

ORDINANCE #04-01

AN ORDINANCE PROVIDING FOR THE AMENDMENT OF THE 1997 REVISED ZONING ORDINANCE

WHEREAS, BROOKINGS COUNTY has previously adopted the 1997 Revised Zoning Ordinance; and

WHEREAS, the Brookings County, South Dakota, Board of County Commissioners deems it necessary, for the purpose of promoting the health, safety, and the general welfare of the County, to amend the 1997 Revised Zoning Ordinance.

THEREFORE, BE IT ORDAINED BY BROOKINGS COUNTY, SOUTH DAKOTA, that the 1997 Revised Zoning Ordinance of Brookings County be amended as follows:

SECTION A.

1. That Article II, Definitions, be amended by adding the following definitions:

Conditional Use: A conditional use is a use that would not be appropriate generally or without restriction throughout the zoning division or district, but which, if controlled as to number, area, location, or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or general welfare. Such uses may be permitted in such zoning division or district as conditional uses, as specific provisions for such uses are made in these zoning regulations. The Board of Adjustment may, after notice and hearing, revoke the conditional use in the event of a violation of any of such conditions. In addition, the conditional use permit may not be transferred during any violation.

Institution farm: Agricultural land wholly owned by a government agency, Federal, State, County or Municipality, and used to grow an agricultural commodity.

Religious farming community: An agricultural community with common land and property ownership.

2. That Article II, Definitions be amended by deleting Section 281, Special Exceptions.
3. That Article II, Definitions be amended by re-numbering each Section so as to alphabetize the definitions after the foregoing amendments.

SECTION B. That Article V, by amended as follows:

1. That Section 501 shall remain unchanged.
2. That Article V be amended by adding the following section and renumbering subsequent sections as follows:

Section 502 that pursuant to SDCL 11-2-49 the County Zoning Commission shall act as the Board of Adjustment.

3. That Article V, Section 503, be amended as follows:

Section 503. Powers and Jurisdiction Relating to Administrative Review.
The County Zoning Commission acting as the Board of Adjustment, pursuant to SDCL 11-2-53, shall have the power to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official or agency based on or made in the enforcement of any zoning regulation or any regulation relating to the location of structures or to interpret any map.

4. That Article V, Section 502, be re-numbered and amended as follows:

Section 504. Appeals, Record and Appeal, Hearing and Stays. Appeals to the County Zoning Commission acting as the Board of Adjustment, pursuant to SDCL 11-2-53, may be taken by any person aggrieved or by an officer, department, board or bureau of the County or city/town affected by any decision of the administrative officer. Such appeals shall be taken within a reasonable time, as provided by the rules of the Board of Adjustment by filing with the officer from whom the appeal is taken and with the Board of Adjustment a notice of appeal specifying the grounds thereof. The officer 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.

An appeal stays all proceedings in furtherance of the action appealed from unless the officer 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.

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 officer from whom the appeal is taken and on due cause shown.

The Board of Adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney. 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 appealed 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 officer from whom the appeal is taken.

The concurring vote of two-thirds (2/3) of the Board of Adjustment shall be necessary to reverse any order, requirement, decision or determination upon which it is required to pass under this regulation.

5. That Article V, Section 504 be re-numbered and amended as follows:

Section 505. Powers and Jurisdiction Relating to Conditional Use Permits. The County Zoning Commission shall have the power to hear and decide in accordance with the provisions of this regulation, requests for Conditional Use Permits or for decisions upon other special questions upon which the Zoning Commission is authorized by this regulation to pass; to decide such questions as are involved in determining whether special conditions and safeguards as are appropriate under this regulation, or to deny Conditional Use Permits when not in harmony with the purpose and intent of this regulation. A Conditional Use Permit shall not be granted by the Zoning Commission unless and until:

- a. A written application for a Conditional Use Permit is submitted, indicating the section of this regulation under which the Conditional Use Permit is sought and stating the grounds on which it is requested. Applications are due the second Tuesday of the month for the following month's meeting.
- b. Notice of hearing shall be published twice in a paper of general circulation in the area affected.
- c. Adjoining landowners shall be notified by First Class mail at their last known address of the public hearing time and date at least seven (7) days prior to the hearing.
- d. The public hearing shall be held. Any party may appear in person, or by agent or attorney.
- e. The County Zoning Commission shall make a finding that it is empowered under the section of this regulation described in the application to grant the Conditional Use Permit and that the

granting of the Conditional Use Permit will not adversely affect the public interest. An affirmative vote of two thirds (2/3) of the full membership of the County Zoning Commission is required for approval of a Conditional Use Permit.

- f. Before granting any Conditional Use Permits the County Zoning Commission shall make written findings certifying compliance with the specific rules and criteria governing individual Conditional Uses and that satisfactory provision and arrangements have been made concerning the following, where applicable:
 1. Entrance and exit to property 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.
 2. The roads providing access to the property are adequate to meet the transportation demands of the proposed conditional use. The County Zoning Commission 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 the issuance of a conditional use permit.
 3. Off-street parking and loading areas where required, with particular attention to the items in (a) above and economic, noise, glare or other effects of the Conditional Use on adjoining properties and properties generally in the district.
 4. Utilities, refuse and service areas, with reference to locations, availability, and compatibility.
 5. Screening and buffering with reference to type, dimensions and character.
 6. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with properties in the district.
 7. Required yards and other open space.
 8. General compatibility with adjacent properties and other property in the district.

- g. Any Conditional Use Permit that is granted and not used within 3 years will be considered invalid.
- h. The County Zoning Commission 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.

6. That Article V, Section 505 be re-numbered and amended as follows:

Section 506. Powers and Jurisdiction Relating to Variances. The County Zoning Commission acting as the Board of Adjustment pursuant to SDCL 11-2-53 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 regulation, 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 regulation 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, spirit and purpose of this regulation. An affirmative vote of two thirds (2/3) of the full membership is required to grant a variance.

- 1. No such variance shall be authorized by the Board of Adjustment unless it finds that the strict application of the Regulation would produce undue hardship; such hardship is not shared generally by other properties in the same zoning district and the same vicinity; the authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance; and the granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit, and caprice.
- 2. No variances shall be authorized unless the Board of Adjustment finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to this regulation.
- 3. A variance from the terms of this regulation shall not be granted by the Board of Adjustment unless and until a written application for a variance is submitted demonstrating that special conditions and

circumstances exist which are peculiar to the land, structure, or buildings in the same district; that literal interpretation of the provisions of this regulation would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this regulation; that the special conditions and circumstances do not result from the actions of the applicant, and that granting the variance requested will not result from the actions of the applicant, and that granting the variance requested will not confer on the applicant any special privilege that is denied by this regulation to other lands, structures, or buildings in the same district.

4. 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.
5. Notice of public hearing shall be given as in Section 505; the public hearing shall be held. Any party may appear in person, or by agent or by attorney; the Board of Adjustment shall make findings that the requirements of this section have been met by the applicant for a variance; 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 the land, building or structure; the Board of Adjustment shall further make a finding that the granting of the variance will be in harmony with the general spirit, purpose and intent of this regulation, will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.
6. In granting any variance, 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 variance is granted, shall be deemed a violation of this regulation and punishable under the terms of this regulation.
7. Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of this regulation in the district involved, or any use expressly or by implication prohibited by the terms of this regulation in said district.
8. Any variance that is granted and not used with three (3) years will be considered invalid.

7. That Article V be amended by deleting Section 506 as it exists prior to these amendments.

8. That Article V, Section 507 be amended as follows:

Section 507. Appeals to a Court of Record. Any person or persons, jointly or severally aggrieved by a decision of the County Zoning Commission or Board of Adjustment or any taxpayer, landowner, or any officer, department, board, or bureau of the County may appeal as provided by SDCL Chapter 11-2.

SECTION C. That Article VI be amended as follows:

ARTICLE VI

DUTIES OF COUNTY ZONING OFFICER, BOARD OF COUNTY COMMISSIONERS AND COURTS ON MATTERS OF APPEAL

It is the intent of this regulation that all questions of interpretation and enforcement shall be first presented to the County Zoning Officer, and that such questions shall be presented to the County Zoning Commission or Board of Adjustment only on appeal from the decision of the administrative official, and that recourse from the decision of the County Zoning Commission or Board of Adjustment shall be to the courts as provided by law.

It is further the intent of this regulation that the duties of the Board of County Commissioners in connection with this regulation shall not include hearing and deciding questions of interpretation and enforcement that may arise.

SECTION D. That with regard to Article XI all references to "special Exception" or like words shall be changed to "Conditional Use", "Conditional Uses" or "Conditional Uses by Conditional Use Permit" as appropriate.

SECTION E. That with regard Article XI the references to the "Board of Adjustment" in Section 1101, Conditional Uses, paragraph 26; Section 1102, Conditional Uses, paragraph 14; Section 1102, Area Regulations, paragraph 1; and Section 1103, Conditional Uses, paragraph 7; shall be changed to "County Zoning Commission".

SECTION F. Article XI, Section 1101, Area Regulations, Paragraph 7 shall be amended by adding thereto the following subsection:

- d. Conditional use permitting of a Religious farming community will include the authorization to construct or utilize an existing building as a church and to construct multiple single family dwelling units. A

detailed site plan will be required, and all federal, state, and local laws will be strictly enforced. If a confined animal feeding operation (CAFO) or any other conditional use permitted uses are planned a separate application will be required. In the event that a Religious farming community ceases to exist all single family dwelling units will be required to be removed.

SECTION G. That Article XI, Section 1105, shall be amended by adding thereto the following subsection 5.2-1a:

5.2-1a Below-Grade Residential Crawlspace Construction

New construction and substantial improvement of any below-grade crawlspace shall:

- (1) Have the interior grade elevation that is below base flood elevation no lower than two feet below the lowest adjacent grade;
- (2) Have the height of the below-grade crawlspace measured from the interior grade of the crawlspace to the top of the foundation wall, not exceed four feet at any point;
- (3) Have an adequate drainage system that allows floodwaters to drain from the interior area of the crawlspace following a flood;
- (4) Be anchored to prevent flotation, collapse, or lateral movement of the structure and be capable of resisting the hydrostatic and hydrodynamic loads;
- (5) Be constructed with materials and utility equipment resistant to flood damage;
- (6) Be constructed using methods and practices that minimize flood damage;
- (7) Be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
- (8) Be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either

be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

- (a) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;
- (b) The bottom of all openings shall be no higher than one foot above grade;
- (c) Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

SECTION H. In all other respects the 1997 Revised Zoning Ordinance shall remain unchanged and is hereby re-ordained.

FIRST READING: September 14, 2004

SECOND READING: September 28, 2004


Chairperson, Brookings County
Board of County Commissioners

ATTEST:


Brookings County Auditor