

**ARTICLE VI
ADMINISTRATION**

**CHAPTER 6.05. PROCEDURES FOR CONDITIONAL USES, VARIANCES,
AND ZONING AMENDMENTS.**

Section 6.05.01. Powers and Jurisdiction Relating to Conditional Uses.

The Board of Adjustment shall have the power to hear and decide, in accordance with 6.04.03 and any other provisions of this Ordinance, requests for conditional uses or for decisions upon other special questions upon which the Board of Adjustment is authorized by this Ordinance to pass; to decide such questions as are involved in determining whether special conditions and safeguards as are appropriate under this Ordinance, or to deny conditional uses when not in harmony with the purpose and intent of this Ordinance. A conditional use shall not be granted by the Board of Adjustment unless and until:

1. A written application for a conditional use permit is submitted which indicates the section of this Ordinance under which the conditional use is sought and stating the grounds on which it is requested.
2. The Zoning Official shall notify adjacent property owners by First Class mail at their last known address of the public hearing time and date at least fourteen (14) days prior to the hearing of the application for the conditional use permit.
3. Notice of time and place of the hearing on an application for conditional use permit shall be published once at least, fourteen (14) days prior to the Board of Adjustment public hearing, in a legal newspaper of the county.
4. The public hearing shall be held. Any party may appear in person, by agent or attorney.
5. 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 use and that the granting of the conditional use will not adversely affect the public interest.
6. Before granting any conditional use, the Board of Adjustment shall make written findings certifying compliance with the specific rules governing individual conditional uses and that satisfactory provision and arrangements have been made concerning the following, where applicable:
 - a. Entrance and exit 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 other effects of the conditional use on adjoining properties and properties generally in the district.
 - c. Utilities, refuse, and service areas, with reference to locations, availability, and compatibility.

- d. Screening and buffering with reference to type, dimensions and character.
 - e. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, compatibility and harmony with properties in the district.
 - f. Required yards and other open space.
 - g. General compatibility with adjacent properties and other property in the district.
 - h. The roads providing access to the property are adequate to meet the transportation demands of the proposed conditional use. The Board of Adjustment may require the applicant to enter into a written contract with any affected township or other governmental unit regarding the upgrading and continued maintenance of any roads used for the conditional use requested prior to issuance of a Conditional Use Permit.
 - i. Any required notifications to law enforcement or fire department.
 - j. Any safety inspections required.
7. In granting any conditional use, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this regulation. Violation of such conditions and safeguards, when made a part of the terms under which the conditional use is granted, shall be deemed a violation of this regulation and punishable under the terms of this regulation.
 8. The concurring vote of two-thirds (2/3) of all members of the Board of Adjustment (six (6) votes) shall be necessary to pass any application for a Conditional Use Permit.
 9. A conditional use permit shall expire three (3) years from the date upon which it becomes effective if no work has commenced.
 10. A conditional use permit is transferable, subject to the new permittee signing a letter agreeing to the same terms of the previously issued letter(s) of assurance/Findings of Facts.
 11. The Board of Adjustment may, after notice and hearing, revoke a conditional use permit in the event of a violation of any of the conditions upon which such permit was issued. In addition, the conditional use permit may not be transferred during any violation.

Section 6.05.02. Powers and Jurisdiction Relating to Variances.

The Board of Adjustment shall have the power, where, by reason of exception, narrowness, shallowness or shape of a specific piece of property at the time of the enactment of this Ordinance, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any regulation under this Ordinance would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon, the owner of such property, to authorize, upon an appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted without substantially impairing the intent and purpose of this Ordinance. A variance shall

not be granted by the Board of Adjustment unless and until:

1. A written application for a variance is submitted, indicating the section of this Ordinance under which the variance is sought and stating the grounds on which it is requested.
2. The Zoning Official may require the notification of adjacent property owners by First Class mail, at their last known address, of the public hearing at least fourteen (14) days prior to the hearing of the variance request.
3. Notice of time and place of the hearing on an application for a variance shall be published once at least, fourteen (14) days prior to the Board of Adjustment public hearing, in a legal newspaper of the county.
4. The public hearing shall be held. Any party may appear in person, or by agent or attorney.
5. 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 variance, and that the granting of the variance will not adversely affect the public interest. A variance from the terms of this Ordinance shall not be granted if the following occur:
 - a. There are no special conditions and circumstances exist which are peculiar to the land, structure or building involved, and which are applicable to other land, structures, or buildings in the same district;
 - b. The literal interpretation of the provisions of this Ordinance would not deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance;
 - c. The special conditions and circumstances do result from the actions of the applicant;
 - d. Financial disadvantage of the property owner shall not constitute conclusive proof of unnecessary hardship within the purposes of zoning.
 - e. The granting the variance request would confer on the applicant any special privilege that is denied by this Ordinance to other lands, structures, or buildings in the same district.
 - f. 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.
6. In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this regulation. 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 and punishable under the terms of this regulation in accordance with 6.05.05.
7. Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of this regulation in the district involved, or any use

expressly or by implication prohibited by the terms of this regulation in said district.

8. The concurring vote of two-thirds (2/3) of all members of the Board of Adjustment (six (6) votes) shall be necessary to approve an application for a variance.
9. A variance shall expire three (3) years from the date upon which it becomes effective if no work has commenced.

Section 6.05.03. Zoning Amendments (rezoning requests).

1. Whenever the public necessity, safety, and general welfare or good zoning practices justifies such action, and after consideration and recommendation by the Planning Commission, as provided herein, the Board of County Commissioners may change zoning district boundaries, use groups, or the regulations established by this Ordinance. A proposed change of zoning district boundaries (rezoning) or regulations may be initiated in the following manners:
 - a. The Board of County Commissioners may direct the Planning Commission to consider a change of zoning district boundaries (rezoning) or regulations;
 - b. The Planning Commission may initiate a change of zoning district boundaries (rezoning) or regulations;
 - c. One (1) or more of the owners of property within the area proposed to be rezoned may present a request to change the zoning district boundaries;
 - d. Initiated petitions specifying and requesting amendments to the regulations of this Ordinance containing signatures of twenty (20) percent of the landowners in the zoning district or districts may be presented to the Zoning Official.
2. Unless otherwise provided for in these regulations, any change in these regulations, shall require Board of County Commissioners approval of an Ordinance describing said changes. The Board of County Commissioners may not consider said Ordinance until the Planning Commission has delivered a recommendation to either approve or not approve said Ordinance amendment.
3. The following procedure for requesting a Zoning Ordinance Amendment or Zoning District Boundary Change (rezoning) shall be followed:

The landowner or other person(s) requesting the Amendment/Boundary change shall complete an application, available from the Zoning Official. Completed applications shall be returned to the Zoning Official for review. To be considered by the Planning Commission and Board of County Commissioners, the application form shall be completed and shall be accompanied by the following items:

- a. Any required attachments and fees, including Registered or Certified Mail.
- b. Intention: A complete statement giving reason and intention for the planned future use of the area proposed for amendment.
- c. Site Plan: A site plan, drawn to scale, showing existing and proposed structures, uses, open space, and facilities for parking and loading, and arrangements for

pedestrian and vehicular circulation of the area proposed for amendment and all abutting properties with their use and zoning district defined. Water and sewer facilities must also be shown on site plan.

- d. A proposed time schedule for beginning and completion of development.
- e. Any additional information, as requested by the Zoning Official, as lawfully may be required to determine conformance with and provide for enforcement of this Ordinance.
- f. The Zoning Official shall review the application, and shall forward a summary of the application, and their comments regarding said application, to the Planning Commission for review.
- g. The Zoning Official shall set the date, time, and place for public hearings to be held by the Planning Commission. An individual landowner may petition the board to change the zoning of all or any part of the landowner's property. The petitioning landowner shall notify abutting and adjoining landowners by registered or certified mail of the petitioned zoning change at least fourteen (14) days before the public hearing is held on the matter by the planning commission. The landowner shall use information provided by the county director of equalization to determine the abutting and adjoining land owners. Property is considered as abutting and adjoining even though it may be separated from the property of the petitioner by a public road or highway. If the affected property abuts, adjoins, or is within one (1) mile of a county border, the county auditor on behalf of the individual landowner shall also notify, by registered or certified mail, the county auditor in the adjoining county of the petitioned zoning change at least fourteen (14) days before the public hearing is held on the matter by the planning commission. Certified or registered mailing receipts shall be filed with the Zoning Official fourteen (14) days prior to the hearing. The Zoning Official shall publish notice of the public hearing in a legal newspaper of the county, such notice shall be published not less than fourteen (14) days prior to the Planning and Zoning board's public hearing.
- h. Within forty-five (45) days of receipt of a petition for rezoning, the planning commission shall hold a public hearing on any proposed change or modification to the plan or ordinances. Notice of the time and place of the hearing shall be given once at least fourteen (14) days in advance by publication in a legal newspaper of the county. At the public hearing, any person may appear and request or protest the requested change. The county planning and zoning board shall consider the requested action and make a recommendation thereon to the board of County Commissioners. The Planning Commission shall recommend approval or disapproval of a requested change either in whole or in part. SDCL 11-2-28.2
- i. The Brookings County Board of County Commissioners shall publish notice of the public hearing in a legal newspaper of the county, such notice shall be published not less than fourteen (14) days prior to the County Commissioner's public hearing.
- j. Any person may appear in person, or by agent or attorney. Minutes of the public hearing shall be recorded and kept in the records of each respective board.

- k. Adoption. The Board of County Commissioners shall thereafter by ordinance either adopt or reject the proposed amendment with or without changes. After passage, the Ordinance Amendment shall take effect on the 20th day after its publication in a legal newspaper of the County.

Section 6.05.04. Reapplication.

No application requesting a variance, conditional use, or zoning ordinance amendment or district classification change on any property whose application includes any such property either entirely or substantially the same as that which has been denied by the Board of Adjustment (administrative appeals, variances, and conditional uses) or Board of County Commissioners (Zoning Amendments, Zoning District Boundary Changes), shall again be considered by the Planning Commission, Board of Adjustment or Board of County Commissioners before the expiration of six (6) months from the date of the final action of the Planning Commission, Board of Adjustment, or Board of County Commissioners

Section 6.05.05 Violations and Penalties.

1. It is declared unlawful for any person to violate any of the terms and provisions of these regulations or other official control adopted by the Board of County Commissioners pursuant thereto. Any person who violates, disobeys, omits, neglects or refuses to comply with or resists the enforcement of any provision of this Zoning Ordinance may be subject to a civil or criminal penalty. The maximum penalty for violation of this Zoning Ordinance shall be five hundred dollars (\$500.00) or thirty (30) days in the County Jail or both. In addition the violator shall pay all costs and expenses involved in the case. Each and every day that such violation continues after notification shall constitute a separate offense. All fines for violation shall be paid to the Finance Office and shall be credited to the General Fund of the County.

The owner or tenant of any building, structure, premises, or part thereof, any architect, builder, contractor, agent, or other person who commits, participates in, assists in, or maintains such violation may each be found guilty of a separate offense and suffer the penalties herein provided. Nothing herein contained shall prevent the County from taking such other lawful action as is necessary to prevent or remedy any violation.

2. In the event any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of these regulations, the appropriate authorities of Brookings County in addition to other remedies, may institute injunction, mandamus or other appropriate actions or proceedings in a court of competent jurisdiction to prevent, restrain, correct or abate such violation of these regulations, and it is the duty of the State's Attorney to institute such action.