

AN ORDINANCE AMENDING ARTICLE 9 - BOARD OF ADJUSTMENT AND ADDING THERETO ARTICLE 11 - CONDITIONAL USE PERMITS OF ORDINANCE NO. 05-01 - ZONING ORDINANCE FOR CLAY COUNTY, SOUTH DAKOTA.

NOW THEREFORE, BE IT ORDAINED BY THE COUNTY COMMISSION OF CLAY COUNTY, SOUTH DAKOTA AS FOLLOWS:

That Ordinance No. 05-01, Article 9 - Board of Adjustment of Clay County, South Dakota is hereby amended in its entirety to read as follows:

ARTICLE 9
ZONING BOARD OF ADJUSTMENT

9.01 ESTABLISHMENT. The Clay County Commission shall act as the Zoning Board of Adjustment.

The Board may, in appropriate cases and subject to appropriate conditions and safeguards, grant variances, and hear appeals to the terms of these regulations in harmony with the general purpose and intent and in accordance with general and specific rules herein contained, in accordance with SDCL 11-2.

9.02 OPERATIONAL PROCEDURE.

(A). The Board shall meet at the regularly scheduled meetings of the County Commission. All meetings of the Board shall be open to the public and all business coming before the Board shall be transacted at such meetings.

(B). The Board shall keep minutes of its proceedings, records of examinations, findings, decisions, and other official actions, all of which shall be filed in the Office of Planning and Zoning and shall be a public record.

9.03 APPLICATION TO COUNTY FOR VARIANCE OR APPEAL. Any person, firm or corporation desiring a variance or wishing to appeal a decision of the Zoning Administrator or authorized representatives shall make application for such request to the Office of Planning and Zoning. Such application shall be provided by the Office and be completed in full by the applicant. All information and records concerning the application shall be transmitted by the Office to the Board of Adjustment within ten (10) business days of the filing.

9.04 FEES. Upon the filing by the Board of any application for a variance or appeal, the applicant shall pay to Clay County the appropriate fee as designated in Article 8.00. These fees shall be utilized to help defray necessary administrative costs of processing the application as required.

9.05 HEARING. Upon the filing of an application, the Office of Planning and Zoning shall set a date for public hearing, at which time and place the Zoning Board of Adjustment shall meet to consider the request for variance or appeal. Any person may appear in person, or by agent or attorney.

(A). NOTICE. The Zoning Administrator shall post notices of the public hearing at the County Courthouse and on the property affected at least ten days prior to the scheduled hearing. No less

ORDINANCE NO-07-01

than ten (10) 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, and shall mail notice of the public hearing to adjacent landowners.

□
(B). DECISION. All requests under this article shall be acted upon at a meeting of the County Commission acting as the Board of Adjustment. Written findings certifying compliance or noncompliance with the specific rules governing the action shall be completed by the Board. The concurring vote of two-thirds of the members of the Board of Adjustment shall be required to approve or modify each request.

9.06 VARIANCES. Variances are designed to allow some flexibility in the Zoning Ordinance, in cases where the exceptional shape of a parcel of land, in cases where use of a property is overwhelmingly affected 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 the Zoning Ordinance 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 the Zoning Ordinance which are found to produce said undue hardship. Variances shall also only be granted when the Board of Adjustment finds that such relief from the Zoning Ordinance will be neither detrimental to the public good nor in conflict with the intent of the Zoning Ordinance. A variance shall not be allowed to vary the use regulations. The following procedures for requesting a Variance shall be followed:

(A). The Zoning Administrator shall review the application for a variance, and shall make a written 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. If any of the information required by 8.01(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 Board of Adjustment shall not vary the regulations unless it shall make written findings based upon the evidence presented to it in each specific case that the specific rules governing individual variances are complied with, and that all of the following conditions are present:

1. 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.
2. 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.
3. The special conditions or circumstances are not the result of the applicant's actions.

ORDINANCE NO-07-01

4. Granting the variance requested will not give the applicant any special privilege that is denied to other uses or structures in the district.
5. The variance requested is the minimum variance that will make possible the reasonable use of property or structure.
6. 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.
7. 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.

□
(C). In order to preserve the intent of the Zoning Ordinance 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.

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

(E). Any order of the Board of Adjustment granting a variance may be declared invalid by the Board of Adjustment unless substantially completed within two years from the date of such order. The Zoning Administrator shall notify the property owner of record upon invalidation of a variance.

9.07 APPEALS. The Board shall hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Zoning Administrator in the enforcement of these regulations.

9.08 APPEALS FROM DECISION OF BOARD. Appeals may be taken to the Circuit Court by any person or persons, jointly or severally, aggrieved by any decision of the Board of Adjustment, or any taxpayer, or any officer, department, board or bureau of the County, aggrieved by any decision of the Board of Adjustment, in the manner and form provided by the statutes of the State of South Dakota, in such cases made and provided.

Be it further ordained that Ordinance No. 05-01 of Clay County, South Dakota be amended hereto by adding a new article thereto as follows:

ARTICLE 11
CONDITIONAL USE PERMITS

11.01 PROCEDURE. The Planning Commission may authorize by conditional use permit the uses designated in this ordinance when located in a zoning district allowing such use. The Planning Commission shall impose such conditions as are appropriate and necessary to insure compliance with the Comprehensive Plan and to protect the health, safety, and general welfare in the issuance of such conditional use permit. Uses not listed in the District Regulations as

ORDINANCE NO-07-01

eligible for a Conditional Use Permit

shall not, in any circumstances, be granted a Conditional Use Permit.

11.02 APPLICATION. To obtain a conditional use permit, the applicant shall file an application with the Office of Planning and Zoning on a form as provided. Every application shall contain the following information:

(A). Legal description of the land on which such conditional use is requested.

(B). Name, address and phone number of the owner of the property which is the subject of such application.

(C). Name, address and phone number of the person making the application if made by anyone other than the owner.

(D). Zoning district classification under which the property is regulated at the time of such application.

□

(E). A site plan as described in 11.04.

(F). Any other information concerning the property as may be requested by the Office of Planning and Zoning.

The Zoning Administrator shall review the application, and shall make a recommendation to the Planning Commission 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.

11.03 FEES. Upon the filing of any application for conditional use with the Office of Planning and Zoning, the applicant shall pay to the County the appropriate fee as designated in Article 8.

11.04 INFORMATION ON SITE PLAN. Plans shall be drawn to scale upon substantial paper or cloth

and shall be of sufficient clarity to indicate the location, nature, and extent of the work proposed and show in detail that it will conform to the provisions of this ordinance and all relevant laws, rules, and regulations, and shall include the following information.

EXCEPTION: The Zoning Administrator may waive the submission of plans, if he finds that the nature of the work applied for is such that reviewing of plans is not necessary to obtain compliance with this title.

(A). The address of the property and the legal description.

(B). The name of the project and/or business.

(C). The scale and north arrow.

(D). All existing and proposed buildings or additions.

(E). Dimensions of all buildings.

(F). Distance from all building lines to the property lines at the closest points.

(G). Building height and number of stories.

(H). Dimensions of all property lines.

(I). Parking lots or spaces; designate each space, give dimensions of the lot, stalls, and aisles.

(J). Screening; show height, location, and type of material to be used.

(K). The landscaped setback and trees; indicate species of trees and material

to be used for landscaping.

(L). Name and location of all adjacent streets, alleys, waterways and other public places.

Approved plans shall not be changed, modified, or altered and all work shall be done in accordance with

the approved plans.

11.05 PLANNING COMMISSION HEARING. Upon the filing of an application for a conditional use permit, the Zoning Administrator shall set a date for public hearing on such requested conditional use, at

□ which time and place the Clay County Planning Commission shall meet to consider the conditional use request.

(A). NOTICE. The Zoning Administrator shall post notices of the public hearing at the County Courthouse and on the property affected by the proposed Conditional Use Permit at least ten days prior to the scheduled hearing. No less than ten (10) 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, and shall mail notice of the public hearing to adjacent landowners.

If the application covers an Animal Feeding Operation or a Concentrated Animal Feeding Operation, the notice shall contain information on the feeding operation to include the location, number of animals, a brief description of the proposed manure management system, the legal description of the lands in the nutrient management plan, and where to obtain further information.

(B). ACTION. The Planning Commission shall decide whether to grant the conditional use with such conditions and safeguards as are appropriate or to deny a conditional use when not in harmony with the purpose and intent of these regulations. The decision of the Planning Commission shall be final unless an appeal is filed in accordance with Article 11.06.

(C). The following procedure shall be followed by the Planning Commission in considering the recommendations 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 Planning Commission.

2. Before any Conditional Use Permit shall be granted, the Planning Commission must 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;
c. 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 spaces;
h. General compatibility with adjoining properties and other property in the
zoning district in
which such use is to be located.

□
(D). In order to preserve the intent of the Zoning Ordinance and to protect
the public interest, the
Planning Commission 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 Planning
Commission. Failure to
comply with the terms and conditions of a Conditional Use Permit may subject
the holder of a
Conditional Use Permit to revocation or other appropriate action, including,
but not limited to,
those remedies found in these ordinances, and enforcement actions as
authorized herein. The
failure to comply with the terms and conditions of a Conditional Use Permit
may be considered a
violation of the Ordinance.

(E). The Planning Commission must make a written finding that it is either
empowered or not
empowered by the Zoning Ordinance to grant the requested Conditional Use
Permit, and that such
Conditional Use Permit is either consistent or inconsistent with the intent of
the Zoning Ordinance.

11.06 APPEAL OF PLANNING COMMISSION DECISION. The decision rendered by the
Planning
Commission on a conditional use permit may be appealed to the Board of County
Commissioners. The
applicant or any other person aggrieved by the decision of the Planning
Commission shall file a written
appeal with the Office of Planning and Zoning within five business days of the
Planning Commission
decision. When an appeal is filed, the Zoning Administrator shall present the
Planning Commission's
decision to the Board of County Commissioners for review. Notice of the
meeting shall be given as
required by Article 11.05 (A). The Board shall vote to either uphold, overrule
or amend the decision of
the Planning Commission.

11.07 AMENDMENTS. Amendments shall be processed in the same manner as required
for a separate
conditional use permit.

11.08 EXPIRATION. A conditional use permit which has been approved shall
expire by limitation and
become null and void if the building, work or use authorized by such
conditional use permit is not
commenced within one year from the date of approval. This provision shall not
apply to a conditional use
permit approved for a residential use in the A-1 or NRC zoning districts. Upon
written request to the

ORDINANCE NO-07-01

Zoning Administrator and prior to the conditional use permit expiration date, a one-year time extension for the conditional use permit may be granted by the Zoning Administrator, subject to the following conditions:

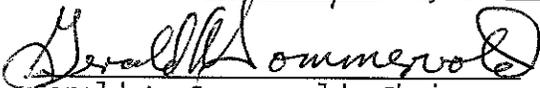
(A). There was no public objection presented during the public hearing process for the original conditional use permit;

(B). The land uses for the surrounding properties have not significantly been altered since the original approval date for the conditional use permit.

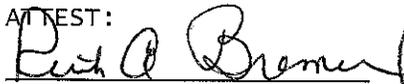
11.09 PRE-EXISTING USES. An existing use eligible for a conditional use permit which was lawfully established on the effective date of this ordinance shall be deemed to have received a conditional use permit as herein required and shall be provided with such permit by the County upon request, and it shall not be a nonconforming use. However, for any enlargement, extension, or relocation of such existing use, an application in accordance with this ordinance shall be required.

11.10 REAPPLICATION. No applicant requesting a conditional use permit whose application includes the same or substantially the same requirements for the same or substantially the same property as that which has been denied by the Planning Commission or Board of County Commissioners shall be again considered by the Planning Commission before the expiration date of six (6) months from the date of the final action on the petition.

11.11 REVOCATION. If the County Zoning Administrator finds at any time that the terms, conditions, or requirements of the conditional use permit have not been complied with, or that any phase thereof has not been completed within the time required under the permit or any amendment thereto, the Zoning Administrator shall report this fact to the permittee, landowner, and/or operator, and the Clay County Planning Commission. The County Planning Commission may, after conducting a public hearing, of which the permittee, landowner and/or operator shall be notified, revoke the conditional use permit for failure to comply with the terms, conditions, or requirements of the permit. Dated this 17th day of June, 2007.


Gerald A. Sommervold, Chairman
Clay County, South Dakota

ATTEST:


Ruth A. Bremer, County Auditor
(SEAL)



First Reading: May 31, 2007
Second Reading: June 14, 2007
Publication: June 22, 2007
Effective Date: July 12, 2007

□