

## 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. 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 (\$50.00).

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 BOARD OF ADJUSTMENT IS COMPRISED OF THE SEVEN MEMBERS. 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 WOULD 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 3/4 VOTE OF THE ENTIRE BOARD OF ADJUSTMENT (6 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 MILBANK ARTICLE III CHAPTER 17.22.

## HOW DO I OBTAIN A VARIANCE?

- ⇒ Meet with the Administrative Official (Assistant 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 in the official newspaper.
- ⇒ Seven days before the public hearing the Administrative Official will mail you and all adjacent landowners, excluding streets and alleys, a notice, at your expense, stating that your application request is being placed upon the agenda of the upcoming 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 three-fourths (3/4) of the total membership of the Board (6 votes) will be required for passage.
- ⇒ If your request is denied, you have the option of seeking settlement through the Courts.

CITY OF MILBANK  
CONDITIONAL USE/VARIANCE APPLICATION

PERMIT 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 MILBANK SOUTH DAKOTA, TO ISSUE A CONDITIONAL USE PERMIT OR VARIANCE FOR THE PROPERTY DESCRIBED AS:

(CIRCLE APPROPRIATE)

LEGAL DESCRIPTION (Please print or type)

\_\_\_\_\_  
\_\_\_\_\_

GENERAL AREA OR STREET ADDRESS: \_\_\_\_\_

EXISTING LAND USE: \_\_\_\_\_ EXISTING ZONING: \_\_\_\_\_

SIZE OF PARCEL: LOT DIMENSIONS: WIDTH \_\_\_\_\_ DEPTH \_\_\_\_\_

SURROUNDING LAND USE  
NORTH: \_\_\_\_\_  
SOUTH: \_\_\_\_\_  
EAST: \_\_\_\_\_  
WEST: \_\_\_\_\_

PLEASE DESCRIBE WHAT YOU PROPOSE TO DO AND WHY YOU ARE SEEKING A CONDITIONAL USE PERMIT (attach a separate sheet of paper if necessary)

\_\_\_\_\_  
\_\_\_\_\_

IF YOUR 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, REAR, SIDE SET BACKS          |
| 3. ADJACENT STREET NAMES                 | 7. LOCATION OF ADJACENT EXISTING BUILDINGS ON THE LOT |
| 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: \_\_\_\_\_

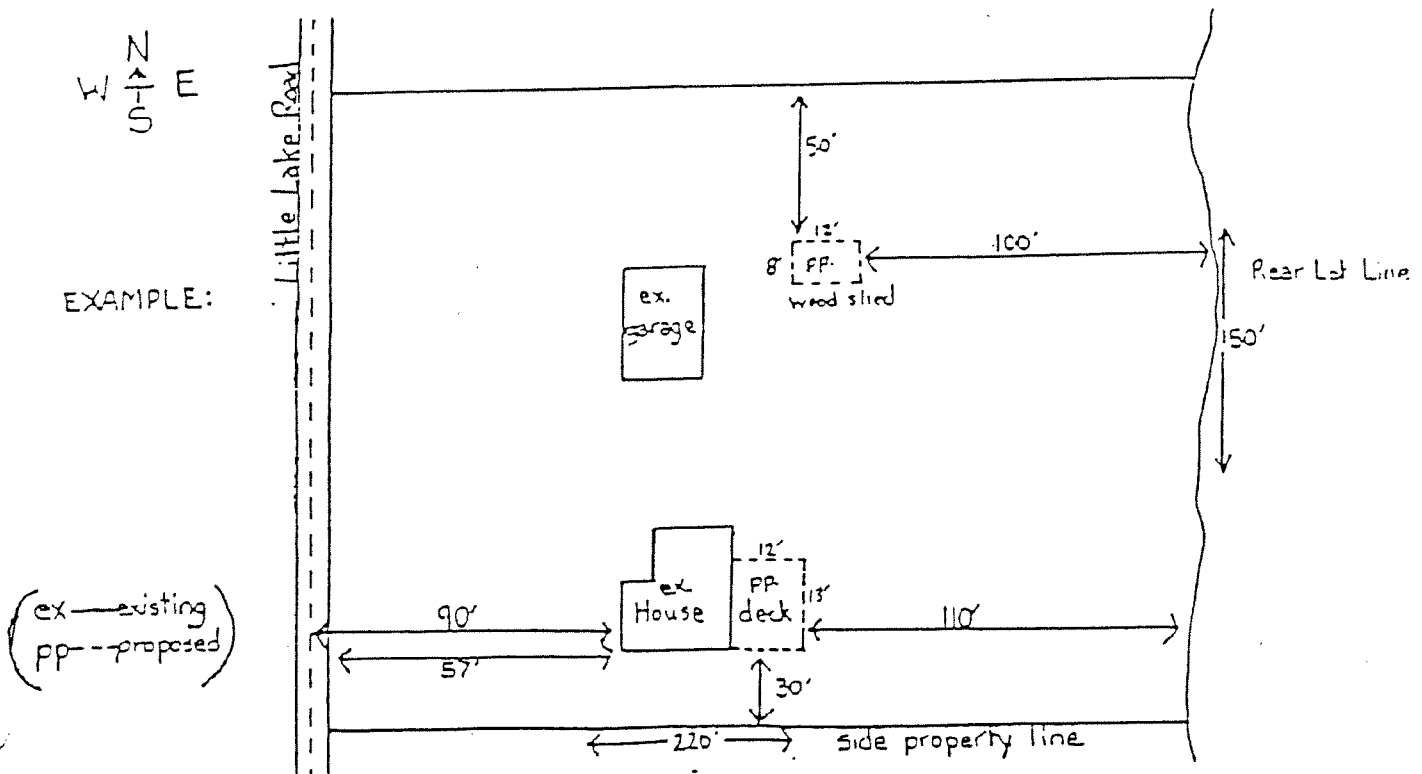
## SKETCH INSTRUCTION SHEET

The intent of this sketch is to graphically illustrate the information included in this application. Please use an 8.5 x 11-inch sheet of paper. The use of graph paper is preferred.

All information requested must be included on your sketch. Label all distances and dimensions as measured in feet. Please refer to the example sketch at the bottom of this instruction sheet for details.

- Show the size and shape of your property. Label all of your property lines with the correct distances.
- If your proposed use will include a structure not now on your property, show the location of the proposed structure or addition in relation to your property lines. Show additions to existing structures by means of a dotted line. Show distances from your property line to nearest portion of the structure or addition.
- Show the distance from the front of your structure to both the road centerline and the road right-of-way line. "Front" means the portion of the structure facing the road.
- Show the dimensions of your proposed structure or addition.
- Show roads abutting your property. Label each road by name and /or number (example – Main Street).
- Show the approximate location of all other structures on your property and label each as to its use (House, garage, etc.)

If your proposed use will include improvements of or alterations to your property besides structures or other than structures, please reflect these improvements on your sketch. Examples of such non-structural improvements or alterations might be: Location of a parking lot for a commercial enterprise, areas of property intended to be filled or drained, location of screening which may be required by provisions of the Zoning Ordinance, etc...



EACH SQUARE EQUALS 5 FEET

