

17

BOARD OF ADJUSTMENT

17.01 Establishment

A Board of Adjustment is hereby established for the City of Lennox, which shall consist of the members of the Planning Commission, pursuant to SDCL 11-4-13.

(Amended: Ordinance No. 585, Section 1, 08-13-18)

17.02 Powers and Duties

The Board of Adjustment shall have the following powers and duties:

- A. To hear and decide appeals where it is alleged there is error in any requirement or determination made by the Zoning Administrator of the City of Lennox in the enforcement of this Ordinance.
- B. To hear and decide upon petitions for variances to vary the strict applications 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.

17.03 Appeal Procedure

- A. 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 filed with the Zoning Administrator of the City of Lennox and with the Board of Adjustment. The Zoning Administrator shall transmit to the Board of Adjustment all the papers constituting the record upon which the action appealed from was taken. Such notice of appeal shall be presented to the Zoning Administrator and the Board of Adjustment within ten days after the filing of the decision in the office of the Zoning Administrator.
- 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. No less than ten days before the public hearing, the Zoning Administrator of the City of Lennox shall publish notice of the public hearing in a legal newspaper of the City and shall provide notice of the hearing by mail to the appellant.

- 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 at least 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 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.

(Amended: Ordinance No. 576, Section 1, 05-08-17)

17.04 Variances

- A. 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, landscaping, 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:
1. 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.
 2. 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.
 3. The variance requested is the minimum variance that will alleviate the hardship.
 4. 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.
 5. No nonconforming use or structure in the same district and no permitted or nonconforming use or structure in other districts shall be considered the sole grounds for the issuance of a variance.
 6. 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.

- B. 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.
- C. An Application for a Variance, available from the Zoning Administrator of the City of Lennox, shall be completed by the landowner requesting the Variance. Completed applications shall be returned to the Zoning Administrator 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. Signature of at least one of the owners of the property;
 4. Name, address, phone number and signature of the applicant;
 5. Zoning district classification under which the property is regulated at the time of such application;
 6. Description of the variance sought from the Zoning Regulations;
 7. Be accompanied with a site plan, unless waived by the Zoning Administrator.
- D. The Zoning Administrator shall review the application, and shall make a recommendation to the Board of Adjustment to either approve or not approve said application. The Zoning Administrator's recommendation shall include a summary of the application, and the reasons and justification for either approval or disapproval of the application.
- E. The Zoning Administrator shall set the date, time and place for a public hearing to be held by the Board of Adjustment. The Zoning Administrator 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 Zoning Administrator shall publish notice of the public hearing in a legal newspaper of the city.
- F. 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 at least two-thirds (2/3) of the members of the Board of Adjustment shall be necessary to approve any variation in an ordinance.

(Amended: Ordinance No. 576, Section 2, 05-08-17)

17.05 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 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 Board's decision as provided in SDCL 11-4-25.