hardship that would prohibit the owner from the reasonable use of the land or building involved, but in no other case.

No variance of any regulation shall be granted by the Board of Adjustment unless they find:

- i. That there is proof that the strict application of the Ordinance would produce undue hardship as distinguished from variations for purposes of convenience, profit and caprice, and the conditions and circumstances are peculiar to such land or buildings, and that these conditions and circumstances do not generally apply to other properties in the same zoning district and the same vicinity.
- ii. That the variance granted by the Board of Adjustment is the minimum variance possible to accomplish the purpose of providing for the reasonable use of the land or building.
- iii. That the granting of the variance does not change the essential character of the neighborhood, will not be of substantial detriment to adjacent property and shall be in accordance with the general purpose and intent of this Ordinance.
- iv. A variance may be granted in cases where this ordinance refers it to the Board of Adjustment directly.

- v. A variance from the terms of this Ordinance shall not be granted by the Board of Adjustment unless and until a written application for a variance is submitted demonstrating that special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings, in the same district; that literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance; that the special conditions and circumstances do not result from the actions of the applicant; and that granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structure, or buildings in the same district.
- vi. No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.
- vii. Notice of public hearing shall be given as in Section 1-111.E.3.b.ii thru iii above; the public hearing shall be held. Any party may appear in person for by agent or by attorney; the Board of Adjustment shall make findings that the requirements of this Section have been met by the applicant for a variance; the Board shall further make a finding that the reasons set forth in the application justify the granting of the variance, and the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure; the Board of Adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this Ordinance, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Ordinance.

Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of this Ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said district.

4. Procedures.

The Board of Adjustment shall act in strict compliance with the procedure prescribed by law and this zoning ordinance. The appeals and application made to the Board of Adjustment shall be made in writing on forms prescribed by the Board of Adjustment. Each appeal or application shall state the interpretation that is claimed, the use for which the permit is sought, or the details of the proposal and the reasons why the request should be granted.

Source: Ord. No. 2006-05, 2006; 2009-06, 2009, Ord. No. 2021-1, 2021.