

**ARTICLE III  
ADMINISTRATION**

**CHAPTER 3.01. GENERAL**

**Section 3.01.01. Permits Required**

No building or other structure shall be erected, moved onto a property, added to, structurally altered, or used without a permit issued by the Administrative Official. The Administrative Official except in conformity with the provisions of this ordinance shall issue no permit, unless he received a written order from the Board of Adjustment in the form of an administrative review, under conditional use, or variance as provided by this ordinance.

It shall be unlawful to commence the excavation for or the construction of any building or any accessory building, or to commence the moving onto a property, or alteration of any buildings, including accessory buildings, until the Administrative Official has issued a building permit for such work. A building permit is also required for any filling, grading, lagooning, or dredging which is **part of actual** ~~related to site preparation for future~~ construction.

**Section 3.01.02. Applications**

Applications for building and use permits shall be made to the Administrative Official upon forms approved by the Board of County Commissioners. These forms shall be filled in by the owner, or authorized agent. All applications for permits shall be accompanied by a site plan showing the **actual dimensions and the shape of the lot to be built upon; the exact sizes and locations on the lot of the buildings already existing, if any; and the** location and dimensions of the proposed building or alteration. The applicant shall also state the existing and intended use of all such buildings, and the location of existing or proposed water and sewer facilities. In the case of a change of use, the applicant shall, in writing, state the intended change. The application shall include such other information as lawfully may be required by the Administrative Official to determine conformity with, and provide for the enforcement of, this ordinance. All plans and data accompanying the permit shall be final and conclusive. Deviations shall be deemed a violation of this Ordinance, and punishable as provided in 1.02.03 and shall require a new building and use permit.

**Section 3.01.03. Fees**

The Board of County Commissioners shall, by resolution, establish a schedule of fees, charges, and expenses and a collection procedure for building permits, certificates of zoning compliance, appeals, and other matters pertaining to this Ordinance, The schedule of fees shall be posted in the office of the Administrative Official and may be altered or amended only by the Board of County Commissioners.

Until all applicable fees, charges, and expenses have been paid in full, no action shall be taken on any application or appeal.

#### **Section 3.01.04. Issuance of Permits ~~Building/Use Permit~~**

**Permits issued on the basis of plans and applications approved by the Administrative Official authorize only the use, arrangement, and construction set forth in such approved plans and applications, and other use, arrangement, or construction at variance with that authorized shall be deemed violation of this Ordinance, and punishable as provided by Section 1.02.02 of this Code.**

**1. ~~A Building/Use Permit shall be deemed to authorize, and is required for both initial and continued occupancy and use of the building or land to which it applies, and shall continue in effect, so long as such building and the use thereof or the use of such land is in full conformity with the requirements of this ordinance and any requirements pursuant thereto. However, on the serving of a written notice by the Administrative Official of any violation of any of the said provisions or requirements with respect to any building or the use thereof or of land, the Building/Use Permit for such use shall without further action, be null and void, and a new Building/Use Permit shall be required for any further use of such building or land.~~**

**2. ~~The issuance of a building/use permit shall, in no case, be construed as waiving any provisions of this Ordinance. A building permit shall become null and void twelve (12) months from the date of issuance thereof unless substantial progress has been made by that date on the project described therein. If the work described in any building permit has not begun within six (6) months or has not been substantially completed within one (1) year of the date of issuance thereof, said permit shall expire and be cancelled by the administrative official and written notice thereof shall be given to the persons affected, together with notice that further work as described in the canceled permit shall not proceed unless and until a new building/use permit has been issued. If substantial progress has been made within twelve (12) months from the issuance of the permit but has not been completed, the Administrative Official may extend the building/use permit an additional six (6) months.~~**

#### **Section 3.01.05. Building/Use Permit Process**

**1. The landowner, or applicant on behalf of the landowner, requesting the Building/Use Permits shall complete an application for a Building/Use Permit, accompanied with the appropriate fee, available from the Administrative Official. Completed applications shall be returned to the Administrative Official for review. To be considered complete, the application form shall be accompanied by the following additional items:**

**A. Applications for Building/Use Permits shall be accompanied by a site plan which may be required to be drawn to scale and may be required to include some or all of the following information indicated in order to determine compliance with this Ordinance:**

**i. The exact size, shape, and dimensions of the lot to be built upon, the exact size and location on the lot of all existing buildings and structures, and the exact size and location on the lot of the structure or building proposed to be repaired, altered, erected, or moved, and the size, arrangement, number of parking stalls, movement of vehicles and ingress and egress drives for all off-street parking and loading facilities.**

**ii. The location of the said lot with respect to existing rights-of-way and adjacent lots.**

- iii. A letter of certification stating that the lot to be built upon has been accurately surveyed may be required.
  - iv. Any other information which the Administrative Official may deem necessary for consideration in enforcing the provisions of this Ordinance.
2. The applicant may be required to stake out the building site for inspection by the administrative official prior to the issuance of the building/use permit.
3. One copy of the application shall be returned to the applicant, after the Administrative Official has marked such copy as either approved or disapproved, and attested to the same by signing said copy of the plans. The Administrative Official, for City records, shall retain one copy of the application, similarly marked.
4. The Administrative Official shall then, if the application is approved, issue a signed Building/Use Permit. If the Administrative Official determines the proposed action would not be in compliance with the provisions of these regulations, a Building/Use Permit may not be issued, and the applicant may then appeal the action of the Administrative Official to the Board of Adjustment.
5. Building/Use Permits are intended to be posted in a conspicuous place upon the premises and visible from a public right-of-way at all times from the beginning until completion of such construction, alteration, or repair.
6. The issuance of a building/use permit shall, in no case, be construed as waiving any provisions of this Ordinance. A building permit shall become null and void twelve (12) months from the date of issuance thereof unless substantial progress has been made by that date on the project described therein. If the work described in any building permit has not begun within six (6) months or has not been substantially completed within one (1) year of the date of issuance thereof, said permit shall expire and be cancelled by the administrative official and written notice thereof shall be given to the persons affected, together with notice that further work as described in the canceled permit shall not proceed unless and until a new building/use permit has been issued. If substantial progress has been made within twelve (12) months from the issuance of the permit but has not been completed, the Administrative Official may extend the building/use permit an additional six (6) months.
- ~~1. The landowner requesting the Building/Use Permit shall complete an application for a building/use permit per Section 3.01.02 accompanied with the appropriate fee. Completed applications shall be returned to the Administrative Official for review.~~
- ~~2. Issuance of a Building/Use Permit. If the proposed excavation alteration, construction, or change of use, as set forth in the application for a Building/Use Permit are in conformity with the provisions of this Ordinance, and other regulations of the County then in force, the Administrative Official shall issue a building/use permit for such excavation, construction, alteration or change in use within a reasonable time from the date the application is submitted. If a building/use permit is refused, the Administrative Official shall immediately thereupon mail notice of such refusal to the applicant at the address indicated upon the application with the cause for denial.~~

~~3. Permits Displayed. It shall be unlawful to commence work until the building permit is displayed. Building permits shall be posted in a conspicuous place upon the premises and visible at all times from the beginning until completion of such construction, alteration, repair, occupancy, or change of use~~

## **CHAPTER 3.02. ADMINISTRATIVE OFFICIAL**

### **Section 3.02.01. Administrative Official**

The provisions of this Ordinance shall be administered and enforced by an Administrative Official appointed by the Board of County Commissioners, who shall have the power to make inspection of building or premises necessary to carry out his/**her** duties in the **administration enforcement** of this Ordinance.

### **Section 3.02.02. Duties**

The powers and duties of the Administrative Official shall be as follows:

1. Issue all building permits and make and maintain records thereof.
2. Conduct inspections of buildings, structures, and the use of land to determine compliance with this Ordinance.
3. Notify in writing persons responsible for violations, indicating the nature of the violation and ordering action necessary to correct.
4. Order discontinuance of illegal use of land, buildings, or structures; removal of illegal buildings or structures or of illegal additions; alterations or structural changes; discontinuance of any illegal work being done; or shall take any other action authorized by this Ordinance to ensure compliance with or to prevent violation of its provisions.
5. Revoke any permit, which was unlawfully issued, or any permit wherein defective work has been performed, and when such work has not been corrected within ninety (90) days of notification.
6. Maintain permanent and current records of this regulation, including, but not limited to, all maps, amendments, variances, appeals, and applications.
7. Provide public information relative to all matters arising out of this Ordinance.
8. Forward to the Planning Commission all applications for amendments to this Ordinance.
9. Forward to the Board of Adjustment, applications for appeals, variances, or other matters on which the Board of Adjustment is required to pass under this ordinance.
10. Initiate, direct, and review, from time to time, a study of the provisions of this ordinance, and to make such reports available to the Planning Commission. The Administrative Official shall receive applications required under this ordinance, specifically but not limited to Building Permits, Special

Permitted Uses, Conditional Uses, Variances, and Zoning Amendments.

- a. For building permits, the Administrative Official shall approve the application only in accordance with the provisions of the County's Zoning Ordinance.
  - b. For Conditional Uses and Variances, the Administrative Official shall review the application, and shall make a recommendation to the Board of Adjustment to either approve or deny said application.
  - c. For Zoning Amendments, the Administrative Official shall review the application, and shall make comments regarding said application to the Planning Commission and Board of County Commissioners.
  - d. For Special Permitted Use Permits, the Administrative Official shall approve the application only in accordance with the provisions of the County's Zoning Ordinance.
11. Prepare documents, easements, letters of assurance, waivers, etc. as required by this Ordinance, or at the direction of the Moody County Planning Commission and/or the Moody County Board of Adjustment and/or Moody County Commissioners.

**Section 3.02.03. Right of Entry.**

1. Whenever necessary to make an inspection to enforce any of the provisions of this regulation, or whenever the Administrative Official or an authorized representative has reasonable cause to believe that there exists in any building or upon any premises a regulation violation, the Administrative Official or an authorized representative may enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon the Administrative Official by this ordinance, provided that if such building or premises be occupied, they shall first present proper credentials and request entry; and if such building or premises be unoccupied, they shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. If such entry is refused, the Administrative Official or an authorized representative shall have recourse to every remedy provided by law to secure entry.
2. When the Administrative Official or an authorized representative shall have first obtained a proper inspection warrant or other remedy provided by law to secure entry, no owner or occupant or any other persons having charge, care or control of any building or premises shall fail or neglect, after proper request is made as herein provided, to promptly permit entry therein by the Administrative Official or an authorized representative for the purpose of inspection and examination pursuant to this regulation.

**Section 3.02.04. Stop Order.**

Whenever any work is being done contrary to the provisions of this ordinance, the Administrative Official may order the work stopped by notice in writing served on any persons engaged in the doing or causing such work to be done, and any such persons shall forthwith stop such work until authorized by the Administrative Official to proceed with the work.

**Section 3.02.05. Occupancy Violation.**

Whenever any building or structure regulated by this ordinance is being used contrary to the provisions of this ordinance, the Administrative Official may order such use discontinued and the structure, or portion thereof, vacated by notice served on any person causing such use to be continued. Such persons shall discontinue the use within the time prescribed after receipt of such notice to make the structure, or portion thereof, comply with the requirements of this ordinance.

**Section 3.02.06. Procedures for Approval of Special Permitted Use Permit**

1. The special permitted use procedure is an administrative review process, where the Administrative Official shall have the power to review an application for conformance with the applicable standards and approval criteria and issue a special permitted use permit. Requests for special permitted uses may be granted if it has been determined that the prescribed conditions for a specific use have been met or assurance has been provided that the conditions will be met. ~~If any of the performance standards cannot be met, the applicant may apply to the Board of Adjustment for a variance from the specific standard.~~ A special permitted use permit shall not be granted unless and until:
  - a. A written application for a special permitted use is submitted, indicating the section of this Ordinance under which the special permitted use is sought and stating the grounds on which it is requested.
  - b. The Administrative Official shall review the application for conformance with this ordinance.
    - ~~c. If the application does not meet all of the performance standards for the special permitted use, or the applicant fails to meet any of the prescribed conditions or safeguards; the Administrative Official shall determine that the application is not in conformance with Section 3.02.06 and appropriate special permitted use standards. The applicant may appeal the decision of the Administrative Official as described in Section 3.03.05.~~
    - c. ~~d.~~ If the Administrative Official determines that the application is in conformance with the prescribed performance standards, the Administrative Official shall make written findings certifying compliance with the specific standards governing the specific special permitted use permit and that satisfactory provisions and arrangements have been made concerning the prescribed conditions for the specific special permitted use permit.
    - d. ~~e.~~ The Administrative Official shall then issue the special permitted use permit subject to the applicant agreeing to any conditions prescribed by this ordinance or the Administrative Official for the specific special permitted use permit.
    - e. ~~f.~~ The Administrative Official shall then issue any other associated building/use permits.
    - f. **If the application does not meet all of the performance standards for the special permitted use, or the applicant fails to meet any of the prescribed conditions or safeguards; the Administrative Official shall determine that the application is not in conformance with Section 6.01.05 and**

**appropriate special permitted use standards. The applicant may, as appropriate:**

**i. Apply for a variance from lot area, size of structure(s) or size of yards and open spaces**

**ii. Apply for Conditional Use Permit, if eligible.**

**iii. Appeal the decision of the Administrative Official in accordance with Section 3.03.04 and 3.03.05.**

- g. A special permitted use permit shall expire one (1) year from the date upon which it becomes effective if no actual construction has commenced. Upon written request to the Administrative Official and prior to the special permitted use expiration date, a one (1) year time extension for the special permitted use may be granted by the Administrative Official.
- h. If a decision by the Administrative Official to issue a special permitted use permit is appealed to circuit court the special permitted use permit that was granted does not expire for a period of two (2) years following completion of any final appeal of the decision.

~~**i. A special permitted use permit that is granted does not expire for a period of two years following completion of any final appeal of the decision.**~~

## **CHAPTER 3.03. BOARD OF ADJUSTMENT**

### **Section 3.03.01. Establishment**

Within Moody County outside of incorporated municipalities, the power and jurisdiction related to this article shall be executed by the Board of Adjustment.

1. The County Commission shall act as the Board of Adjustment.
2. The Board of County Commissioners shall also appoint two (2) alternates to the Board of Adjustment. Alternates may be appointed for a term of three (3) years.

### **Section 3.03.02. Procedures for Meetings.**

1. Meetings shall be held at the call of the chair **personman** and at such other times as the Board of Adjustment may determine. The Board of Adjustment shall adopt rules necessary to the conduct of its affairs and in keeping with the provisions of this Ordinance. The Chair **personman**, or in his or her absence the Acting Chair **personman**, may administer oaths and compel the attendance of witnesses in order to execute the purposes of this article.
2. All meetings of the Board of Adjustment shall be open to the public. The Board of Adjustment shall keep minutes of its proceedings and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the County Auditor and shall be public record. The Board of Adjustment shall keep record in the minutes showing the vote of each member upon each

question or if absent or failing to vote, indicating that fact.

~~3. A quorum of the Board of Adjustment consists of four (4) members physical present or participating remotely~~

~~4. The Board of Adjustment shall take no action on any item at a meeting where a quorum of the Board is not physical present or participating remotely.~~

### **Section 3.03.03. Powers and Duties of the Board.**

1. The Board of Adjustment shall have the following powers and duties:

a. Administrative Review. To hear and decide where it is alleged by the appellant that there is error in any order, requirement, permit decision, determination or refusal made by the Administrative Official or other administrative officers in the carrying out or enforcement of any provision of this Ordinance, and for interpretation of the **Official** Zoning Map.

b. Conditional Uses. ~~To hear and decide applications for conditional uses that are specified in this Ordinance and for decisions on any special questions upon which the Board of Adjustment is specifically authorized to pass.~~ **To hear and decide only such Conditional Use Permits as the Board of Adjustment is specifically authorized to pass on by the terms of this Ordinance; to decide such questions as are involved in determining whether Conditional Use Permits should be granted; and to grant Conditional Use Permits with such conditions and safeguards as are appropriate under this Ordinance, or to deny special exceptions when not in harmony with the purpose and intent of this Ordinance.**

c. Variance. To hear and decide applications for variance from the terms of this Ordinance because of unnecessary hardship and to authorize upon appeal in specific cases such variance from the terms of this Ordinance as which will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship.

### **Section 3.03.04. Appeals, Record of Appeal, Hearing and Stays**

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 and that recourse from the decision of the Board of Adjustment shall be to the courts as provided by the laws of the State of South Dakota.

2. An appeal to the Board of Adjustment may be taken by any person aggrieved or by an officer, department, board or bureau of the County affected by any decision of the Administrative Official, to grant or deny the permit. No other appeal such as relating to a ministerial act or other preliminary act to bring an application or matter before the Board of Adjustment for hearing and a final decision is authorized. Such appeals shall be taken within a reasonable time not to exceed twenty-one (21) days, as provided by the rules of the Board of Adjustment by filing with the Administrative Official from

whom the appeal is taken and with the Board of Adjustment a notice of appeal specifying the grounds of appeal. The Administrative Official from whom the appeal is taken shall forthwith transmit to the Board of Adjustment all the papers constituting the record upon which the action appealed from was taken. Such appeals shall be **consolidated and** taken **on an expedited basis within thirty (30) days.**

3. An appeal stays all proceedings in furtherance of the action appealed from, except ministerial or other preliminary acts necessary to allow consolidated appeals on all matters prior to final decision by the Board of Adjustment, or unless the Administrative Official from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property.
4. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application on notice to the office from whom the appeal is taken and on due cause shown.
5. The Board of Adjustment shall hear and decide, on not less than ten (10) days public notice prior to an affixed time and place for hearing appeals where it is alleged by the appellant that there is error in any order, requirement, permit decision, determination or refusal made by the Administrative Official or other administrative officers in carrying out the enforcement of any provision of this Ordinance, and for interpretation of the Zoning Map. At the hearing, any party may appear in person or by agent or attorney. The Board of Adjustment shall decide the appeal within sixty (60) days of receiving a notice of appeal. Any party may appear at the hearing in person or by agent or by attorney.

**Section 3.03.05. Board of Adjustment has Powers of Administrative Official on Appeals: Reversing Decision of Administrative Official**

1. In exercising the above-mentioned powers, the Board of Adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appeal from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the office from whom the appeal is taken.
2. The concurring vote of two-thirds (2/3) of all members of the Board of Adjustment four (4) votes 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 this Ordinance.

**Section 3.03.06. Duties of Administrative Official, Board of Adjustment, and Courts on Matters of Appeal**

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, and that recourse from the decision of the Board of Adjustment shall be to the courts as provided by law.

**Section 3.03.07. Appeals to a Court of Record.** Any person or persons, jointly or severally, or any officer, department, board, or bureau of the County, aggrieved by any decision of the Board of Adjustment may present to a court of record a petition duly verified, setting forth that the decision is illegal, in whole or in

part, specifying the grounds of the illegality. The petition shall be presented to the court within thirty (30) days after the filing of the decision in the office of the Board of Adjustment. The Board of Adjustment shall respond to the petition within thirty (30) days of receiving the notice of the filing and shall simultaneously submit the complete record of proceedings of the board appealed from, in the form of a return on a petition for writ, without need for a court order or formal issuance of writ.

A petitioner to the circuit court under this section shall pay all transcript costs required to complete the record of proceedings of the board appealed from.

## **CHAPTER 3.04. PROCEDURES FOR CONDITIONAL USES, VARIANCES, AND ZONING AMENDMENTS**

### **Section 3.04.01. Powers and Jurisdiction Relating to Conditional Uses**

The Board of Adjustment shall have the power to hear and decide, in accordance with the provisions of this Ordinance, requests for conditional uses or for decisions upon other special questions upon which the Board of Adjustment is authorized by this Ordinance to pass; to decide such questions as are involved in determining whether special conditions and safeguards as are appropriate under this Ordinance, or to deny conditional uses when not in harmony with the purpose and intent of this Ordinance. A conditional use permit shall not be granted by the Board of Adjustment unless and until:

1. An **written** application for a conditional use permit is submitted, indicating the section of this Ordinance under which the conditional use permit is sought and stating the grounds on which it is requested.
2. Property owners adjacent to the proposed site shall be notified of the conditional use permit request by certified or registered mail, at the cost of the applicant or in lieu of this, **at the discretion of the administrative official**, obtain written consent from adjacent landowners.
3. Notice of hearing shall be published once, ten (10) days prior to the Board of Adjustment public hearing, in a paper of general circulation in the area affected.
4. **Written notice of the application for conditional use shall be sent ten (10) days prior to the public hearing, at the cost of the applicant, to each oath sworn township supervisor of the township in which the property being applied for conditional use is located.**
5. ~~4.~~ The public hearing shall be held. Any party may appear in person, or by agent or attorney.
6. ~~5.~~ The Board of Adjustment shall make a finding that it is empowered under the section of this Ordinance described in the application to grant the conditional use permit, and that the granting of the conditional use will not adversely affect the public interest.
7. ~~6.~~ The granting of any conditional use permit, by the Board of Adjustment shall be based upon written findings certifying compliance with the specific rules governing individual conditional uses and that satisfactory provision and arrangements have been made concerning the following, where applicable:
  - a. Access:

- i. The roads providing access to the property shall be determined to be adequate to meet the transportation demands of the proposed conditional use. The Board of Adjustment may require the applicant to enter into a written contract with the applicable road authority regarding the upgrading and continued maintenance of any roads used for conditional use requested prior to issuance of a Conditional Use Permit.
- ii. Reasonable provisions have been made for safe vehicular and pedestrian entrance and exit of the property for daily and emergency traffic.
- b. Parking and internal traffic:
  - i. The parking areas and driveways will be covered in materials appropriate for the internal traffic generated by the use.
  - ii. The number of parking spaces is appropriate for the proposed use of the property.
- c. Utilities and refuse:
  - i. The manner by which electricity, water, sewer, natural gas, and other utilities will be provided has been described.
  - ii. Consideration has been given to the location of refuse and service areas and manner for disposing of trash, junk, or other debris.
- d. Screening, buffering, and open space:
  - i. The type, dimensions, and character of any fences, walls, hedges, or other materials used for screening; and/or open space is appropriate for the proposed use in reference the specific property.
- e. Lighting:
  - i. Lights associated with the use will not create a nuisance nor distract traffic.
  - ii. Brightness, intensity, glare of lights will be similar to lighting which would be customarily used for permitted uses in the applicable zoning district.
- f. General compatibility with adjacent properties and other property in the district.
  - i. Any use listed as a Conditional Use is generally compatible in the district it is listed in.
  - ii. General compatibility is used when prescribing conditions for approval of a permit.
- g. The roads providing access to the property are adequate to meet the transportation demands of the proposed conditional use. The Board of Adjustment may require the applicant to enter into a written contract with any affected township or other governmental unit regarding the upgrading and continued maintenance of any roads used for the conditional use requested prior to issuance

of a Conditional Use Permit.

8. ~~7.~~ The affirmative majority vote of the present and voting members of the Board of Adjustment is required to pass any application for a Conditional Use Permit.
9. ~~8.~~ Expiration of a Conditional Use Permit
  - a. Unless otherwise specified by the Board of Adjustment, a conditional use permit shall expire one (1) year from the date upon which it becomes effective if no actual construction has commenced. Upon written request to the Board of Adjustment and prior to the conditional use permit expiration date, a one (1) year time extension for the conditional use may be granted by the Board of Adjustment.
  - b. If a decision by the Board of Adjustment to grant a conditional use permit is appealed to circuit court the conditional use permit that was granted does not expire for a period of two years following completion of any final appeal of the decision.
10. ~~9.~~ In granting any conditional use, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this regulation. Violation of such conditions and safeguards, when made a part of the terms under which the conditional use permit is granted, shall be deemed a violation of this regulation and punishable under the terms of this regulation.

~~10. The Board of Adjustment may, after notice and hearing, revoke a conditional use permit in the event of a violation of any of the conditions upon which such permit was issued. In addition, the conditional use permit may not be transferred during any violation.~~
11. Any alteration, construction, use of earthmoving equipment, or other change pursuant to a zoning permit or allowed land use on neighboring land that began after the date on which an application for a conditional use is received, and that causes the application to fail to meet one or more of the criteria or requirements for conditional use under the zoning ordinance, does not cause the request for a conditional use permit to be considered nonconforming until a final disposition of the conditional use request is determined pursuant to SDCL 11-2-61 or SDCL 11-2-65. If the conditional use permit is granted, the conditional use shall be considered a lawful use, lot, or occupancy of land or premises and may be continued even though the use, lot, or occupation does not conform to the provisions of the ordinance. If the conditional use is not pursued by the applicant for a period of more than one year, any subsequent use, lot, or occupancy of the land or premises shall conform with the zoning ordinance.

### **Section 3.04.02. Powers and Jurisdiction Relating to Variances**

The County Board of Adjustment shall have the power, where, by reason of exception, narrowness, shallowness or shape of a specific piece of property at the time of the enactment of this Ordinance, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any regulation under this Ordinance would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon, the owner of such property, to authorize, upon an appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted without substantially impairing

the intent and purpose of this Ordinance. A variance shall not be granted by the Board of Adjustment unless and until:

1. An ~~written~~ application for a variance is submitted, indicating the section of this Ordinance under which the variance is sought and stating the grounds on which it is requested.
2. Property owners adjacent to the proposed site shall be notified of the variance request by certified or registered mail, at the cost of the applicant or in lieu of this, obtain written consent from adjacent landowners.
3. Notice of hearing shall be published once, ten (10) days prior to the Board of Adjustment public hearing, in a paper of general circulation in the area affected.
4. **Written notice of the application for variance shall be sent ten (10) days prior to the public hearing, at the cost of the applicant, to each oath sworn township supervisor of the township in which the property being applied for variance is located.**
5. ~~4.~~The public hearing shall be held. Any party may appear in person, or by agent or attorney.
6. ~~5.~~The Board of Adjustment shall make a finding that it is empowered under the section of this Ordinance described in the application to grant the variance, and that the granting of the variance will not adversely affect the public interest.
  - a. 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 a written application for a variance is submitted demonstrating:
    - i. 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;
    - ii. 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;
    - iii. That the special conditions and circumstance do not result from the actions of the applicant;
    - iv. Financial disadvantage of the property owner shall not constitute conclusive proof of unnecessary hardship within the purposes of zoning.
    - v. 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.
    - vi. 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.

7. ~~6.~~ The concurring vote of two-thirds (2/3) of all members of the Board of Adjustment four (4) votes is required to pass any application for a variance.
8. ~~7.~~ In granting any variance, 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 variance is granted, shall be deemed a violation of this Ordinance and punishable under the terms of this Ordinance.
9. ~~8.~~ 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.
10. ~~9.~~ Expiration of a Variance
  - a. Unless otherwise specified by the Board of Adjustment, a variance shall expire one (1) year from the date upon which it becomes effective if no actual construction has commenced. Upon written request to the Board of Adjustment and prior to the variance expiration date, a one (1) year time extension for the variance may be granted by the Board of Adjustment.
  - b. If a decision by the Board of Adjustment to grant a variance is appealed to circuit court, the variance that is granted does not expire for a period of two years following completion of any final appeal of the decision.

### **Section 3.04.03. Zoning Amendments**

1. Whenever the public necessity, safety, and general welfare or good zoning practices justifies such action, and after consideration and recommendation by the Planning Commission, as provided herein, the Board of County Commissioners 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 in the following manners:
  - a. **A proposed change of zoning district boundaries may be initiated by** the Board of County Commissioners, ~~may direct~~ the Planning Commission, or ~~to consider a change of zoning district boundaries or regulations;~~
  - ~~b. The Planning Commission may initiate a change of zoning district boundaries or regulations;~~
  - ~~c. One (1) or more of the owners of property within the area requested proposed to be rezoned may present a request to change the zoning district boundaries;~~
  - b. A proposed textual change to use groups or other regulations established by this ordinance may be initiated by the Board of County Commissioners or the Planning Commission.**

- ~~c.d.~~ Initiated petitions specifying and requesting **textual** amendments to **use groups or other** the regulations **established by** of this ordinance ~~containing~~ **require the** signatures of twenty (20) percent of the landowners in the zoning district or districts requesting the change **may be presented to the Administrative Official.**
2. Unless otherwise provided for in these regulations, any change in these regulations, shall require Board of County Commissioners approval of an ordinance describing said changes. The Board of County Commissioners may not consider said ordinance until the Planning Commission has delivered a recommendation to either approve or not approve said ordinance amendment.
  3. The following procedure for requesting a Zoning Amendment or Zoning District Boundary Change shall be followed:
  4. The landowner or other person(s) requesting the Amendment/Boundary change shall complete an application, available from the Administrative Official. Completed applications shall be returned to the Administrative Official for review. To be considered by the Planning Commission and Board of County Commissioners, 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.
    - 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 Commission for their review.
    - d. The Administrative Official shall set the date, time, and place for public hearings to be held by the Planning Commission and Board of County Commissioners. 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 each board's (Planning Commission, Board of County Commissioners) public hearing. If the proposed amendment will change the boundaries of a zoning district, the Administrative Official shall notify all owners of property within two hundred fifty 250 feet of the proposed boundary change, by Registered or Certified Mail at the expense of the applicant, at least one (1) 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 Commission.
    - f. The Planning Commission shall ~~either~~ recommend approval or **disapproval** denial of the amendment, **either in whole or in part. The recommendation shall be presented** to the Board of County Commissioners.

- g. The Board of County Commissioners shall **thereafter by ordinance** either **adopt or reject** approve or deny the ordinance describing the proposed changes to these zoning regulations, in accordance with standard procedures for reading, approval, publication, and effective date.
- h. ~~After passage, the Ordinance Amendment shall take effect on the 20th day after its publication in the official newspaper of the County.~~

#### **Section 3.04.04. Re-application**

No application requesting a variance, conditional use, or zoning ordinance amendment or district classification change on any property whose application includes any such property either entirely or substantially the same as that which has been denied by the Board of Adjustment (variances, conditional uses) or Board of County Commissioners (Zoning Amendments, Zoning District Boundary Changes), shall again be considered by the Planning Commission, Board of Adjustment or Board of County Commissioners before the expiration of six (6) months from the date of the final action of the Planning Commission, Board of Adjustment, or Board of County Commissioners

### **CHAPTER 3.05. PLANNING COMMISSION.**

#### **Section 3.05.01. Establishment.**

**The Planning Commission shall consist of the membership of the Board of County Commissioners.**

#### **Section 3.05.02. Term of Office.**

**The terms shall run concurrent with the terms of the membership of the Board of County Commissioners. Zoning Officials of the County may be appointed as ex-officio members of the Planning Commission.**

#### **Section 3.05.03. Meetings of the Planning Commission**

**The Planning Commission shall meet at such times as may be necessary to accomplish the purposes of their duties, but in no event shall they meet less than once every three (3) months.**

#### **Section 3.05.04. Per Diem and Expenses of Commission**

**Per diem and expenses of the County Planning Commission shall be established by the Board of County Commissioners and paid by the County.**

#### **Section 3.05.05 Duties of Planning Commission**

**The Planning Commission shall have the following duties:**

##### **1. Comprehensive Plan:**

The Planning Commission may prepare, or cause to be prepared, a comprehensive plan for the county including those municipalities within the county which are either unincorporated, or which have requested by resolution of the governing board of such municipality to be included. Upon preparation the Planning Commission shall make recommendation to the Board of County Commissioners subject to SDCL 11-2-18.

**2. Zoning Ordinance:**

To develop and recommend a zoning ordinance, in accordance with the Plan, for the regulation of the height, area, bulk, location, and use of private and public structures and premises, and of population density as may be provided by SDCL 11-2-13 and 11-2-14. Upon preparation the Planning Commission shall make recommendation to the Board of County Commissioners subject to SDCL 11-2-18.

**3. Subdivision:**

- a. To develop and recommend regulations governing the subdivision of land within Moody County.
- b. To review proposals for subdivision to determine whether such subdivisions comply with the subdivision ordinance of Moody County and make recommendation to the Board of County Commissioners relating to the approval of subdivisions.

**4. Amendments:**

The Planning Commission may from time to time propose and make recommendation on amendments to the comprehensive plan, zoning ordinance, and subdivision regulations subject to SDCL 11-2-28.

**Section 3.05.06 Procedures for Meetings.**

1. The members of the Planning Commission shall select one (1) of their members as Chairperson and another as Vice-chairperson, who shall act as Chairperson in the Chairperson's absence. Both shall serve one (1) year terms or until their successors have been selected. Meetings of the Planning Commission shall be held at the call of the Chairperson and at such times as the Planning Commission shall determine.
2. The Chairperson, or in his or her absence the acting Chairperson, may administer oaths and compel the attendance of witnesses in order to execute the purposes of this Article.
3. All meetings of the Planning Commission shall be open to the public and conducted in accordance with the rules established by the Planning Commission. The Planning Commission shall keep minutes of its proceedings and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the Moody County Auditor's Office and shall be public record. The Planning Commission shall keep record in the minutes showing the vote of each member upon each question or if absent or failing to vote, indicating that fact.

4. A simple majority vote of a quorum of members of the Planning Commission in attendance is required to forward a recommendation, pertaining to its duties described in Section 601.03, on to the Board of County Commissioners.