

ORDINANCE #822

An ordinance to amend the Milbank Municipal Code regarding Board of Adjustment voting requirements.

BE IT ORDAINED BY THE CITY COUNCIL of the City of Milbank, Grant County, South Dakota, that Chapter 17.22 be amended to read as follows:

17.22.01 – Conditional Uses

Section 3. Approval of any application for Condition Use Permit shall be by a two-thirds (2/3) majority vote of members present provided that a quorum is present.

17.22.02 – Variances

Section 1.1 – Approval of any variance shall be by a two-thirds (2/3) majority (5 votes) of all members of the Board of Adjustment.

17.22.03 – Board has Powers of Administrative Official on Appeals; Reversing Decision of Administrative Official

Section 3. The concurring vote of two-thirds (2/3) majority (5 votes) of all members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision, or determination of the Administrative Official, or to decide in favor of the applicant on any matter upon which it is required to pass under this ordinance, or to effect any variation in the application of this ordinance.

Passed and adopted this _____ day of _____, _____.

Aye: _____ Nay: _____ Absent: _____

Pat Raffety, Mayor

ATTEST:

Cynthia Schumacher, Finance Officer

First Reading: _____

Second Reading: _____

Adopted & Approved: _____

Published: _____

Effective: _____

CURRENT CODE

CHAPTER 17.22 PROCEDURES FOR CONDITIONAL USES, VARIANCES AND ZONING AMENDMENTS

Section 17.22.01 Conditional Uses

Conditional Uses are allowed for certain uses in some districts, as identified in Article II District Regulations. Uses not listed in Article II District Regulations as eligible for a Conditional use Permit shall not, in any circumstances, be granted a Conditional use Permit.

The following procedure for requesting a Conditional use Permit shall be followed:

1. The Board of Adjustment shall follow the following procedure in considering the recommendation of the Administrative Official. A Conditional Use Permit from the terms of this ordinance shall not be granted by the Board of Adjustment unless and until:
 - A. An application for a Conditional Use Permit, available from the Administrative Official, shall be completed by the landowner requesting the Conditional Use Permit. Any required attachments and fees as in Section 17.18.05 shall further accompany the application. The written application for a conditional use shall indicate the section of this Ordinance under which the conditional use is sought and stating the grounds on which it is requested; Completed applications shall be returned to the Administrative Official for review. To be considered by the Board of Adjustment, the application form shall be completed. If any of the information required by Section 17.18.02 has changed since the original Building Permit application, the revised, update or corrected information shall accompany the application for a Conditional Use Permit.
 - B. The Administrative Official shall review the application and forward it to the Board of Adjustment for their decision to either approve or not approve said application.
 - C. The Administrative Official shall set the date, time and place for a public hearing to be held by the Board of Adjustment. The Administrative Official shall notify the adjacent landowners (excluding streets and alley) by either mail or certified mail at the expense of the applicant, at least one week before the public hearing. The Administrative Official shall publish notice of the public hearing, with all costs to be paid by the applicant, not

less than ten (10) days prior to the public hearing in a newspaper of general circulation in the area affected by the proposed Conditional Use Permit.

- D. A public hearing shall be held. Any party may appear in person, or by agent or attorney;
 - E. The Board of Adjustment shall rule that it is empowered under the section of this ordinance described in the application to grant the Conditional Use, and that the granting of the Conditional Use will not adversely affect the public interest; and
 - F. Before any Conditional Use shall be issued, the Board of Adjustment shall make written finding certifying compliance with the specific rules governing individual Conditional Uses and that satisfactory provision and arrangement has been made concerning the following, where applicable:
 - i) Utilities, refuse, and service areas, with reference to locations, availability, and compatibility;
 - ii) Screening and buffering with reference to type, dimensions, and character;
 - iii) Required yards and other open space; and
 - iv) General compatibility with adjacent properties and other property in the district.
 - v) Entrance and exit to property and proposed and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe;
 - vi) Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties.
 - vii) VII. Off-street parking and loading areas where required, with particular attention on effects of the conditional use on adjoining properties and properties generally within the district.
2. 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 Conditional Use Permit. A Conditional Use Permit shall remain valid only as long as the original applicant complies with any terms and conditions of the Conditional Use Permit, as attached by the Board of Adjustment.

3. Approval of any application for a Conditional use permit shall be by a three-fourths (3/4) majority (6 votes) of all members of the Board of Adjustment. (Ord. 682, 2001)

Section 17.22.02 Variances.

Variances are designed to allow some flexibility in the Zoning Regulations in cases where use of a property is overwhelmingly effected by exceptional topographic conditions, or any other extraordinary situation or condition of such a parcel of land.

Variances are to be approved only when a property owner demonstrates that the provisions of all or part of these regulations present an undue hardship on such property owner's use of such parcel land. A variance shall include a description of the specific regulatory item or items in these regulations, which are found to produce, said undue hardship. Variances shall only be granted when the Board of Adjustments finds that such relief from these Zoning Regulations will be neither detrimental to the public good nor in conflict with the intent of these Zoning Regulations.

The following procedure for requesting a Variance shall be followed:

1. The Board of Adjustment shall follow the following procedure in considering the recommendation of the Administrative Official. A variance from the terms of this ordinance shall not be granted by the Board of Adjustment unless and until:
 - A. An application for Variance, available from the Administrative Official, shall be completed by the landowner requesting the variance and shall be accompanied by any required attachments and fees as in Section 17.18.05. The written application for a variance shall indicate the section of this Ordinance under which the variance is sought and stating the grounds for which it is requested. Completed applications shall be returned to the Administrative Official for review. To be considered by the Board of Adjustment, the application form shall be completed. If any of the information required by Section 17.18.02 has changed since the original Building Permit application, the revised, updated or corrected information shall accompany the application for a variance.
 - B. The Administrative Official shall review the application and forward it to the Board of Adjustment for their decision to either approve or not approve said application.
 - C. The Administrative Official shall set the date, time and place for a public hearing to be held by the Board of Adjustment. The Administrative Official shall notify the adjacent landowners (excluding streets and alleys) by either mail or certified mail at the expense of the applicant, at least one week before the public hearing. The Administrative Official shall publish notice of the public hearing, with all costs to be paid by the applicant, no less than (10) days prior to the public hearing in a newspaper of general circulation in the area affected by the proposed variance.
 - D. A public hearing shall be held. Any party may appear in person, or by agent or attorney;
 - E. The Board of Adjustment shall follow the following procedure in considering the recommendation of the Administrative Official. A variance from the terms of this ordinance shall not be granted by the Board of Adjustments unless and until:
 - i) A written application for a variance is submitted demonstrating:
 - ii) That special conditions and circumstances exist which are peculiar to the land, structure or building involved, and which are not applicable to other land, structures, or buildings in the same district;
 - iii) That 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;

- iv) That the special conditions and circumstance do not result from the actions of the applicant;
 - v) Financial disadvantage of the property owner shall not constitute conclusive proof of unnecessary hardship within the purposes of zoning.
 - vi) That granting the variance request will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same district.
 - vii) No non-conforming use of neighboring lands, structures, or buildings in the same district, and no permitted or non-conforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.
- F. The Board of Adjustment shall make findings that the requirements of Section 17.22.02.1.E.I above have been met by the applicant for a variance;
- G. The Board of Adjustment shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of land, building, or structure; and
- H. The Board of Adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this ordinance, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.
- I. Approval of any variance shall be by a three-fourths (3/4) majority (six votes) of all members of the Board of Adjustment.**

2. In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this ordinance. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this ordinance and punishable under Chapter 17.02, Section 17.02.02 of this Code.

Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of this ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this ordinance in said district. (Ord. 682, 2001)

Section 17.22.03 Board has Powers of Administrative Official on Appeals; Reversing Decision of Administrative Official:

1. It is the intent of this Ordinance that all questions of interpretation and enforcement shall be first presented to the Administrative Official, and that such questions shall be presented to the Board of Adjustment only on appeal from the decision of the Administrative Official.
2. In exercising the above-mentioned powers, the Board of Adjustment may, so long as such action is in conformity with the terms of this ordinance, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have the powers of the Administrative Official from whom the appeal is taken.

3. The concurring vote of three-fourths (3/4) of all members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision, or determination of the Administrative Official, or to decide in favor of the applicant on any matter upon which it is required to pass under this ordinance, or to effect any variation in the application of this ordinance. (Ord. 682, 2001)

Section 17.22.04 Appeals:

Any persons, or any board, taxpayer department, board, or bureau of the City aggrieved by any decision of the Board of Adjustment may seek review by a court of record of such decision, in the manner provided by the laws of the State of South Dakota. (Ord. 682, 2001)

Section 17.22.05 Zoning Amendments.

Whenever the public necessity, safety, and general welfare or good zoning practices justifies such action, and after consideration and recommendation by the City Planning and Zoning Commission, as provided herein, the City Council may change zoning district boundaries, use groups, or the regulations established by this ordinance. A proposed change of zoning district boundaries or regulations may be initiated by the City Planning and Zoning Commission, City Council, or by application of one or more of the owners of property within the area requested to be changed. However, no such action may be taken until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. Notice of the time and place of such hearing shall be published once ten (10) days prior to the date of the meetings as provided in South Dakota Compiled Laws Chapter 11-4, and its and Amendments. Unless otherwise provided for in these regulations, any change in these regulations, shall require City Council approval of an ordinance describing said changes. The City Council may not consider said ordinance until the Planning and Zoning Commission has delivered a recommendation to either approve or not approve said ordinance.

The following procedure for requesting a Zoning Amendment shall be followed:

1. The landowner or other person(s) requesting the Amendment shall complete an application for Amendment, available from the Administrative Official. Completed applications shall be returned to the Administrative Official for review. To be considered by the Planning and Zoning Commission and City Council, the application form shall be completed and shall be accompanied by the following items:
 - A. Any required attachments and fees, including Registered or Certified Mail costs in Section 17.18.05; and
 - B. Any additional information, as requested by the Administrative Official, as lawfully may be required to determine conformance with and provide for enforcement of this ordinance.
 - C. The Administrative Official shall review the application, and shall forward a summary of the application, and his/her comments regarding said application, to the Planning and Zoning Commission for their review.
 - D. The Administrative Official shall set the date, time, and place for a joint public hearing to be held by the Planning and Zoning Commission and City Council. The Administrative Official shall publish notice of the public hearing in a newspaper of general circulation in the area affected by the proposed amendment; such notice shall be published not less than ten (10) days prior to the public hearing. If the proposed amendment will change the boundaries of a zoning district, the Administrative Official shall notify all owners of property within 250 feet of the proposed boundary change, by Registered or Certified Mail at the expense of the applicant, at least one week before the public hearing.
 - E. The public hearing shall be held. Any person may appear in person, or by agent or attorney. Minutes of the public hearing shall be recorded and kept in the records of the Planning and Zoning Commission.
 - F. The Planning and Zoning Commission shall either recommend or not recommend approval of the amendment to the City Council.
 - G. The City Council may adopt the amendment(s) to the zoning ordinance by a simple majority vote unless the amendment has been denied by the Planning and Zoning Commission in which case a two-thirds (2/3) (four votes) vote of the City Council is required date.
 - H. When the City Council approves a proposed amendment affecting the zoning classification of property, affected property owners may file a written protest to stop such an amendment from taking effect. If the protest meets the following protest standard, such amendment shall not become effective unless the amendment is approved by two-thirds (2/3) (four votes) of the City Council.
 - I. Protest Standard: The protest shall be signed by at least 40% of the owners of equity in the parcels in the area affected by the amendment, and the parcels or parts of parcels within 250 feet of the area affected by the amendment. (Ord. 682, 2001)

Section 17.22.06 Lot Merger Agreement

Lot Merger Agreements are designed to contractually bind two or more lots together for the purpose of planning and zoning without replatting the lots.

The following procedure for requesting a Lot Merger Agreement shall be followed:

1. The Board of Adjustment shall follow the following procedure in considering the recommendation of the Administrative Official. A Lot Merger Agreement from the terms of this ordinance shall not be granted by the Board of Adjustment unless and until:
 - A. An application for Lot Merger Agreement, available from the Administrative Official, shall be completed by the landowner requesting the Lot Merger Agreement and shall be accompanied by any required attachments and fees as in Section 17.18.05. Completed applications shall be returned to the Administrative Official for review. To be considered by the Board of Adjustment, the application form shall be completed. If any of the information required by Section 17.18.02 has changed since the original Building Permit Application, the revised, updated or corrected information shall accompany the application for a Lot Merger Agreement.
 - B. The administrative Official shall review the application and forward it to the Board of Adjustment for their decision to either approve or not approve said application.
 - C. The Administrative Official shall set the date, time and place for a public hearing to be held by the Board of Adjustment. The Administrative Official shall notify the adjacent landowners (excluding streets and alleys) by certified mail at the expense of the applicant, at least one week before the public hearing. The Administrative Official shall publish notice of the public hearing, with all costs to be paid by the applicant, no less than ten (10) days prior to the public hearing in a newspaper of general circulation in the area affected by the proposed Lot Merger Agreement.
 - D. A public hearing shall be held. Any party may appear in person, or by agent or attorney.
 - E. Board of Adjustment will vote on whether or not to recommend approval of the Lot Merger Agreement to the Milbank City Council.
 - F. City Council will vote based on the recommendation of the Planning and Zoning Commission to approve or disapprove the Lot Merger Agreement.
2. In recommending approve of the lot merger agreement the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the lot merger agreement is granted, shall be deemed a violation of this ordinance and punishable under Chapter 17.02, Section 17.02.02 of this code. (Ord. 734, 2007)