

VARIANCE

VARIANCE INFORMATION

WHAT IS A VARIANCE?

A VARIANCE IS A RELAXATION OF THE TERMS OF THE ZONING ORDINANCE WHERE SUCH VARIANCE WILL NOT BE CONTRARY TO THE PUBLIC INTEREST AND WHERE, OWING TO CONDITIONS PECULIAR TO THE PROPERTY AND NOT THE RESULT OF THE ACTIONS OF THE APPLICANT, A LITERAL ENFORCEMENT OF THE ORDINANCE WOULD RESULT IN UNNECESSARY AND UNDUE HARDSHIP. AS USED IN THIS ORDINANCE, A VARIANCE IS AUTHORIZED ONLY FOR HEIGHT, AREA, AND SIZE OF STRUCTURE OR SIZE OF YARDS AND OPEN SPACES; ESTABLISHMENT OR EXPANSION OF A USE OTHERWISE PROHIBITED SHALL NOT BE ALLOWED BY VARIANCE, NOR SHALL A VARIANCE BE GRANTED BECAUSE OF THE PRESENCE OF NON-CONFORMITIES IN THE ZONING DISTRICT OR USES IN AN ADJOINING ZONING DISTRICT.

STEP #1 MAKING APPLICATION

AN APPLICATION FOR A VARIANCE MAY BE OBTAINED FROM THE ADMINISTRATIVE OFFICIAL OR FINANCE OFFICER. THE APPLICATION WILL REQUIRE YOU TO PROVIDE THE LEGAL DESCRIPTION OF THE PROPERTY, A BRIEF STATEMENT OF THE VARIANCE DESIRED, AND A STATEMENT OF THE HARDSHIP REQUIRING RELIEF. YOU WILL ALSO BE REQUIRED TO PAY A FILING FEE FOR PROCESSING YOUR PETITION

ONCE YOU HAVE COMPLETED YOUR PETITION, PAID YOUR FILING FEE, AND PROVIDED A SITE PLAN, YOU WILL BE PLACED ON THE AGENDA OF THE NEXT BOARD OF ADJUSTMENT MEETING.

STEP #2 PUBLIC HEARING OF THE BOARD OF ADJUSTMENT

THE CITY COUNCIL ACTS AS THE BOARD OF ADJUSTMENT. AT THE PUBLIC HEARING. AT THE PUBLIC HEARING, THE BOARD OF ADJUSTMENT CHAIRPERSON WILL ANNOUNCE EACH AGENDA ITEM IN TURN AND THEN ASK IF THE PETITIONER IS PRESENT TO EXPLAIN THE REQUEST. THIS IS WHEN YOU STATE YOUR REASONS FOR THE VARIANCE. THE CHAIRPERSON WILL ALSO ASK IF THERE ARE PEOPLE PRESENT WHOM WISH TO SPEAK AGAINST THE VARIANCE, AND THEY MAY DO SO AT THIS TIME.

AFTER THE BOARD OF ADJUSTMENT HAS HEARD FROM THE CITIZENS PRESENT AND DISCUSSED THE PETITION AMONG THEMSELVES, THEY WILL VOTE TO EITHER DENY OR APPROVE THE REQUEST. THE BOARD OF ADJUSTMENT BASES ITS DECISION ON A NUMBER OF THINGS:



- WHETHER OR NOT THE SPECIAL CONDITIONS AND CIRCUMSTANCES THAT EXIST ARE PECULIAR TO THE LAND, STRUCTURE, OR BUILDING INVOLVED AND WHICH ARE NOT APPLICABLE TO OTHER LAND STRUCTURES, OR BUILDINGS ON THE SAME DISTRICT.
- DOES THE LITERAL INTERPRETATION OF THE ORDINANCE DEPRIVE THE APPLICANT OF RIGHTS COMMONLY ENJOYED BY OTHER PROPERTIES IN THE SAME DISTRICT UNDER THE TERMS OF THIS ORDINANCE?
- THAT SPECIAL CONDITIONS AND CIRCUMSTANCES DO NOT RESULT FROM THE ACTIONS OF THE APPLICANT.
- AND THAT THE GRANTING OF THE VARIANCE WILL NOT CONFER ON THE APPLICANT ANY SPECIAL PRIVILEGE.

THE BOARD OF ADJUSTMENT WILL THEN VOTE TO ACCEPT THE REQUEST. A two-thirds VOTE OF THE ENTIRE BOARD OF ADJUSTMENT (2 VOTES) IS REQUIRED FOR APPROVAL. IF THE BOARD OF ADJUSTMENT SHOULD VOTE TO DENY YOUR REQUEST, YOU MAY SEEK RELIEF THROUGH LEGAL ACTION.

SPECIFIC VARIANCE REQUIREMENTS MAY BE FOUND IN THE ZONING ORDINANCE OF THE CITY OF CASTLEWOOD SECTION 3.04.03.

HOW DO I OBTAIN A VARIANCE?

- ⇒ Meet with the Administrative Official (Finance Officer) and ask for a variance application.
- ⇒ Complete the application and pay the appropriate fee.
- ⇒ The Administrative Official will review your application and will forward the application to the Board of Adjustment.
- ⇒ The Administrative Official will set a date for a public hearing of the Board of Adjustment to hear your request.
- ⇒ Ten (10) days before the public hearing the Administrative Official will publish a notice, at your expense, in the official newspaper.
- ⇒ Prior to the public hearing the Administrative Official will mail you, at your expense, a notice of your application being placed upon the agenda of the Board of Adjustment Meeting.
- ⇒ Prior to the public hearing the Administrative Official will mail all adjacent landowners, excluding streets and alleys, at your expense, a notice of your application being placed upon the agenda of the Board of Adjustment Meeting.
- ⇒ The public hearing is held.
- ⇒ The Board of Adjustment will hear your request and any comments pro or con from the public.
- ⇒ The Board of Adjustment will either approve or deny your request. The Board will make written findings supporting its decision.
- ⇒ For the Board of Adjustment to grant you a variance, a vote of two-thirds (2/3) of the total membership of the Board (5 votes) will be required for passage.
- ⇒ If your request is denied, you have the option of seeking settlement through the Courts.

VARIANCE CHECK LIST

**** INFORMATION PERTAINING TO VARIANCES MAY BE FOUND IN SECTION 3.04.03 OF THE ZONING ORDINANCE STARTING ON PAGE 40.**

- _____ Met with applicant and provided variance application.
- _____ Collected variance application and appropriate fee.
- _____ Reviewed application and forwarded it to the Board of Adjustment.
- _____ Set date for a public hearing of the Board of Adjustment.
- _____ Publish notice in the newspaper ten (10) days prior to the public hearing. The applicant is to pay for the publication.
- _____ Mail applicant letter notifying the applicant of upcoming Board of Adjustment meeting seven (7) days prior to the public hearing. (Applicant pays for the letter)
- _____ Mail a letter to all adjacent landowners, excluding streets and alleys, notifying them of upcoming Board of Adjustment meeting seven (7) days prior to the public hearing. (Applicant pays for the letter)
- _____ Hold public hearing.
- _____ For the Board of Adjustment to grant a variance, a vote of two-thirds (2/3) of the total membership of the Board (2 votes) will be required for passage.
- _____ If the Board of adjustment approves the request, the Board will make written findings supporting its decision. The board should grant a variance only when the applicant meets the requirements of 3.04.03 located on page 40.

**CITY OF CASTLEWOOD
VARIANCE APPLICATION
VARIANCE NUMBER _____**

APPLICANT (PRINT): _____ **PHONE:** _____

ADDRESS: _____

OWNER (PRINT): _____ **PHONE:** _____
IF DIFFERENT THAN APPLICANT

ADDRESS: _____

I/WE, THE UNDERSIGNED, DO HEREBY PETITION THE BOARD OF ADJUSTMENT OF THE CITY OF CASTLEWOOD SOUTH DAKOTA, TO
ISSUE A VARIANCE FOR THE PROPERTY DESCRIBED AS:

LEGAL DESCRIPTION (Please print or type)

GENERAL AREA OR STREET ADDRESS: _____

EXISTING LAND USE: _____ **EXISTING ZONING:** _____

SIZE OF PARCEL: ACRES/SQUARE FEET _____ **LOT DIMENSIONS:** WIDTH _____ LENGTH _____ DEPTH _____

SURROUNDING LAND USE

NORTH: _____

SOUTH: _____

EAST: _____

WEST: _____

**IF YOU ARE SEEKING A VARIANCE PLEASE PROVIDE A BRIEF STATEMENT OF THE VARIANCE DESIRED AND PLEASE STATE THE
HARDSHIP REQUIRING RELIEF.** (Proof of hardship is on the applicant - Hardship examples are odd size or shape of the lot, unusual
topography, etc. attach a separate sheet of paper if necessary)

SIGNATURE OF APPLICANT _____

SIGNATURE OF OWNER (IF DIFFERENT THAN APPLICANT) _____

NOTE: A SKETCH OF PROPOSED PROPERTY SHALL ACCOMPANY THIS APPLICATION, SHOWING THE FOLLOWING:

- | | |
|--|--|
| 1. NORTH DIRECTION | 5. LOCATION OF PROPOSED STRUCTURE ON LOT |
| 2. DIMENSIONS OF PROPOSED STRUCTURE | 6. DIMENSIONS OF FRONT, SIDE, AND REAR YARD SETBACKS |
| 3. STREET NAMES | 7. LOCATION OF ADJACENT EXISTING BUILDINGS |
| 4. OTHER INFORMATION AS MAY BE REQUESTED | |

THE BOARD OF ADJUSTMENT MAY REQUIRE THAT SUCH PLANS BE PREPARED BY A REGISTERED ENGINEER OR LAND SURVEYOR.

****PLEASE USE THE ATTACHED SKETCH INSTRUCTION SHEET FOR AN EXAMPLE.**

FOR OFFICIAL USE ONLY

DATE FILED WITH ADMINISTRATIVE OFFICIAL: _____

FEE PAID (NON-REFUNDABLE): _____ YES _____ NO

DATE OF HEARING: _____

ACTION BY BOARD OF ADJUSTMENT: _____ YES _____ NO

EFFECTIVE DATE: _____

BUILDING PERMIT #: _____