

## ORDINANCE NO. 2025-004

AN ORDINANCE OF THE CITY OF MONTROSE, SD, AMENDING THE MONTROSE ZONING REGULATIONS, BY AMENDING TITLE 13, BOARD OF ADJUSTMENTS; CHAPTER 13.04, VARIANCES.

BE IT ORDAINED BY THE CITY OF MONTROSE, SD:

*Section 1. That Chapter 13.04 of the Montrose Zoning Regulations is hereby amended to read as follows:*

### **13.04 Variances**

The Board of Adjustment (Zoning Committee) 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.
- H. An Application for a Variance, available from the Authorized Official (Finance Officer) of the City of Montrose, shall be completed by the landowner requesting the Variance. Completed applications shall be returned to the Authorized Official for review. To be considered completed, the application shall contain the following information:
1. Legal description of the land on which such variance is requested, together with local street address;
  2. Name and address of each owner of the property;
  3. Name, address, phone number and signature of the applicant;
  4. Zoning district classification under which the property is regulated at the time of such application;
  5. Description of the variance sought from the Zoning Regulations;
  6. Be accompanied with a site plan, unless waived by the Authorized Official.
- I. The Authorized Official shall review the application, and shall make a recommendation to the Board of Adjustment to either approve or not approve said application. The Authorized Official's recommendation shall include a summary of the application, and the reasons and justification for either approval or disapproval of the application.
- J. The Authorized Official shall set the date, time and place for a public hearing to be held by the Board of Adjustment. The Authorized Official 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 ten (10) days prior to the scheduled public hearing. No less than ten (10) days before the public hearing, the Authorized Official shall publish notice of the public hearing in a legal newspaper of the city.
- K. The public hearing shall be held. The applicant 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 two-thirds (2/3) of the members of the Board of Adjustment shall be necessary to approve any variance or arrive at any determination.

*Section 2. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.*

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Finance Officer

Seal

First Reading: \_\_\_\_\_

Second Reading & Adoption: \_\_\_\_\_

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