

ORDINANCE NO. UCC 2010-003

AN ORDINANCE OF UNION COUNTY, SD, AMENDING THE 2008 REVISED ZONING ORDINANCE FOR UNION COUNTY, SD, BY AMENDING ARTICLE 22, SECTION 2204, CONDITIONAL USES AND SECTION 2205, VARIANCES.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF UNION COUNTY, SD:

*Section 1. That Section 2204 of the 2008 Revised Zoning Ordinance for Union County, SD, is hereby amended to read as follows:*

Section 2204. Conditional Uses. Conditional uses are allowed for certain uses in some districts, as identified in each District Regulations. Uses not listed in the District Regulations as eligible for a conditional use permit shall not, under any circumstances, be granted a conditional use permit. Listed below are the procedures for requesting a conditional use permit.

- A. Application. Application forms for conditional use permits are available from the Planning Director. When the application form is completed, and returned to the Planning Director, the Planning Director shall set the date, time and place for a public hearing by the Board of Adjustment. (See Section 2204(C) for further information concerning hearing procedures.) Every application shall contain the following information:
  1. The legal description of the land for which the conditional use permit is requested.
  2. The name, address, phone number and e-mail address of the owner of the property for which the permit is being requested.
  3. The name, address, phone number and e-mail address of the person making the application if made by anyone other than the owner of the property. The applicant shall have written authorization from the owner to pursue the described action if the applicant is not the owner of the property.
  4. The zoning district classification under which the property is regulated at the time of such application.
  5. A description of the proposed conditional use.
  6. Other information concerning the property as requested by the Planning Director.
- B. Site Plan. In addition to the following information, plans shall be drawn to scale and shall be of sufficient clarity to indicate the location, nature, and extent of the work proposed and show in detail that it will conform to the provisions of this ordinance and all relevant laws, rules, and regulations.
  1. The address of the property and the legal description.
  2. The name of the project and/or business.
  3. The scale and north arrow.

4. All existing and proposed buildings or additions.
5. Dimensions of all buildings.
6. Distance from all building lines to the property lines at the closest points.
7. Building height and number of stories.
8. Dimensions of all property lines.
9. Parking lots or spaces; designate each space, give dimensions of the lot, stalls, and aisles.
10. Screening; show height, location, and type of material to be used.
11. The landscaped setback and trees; indicate species of trees and material to be used for landscaping.
12. Name and location of all adjacent streets, alleys, waterways and other public places.

Approved site plans shall not be changed, modified, or altered and all work shall be done in accordance with the approved site plans.

- C. Board of Adjustment Hearing. Upon filing of an application for a conditional use permit, the Planning Director shall set the date, time and place for a public hearing to be held by the Board of Adjustment. The Planning Director shall post notices of the public hearing at the County Courthouse and on the property affected by the proposed Conditional Use Permit. No less than ten (10) days before the public hearing, the Planning Director shall publish notice of the public hearing in a newspaper of general circulation in the area affected by the proposed Conditional Use Permit.
- D. Decision. The following procedure shall be followed by the Board of Adjustment in considering the application for a conditional use permit:
  1. 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 Board of Adjustment.
  2. The Board of Adjustment shall decide whether to grant the conditional use with such conditions and safeguards as are appropriate or to deny a conditional use when not consistent with these regulations. A favorable vote of two-thirds of the members of the Board of Adjustment shall be required to approve each request.
- E. Amendments. Amendments shall be processed in the same manner as required for a separate conditional use permit.
- F. Expiration. A conditional use permit which has been approved shall expire by limitation and become null and void if the building, work or use authorized by such conditional use permit is not commenced within one year from the date of approval. This provision shall

not apply to a conditional use permit approved for a residential use in the AG or FPC zoning districts. Upon written request to the Planning Director and prior to the conditional use permit expiration date, a one-year time extension for the conditional use permit may be granted by the Planning Director.

- G. **Preexisting Uses.** An existing use eligible for a conditional use permit which was lawfully established on the effective date of this ordinance shall be deemed to have received a conditional use permit as herein required and shall be provided with such permit by the County upon request, and it shall not be a nonconforming use; provided, however, for any enlargement, extension, or relocation of such existing use, an application in accordance with this ordinance shall be required.
- H. **Revocation.** If the Planning Director finds that at any time that the terms, conditions, or requirements of the conditional use permit have not been complied with, or that any phase thereof has not been completed within the time required under the permit or any amendment thereto, the Planning Director shall report this fact to the permittee, landowner, and/or operator, and the Board of Adjustment. The Board of Adjustment may, after conducting a public hearing, of which the permittee, landowner and/or operator shall be notified, revoke the conditional use permit for failure to comply with the terms, conditions or requirements of the conditional use permit.
- I. **Appeals from Decision of Board.** Appeals may be taken to the Circuit Court by any person or persons, jointly or severally, aggrieved by any decision of the Board of Adjustment, or any taxpayer, or any officer, department, board or bureau of the County, aggrieved by any decision of the Board of Adjustment, in the manner and form provided by the statutes of the State of South Dakota, in such cases made and provided. (SDCL 11-2-61)

*Section 2. That Section 2205 of the 2008 Revised Zoning Ordinance for Union County, SD, is hereby amended to read as follows:*

Section 2205. Variances. Upon request, the Board may, subject to appropriate conditions and safeguards, grant variances and hear appeals to the terms of these regulations in accordance with the general purpose, intent and specific rules herein contained. (See Section 2203(D) for further information concerning powers and duties, specifically variances, of the Board of Adjustment.) Listed below are the procedures for requesting a variance:

- A. **Application to County for Variance.** Forms for requesting a variance are available from the Planning Director. When the application form is completed, and returned to the Planning Director, the Planning Director shall set the date, time and place for a public hearing by the Board of Adjustment. (See Section 2205(B) for further information concerning hearing procedures.) Every application shall contain the following information.
  - 1. The legal description of the property for which the variance is requested.
  - 2. The name, address, phone number and e-mail address of the owner of the property for which the variance is requested.
  - 3. The name, address, phone number and e-mail address of the person making the application if made by anyone other than the owner of the property. The

applicant shall have written authorization from the owner to pursue the described action if the applicant is not the owner of the property.

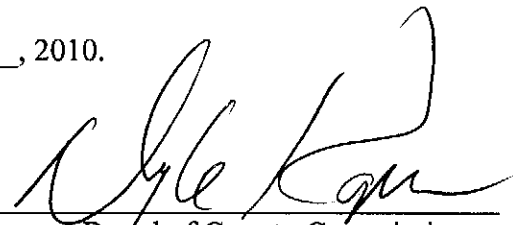
4. The zoning district classification under which the property is regulated at the time of such application.
  5. A description of the proposed variance.
  6. Other information concerning the variance as requested by the Planning Director.
- B. Board of Adjustment Hearing. When an application for a variance is filed, the Planning Director shall set the date, time and place for a public hearing to be held by the Board of Adjustment. The Planning Director shall post notices of the public hearing at the County Courthouse and on the property affected by the proposed variance. No less than ten (10) days before the public hearing, the Planning Director shall publish notice of the public hearing in a newspaper of general circulation in the area affected by the proposed variance.
- C. Decision. The following procedure shall be followed by the Board of Adjustment in considering the application for a variance.
1. 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 Board of Adjustment.
  2. Standards. The Zoning Board of Adjustment shall not vary the regulations unless it shall make findings based upon the evidence presented to it in each specific case that all of the following conditions are present:
    - a. The particular physical surroundings, shape or topographical conditions of the specific property involved would result in a particular hardship upon the owner as distinguished from a mere inconvenience, if the strict letter of the regulations were to be carried out.
    - b. The conditions upon which the application for a variance is based would not be applicable generally to other property within the same zoning classification or other property substantially similar in use.
    - c. The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the area in which the property is located.
    - d. The proposed variance will not unreasonably impair an adequate supply of light and air to adjacent property; increase the congestion in the public streets; increase the danger of fire; endanger the public safety; or diminish or impair property values within the area.
    - e. That because of circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulations and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.

- f. That the variance, if authorized, will represent the minimum variance that will afford reasonable relief and will represent the least modification desirable of the zoning regulations.
- g. The Board shall hear and make determinations on variance to exceed the height limits as established by these regulations.
- h. The Board of Adjustment, under its authority to grant variances may impose reasonable conditions on the grant, and one accepting those conditions is bound by them.

3. The Board of Adjustment shall decide whether to grant the variance. A favorable vote of two-thirds of the members of the Board of Adjustment shall be required to approve each request.

D. Appeals from Decision of Board. Appeals may be taken to the Circuit Court by any person or persons, jointly or severally, aggrieved by any decision of the Board of Adjustment, or any taxpayer, or any officer, department, board or bureau of the County, aggrieved by any decision of the Board of Adjustment, in the manner and form provided by the statutes of the State of South Dakota, in such cases made and provided. (SDCL 11-2-61)

Adopted this 7<sup>th</sup> day of Sept., 2010.

  
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Chairman, Board of County Commissioners

ATTEST:

  
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Auditor

(SEAL)

First Reading: August 24, 2010  
Second Reading: Sept. 7, 2010  
Publication: Sept 16, 2010  
Effective Date: October 6, 2010