

# CHAPTER 17.96 CONDITIONAL USE PERMITS

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**17961**     **General.** The Board of Adjustment may authorize, by conditional use permit, both those principal uses specifically designated as Conditional Uses in Chapters 17.12 through 17.52 and any other building, structure, or land use requiring such a permit pursuant to the terms of this Ordinance. The Board of Adjustment shall impose such conditions as are appropriate and necessary to ensure compliance with the Comprehensive Plan and protect the health, safety, and general welfare of the community.

**17962**     **Application.** To obtain a Conditional Use Permit, the applicant shall file an application in writing on a form furnished by the Authorized Official. Every application shall contain the following information:

- A.     Legal description or address of the lot on which such conditional use is requested.
- B.     Name, address, and phone number of the owner of the lot which is the subject of such application.
- C.     The district and principal land use classification(s) under which the lot is regulated at the time of the application.
- D.     The principal land use classification(s) requested by the application.
- E.     A site plan in conformance with Chapter 17.96.04.
- F.     Any other information concerning the lot as may be requested by the Authorized Official.

**17963**     **Fees.** Upon the filing of any application for a conditional use permit with the Authorized Official, the applicant shall pay to the City the appropriate fee in conformance with Chapter 17.100.

**17964**     **Information on Site Plan.** Plans of sufficient clarity to indicate the location, nature,

and extent of the work proposed shall be provided to the Authorized Official. Where applicable, all site plans required in Chapter 17.96.02(E) shall contain the following information:

- A. The legal description and/or address of the lot.
- B. The name of the project and/or business.
- C. A north arrow.
- D. All existing and proposed buildings or additions.
- E. Dimensions of all buildings.
- F. Distance from all building lines to the lot lines at the closest points.
- G. Building height and number of stories.
- H. Dimensions of all lot lines.
- I. Parking lots or spaces: designate each space and give dimensions of the parking lot(s), stall(s), and aisle(s).
- J. The location and dimensions of all buildings and structures located on properties abutting the lot that is the subject of the application.
- K. Screening: show height, location, and type of material to be used.
- L. Landscaped setback and trees: indicate species of trees and material(s) to be used for landscaping.

Exception: The Authorized Official may waive the submission of plans, if he or she determines the nature of the work applied for is such that reviewing of plans is not necessary to assist the Board of Adjustment in determining whether to grant the conditional use permit.

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

**17965 Review and Public Hearing Procedure.** Prior to the approval of a conditional use permit, the Authorized Official shall review the application. After review of the application, the Authorized Official shall make a recommendation to the Planning Commission that they either recommend approval or denial of the permit to the Board of Adjustment. 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.

Once the completed application and Authorized Official's recommendation have been transmitted to the Planning Commission, the matter shall be scheduled to be heard at their next regularly schedule. After review of the application, the Planning Commission shall make a recommendation to the Board of Adjustment that they either approve or deny the application. The Planning Commission's recommendation shall include a summary of the application, the Authorized Official's recommendation and justifications, and the Planning Commission reasons and justifications for either approval or denial of the application.

Once transmitted to the Board of Adjustment, the Authorized Official shall set the date, time, and place for a formal 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 conditional use permit 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 type of conditional use 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.

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.

The following procedure shall be followed by the Board of Adjustment in considering the recommendation of the Authorized Official:

- A. The public hearing shall be held. Any person or persons 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.
- B. 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:

1. Ingress and egress to the lot and any proposed buildings or structures thereon, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe;
2. Off-street parking and loading areas where required;
3. Refuse and service areas, with particular reference to (a) and (b) above;
4. Utilities, with reference to locations, availability and compatibility;
5. Screening and buffering with reference to type, dimensions and character;
6. 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;
7. Required yards and other open space;
8. General compatibility with adjoining properties and other property in the zoning district in which such use is to be located;
9. The goals and objectives of the most recently adopted Comprehensive Plan.

The 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.

The Board of Adjustment 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 this Ordinance. The decision of the Board of Adjustment shall be final unless an appeal is filed in accordance with SDCL 11-4-25.1.

**17966 Reapplication.** No applicant requesting a conditional use permit whose application involves the same or substantially the same request, project, or proposal for the same or substantially the same building or lot as that which has been denied by the Zoning Board of Adjustment shall be again considered by the Board of Adjustment until a period of at least twelve (12) months has passed from the date of the final action on the application.

**17967 Expiration.** A conditional use permit shall expire one (1) year from the date upon which it becomes effective if the use or uses have not commenced operations. Upon written request to the Authorized Official and prior to the conditional use permit expiration date, a one (1) year time extension for the conditional use permit may be granted by the Authorized Official, 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 lots have not significantly been altered since the original approval date for the conditional use permit.

A conditional use permit shall also expire one (1) year after the use discontinues on the lot, or the use is changed to another authorized use in the underlying district.

**17968** **Review of Permit by Board of Adjustment.** The following procedures shall be employed when acting upon reviews of previously approved conditional use permits:

- A. Basis for Review. Noncompliance with any of the terms, conditions, or requirements placed on a conditional use permit is sufficient cause to subject the permit to be reviewed by the Board of Adjustment.
- B. Procedure. If the Authorized Official is reasonably satisfied there exists any noncompliance with the terms, conditions, or requirements of a conditional use permit, he or she shall give written notice of such noncompliance to the person, firm, corporation, or entity to which the permit was granted. Additionally, the Authorized Official shall advise the Board of Adjustment of such noncompliance at its next regularly scheduled meeting. Upon such advisement, the Board of Adjustment shall set a time for review of the permit at a public hearing. Notice of the public hearing shall be provided in the manner required by law.
- C. Hearing. In the event the Board of Adjustment determines by a vote of two-thirds (2/3) of its members that such compliance has not been established, it may do any of the following:
  - 1. Revoke the permit.
  - 2. Amend the permit.
  - 3. Postpone action for a period of time it deems appropriate to allow the permit holder to comply with all terms, conditions, and requirements of the permit in question.
  - 4. Require any other such action it deems appropriate and in accordance with the provisions of this Chapter.
- D. Effect of Revocation. Any person, firm, corporation, or entity to which a conditional use permit has been granted and subsequently revoked by the Board of Adjustment may not apply for a similar or substantially similar conditional use permit for a period of six (6) months.

**17969** **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 11-4-25.1.