

# CHAPTER 17.88 BOARD OF ADJUSTMENT

## CHAPTER 17.88 - BOARD OF ADJUSTMENT

- 17.88.1 Establishment
- 17.88.2 Powers and Duties
- 17.88.3 Fees
- 17.88.4 Appeal Procedure
- 17.88.5 Variances
- 17.88.6 Court Review

**17.88.1 Establishment.** A Board of Adjustment is hereby established for the City of North Sioux City, which shall consist of the members of the Planning & Zoning Commission, pursuant to SDCL 11-4-13.

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

- A. To hear and decide appeals where it is alleged that the Authorized Official or Building Official has made an error in any requirement or determination made in the enforcement of this Ordinance.
- B. To hear and decide upon petitions for variances to alter the strict application of the height, area, setback, yard, parking, or density requirements as will not be contrary to the public interest. A variance shall not be allowed to vary the use regulations.
- C. To hear and decide upon conditional use permits in conformance with Chapter 17.96.

**17.88.3 Fees.** Upon the filing of any application for an appeal or variance with the Authorized Official, the applicant shall pay the City of North Sioux City the appropriate fee in conformance with Chapter 17.100.

**17.88.4 Appeal Procedure.**

- A. Any person or persons, jointly or severally, aggrieved by any decision of the Authorized Official or Building Official may present a notice of appeal setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. The notice of appeal shall be in writing and filed with the Authorized Official, who shall transmit all information and records concerning the appeal to the Board of Adjustment. Such notice of appeal shall be presented to the Authorized Official within thirty (30) days of the appealed decision or determination.
- 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 or Authorized Official and at such other times as necessary. Each session at which an appeal

is to be heard shall be a public hearing pursuant to SDCL 11-4-21. At least ten (10) days prior to the date of the scheduled public hearing, the Authorized Official shall notify the landowner by mail; post notices of the public hearing at City Hall and on the City's website; and shall publish notice of the public hearing in the City's legal newspaper(s).

The applicant shall give notice by certified mail to at least one (1) owner of each adjacent property. The notice shall include, at a minimum, the name and contact information or a person responsible for addressing questions related to the matter; the address of the lot that is the subject of the matter; the nature and basis of the applicant's appeal; the date, time, and place of the public hearing; and a statement that all materials submitted by the applicant are available for public review prior to the public hearing at City Hall. Notices shall be postmarked not less than ten (10) days prior to the date of the public hearing. The applicant is responsible for meeting all requirements and shall provide documentation to the Authorized Official that this public notice requirement has been satisfied at least four (4) business days prior to the date of the public hearing. Failure to provide all required notices or proper documentation of such shall result in the cancellation of the public hearing. Failure of the recipient of the certified letter to accept delivery does not invalidate service.

For residentially zoned properties, the term "adjacent" shall mean all properties located within two hundred fifty (250) feet. For commercially and industrially zoned properties, the term "adjacent" shall mean all properties located within one thousand (1,000) feet.

- C. The public hearing shall be held. The person or persons appealing the decision may appear in person, by agent, or by 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 reverse any order, requirement, decision, or determination of the Authorized Official or Building Official.

**17.88.5 Variances.** The Board of Adjustment shall have the jurisdiction to hear and decide upon petitions for variances to alter the strict application of the height, lot area, lot width, setback, parking, or other applicable requirements of this Ordinance as will not be contrary to the public interest. For purposes of this Ordinance, 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.

Before any variance shall be granted, the Board of Adjustment shall make written findings certifying that the variance meets all the specific requirements outlined above. The Board's written findings shall not simply state the Board's conclusions regarding each applicable requirement, but shall include a brief statement of their rationale concerning the basis for finding each has been satisfied.

In order to preserve the intent of this Ordinance as well as 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.

An application for a variance, available from the Authorized Official, 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:

- A. Legal description or address of the lot for which such variance is requested;
- B. Name and address of each owner of the lot;
- C. Name, address, phone number, and signature of the applicant if made by anyone other than the lot's owner;
- D. Zoning district classification under which the lot is regulated at the time of such application;
- E. Description of the variance sought; and

F. Be accompanied with a site plan, unless waived by the Authorized Official.

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 justifications for either approval or disapproval of the application.

The Authorized Official shall set the date, time, and place for a public hearing to be held by the Board of Adjustment. At least ten (10) days prior to the date of the scheduled public hearing, the Authorized Official shall notify the landowner by mail; post notices of the public hearing at City Hall, on the lot subject to the proposed variance in conformance with SDCL 11-4-4.4, and on the City's website; and shall publish notice of the public hearing in the City's legal newspaper(s).

The applicant shall give notice by certified mail to at least one (1) owner of each adjacent property. The notice shall include, at a minimum, the name and contact information for a person responsible for addressing questions related to the proposal; the address of the lot subject to the proposal; the current zoning district classification of the lot; the nature and extent of the variance requested by the applicant; the date, time, and place of the public hearing; and a statement that all materials submitted by the applicant are available for public review prior to the public hearing at City Hall. Notices shall be postmarked not less than ten (10) days prior to the date of the public hearing. The applicant is responsible for meeting all requirements and shall provide documentation to the Authorized Official that this public notice requirement has been satisfied at least four (4) business days prior to the date of the public hearing. Failure to provide all required notices or proper documentation of such shall result in the cancellation of the public hearing. Failure of the recipient of the certified letter to accept delivery does not invalidate service.

The public hearing shall be held. The applicant may appear in person, by agent, or by 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.

Any variance granted by the Board of Adjustment shall expire if either of the following occurs: (1) the action(s) or circumstance(s) authorized by the variance is not completed within one (1) year from the date the variance is approved; or (2) the permittee is not in compliance with any of the conditions of the variance. If the action(s) or circumstance(s) authorized by the variance is not completed within one (1) year from the date the approved variance is filed with the Authorized Official, the Board may, extend the time period for good cause. The holder of the variance shall be solely responsible for convincing the Board that good cause warranting the extension of the variance exists.

If the Authorized Official is reasonably satisfied there exists any non-compliance with

the terms of the action(s), circumstances(s), or condition(s) of a variance, he or she shall give written notice of such non-compliance to the person, firm, corporation, or entity to which it was granted. He or she shall advise the Board of Adjustment of such non-compliance at its next regularly scheduled meeting. Upon such advisement, the Board of Adjustment shall schedule a time for review of the variance at a subsequent regularly scheduled meeting. Such review will be open to the public and notice provided in the manner required by law.

In the event the Board of Adjustment determines by a vote of two-thirds (2/3) of its members that the variance holder is not in compliance with the terms of the action(s), circumstance(s), or condition(s), it may do any of the following:

- A. Revoke the variance.
- B. Amend the terms and conditions of the variance.
- C. Postpone action for a period of time it deems appropriate to allow the variance holder to comply with all terms, conditions, and requirements in question.
- D. Require any other such action it deems appropriate and in accordance with the provisions of this Ordinance.

Any person, firm, corporation, or entity to which a variance has been granted and subsequently revoked by the Board of Adjustment may not apply for a similar or substantially similar variance for a period of six (6) months.

**17.88.6 Court Review.** Any person aggrieved by any decision of the Board of Adjustment may petition a court of record within thirty (30) days after the filing of the Board's decision as provided by SDCL 11-4-25.