

VARIANCE

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

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 CITY COMMISSION. 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 2/3 VOTE OF THE ENTIRE BOARD OF ADJUSTMENT (5 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 MADISON ARTICLE III CHAPTER 17.24.03.

HOW DO I OBTAIN A VARIANCE?

- ⇒ Meet with the Administrative Official 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 at the regularly scheduled meeting of the Board of Adjustment (2nd Tuesday of each month) to hear your request. The applicant may request a special meeting at additional costs.
- ⇒ Ten (10) days before the public hearing the Administrative Official will publish a notice in the official newspaper.
- ⇒ The Administrative Official will post notices of the public hearing in the City Offices.
- ⇒ Ten (10) days before the public hearing the applicant shall place a sign upon the property seeking variance. The applicant shall provide a Certificate of Compliance indicating the sign with notice was so placed.
- ⇒ Seven (7) days before the public hearing the Administrative Official will mail you a notice of your application being placed upon the agenda of the Board of Adjustment Meeting.
- ⇒ Seven (7) days before the public hearing the Administrative Official will mail a certified letter to adjacent landowners, excluding streets and alleys a notice of your application being placed upon the agenda of the Board of Adjustment Meeting. Remaining landowners within 150' will receive letter via 1st class mail.
- ⇒ The public hearing is held. At or before the hearing the applicant provides signed petition or certified mail receipts and copy of notice to adjacent landowners. Certified mail recipients shall be dated 10 days prior to hearing.
- ⇒ 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.
- ⇒ Notice of Board of Adjustment action will be provided to applicant.
- ⇒ If your request is denied, you have the option of seeking settlement through the Courts.

**CITY OF MADISON
VARIANCE APPLICATION**

APPEAL 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 MADISON 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 / SQFT _____ **LOT DIMENSIONS:** WIDTH _____ LENGTH _____ DEPTH _____

SURROUNDING LAND USE

NORTH: _____
SOUTH: _____
EAST: _____
WEST: _____

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 letter of explanation to document requirements necessary to approve if necessary)

I (we) further state that if this request is granted, I (we) will proceed with the actual construction in accordance with the plans herewith submitted within one year or additional time as extended from the effective date of the appeal.

SIGNATURE OF APPLICANT _____

SIGNATURE OF OWNER (IF DIFFERENT THAN APPLICANT) _____

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

- | | |
|--|--|
| 2. NORTH DIRECTION | 5. LOCATION OF PROPOSED STRUCTURE ON LOT |
| 2. DIMENSIONS OF PROPOSED STRUCTURE | 6. DIMENSIONS OF FRONT AND SIDE SET BACKS |
| 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: _____

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...

