

**AN ORDINANCE TO UPDATE AND CLARIFY THE CRITERIA AND PROCEDURE FOR GRANTING VARIANCES TO THE ZONING CODE BY AMENDING SECTION 17.54.020 OF THE RAPID CITY MUNICIPAL CODE**

WHEREAS, the City has adopted a Comprehensive Plan to guide growth and economic development within the community; and

WHEREAS, the City has also adopted zoning ordinances to implement regulations on land uses to further the goals and objectives of the Comprehensive Plan; and

WHEREAS, the zoning code provides a process for property owners to receive a variance from land use regulations where those regulations prevent the owner from reasonably using the property; and

WHEREAS, the Common Council desires to clarify the criteria and process for granting variances as provided herein.

NOW THEREFORE, BE IT ORDAINED by the City of Rapid City that Section 17.54.020 of the Rapid City Municipal Code be and is hereby amended to read in its entirety as follows:

**17.54.020 Variances**

The purpose of the variance is to modify the strict application of the specific requirements of this title in the case of exceptionally irregular, narrow, shallow or steep lots or other exceptional physical conditions, whereby the strict application would result in practical difficulty or ~~unnecessary~~ unreasonable hardship which would deprive an owner of the reasonable use of his or her land. The variance shall be used only where necessary to overcome some obstacle which is preventing an owner from reasonably using his or her property as the zoning ordinance intended.

A. *Application.* ~~After written denial of a building permit by the Building Official, a~~ A property owner may apply to the Board of Adjustment for a variance. A fee shall be paid by the property owner at the time of application for each application submitted. The fee amount shall be set by resolution of the City Council ~~by resolution.~~

B. *Public hearing—publication and mailing of notice.*

1. Upon receipt of an application and fee, the Board shall hold a public hearing, having first given 7 days' notice. The notice of the time and place of the hearing shall be published in a daily paper of general circulation. The Board shall consider and decide ~~the~~ applications for variances within 30 days of the public hearing and in accordance with the ~~following~~ standards provided in this Section and in applicable state law. ~~No building permit shall be issued by the Building Official until 7 business days after the granting of a variance.~~

2. *Adjacent property owner notification.* Public notice shall be sent to all owners of property adjacent to or within 250 feet of the perimeter of the property, inclusive of public right-of-way. Notice shall be sent by first class mail at least 7 days prior to the public hearing. When adjacent

property is owned by a subdivision or condominium association, notification may be sent to the management company or board of such association. The city may require the applicant to sign a certified affidavit prior to the public hearing as evidence to document compliance with the requirements of this section. The City may decide to perform the adjacent property owner mailing and shall notify the applicant in writing prior to scheduling the public hearing.

C. *Criteria for variances.* In granting a variance, the Board may consider the following criteria:

1. Variances may be granted where special circumstances or conditions (such as lot size or dimension, topography or existing building location), fully described in the findings of the Board, do not apply generally in the district;

2. Variances shall not be granted to allow a land use otherwise excluded from the particular district in which requested;

3. For reasons fully set forth in the findings of the board, the aforesaid circumstances or conditions are such that the strict application of the provisions of this title would deprive the applicant of ~~any~~ reasonable use of his or her land. Mere loss in value shall not constitute a deprivation of reasonable use so as to justify a variance; ~~there must be a deprivation of beneficial use of land;~~

4. Variances granted under the provisions of this section should be the minimum adjustment necessary for the reasonable use of the land; and

5. The granting of any variance is in harmony with the general purposes and intent of this title and will not be injurious to the neighborhood, detrimental to the public welfare, or in conflict with the City's Comprehensive Plan for development.

D. *Requirements for the granting of a variance.* Before the Board shall have the authority to grant a variance, the person claiming the variance has the burden of showing, and findings must be made, that:

1. ~~That~~ the granting of the permit variance will not be contrary to the public interest;

2. ~~There are special conditions attached to the property that do not generally apply to other properties in the same district;~~

~~23. That~~ owing to special conditions, the literal enforcement of this title will result in unnecessary-unreasonable hardship;

~~34. That~~ by granting the permit variance contrary to the provisions of this title, the spirit of this title and the City's Comprehensive Plan will be observed; and

~~45. That~~ by granting the permit variance, substantial justice will be done.

E. Unreasonable hardship.

1. The Board may not find an unreasonable hardship unless the alleged hardship:

a. is located on or associated with the property for which the variance is sought; and

b. comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.

2. The Board may not find an unreasonable hardship if the hardship is self-imposed or economic.

F. Special conditions. Special conditions exist only if they relate to the hardship complained of and deprive the property of privileges granted to other properties in the same district.

G. Additional requirements. Additional requirements may be imposed on the applicant, as a condition for granting a variance that will:

1. Mitigate any harmful effects of the variance; or
2. Serve the purpose of the standard or requirement that is waived or modified.

~~E H. Court review of Board.~~

~~—1.— Within 30 days of the Board’s decision, Any person, firm or corporation aggrieved by any decision of the Board may present to the a court of competent jurisdiction a verified petition fully verified for a writ of certiorari as allowed by South Dakota Codified Law., setting forth that such decision is illegal, in whole or in part, and specifying the grounds of illegality. The petition shall be presented to the court within 30 days after the filing of the decision in the office of the Board. The petition shall not be filed with respect to the decision of the Building Inspector or any administrative officer without recourse to the Board.~~

~~—2.— Upon the presentation of the petition the court may allow a writ of certiorari directed to the Board to review the decision of the Board. The Board shall be required to turn over to the court certified copies of all papers acted on by it, and any other information as may be pertinent and material to show the grounds of the decision appealed from. If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take evidence, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.~~

~~—3.— Costs shall not be allowed against the Board unless it shall appear to the court that the Board acted with gross negligence or in bad faith or with malice in making the decisions appealed from.~~

CITY OF RAPID CITY

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Steve Allender, Mayor

Attest

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Pauline Sumption, Finance Officer

(seal)