

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE PLANNING COMMISSION TO ACT AS THE BOARD OF ADJUSTMENT IN THE CITY OF BROOKINGS, SOUTH DAKOTA, AND PROVIDING THE POWERS AND DUTIES OF THE BOARD OF ADJUSTMENT.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF BROOKINGS, SOUTH DAKOTA, AS FOLLOWS:

I.

Sec. 66-13. Board of Adjustment.

- (a) *Established.* A Board of Adjustment is hereby established. The Planning Commission shall also act as the Board of Adjustment pursuant to SDCL 11-4-13, and, when acting as the Board of Adjustment, shall be referred to as the Board of Adjustment. The Planning Commission acting as a Board of Adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, hear appeals and grant variances and special exceptions to the terms of the Zoning Ordinance of the City of Brookings. Said approval shall be in accordance with the general purpose and intent of the Zoning Ordinance of the City of Brookings and in conformance with the general or specific rules contained therein.
- (b) *Powers.* The Planning Commission acting as the Board of Adjustment shall have the powers provided by law and the ordinances of the City of Brookings.

Sec. 66-14. Appeals.

The board of adjustment shall 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 thereto.

Sec. 66-15. Hearing and deciding petitions for variances; conditions.

The board of adjustment shall also hear and decide petitions for variances to modify the strict application of the setback, area, height, parking or density requirements as will not be contrary to the public interest where each of the following conditions exist:

- (1) Due to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and variance shall not violate the spirit of the ordinance and substantial justice may be achieved as a result of variance.
- (2) Unique circumstances apply to the property which do not apply to other properties in the same vicinity or district.
- (3) The variance is necessary for the preservation of a property right that is substantially the same as that possessed by owners of other property in the same district.
- (4) The variance requested is the minimum variance which would alleviate the hardship.
- (5) Reasonable use of the property is not permitted under the terms of this chapter.

Sec. 66-16. Limitations.

Any order of the board of adjustment granting a variance or special exception shall be invalid unless the action authorized in the order is substantially completed within three years

from the date of such order and such order shall expire without notice. At the expiration of said three year period, the Board may, however, extend the time period for good cause.

II.

Brookings Ordinance Sections 94-42 through 94-45 are repealed because the Planning Commission will assume the duties and carry out the functions of the Board of Adjustment pursuant to this Ordinance.

III.

Any or all other ordinances in conflict herewith are hereby repealed.

FIRST READING: _____

SECOND READING: _____

PUBLISHED: _____

CITY OF BROOKINGS, SOUTH DAKOTA

ATTEST:

Oepke G. Niemeyer, Mayor

Bonnie Foster, City Clerk