

VARIANCE APPLICATION

PLANNING & ZONING COMMISSION AS BOARD OF ADJUSTMENT

Date Application Filed: _____

Name of Applicant: _____

Address of property for variance: _____

_____ Montrose, SD Zip Code: 57048

Contact Number: _____

Email Address: _____

Fee: (SET BY CURRENT RESOLUTION) Paid: YES _____ NO _____

Present Zoning District: _____ Site Plan Included: YES _____ NO _____

I received a copy of the Planning & Zoning Variance ORD No. 13.04: YES _____ NO _____

Signature of Present Owner of Property: _____

Parcel No. of Property: _____

Description of project: _____

Explain your unnecessary hardship/rights deprived of: _____

Finance Officer Comments: _____

Planning/Zoning Team Comments: _____

Board of Adjustment Meeting: _____ Time: _____

Publish Date: _____

Posting Date (on property & at City Hall): _____

Landowner letter sent: _____

Action Taken: _____ Zoning Member Signature: _____

- B. The Board of Adjustment shall keep a public record of all findings and decisions. All 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. A sign shall be posted in a conspicuous place on the property and the Authorized Official of the City of Montrose shall publish notice of the public hearing in a legal newspaper of the City no less than ten (10) days before the public hearing.
- C. The public hearing shall be held. The appellant 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. Written findings certifying compliance with the specific rules governing the action considered at the public hearing shall be completed by the Board. The concurring vote of three-fourths (3/4) of the members of the Board of Adjustment shall be necessary to approve any appeal or arrive at any determination.

13.04 Variances

The Board of Adjustment shall have the jurisdiction to hear and decide upon petitions for variances to vary the strict application of the height, area, setback, yard, parking or density requirements as will not be contrary to the public interest. For purposes of these regulations, public interest shall include the interests of the public at large within the City, not just neighboring property owners. At all times, the burden shall be on the applicant to prove the need for a variance. The following issues are to be considered, each and all of them, as determining factors in whether or not the issuance of a variance is justified:

- A. An unnecessary hardship must be established by the applicant who applies for the variance. For purposes of this Chapter, an unnecessary hardship is a situation where, in the absence of a variance, an owner can make no feasible or reasonable use of the property. Convenience, loss of profit, financial limitations, or self-imposed hardship shall not be considered as grounds for approving a variance by the Board of Adjustment.
- 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.
- C. The variance requested is the minimum variance that will alleviate the hardship.
- D. 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.
- E. 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.

- F. Exceptional and extraordinary circumstances apply to the property that do not apply to other properties in the same zone or vicinity and that result from lot size or shape, topography or other circumstances which are not of the applicant's making.
- G. 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.

13.05 Conditional Use

A. Procedure

Conditional Uses are allowed for certain uses in some districts as defined in the District Regulations. Uses not listed in the District Regulations as eligible for a Conditional Use Permit shall not, in any circumstance, be granted a Conditional Use Permit.

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

1. An application for a Conditional Use Permit, available from the Authorized Official, shall be completed by the landowner requesting the Conditional Use Permit. Completed applications shall be returned to the Authorized Official for review.

To be considered completed, the application shall contain the following information:

- a. Legal description of the land on which such conditional use is requested, together with local street address.
- b. Name and address of each owner of the property.
- c. Name, address, phone number and signature of the applicant.
- d. Zoning district classification under which the property is regulated at the time of such application.
- e. Be accompanied with a site plan, unless waived by the Authorized Official.

In addition to the following information, 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 title and all relevant laws, ordinances, rules and regulations.