

ARTICLE 4

ADMINISTRATION

Chapter 4.01 GENERALLY

4.01.01 Applications and Fee Schedule. The Zoning Administrator shall develop an omnibus application, to include requests for Building Permits, Conditional Uses, Variances and Amendments. Such application will be available from the Zoning Administrator and the Finance Officer. A schedule of fees, charges, and expenses for permits, rezonings, appeals, and other matters pertaining to this ordinance shall be established by resolution of the City Council. The current fee schedule shall be available from the Zoning Administrator or Finance Officer. All fees shall be the property of the City and shall be paid over to the Finance Officer for credit to the General Fund of the City which under no condition shall be refunded. Until all applicable fees, charges, and expenses have been paid in full, no action shall be taken on any application or appeal.

4.01.02 Issuance of Permits. Permits issued on the basis of plans and applications approved by the Zoning Administrator authorize only the use, arrangement, and construction set forth in such approved plans and applications, and any other use, arrangement, or construction at variance with that authorized shall be a violation of this ordinance.

4.01.03 Expiration of Permits. If the work described in any permit has not begun within 120 days from the date of issuance, the permit shall expire by limitation. If the activity described in any permit has not been substantially completed within one year of the date of issuance, said permit shall expire and be canceled by the Zoning Administrator and written notice shall be given to the persons affected, together with notice that further work as described in the canceled permit shall not proceed unless and until a new use permit has been obtained.

Chapter 4.02 ZONING ADMINISTRATOR

4.02.01 Establishment and Purpose. The position of Zoning Administrator is hereby established for the City of Sherman. The Zoning Administrator may be employed by the City or other entity in another position. The City Council shall appoint the Zoning Administrator. The Zoning Administrator shall administer and enforce this ordinance. It is the intent of this ordinance that all questions of interpretation and enforcement shall be first presented to the Zoning Administrator and that such questions shall be presented to the Board of Adjustment only on appeal from the decision of the Zoning Administrator.

4.02.02 Duties. The Zoning Administrator shall receive applications for Building Permits, Conditional Uses, Variances and Zoning Amendments.

(A) For Building Permits, the Zoning Administrator shall approve the application only if in accordance with the provisions of the City's Zoning Regulations.

(B) For Conditional Uses and Variances, the Zoning Administrator shall review the application, and shall make a recommendation to the Board of Adjustment to either approve or not approve said application.

© For Zoning Amendments, the Zoning Administrator shall review the application, and shall make comments regarding said application to the Planning Commission.

4.02.03 Powers. If the Zoning Administrator shall find that any of the provisions of this ordinance are being violated, the person responsible for such violations shall be notified in writing, indicating the nature of the violation and ordering that such violation be corrected within 30 days of such notice. The notice shall also include the penalty for failure to comply with the zoning requirements. The Zoning Administrator may order discontinuance of illegal use of land, buildings, or of illegal additions, alterations, or structural changes; discontinuance of any illegal work being done; or take any other action authorized by this ordinance to ensure compliance with or to prevent violation of its provisions.

Chapter 4.03 BOARD OF ADJUSTMENT

4.03.01 Establishment. A Board of Adjustment is hereby established for the City of Sherman. Members of the Board of Adjustment must be residents of the City of Sherman. Members of the Board of Adjustment may also be members of the City Council or Planning Commission. The Board of Adjustment shall be a ~~five~~³-member board, unless the Planning Commission or City Council is acting as the Board of Adjustment, in which case the number of members shall be the same as that of the body acting as the Board of Adjustment. The City Council, shall appoint members of the Board of Adjustment for three-year terms, unless the Planning Commission or City Council is acting as the Board of Adjustment, in which case the terms of members shall run concurrent with the terms of the officials acting as the Board of Adjustment.

4.03.02 Procedures for Meetings. The Board of Adjustment shall keep a public record of all findings and decisions. Meetings shall be held at the call of the Chairman and at such other times as necessary. Each session at which an appeal is to be heard shall be a public meeting with notice to be published at least 10 days in advance. Appeals to the Board of Adjustment concerning interpretation or administration of this ordinance, may be taken by any person, group or organization, public or private. Such appeal shall be taken by filling a notice of appeal with the Zoning Administrator, who shall transmit to the Board of Adjustment all papers concerning the record of action from which the appeal was taken. The concurring vote of three-fourths of the members of the Board of Adjustment shall be necessary to approve any appeal or arrive at any determination.

4.03.03 Powers and Duties. The Board of Adjustment shall have the following powers and duties:

(A) To hear and decide appeals where it is alleged there is error in any requirement or determination made by the Zoning Administrator in the enforcement of this ordinance.

(B) To hear and decide appeals to decisions made by the Zoning Administrator regarding Zoning Permits.

© To hear and decide only such Conditional Uses as the Board of Adjustment is specifically authorized to pass on by the terms of this ordinance; to decide such questions as are involved in determining whether Conditional Uses should be granted; and to grant Conditional Uses with such 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.

(D) To hear requests for variances from this ordinance in instances where strict enforcement would cause unnecessary hardship, and to grant such variances only when the Board of Adjustment finds that such relief from these Zoning Regulations will be neither detrimental to the public good nor in conflict with the intent of these Zoning Regulations.

Chapter 4.04 PROCEDURES FOR APPLICATIONS

4.04.01 Building Permits. No new development, change of use, moving in/moving out of structures, demolition, or other action which may be regulated by the provisions of this ordinance including use, height, number of occupants, lot area, off-street parking or yard requirements, shall occur without a Building Permit issued by the Zoning Administrator.

(A) An Application for Building Permit, available from the Zoning Administrator or Finance Officer, shall be completed by the landowner requesting the Building Permit. Completed applications shall be returned to the Zoning Administrator for review. To be considered complete, the application form shall be accompanied by the following additional items:

(1) Any required attachments and City fees;

(2) Two copies of plans drawn to scale, showing the dimensions and shape of the lot to be built upon; the exact sizes and locations on the lot of buildings already existing, if any; and the location and dimensions of the proposed building or alteration;

(3) Any additional information, as requested by the Zoning Administrator, as lawfully may be required to determine conformance with and provide for the enforcement of this ordinance.

(B) A temporary Building Permit may be issued by the Zoning Administrator for a period not exceeding 6 months during alterations or partial occupancy of a building pending its completion. The Zoning Administrator may attach conditions and safeguards to said temporary permit to protect the safety of the occupants and the public.

© One copy of the plans shall be returned to the applicant, after the Zoning Administrator has marked such copy as either approved or disapproved, and attested to the same by signing said copy of the plans. One copy of the plans, similarly marked, shall be retained by the Zoning Administrator for City records.

(D) If the Zoning Administrator determines the proposed action would not be in compliance with the provisions of these regulations, a Building Permit may not be issued, except upon completion of one of the following processes established in these regulations, as may be applicable to such proposed action. The Zoning Administrator shall inform the applicant when one of the following processes may be applicable:

- (1) Conditional Use Permit, 4.04.02;
- (2) Variance, 4.04.03;
- (3) Amendment; 4.04.04.

Issuance of a Building Permit shall indicate that, in the opinion of the Zoning Administrator, the proposed use and/or alterations of existing use are in compliance with the requirements of these Zoning Regulations. Issuance of a Building Permit shall not be construed as waiving any provisions of these regulations. Proposed uses and/or alterations of existing uses which are not in compliance with the requirements of these Zoning Regulations shall not be issued a Building Permit.

4.04.02 Conditional Uses. Conditional Uses are allowed for certain uses in some districts, as identified in Chapter 3.03 - District Regulations. Uses not listed in the District Regulations as eligible for a Conditional Use Permit shall not, in any circumstances, be granted a Conditional Use Permit.

The following procedure for requesting a Conditional Use Permit shall be followed:

(A) An Application for Conditional Use Permit, available from the Zoning Administrator or Finance Officer, shall be completed by the landowner requesting the Conditional Use Permit. Completed applications shall be returned to the Zoning Administrator for review. To be considered by the Board of Adjustment, the application form shall be completed. If any of the information required by 4.04.01(A) has changed since the original Building Permit application, the revised, updated or corrected information shall accompany the application for a Conditional Use Permit.

(B) The Zoning Administrator shall review the application, and shall make a recommendation to the Board of Adjustment to either approve or not approve said application. The Zoning Administrator's recommendation shall include a summary of the application, and the reasons and justification for either approval or disapproval of the application.

© The Zoning Administrator shall set the date, time and place for a public hearing to be held by the Board of Adjustment. The Zoning Administrator shall notify the landowner by mail, and shall post notices of the public hearing at the City Office and on the property affected by the proposed Conditional Use Permit. No less than 15 days before the public hearing, the Zoning Administrator shall publish notice of the public hearing in a newspaper of general circulation in the area affected by the proposed Conditional Use Permit.

(D) The following procedure shall be followed by the Board of Adjustment in considering the recommendation of the Zoning Administrator:

(1) The public hearing shall be held. 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 the Board of Adjustment.

(2) Before any Conditional Use Permit shall be granted, the Board of Adjustment shall make written findings certifying compliance with the specific rules governing individual Conditional 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,

© refuse and service areas, with particular reference to (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 other properties in the district;

(g) required yards and other open space;

(h) general compatibility with adjoining properties and other property in the zoning district in which such use is to be located,

(E) In order to preserve the intent of these Zoning Regulations and to protect the public interest, the Board of Adjustment may attach conditions to a Conditional Use Permit. A Conditional Use Permit shall remain valid only as long as the original applicant complies with any terms and conditions of the Conditional Use Permit, as attached by the Board of Adjustment.

(F) The Board of Adjustment shall make a finding that it is either empowered or not empowered by these Zoning Regulations to grant the requested Conditional Use Permit, and that such Conditional Use Permit is either consistent or inconsistent with the intent of these Zoning Regulations.

4.04.03 Variances. Variances are designed to allow some flexibility in the Zoning Regulations, in cases where the exceptional shape of a parcel of land, in cases where use of a property is overwhelmingly effected by exceptional topographic conditions, or any other extraordinary situation or condition of such parcel of land. Variances are to be approved only when a property owner demonstrates that the provisions of all or part of these Zoning Regulations present an undue hardship on such property owner's use of such parcel of land. A Variance shall include a description of the specific regulatory item or items in these Zoning Regulations which are found to produce said undue hardship. Variances shall also only be granted when the Board of Adjustment finds that such relief from these Zoning Regulations will be neither detrimental to the public good nor in conflict with the intent of these Zoning Regulations.

The following procedure for requesting a Variance shall be followed:

(A) An Application for Variance, available from the Zoning Administrator or Finance Officer, shall be completed by the landowner requesting the Variance. Completed applications shall be returned to the Zoning Administrator for review. To be considered by the Board of Adjustment, the application form shall be completed. If any of the information required by 4.04.01(A) has changed since the original Building Permit application, the revised, updated or corrected information shall accompany the application for a Variance.

(B) The Zoning Administrator shall review the application, and shall make a recommendation to the Board of Adjustment to either approve or not approve said application. The Zoning Administrator's recommendation shall include a summary of the application, and the reasons and justification for either approval or disapproval of the application.

© The Zoning Administrator shall set the date, time and place for a public hearing to be held by the Board of Adjustment. The Zoning Administrator shall notify the landowner by mail, and shall post notices of the public hearing at the City Office and on the property affected by the proposed Variance. No less than 15 days before the public hearing, the Zoning Administrator shall publish notice of the public hearing in a newspaper of general circulation in the area affected by the proposed Variance.

(D) The following procedure shall be followed by the Board of Adjustment in considering the recommendation of the Zoning Administrator:

(1) The public hearing shall be held. 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 the Board of Adjustment.

(2) Before any Variance shall be granted, the Board of Adjustment shall make written findings certifying compliance with the specific rules governing individual Variances and that satisfactory provision and arrangement has been made concerning the following, where applicable:

(a) Special conditions or circumstances exist which are peculiar to the use or structure involved and are not applicable to other uses or structures in the same district,

(b) 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,

© The special conditions or circumstances are not the result of the applicant's actions,

(d) Granting the variance requested will not give the applicant any special privilege that is denied to other uses or structures in the district,

(e) The variance requested is the minimum variance that will make possible the reasonable use of property or structure,

(f) Granting of the variance will comply with the general purpose and intent of this ordinance, and will not be offensive to adjacent areas or to the public welfare.

(g) No nonconforming use or structure in the same district and no permitted or nonconforming use or structure in other districts shall be considered grounds for the issuance of a variance.

(E) In order to preserve the intent of these Zoning Regulations and to protect the public interest, the Board of Adjustment may attach conditions to a Variance. A Variance shall remain valid only as long as the property owner complies with any terms and conditions of the Variance, as attached by the Board of Adjustment.

(F) The Board of Adjustment shall make a finding that granting such request for Variance either is or is not necessary to ameliorate an undue hardship on the property owner's use of such parcel of land, and that such decision is consistent with the intent of these Zoning Regulations.

4.04.04 Amendments. Zoning Amendments are changes to the City of's Zoning Regulations. Applications for amendment may be submitted by either the City or any owner of land within the City. The regulations, restrictions and boundaries set forth in this ordinance may from time to time be amended, supplemented, or repealed, provided however, that no such action may be taken until after public hearings, at which parties in interest and citizens shall have an opportunity to be heard. Unless otherwise provided for in these Zoning Regulations, any change in these Zoning Regulations shall require City Council approval of an ordinance describing said changes. The City Council may not consider said ordinance until the Planning Commission has delivered a recommendation to either approve or not approve said ordinance.

The following procedure for requesting a Amendment shall be followed:

(A) An Application for Amendment, available from the Zoning Administrator or Finance Officer, shall be completed by the landowner or other person(s) requesting the Amendment. Completed applications shall be returned to the Zoning Administrator for review. To be considered by the Planning Commission, the application form shall be completed., and shall be accompanied by the following additional items:

(1) Any required attachments and City fees, including Registered or Certified Mail costs in (C);

(2) Any additional information, as requested by the Zoning Administrator, as lawfully may be required to determine conformance with and provide for the enforcement of this ordinance.

(B) The Zoning Administrator shall review the application, and shall forward a summary of the application, and his/her comments regarding said application, to the Planning Commission for their review.

(C) The Zoning Administrator shall set the date, time and place for a joint public hearing to be held by the Planning Commission and the City Council. The Zoning Administrator shall notify the landowner by Registered or Certified Mail at least 1 week before the public hearing, and shall post notices of the public hearing at the City Office and on the property affected by the proposed Amendment, if applicable. The Zoning Administrator shall also publish notice of the public hearing in a newspaper of general circulation in the area affected by the proposed Amendment; such notice shall be published once a week for two successive weeks, not less than 15 days prior to the public hearing. If the proposed amendment will change the boundaries of a zoning district, the Zoning Administrator shall notify all owners of property affected by the boundary change, by Registered or Certified Mail at the expense of the applicant, at least one week before the public hearing.

(D) The public hearing shall be held. 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 the Planning Commission.

(E) The Planning Commission shall either recommend or not recommend approval of the amendment to the City Council.

(F) The City Council shall either approve or not approve the ordinance describing the proposed changes to these Zoning Regulations, in accordance with standard procedures for reading, approval, publication and effective date.

(G) When a proposed amendment affecting the zoning classification of property is approved by the City Council, affected property owners may file a written protest to stop such amendment from taking effect. If the protest meets the following standards, such amendment shall not become effective:

(1) The protest shall be in writing;

(2) The protest shall be signed by at least 40% of the owners of equity in the parcels in the area affected by the amendment, and the parcels or parts of parcels within 150 feet of the area affected by the amendment, excluding streets and alleys.

Chapter 4.05 APPEALS

4.05.01 Generally. Persons making an application for Building Permits, Conditional Uses, Variances or Zoning Amendments may appeal a decision to deny any such application by the Zoning Administrator, Board of Adjustment or City Commission. Recommendations made by the Zoning Administrator or Board of Adjustment are not considered to be decisions subject to appeal.

4.05.02 Procedures. The following procedure is hereby established for appealing decisions to deny any such application by the Zoning Administrator, Board of Adjustment or City Council:

Any person or persons, or any board or taxpayer aggrieved by any decision of the Zoning Administrator, may seek review by appearing at a Board of Adjustment meeting and petitioning the Board to consider the application. The Board of Adjustment may or may not approve the application. The Board of Adjustment shall notify the petitioner(s) by letter within two weeks of hearing said petition, with such letter including the decision of the Board of Adjustment and any reasons for said decision.

Any person or persons, or any board or taxpayer aggrieved by any decision of the Board of Adjustment, may seek review by filing a petition with the Finance Officer no less than two weeks before the next City Council meeting. Such petition shall be reviewed at the next City Council meeting. The City Council may or may not grant the request of the petitioner(s). The City Council shall notify the petitioner(s) by letter within two weeks of reviewing said petition, with such letter including the decision of the City Council and any reasons for said decision.

Any person or persons, or any board or taxpayer aggrieved by any decision of the City Council relating to these Zoning Regulations may seek review by filing a petition with a court record in the manner and form provided by South Dakota law.