



Pennington County Planning & Zoning Pennington County, South Dakota

VARIANCE PROCESS

APPLICABILITY

The purpose of the Variance is to modify the strict application of the specific requirements of the Zoning Ordinance in the case of exceptionally irregular, narrow, shallow or steep lots, or other exceptional physical conditions; whereby such strict application would result in practical difficulty or unnecessary hardship which would deprive an owner of the reasonable use of his land. Application for a Variance may be made when the literal interpretation of these Zoning Ordinances caused undue hardship or the Planning Director has denied a Building Permit in writing.

APPLICATION REQUIREMENTS

A *pre-meeting* with Planning Staff is required prior to submittal of a Variance Application. A list of the minimum required elements is located on the following page: Variance Application Checklist.

APPROVAL PROCESS

The application form and required materials for a Variance request must be submitted to the Pennington County Planning Department. A complete application shall include: the application form (attached), all materials required by the Zoning Ordinance, and the non-refundable application fee.

APPROVAL PROCESS CONTINUED

After submittal of all the application materials and the required fee, the Planning Department will prepare a list of names and addresses of those persons who own land within 500 feet of the subject property. The applicant will be provided with the list and "Notice of Public Hearing" letter. The letter must be sent to all listed property owners by certified mail, with return receipt at least 10 days prior to the date of the public hearing.

A Notice of Public Hearing sign will be provided by the Planning Department. The sign must be posted on the property in such a manner that it is visible from the road, which provides access to the property. The sign must be posted no less than 10 days prior to the date of the hearing and must remain posted until final action by the Board of Adjustment.

Upon receipt of a complete application (including application fee) and proper notice to adjoining landowners, the Board of Adjustment will hold a public hearing on the application. Notice of time and place of hearing must be given at least 10 days in advance by publication in the legal newspapers of the County.

It is recommended the petitioner or a representative attend the County Board of Adjustment (County Board of Commissioners) meeting to answer any questions. The Board of Adjustment action on the request is final, although their decisions may be appealed through the Circuit Court.



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VARIANCE APPLICATION CHECKLIST

Pre-application Meeting Date with Planning Staff is scheduled on: _____.

Completed Application Form

Completed Variance Findings Worksheet

If applying for a Zoning Variance:

- Site Plan Drawn to scale (include existing and proposed building(s))
- Stamped survey (for setbacks)
- Written narrative describing the hardship and need for a Variance

If applying for a Subdivision Regulation Variance:

- Existing infrastructure (i.e. road width, paved or gravel, emergency turnarounds)
- Existing Right-of-Way/easements (width)

Permit Application Fee:

Application fee -	\$380.00
Publication costs -	\$120.00 (may exceed \$120 due to lengthy legal description)
Property owner's list -	\$ 20.00
Sign fee -	<u>\$ 25.00</u>
	\$545.00 Total

If applicable, additional information and documentation as requested by Planning Staff

VARIANCE APPLICATION

Tax ID: _____

(Choose one) Subdivision Regulations Variance or Zoning Variance

Board of Adjustment Meeting Date: _____

Fee Paid: _____

1. APPLICANT: _____ DAYTIME PHONE: _____
MAILING ADDRESS: _____
E-MAIL ADDRESS: _____
AUTHORIZED AGENT: _____ DAYTIME PHONE: _____
MAILING ADDRESS: _____
LANDOWNER: _____ DAYTIME PHONE: _____
MAILING ADDRESS: _____

2. EXISTING LEGAL DESCRIPTION: _____
_____ BHM, Pennington County, South Dakota.
CURRENT ZONING: _____ ACREAGE: _____ UTILITIES: _____
PHYSICAL DESCRIPTION: _____ SITE PLAN: _____
LANDMARK OR ADDRESS: _____
SURROUNDING ZONING: NORTH: _____ SOUTH: _____ EAST: _____ WEST: _____

3. LAND USE: RESIDENTIAL MIXED-USE COMMERCIAL INDUSTRIAL OTHER: _____

4. VARIANCE REQUESTED: _____

5. The Owner, Applicant, or Authorized Agent acknowledges and agrees that he or she (1) has read and received a copy of the instruction sheets and this application form concerning the filing and hearing of this matter; (2) authorizes the Pennington County Planning Department Staff and designees to enter onto and inspect the above-described property; and (3) has been advised of the fee requirements.

SIGNATURE OF APPLICANT OR AGENT:

SIGNATURE OF LANDOWNER:

DATE: _____

DATE: _____

Subscribed and sworn to before me this _____
day of _____, 20____.

Subscribed and sworn to before me this _____
day of _____, 20____.

Notary Public for the State of South Dakota

Notary Public for the State of South Dakota

My Commission Expires: _____

My Commission Expires: _____

AUTHORITY, STANDARD, & PROCEDURE

I. Authority

Under SDCL 11-2-53 and Pennington County Zoning Ordinance Section 509, the Pennington County Board of Adjustment may grant a Variance if two prongs are met: (1) granting the Variance does not run counter to the public interest; and, (2) special conditions exist “(such as exceptional narrowness, topography, or siting)” that excuse literal enforcement of the Ordinance because (a) enforcement causes “unnecessary hardship,” and (b) granting the Variance not only observes the Ordinance’s spirit but also ensures substantial justice is done.

II. Standard

Each prong has questions that guide the Board of Adjustment’s decision. The first prong has five questions, while the second prong has one question and two conditional questions that only merit consideration, if a special condition exists.

III. Procedure

You, the applicant, must complete the entire application—including completely filling out the Variance Findings Worksheet that is attached. Failure to do so means your application is incomplete and will not be submitted to the Board of Adjustment for consideration.

VARIANCE FINDINGS WORKSHEET

Prong One			
<i>Whether granting the Variance runs counter to the public interest?</i>			
Consider the entire public— not just the neighbors	Findings		
1. Does it injure the neighborhood?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
2. Does it conform to the neighborhood?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
3. Does it conform to the general purpose of the Zoning Ordinances?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
4. Does it conform to the Comprehensive Plan currently in place?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
5. Does it harm the public safety, health, or general welfare of the community?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Prong Two			
<i>Whether special conditions exist to grant a Variance?</i>			
Physical conditions— not money or econ hardship	Findings		
1. Does a special condition—exceptional narrowness, topography, siting, or the like—exist on the property? *Explicitly state the condition on the property that is a special condition if one exists. *It must be a physical condition. *Exception: legal justification (for example, estoppel) is a special circumstance.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
a. If a special condition exists, does enforcing the ordinance create an unnecessary hardship? *That does not mean money, econ hardship, or allowing a use that’s prohibited (<i>i.e.</i> , not otherwise excluded) in the zoning district.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
b. If a special circumstances exist, does granting the Variance observe the Ordinance’s spirit while doing substantial justice.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	