

RULES OF THE ZONING BOARD OF ADJUSTMENT OF THE CITY OF SIOUX FALLS, SOUTH DAKOTA (SDCL 11-4-18; Title XV, Chapter 160)

Rule 1. Board of Adjustment Membership. The Board of Adjustment shall consist of five (5) members, who shall be residents of the city of Sioux Falls, as provided by SDCL 11-4-14 and Section 160.666 of the "2013 Shape Places Zoning Ordinance of the City of Sioux Falls." They shall be appointed by the Mayor with the approval of the City Council. Members shall be appointed for a term of three (3) years and removable for cause by the appointing authority upon written charges and after public hearing. Members may serve two consecutive terms. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. Vacancies shall be filled by appointment for the unexpired term only. Members of the Board shall serve without compensation.

Rule 2. Chairperson of the Board. The Board shall select one of their members as Chairperson and one as Vice-Chairperson, who shall serve one (1) year and until their successors have been selected. In the absence of the Chairperson, the Vice-Chairperson shall act as Chairperson of the Board.

Rule 3. Clerk of the Board. Records. A zoning official shall act as Clerk of the Board. He/She shall keep all records of the Board as required by SDCL 11-4-16 and ordinance.

He/She shall keep Minutes that record the resolution relating to each case acted on, or question voted on, together with a vote for each member of the Board, those absent being so marked, together with all other actions of the Board.

The Clerk of the Board shall keep, in his/her office, a file containing all records of the Board.

The Clerk shall, under the direction of the Board and its Chairperson, conduct all correspondence of the Board; send out all notices required by these rules and the order of the Board; shall attend all meetings of the Board and all hearings; shall scrutinize all appeals and applications for variations to see that these rules are complied with; shall keep the minutes of the Board's proceedings; shall compile all required records; shall maintain the necessary files and indexes and generally oversee all the clerical work of the Board; and shall retain in the records the original papers acted upon by the Board.

After docketing of any appeal or application, the Clerk shall make a personal inspection of the premises involved, see that all maps and plats are properly prepared and be prepared to advise the Board on the physical conditions of the property affected by such appeal or application.

The Clerk shall obtain from the appellant or applicant such additional information and data as may be required to fully advise the Board with reference to the appeal or application. Any failure or refusal on the part of any appellant or applicant to furnish such additional information or data shall be grounds for the dismissal of the appeal or application by the Board.

Rule 4. Meetings of the Board. Roberts Rules of Order, as revised from time to time, shall govern the proceedings of the Board of Adjustment.

Meetings of the Board shall be held at the call of the Chairperson and at such other times as the Board may determine. The regular meeting schedule shall be set on or before January 1st of each new year. The Board shall meet at least once each month at such time and place as the Board may fix by resolution. Special meetings may be called at any time by the Chairperson, or in his/her absence, by the Vice-Chairperson. A quorum of the Board shall consist of five persons for the transaction of business. All meetings of the Board shall be open to the public.

The Chairperson, or in his/her absence, the Acting Chairperson, may administer oaths and compel the attendance of witnesses as provided in SDCL 11-4-15. Each member shall be notified of a meeting fourteen days in advance, unless such notice is waived by the member.

Rule 5. Appeal to the Board. Appeals to the Board may be taken by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within twenty (20) days after the decision of the Zoning Officer. Such appeal shall be filed with the Clerk of the Board of Adjustment specifying the grounds thereof. The Officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from is taken. An appeal stays all proceedings as provided by SDCL 11-4-20 and SFO: Chapter 160.671

Rule 6. Application for Modification. An application to the Board of Adjustment for variation or modification of any regulation or provision of the Zoning Ordinance as provided by SDCL 11-4-17 and SFO Chapter 160.672 of the Revised Shape Places Zoning Ordinance shall be made in writing and filed with the zoning office.

The application shall refer to the provisions of the Zoning Ordinance involved and shall set out such information with drawings or plats as may be necessary to show all matters material to the application under the Zoning Ordinance.

Rule 7. Fees. All applications submitted to the Board shall be accompanied with a fee as set from time to time by the City Council.

Rule 8. Notice and Hearing by the board of adjustments. Upon the filing of an application for variation or modification or notice of appeal, the same shall be set for hearing at a regular meeting of the Board if filed by the filing deadline. Notice of the time and place of the hearing shall be given once at least ten days in advance by publication in a legal newspaper of the municipality, and due notice shall be given to the parties in interest. The board shall decide the appeal within a reasonable time. Any party may appear at the hearing in person or by agent or by attorney. The Board shall give further notice of no less than ten (10) days public notice thereof by requiring the applicant to post signs in the number prescribed by the Director of Planning and Building Services, except that in no case shall less than two (2) signs be posted of at least one square foot in area with a yellow background and black letters in a conspicuous place on the property upon which the application is made. Said sign shall remain posted for no less than ten (10) days immediately prior to the date of public hearing. Except for good cause to be found and entered in the records of the Board, such hearing shall be held within forty-five (45) days after the filing of the application or notice of appeal.

Rule 9. Powers of the Board. Decision. The Board of Adjustment at such hearing shall have and exercise the powers to the extent and in the manner provided by SDCL 11-4-17 and 160.672 of the "2013 Revised Shape Places Zoning Ordinance of the City of Sioux Falls." The concurring vote of four members of the Board of Adjustment present shall be necessary to reverse any order, requirement, decision, or determination of any such Administrative Official.

Rule 10. Action by Resolution. The final disposition of any appeal shall be in the form of a resolution affirming, modifying, or reversing the refusal of a permit or of any order or decision by an administrative official under the zoning ordinance. The final disposition of any application for variation or modification shall be in the form of a findings of fact per Section 160.673, the 2013 Revised Shape Places Zoning Ordinance granting or rejecting, in whole or in part or upon conditions, the application and shall specifically set forth what variations or modifications are permitted and what conditions, if any, shall be complied with.

Rule 11. Legal Adviser. The City Attorney shall act as the legal adviser to the Board and shall be notified by the Clerk of all hearings and meetings of the Board

Rule 12. Amendments. These rules may be amended by resolution at any meeting of the Board.

Rule 13. Appeal from Board Action. Any appeal from the action of the Board of Adjustment shall be taken as provided by SDCL 11-4-25.

Authority:

SDCL 11-4-18. Rules of board of adjustment. The board of adjustment shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this chapter.

Source: SL 1927, ch 176, § 7; SDC 1939, § 45.2607.

160.667 Rules.

The board shall organize and adopt rules to govern its proceedings; provided, however, that such rules are not inconsistent with the Sioux Falls Code of Ordinances, the Sioux Falls comprehensive development plan, state or federal law.

(Ord. No. 43-86, §§ 1, 2, 5-19-86)

Rule 1:

SDCL: 11-4-14. Appointment and terms of board of adjustment other than commission-- Removal--Vacancies--Alternates. A board of adjustment, other than the planning and zoning commission acting as a board of adjustment, consists of five members, each to be appointed for a term of three years and removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. The appointing authority may also appoint a first alternate and a second alternate for a term of three years each. If a member is unable to attend a meeting, the first alternate, or second alternate, in turn, shall serve in the member's place.

Source: SDC 1939, § 45.2607; SL 1975, ch 114, § 6; SL 1984, ch 105; SL 2000, ch 69, § 61.

160.666 Membership.

Such board shall consist of five persons, who are not members of any governing body, to be appointed by the mayor, three of whom shall be persons with expert knowledge of construction, architecture, fine arts, engineering, landscape architecture, law or practical experience in related areas. The terms of all members shall be for three years each and so arranged that the term of at least one member will expire each year. Members of the board shall be removable for cause by the mayor upon written charges and after a public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. The mayor shall also appoint a first alternate and a second alternate for a term of three years each. If a member is unable to attend a meeting, the first alternate or second alternate, in turn, shall serve in that person's place. (Ord. No. 43-86, §§ 1, 2, 5-19-86; Ord. No. 26-99, § 12, 3-1-99)

Rule 3:

SDCL 11-4-16. Minutes and records of board of adjustment--Destruction of records. The board of adjustment shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record. However, the board of adjustment may destroy any record which the records destruction board, acting pursuant to § 1-27-19, declares to have no further administrative, legal, fiscal, research, or historical value.

Source: SL 1927, ch 176, § 7; SDC 1939, § 45.2607; SL 1981, ch 45, § 13.

160.668 Meetings.

All meetings of the board shall be open to the public and held as the board may determine. Special meetings may be held at the call of the chairperson. The chairperson or, in his absence, the acting chairperson may administer oaths, and the board may compel the attendance of witnesses. All business of the board shall be transacted at such meetings. The board shall keep minutes of its proceedings showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

(Ord. No. 43-86, §§ 1, 2, 5-19-86)

Rule 4:

11-4-15. Meetings of board of adjustment--Administration of oaths and attendance of witnesses. Meetings of the board of adjustment shall be held at the call of the chairman and at such other times as the board may determine. Such chairman or, in his absence, the acting chairman may administer oaths and compel the attendance of witnesses. All meetings of such board shall be open to the public.

Source: SL 1927, ch 176, § 7; SDC 1939, § 45.2607.

Rule 5 & 6:

11-4-17.

Appeals to board of adjustment--Exceptions and variances. The board of adjustment may:

(1) Hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this chapter or of any ordinance adopted pursuant to this chapter;

(2) Authorize upon appeal in specific cases such variance from terms of the ordinance not contrary to the public interest, if, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship and so that the spirit of the ordinance is observed and substantial justice done.

Source: SDC 1939, § 45.2607; SL 2000, ch 69, § 62.

160.699 Appeal procedure.

Appeals to the board may be taken by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal was taken shall transmit to the board all the papers constituting the record upon which the action appealed from was taken. The board shall fix a reasonable time for the hearing of the appeal.

(Ord. No. 43-86, §§ 1, 2, 5-19-86)

Rule 7:

160.745 General Regulations. Fees

The fees set forth in this subchapter shall apply to this chapter. Under no conditions shall any fee required hereunder be refunded after the application has been heard by the planning commission or board of adjustment.

(1992 Code, App. B, § 15.71.010) (Ord. 42-83, passed 6-27-1983; Ord. 9-13, passed 3-19-2013)

160.754 BOARD OF ADJUSTMENT.

A charge of \$95 shall be made for filing an application for an appeal to the board of adjustment. (1992 Code, App. B, § 15.71.080) (Ord. 42-83, passed 6-27-1983; Ord. 119-01, passed 12-10-2001; Ord. 9-13, passed 3-19-2013; Ord. 54-14, passed 8-5-2014)

Rule 8:

11-4-21. Notice and hearing by board of adjustment--Hearing open to public. The board of adjustment shall hold at least one public hearing of the appeal. Notice of the time and place of the hearing shall be given once at least ten days in advance by publication in a legal newspaper of the municipality, and due notice shall be given to the parties in interest. The board shall decide the appeal within a reasonable time. Any party may appear at the hearing in person or by agent or by attorney.

Source: SDC 1939, § 45.2607; SL 1999, ch 65, § 13.

160.670 Public notice.

(a) *Signs.* Signs shall be posted on the affected property for a continuous period of ten days prior to any public hearing held by the board of adjustment. The signs shall be furnished by the department of planning and building services and posted by the applicant in the numbers and locations prescribed by the director, but in no case less than two signs. The signs shall be located in a conspicuous place. Before any action can be taken by the board, the applicant shall first file with planning and building services a certificate verifying that the signs have been posted at the proper location before the time specified in this section.

(b) *Written notice.* Letters shall be sent by the city to abutting property owners, marked as contiguous properties including those abutting properties separated by public right-of-way. The letters shall be postmarked ten business days prior to the hearing and state the date, time, and location of the public hearing.

(c) *Publication.* The public hearing date, time, and location shall be published at least ten days in advance of the hearing in a legal newspaper of the community.

(d) *Failure to provide notice.* Failure to provide actual notice to each person so entitled shall not render any proceeding hereunder invalid, provided that the applicant or the city substantially complies with the requisite published legal newspaper notice, public notice and hearing requirements of this chapter.

(1992 Code, App. B, § 15.63.060) (Ord. 42-83, passed 6-27-1983; Ord. 43-86, passed 5-19-1986; Ord. 7-12, passed 2-6-2012; Ord. 9-13, passed 3-19-2013)

Rule 9:

11-4-23. Vote required to reverse or to grant exception or variance. The concurring vote of at least two-thirds of the members of the board of adjustment is necessary to reverse any order, requirement, decision, or determination of the administrative officer, or to decide in favor of the applicant on any matter upon which the board of adjustment is required to pass under any ordinance, or to effect any variation in an ordinance.

Source: SL 1927, ch 176, § 7; SDC 1939, § 45.2607; SL 1975, ch 114, § 7; SL 2006, ch 65, § 1.

160.673 Decisions of board; scope and factors considered.

In exercising its jurisdiction, the board may, in conformity with law, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken. In considering all appeals and petitions within its jurisdiction under this title, the board shall, before making any finding in a specific case, first determine that the proposed change will not constitute a change in the zoning district map and will not impair an adequate supply of light and air to adjacent property or increase the congestion in public streets or increase the public danger of fire and safety or materially diminish or impair established property values within the surrounding area or in any other respect impair the public health, safety, comfort, morals and welfare of the city. In making a determination, the board may request information and recommendations from any department of the city. Every decision by the board shall be accompanied by a written finding of fact based on testimony and other evidence, specifying the reason for granting or denying the variation. The concurring vote of at least two-thirds of the members of the board of adjustment shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which the board of adjustment is required to pass under any ordinance, or to effect any variation in an ordinance.

(Ord. No. 43-86, §§ 1, 2, 5-19-86; Ord. No. 28-10, § 1, 4-5-10)

Rule 10:

11-4-22. Disposition of appeals by board of adjustment. In exercising the powers mentioned in § 11-4-17, the board of adjustment may, in conformity with the provisions of this chapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

Source: SL 1927, ch 176, § 7; SDC 1939, § 45.2607.

160.673 Decisions of board; scope and factors considered.

In exercising its jurisdiction, the board may, in conformity with law, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken. In considering all appeals and petitions within its jurisdiction under this title, the board shall, before making any finding in a specific case, first determine that the proposed change will not constitute a change in the zoning district map and will not impair an adequate supply of light and air to adjacent property or increase the congestion in public streets or increase the public danger of fire and safety or materially diminish or impair established

property values within the surrounding area or in any other respect impair the public health, safety, comfort, morals and welfare of the city. In making a determination, the board may request information and recommendations from any department of the city. Every decision by the board shall be accompanied by a written finding of fact based on testimony and other evidence, specifying the reason for granting or denying the variation. The concurring vote of at least two-thirds of the members of the board of adjustment shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which the board of adjustment is required to pass under any ordinance, or to effect any variation in an ordinance.

(Ord. No. 43-86, §§ 1, 2, 5-19-86; Ord. No. 28-10, § 1, 4-5-10)

Rule 13.

11-4-25. Petition to court alleging illegality of decision by Board of Adjustment--Time of filing. 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 municipality, may present to a court of record a petition duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within thirty days after the filing of the decision in the office of the board.

Source: SL 1927, ch 176, § 7; SDC 1939, § 45.2608.

11-4-26. Writ of certiorari to review decision of board--Time of return--Restraining order to stay proceedings. Upon the presentation of such petition the court may allow a writ of certiorari directed to the board of adjustment to review such decision of the board of adjustment and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten days and may be extended by the court.

The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

Source: SL 1927, ch 176, § 7; SDC 1939, § 45.2608.

160.675 Court review.

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 city, may petition a court of record within 30 days after the filing of the board's decision, as provided by SDCL 11- 4-25. (Ord. No. 43-86, §§ 1, 2, 5-19-86)