

BOARD OF ADJUSTMENT

RULES AND PROCEDURES

The following rules and procedures are set forth as provided for in Section 94-42(d).

SECTION A.

MEMBERSHIP. Members of the Board of Adjustment shall either be residents of the City of Brookings or residents residing within the joint jurisdiction area surrounding the City of Brookings. Any member of the Board of Adjustment shall be removable for cause by the mayor, with confirmation from the council, upon written charges and after public hearing. A vacancy shall be filled by the City Council for the unexpired term of any member who resigns, is deceased or is removed.

SECTION B.

OFFICERS. The duties and powers of the officers of the Board of Adjustment shall be as follows:

Chairperson:

- Preside at all meetings.
- Preserve the order of the meeting
- Call special meetings when necessary
- Sign documents of the Board
- Insure that all actions of the Board are properly taken

Vice-Chairperson:

- Assume the duties of the Chairperson when he/she is absent

Secretary:

- Keep the minutes and summary of discussion of all meetings
- Serve all notices as required by law
- Prepare the agenda for all meetings
- Keep all records pertaining to the meetings of the Board
- Sign official documents of the Board

SECTION C.

MEETINGS. Meetings shall be governed by the following rules:


- The Board shall meet on the first and third Thursdays of each month at 5:00 P.M. when there is business to transact.
- Four members is necessary for a quorum
- Attendance and voting shall be as follows


- All regular and alternate members shall attend all scheduled meetings, be seated on the dais, and take part in discussion. Members with a conflict of interest shall be allowed to voluntarily recuse themselves.
 - Voting on the Board of Adjustment will be comprised of regular members first, then the first alternate and finally the second alternate.
 - Voting members will be those regular or alternate members in attendance at the time the meeting is called to order based on the order listed above.
 - In the case when only four members are in attendance when the meeting is called to order, a fifth member will be allowed to vote upon arrival. Other members arriving after that time will be seated at the dais but will not vote.
- Robert's Rules of Order are hereby adopted to govern the Board in all cases not otherwise provided for in these rules.
 - All motions shall be made in the "positive" sense (i.e. Motion to approve).
 - Voting shall be by roll call
 - The order of voting shall be rotated with each subsequent vote except that the chairperson shall always vote last.
 - Any member who is absent for three (3) consecutive meetings may be subject to removal according to the same procedures outlined in Section A.

SECTION D.

AMENDMENTS. These rules and procedures may be amended at any meeting of the Board of Adjustment provided that notice of said proposed amendment(s) is given to each member in writing at least five days prior to the meeting. Amendments may be approved by a majority vote of the full board.

Passed this 7th day of April 2005.


Chairperson


Secretary

ORDINANCE NO. 04-93

AN ORDINANCE AMENDING SECTION 930 OF THE ZONING ORDINANCE OF THE CITY OF BROOKINGS, SOUTH DAKOTA AND PERTAINING TO APPOINTMENT TO THE BOARD OF ADJUSTMENT.

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

I.

.1 A Board of Adjustment is hereby established; the membership of which shall be appointed by the City Commissioners.

.2 The Board of Adjustment shall consist of five (5) members. The initial members shall be appointed for terms of one (1), two (2) and three (3) years respectively. Their successors shall be appointed upon the expiration of their respective terms to serve three (3) years. Members of the Board of Adjustment must either be residents of the City of Brookings or residents residing within the joint jurisdiction area surrounding the City. The members of the Board shall be removable for cause by the Commissioners upon written charges and after public hearing. A vacancy shall be filled by the Commissioners for the unexpired term of any member who resigns, dies or is removed. The Board shall elect a chairman from its members, and a secretary, who may, but need not, be a member of the Board.

II.

This amendment to the Ordinance shall be effective as of the 1st day of May, 1993.

FIRST READING: February 9, 1993

SECOND READING: March 9, 1993

PUBLISHED: March 15, 1993

CITY OF BROOKINGS


Mayor

ATTEST:


Finance Officer

RESOLUTION

A RESOLUTION ADOPTING BYLAWS PERTAINING TO THE ATTENDANCE AND SEATING OF MEMBERS AND ALTERNATES.

BE IT RESOLVED by the Board of Adjustment of the City of Brookings, South Dakota as follows:

- I. All alternate and regular members will attend normally scheduled meetings, be seated on the dais, and take part in discussion.
- II. Seating on the Board of Adjustment will be comprised of regular members first, then the first alternate and finally the second alternate.
- III. Voting members will be those regular or alternate members seated at the beginning of the meeting based upon the order listed above.
- IV. In the case of only four members at the beginning of a meeting, a fifth member will be seated upon arrival. Subsequent arrivals will be seated at the dais, but will not vote.

PASSED AND APPROVED this 2nd day of August, 1989.

Dorreen Nachtigal
(Acting) Chairperson,
Board of Adjustment

RESOLUTION

A RESOLUTION ADOPTING BYLAWS PERTAINING TO THE ATTENDANCE
AND SEATING OF MEMBERS AND ALTERNATES.

BE IT RESOLVED by the Board of Adjustment of the City of
Brookings, South Dakota as follows:

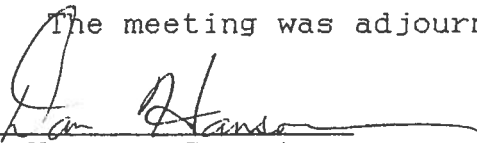
- I. All alternate and regular members will attend normally
scheduled meetings, be seated on the dais, and take
part in discussion.
- II. Seating on the Board of Adjustment will be comprised of
regular members first, then the first alternate and
finally the second alternate.
- III. Voting members will be those regular or alternate
members seated at the beginning of the meeting based
upon the order listed above.
- IV. In the case of only four members at the beginning of a
meeting, a fifth member will be seated upon arrival.
Subsequent arrivals will be seated at the dais, but
will not vote.

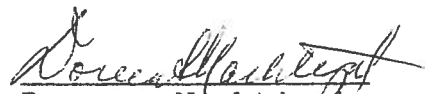
PASSED AND APPROVED this 2nd day of August, 1989.

Dorreen Nachtigal
(Acting) Chairperson,
Board of Adjustment


(Ghazi/Birath) Motion to adopt Resolution. All present
voted aye. MOTION CARRIED.

The meeting was adjourned.


Dan Hanson, Secretary


Dorreen Nachtigal
Acting Chairperson

TO: Board of Adjustment Members

FROM: Dan Hanson 
Planning, Zoning and Housing Administrator

RE: Variances

DATE: June 21, 1999

This memorandum relates to several aspects of the Board of Adjustment and its duties.

In general, Boards of Adjustment have several purposes. They can hear appeals from persons affected by a decision of an administrative officer. They can grant variances and special exceptions (conditional uses). They can also decide issues relating to nonconforming uses.

The 1994 Zoning Ordinance was written to allow the Board of Adjustment to focus on variances. Land use decisions were transferred to the Planning Commission and City Commission.

State statutes and the zoning ordinance list prerequisites that must be followed prior to granting a variance. SDCL 11-4-17(3) provides that the Board of Adjustment may "authorize upon appeal in specific cases such variance from terms of the ordinance as will not be contrary to the public interest, where 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 shall be observed and substantial justice done."

The zoning ordinance applies similar language and also adds a list of conditions that must exist before the variance can be granted.

To 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 the 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 ordinance.
6. The variance request will not violate any flood damage prevention regulations set forth in Chapter 14.5 of the Brookings Revised Ordinances.
7. Where the variance requested is for the enlargement of a nonconforming use, the Board shall not grant a variance for an expansion greater than 25 percent (25%) in accordance with section 50.70.130(A).

If we look closer at SDCL 11-4-17(3) the words "special conditions" are stated as a reason to possibly grant a variance. Examples would include irregular lot shape, unusual topography or vegetation, and natural barriers such as lakes or streams. It is important to note that special conditions relate to the property not the owner.

Another term which we are confronted with constantly is "unnecessary hardship". This is related to the Fifth Amendment where a variance is necessary to prevent a "takings" claim. A "takings" suit is a claim that the government's exercise of regulation over private property restricts or denies all or substantially all use of the land by the owner.

It is again important to note that the unnecessary hardship clause should be granted only when, viewing the property in the setting of its environment, the restriction would be so unreasonable as to constitute an arbitrary and capricious interference with the basic right of private property. The courts, in many instances, state that the power to vary conditions of a municipal zoning ordinance should be sparingly exercised.

Another aspect of the hardship clause is that it is not self imposed or self created. A good example of this is the owner who converts his garage into a living room and then asks for a variance to add on a garage for his vehicle.

Sometimes a variance may be appropriate if the entire neighborhood enjoys a similar right. Usually, in this case, a zoning amendment may be a better option.

Finally, findings of fact are important to guard against your decision being declared void. The following flow chart has a list of questions which can help in determining if the variance request meets the conditions in 50.110.130(13) above.

FINDINGS - VARIANCE

<u>Inquiry</u>		<u>Finding</u>
Is the request for a variance owing to special condition inherent in the property itself?	→	The property is/has ... (e.g. odd-shaped, unusual topo, etc.).
If yes, CONTINUE If no, STOP		
↓		
Is the condition one unique to the property requesting the variance?	→	The condition is unique to this property.
If yes, CONTINUE If no, STOP		
↓		
Is the condition self-imposed or self-created?	→	The condition necessitating the request was not created by the property owner.
If yes, STOP If no, PROCEED		
↓		
Will a literal enforcement of the zoning ordinance result in an unnecessary hardship?	→	Strict enforcement of the zoning ordinance would impose a hardship above that suffered by the general public.
If yes, CONTINUE If no, STOP		
↓		

Will the hardship prevent any reasonable use whatsoever?



Without the grant of the requested variance, the property owner would be deprived of the right to use his property. Financial considerations alone cannot satisfy this requirement.

If yes, CONTINUE
If no, STOP



Would the grant of the variance be contrary to public interest?

If yes, STOP
If no, CONTINUE



Is the request within the spirit of the ordinance, does it further substantial justice?

If yes, CONTINUE
If no, STOP

BOARD OF ADJUSTMENT

Factors in determining variances

Generally, the following issues (in brief) should be addressed when a variance is requested. Your decision should then be based on facts and not hearsay. It is important to verbalize how you feel the testimony and the factors support or do not support the application. Interpretations vary and your experience will ultimately guide your decision.

- Are the circumstances unique to the land, structure or building?
- Is the variance exclusively for financial gain?
- Is the hardship self-created?
- Are the applicant's rights substantially denied without the variance?
- If granted, would the variance confer a special privilege?
- Would the variance be detrimental to the general public?
- Is there no other remedy available to the applicant?