



**City of Vermillion
Planning Commission Agenda**

5:30 pm Regular Meeting

Monday, May 9, 2011

City Hall

Large Conference Room – 2nd Floor

25 Center Street

Vermillion, SD 57069

1. **Roll Call**
2. **Minutes**
 - a. April 11, 2011 Regular Meeting.
3. **Adoption of the Agenda**
4. **Visitors To Be Heard**
5. **Public Hearings**
 - a. Proposed Amendment to Zoning Regulations - Section 155.095, Conditional Use Permits and Section 155.100, Board of Adjustment.
6. **Old Business**
7. **New Business**
8. **Adjourn**

WELCOME TO YOUR PLANNING COMMISSION MEETING

If you wish to participate in the discussion, the meeting provides several opportunities.

After the minutes are approved, the Chairperson will ask if any visitors wish to be heard. Any item not on the agenda may be discussed.

During the discussion of agenda topics, anyone may comment. The Chairperson will recognize you if you raise your hand. Please introduce yourself with your name and address when addressing the Planning Commission. Discussion occurs before motions are made and seconded. Discussion also occurs after the motion is seconded and before the vote. You may participate each time if you wish.

Your suggestions and ideas are welcome. The best decisions are made when everyone participates and provides information.

Meeting Assistance: The City of Vermillion fully subscribes to the provisions of the Americans with Disabilities Act of 1990. If you desire to attend this public meeting and are in need of special accommodations, please notify the City Manager's Office at 677-7050 at least 3 working days prior to the meeting so appropriate auxiliary aids and services can be made available.

Unapproved Minutes
Vermillion Planning Commission
Monday April 11, 2011 Regular Meeting

The regular meeting of the Vermillion Planning Commission was called to order in the conference room at City Hall on April 11, 2011 at 5:30 p.m.

1. Roll Call

Present: Fairholm, Forseth, Muenster, Tuve and Iverson. Absent: Howe, Gruhn and Reasoner.

Also present was José Dominguez, City Engineer and Andy Colvin, Assistant to the City Manager.

2. Minutes

a. March 28, 2011 Regular Meeting.

Moved by Forseth to approve the March 28, 2011 Regular Meeting minutes, seconded by Tuve. Motion carried 5-0.

3. Adoption of the Agenda

Moved by Fairholm to adopt the agenda as printed, seconded by Forseth. Motion carried 5-0.

4. Visitors to be Heard

5. Public Hearing

6. Old Business

7. New Business

a. José reported that the plat meets city ordinance requirements and has been presented to divide the land for inheritance purposes. José noted that the plat will also dedicate the required 8-foot easement and additional 7 foot right-of-way along 315th Street. Discussion followed.

Muenster asked if it was possible to meet jointly with the County Planning Commission to shorten the approval process for plats. José reported that it is possible, but it is not the way the process has been completed in the past. José also noted that the County Planning Commission does get to review and approve plats before they come to the City.

Moved by Tuve to recommend approval of the plat to the City Council, seconded by Muenster. Motion carried 5-0.

8. Staff Reports

Staff fielded questions pertaining to the City's property Maintenance Code.

9. Adjourn

Moved by Forseth to adjourn, seconded by Tuve. Motion carried 5-0.

Chairman Iverson declared the meeting adjourned 5:40 p.m.



Planning Commission Agenda Memo

From: Andy Colvin

Meeting: May 9, 2011

Subject: Zoning Ordinance Amendment –Section 155.095, Conditional Use Permits and Section 155.100, Board of Adjustment

Presenter: Andy Colvin

Background: The City of Vermillion’s current zoning ordinance was adopted in 2008. The ordinance details regulations for various uses and divides the City into residential, commercial, industrial, natural resource conservation, and planned development districts. Each district contains a series of permitted uses and conditional uses. Permitted uses are allowed as long as the project can meet ordinance requirements for setbacks, parking, etc. Conditional uses, on the other hand, are allowed only after a public hearing. South Dakota law authorizes conditional uses as follows:

11-4-4.1. Ordinance authorizing conditional use of real property--Content--Approval or disapproval of request. A municipal zoning ordinance adopted pursuant to this chapter that authorizes a conditional use of real property shall specify the approving authority, each category of conditional use requiring such approval, the zoning districts in which a conditional use is available, and the criteria for evaluating each conditional use. The approving authority shall consider the stated criteria, the objectives of the comprehensive plan, and the purpose of the zoning ordinance and its relevant zoning districts when making a decision to approve or disapprove a conditional use request.

Greater oversight and public input is required prior to granting a conditional use. Some uses may be harmful to neighborhoods or not in keeping with a community’s comprehensive plan. Restrictions, limitations or prohibitions may be imposed for certain uses. For example, a bed and breakfast may be appropriate for a residential district, but may cause parking or traffic issues. For this reason the approving authority may allow the use, but will impose special parking requirements, specific hours of operation or other restrictions to lessen the impact on the neighborhood. The City of Vermillion currently designates the Board of Adjustment as the approving authority for conditional uses.

Discussion: On February 8, 2011, the Planning Commission and City Council held a joint meeting to discuss the proposed joint jurisdictional zoning ordinance. Staff went through the process for amending the ordinance, applying for variances, hearings, and other items. The proposed joint jurisdictional ordinance provides for the Planning Commission to be the approving authority for conditional uses. At the meeting both bodies discussed the possibility of having the City ordinance reflect the same process for approving conditional uses. The City Council sent the issue to the Policies and Procedures Committee, who met on March 18th to go over the different processes found in other South Dakota cities. After reviewing the information, the committee's recommendation was to draft an ordinance amending the City's zoning regulations to designate the Planning Commission as the approving authority for conditional uses. The Planning Commission's decision is final unless appealed to the City Council within five working days of the Planning Commission's decision.

The committee also expressed the desire to have the Planning Commission review and make recommendation on variances. The recommendation will be forwarded to the Board of Adjustment for consideration.

Compliance with Comprehensive Plan: State law authorizes municipalities to designate an approving authority for conditional uses. The City Council is empowered to make such a designation via the zoning ordinance. The Comprehensive Plan will be used as a reference for considering conditional uses.

Conclusion/Recommendations: Staff recommends approval of the amendment to the zoning ordinance.

ORDINANCE NO. 1254

AN ORDINANCE AMENDING SECTIONS 155.095, CONDITIONAL USE PERMITS AND 155.100, BOARD OF ADJUSTMENT OF THE 2008 REVISED ORDINANCES OF THE CITY OF VERMILLION, SOUTH DAKOTA.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF VERMILLION, SD:

Section 1. That Section 155.095, of the Zoning Ordinance of Vermillion, SD, is hereby amended to read as follows:

155.095 CONDITIONAL USE PERMITS.

Any conditional use approved by the ~~Board of Adjustment~~ Planning Commission shall conform to the standards set forth ~~for the uses in this section for such uses below.~~ These standards shall be construed to be the minimum requirements for any of the specified conditional uses, and the ~~Board of Adjustment~~ Planning Commission may require additional reasonable stipulations at their discretion. In all cases, the impact of the proposed use on adjacent properties shall be a major consideration.

- (A) *Procedure.* The ~~Board of Adjustment~~ Planning Commission may authorize by conditional use permit, those uses specifically designated as conditional uses in §§ 155.030 through 155.039. The ~~Board of Adjustment~~ Planning Commission shall impose ~~the such~~ conditions as are appropriate and necessary to insure compliance with the Comprehensive Plan and protect the health, safety, and general welfare in the issuance of the conditional use permit.
- (B) *Application.* To obtain a conditional use permit, the applicant shall file an application, therefore, in writing on a form furnished by the Zoning Administrator. Every application shall contain the following information:
- (1) Legal description of the land on which the conditional use is requested, together with local street address.
 - (2) Name and address of each owner of the property.
 - (3) Name, address, phone number and signature of the applicant.
 - (4) Zoning district classification under which the property is regulated at the time of ~~the such~~ application.
 - (5) Be accompanied with a site plan, unless waived by the Zoning Administrator.
 - (6) Any other information concerning the property as may be requested by the Zoning Administrator or the ~~Board of Adjustment~~ Planning Commission.

(C) *Fees.* Upon the filing of any application for a conditional use permit with the Zoning Administrator, the applicant shall pay to the eCity the appropriate fee as designated by resolution of the Vermillion City Council.

(D) *Information on site plan.*

(1) In addition to the following information, plans shall be drawn to scale upon substantial paper or electronic 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 section and all relevant laws, ordinances, rules and regulations. The Zoning Administrator may waive the submission of plans, if he or she finds that the nature of the work applied for is such that reviewing of plans is not necessary to obtain compliance with this section.

(a) The address of the property and the legal description.

(b) The name of the project and/or business.

(c) The scale and north arrow.

(d) All existing and proposed buildings or additions.

(e) Dimensions of all buildings.

(f) Distance from all building lines to the property lines at the closest points.

(g) Building height and number of stories.

(h) Dimensions of all property lines.

(i) Parking lots or spaces; designate each space, give dimensions of the lot, stalls and aisles.

(j) Screening; show height, location, and type of material to be used.

(k) The landscaped setback and trees; indicate species of trees and material to be used for landscaping.

(l) Name and location of all adjacent streets, alleys, waterways and other public places.

(2) Approved plans shall not be changed, modified, or altered without authorization from the Board of Adjustment Planning Commission giving final approval, and all work shall be done in accordance with the approved plans.

(E) *Review and public hearing procedure.*

- (1) Prior to the approval of a conditional use permit, the Zoning Administrator shall meet with the applicant to review the application. After review of the application, the Zoning Administrator shall make a recommendation to the ~~Board of Adjustment~~ Planning Commission to either approve or not approve the application. The Zoning Administrator's recommendation shall include a summary of the application, and the reasons and justification for either approval or disapproval of the application.
- (2) The Zoning Administrator shall set the date, time and place for a public hearing to be held by the ~~Board of Adjustment~~ Planning Commission. The Zoning Administrator shall notify the landowner by mail, and shall post notices of the public hearing at ~~the eCity office Hall~~ and on the property affected by the proposed conditional use permit no less than seven (7) days prior to the scheduled public hearing. No less than ten (10) days before the public hearing, the Zoning Administrator shall publish notice of the public hearing in a legal newspaper of the eCity.
- (3) The following procedure shall be followed by the ~~Board of Adjustment~~ Planning Commission in considering the recommendation of the Zoning Administrator:
 - (a) 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~~ Planning Commission.
 - (b) Before any conditional use permit shall be granted, the ~~Board of Adjustment~~ Planning Commission shall make written findings certifying compliance with the specific rules governing individual conditional uses and that satisfactory provision and arrangement has been made concerning the following, where applicable:
 1. Ingress and egress 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. Off-street parking and loading areas where required;
 3. Refuse and service areas, with particular reference to 1. and 2. above;
 4. Utilities, 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 other properties in the district;
7. Required yards and other open space;
8. General compatibility with adjoining properties and other property in the zoning district in which such use is to be located;
9. The goals and objectives of the most recently adopted comprehensive plan.

(c) The Planning Commission shall decide whether to grant the conditional use with such conditions and safeguards as are appropriate or to deny a conditional use when not in harmony with the purpose and intent of these regulations. The decision of the Planning Commission shall be final unless an appeal is filed in accordance with Section 155.095 (F).

(F) Appeal of planning commission decision. The decision rendered by the Planning Commission on a conditional use permit may be appealed to the City Council. The applicant or any other person aggrieved by the decision of the Planning Commission shall file a written appeal with the Zoning Administrator within five working days of the Planning Commission decision. When an appeal is filed, the Zoning Administrator shall present the Planning Commission's decision to the City Council for review. Notice of the meeting shall be given as required by Section 155.095 (E). The City Council shall vote to either uphold, overrule or amend the decision of the Planning Commission.

~~(4) A conditional use permit shall automatically expire if the primary use for which it was granted has ceased for a period of 2 years or more; or, the primary use proposed under the conditional use permit has not been undertaken and completed according to the terms and conditions of the conditional use permit within 2 years of the approval of the conditional use permit.~~

(G) Expiration. A conditional use permit shall expire one year from the date upon which it becomes effective if no work has commenced. Upon written request to the Zoning Administrator and prior to the conditional use permit expiration date, a one-year time extension for the conditional use permit may be granted by the Zoning Administrator, subject to the following conditions:

(1) The land uses for the surrounding properties have not significantly been altered since the original approval date for the conditional use permit;

(2) Due to other on-going permitting processes or necessary engineering/planning studies relating to the specific project for the conditional use permit that may impact the one-year schedule for project completion.

A conditional use permit approved in accordance with Section 155.095 shall expire one year after the use discontinues on the premises, or the use is changed to another permitted use in the underlying district.

~~(5) The Board of Adjustment shall make a finding that it is either empowered or not empowered by these zoning regulations to grant the requested conditional use permit, and that the conditional use permit is either consistent or inconsistent with the intent of these zoning regulations and the city's most recently adopted Comprehensive Plan.~~

Section 2. That Section 155.100, of the Zoning Ordinance of Vermillion, SD, is hereby amended to read as follows:

155.100 BOARD OF ADJUSTMENT.

(A) *Establishment.* A Board of Adjustment is hereby established for the eCity of Vermillion, which shall consist of the members of the City Council, pursuant to SDCL § 11-4-24.

(B) *Powers and duties.* The Board of Adjustment shall have the following powers and duties:

(1) To hear and decide appeals where it is alleged there is error in any requirement or determination made by the Zoning Administrator in the enforcement of this chapter.

(2) To hear and decide upon petitions for variances to vary the strict applications of the height, area, setback, yard, parking or density requirements as will not be contrary to the public interest. A variance shall not be allowed to vary the use regulations.

~~(3) To hear and decide only conditional use permits as the Board of Adjustment is specifically authorized to pass on by the terms of this chapter; to decide questions as are involved in determining whether conditional use permits should be granted; and to grant conditional use permits with conditions and safeguards as are appropriate under this chapter, or to deny conditional use permits when not in harmony with the purpose and intent of this chapter and the Comprehensive Plan.~~

(C) *Appeal procedure.*

- (1) Any person or persons, jointly or severally, aggrieved by any decision of the Zoning Administrator, may present to that official, a notice of appeal, setting forth that ~~the-such~~ decision is illegal, in whole or in part, specifying the grounds of the illegality. The notice of appeal shall be filed with the Zoning Administrator of the City of Vermillion, who shall transmit to the Board of Adjustment all information and records concerning the appeal. ~~The-Such~~ notice of appeal shall be presented to the Zoning Administrator within thirty (30) days after the filing of the decision in the office of the Zoning Administrator.
 - (2) The Board of Adjustment shall keep a public record of all findings and decisions. All meetings shall be held at the call of the chairperson and at such other times as necessary. Each session at which an appeal is to be heard shall be a public meeting. The Zoning Administrator shall notify the appellant by mail, and shall post notices of the public hearing at ~~the eCity office-Hall~~ and on the property affected by the proposed appeal (if applicable) no less than seven (7) days prior to the scheduled public hearing. No less than ten (10) days before the public hearing, the Zoning Administrator shall publish notice of the public hearing in a legal newspaper of the eCity.
 - (3) The public hearing shall be held. The appellant 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. Written findings certifying compliance with the specific rules governing the action considered at the public hearing shall be completed by the Board. The concurring vote of two-thirds (2/3) of the members of the Board of Adjustment shall be necessary to approve any appeal or arrive at any determination.
- (D) *Variances.* The Board of Adjustment shall have the jurisdiction to hear and decide upon petitions for variances to vary the strict application of the height, area, setback, yard, parking or density requirements as will not be contrary to the public interest. For purposes of these regulations, public interest shall include the interests of the public at large within the eCity, not just neighboring property owners. At all times, the burden shall be on the applicant to prove the need for a variance. The following issues are to be considered, each and all of them, as determining factors in whether or not the issuance of a variance is justified:
- (1) An unnecessary hardship must be established by the applicant who applies for the variance. For purposes of this ~~subchapter subsection~~, an unnecessary hardship is a situation where, in the absence of a variance, an owner can make no feasible or reasonable use of the property. Convenience, loss of profit, financial limitations, or self-imposed hardship shall not be considered as grounds for approving a variance by the Board of Adjustment.
 - (2) Literal interpretation of the provisions of this eChapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this eChapter.

- (3) The variance requested is the minimum variance that will alleviate the hardship.
- (4) Granting of the variance will comply with the general purpose and intent of this Chapter, and will not be offensive to adjacent areas or to the public welfare.
- (5) No nonconforming use or structure in the same district and no permitted or nonconforming use or structure in other districts shall be considered grounds for the issuance of a variance.
- (6) Exceptional and extraordinary circumstances apply to the property that do not apply to other properties in the same zone or vicinity and that result from lot size or shape, topography or other circumstances which are not of the applicant's making.
- (7) In order to preserve the intent of these zoning regulations and to protect the public interest, the Board of Adjustment may attach conditions to a variance. A variance shall remain valid only as long as the property owner complies with any terms and conditions of the variance, as attached by the Board of Adjustment.
- (8) An application for a variance, available from the Zoning Administrator of the City of Vermillion, shall be completed by the landowner requesting the variance. Completed applications shall be returned to the Zoning Administrator for review. To be considered completed, the application shall contain the following information:
 - (a) Legal description of the land on which such variance is requested, together with local street address;
 - (b) Name and address of each owner of the property;
 - (c) Name, address, phone number and signature of the applicant;
 - (d) Zoning district classification under which the property is regulated at the time of such application;
 - (e) Description of the variance sought from the zoning regulations;
 - (f) Be accompanied with a site plan, unless waived by the Zoning Administrator.
- (9) The Zoning Administrator shall review the application, and shall make a recommendation to the Board of Adjustment to either approve or not approve the said application. The Zoning Administrator's recommendation shall include a summary of the application, and the reasons and justification for either approval or disapproval of the application. The Authorized Official or the

Board of Adjustment may refer requests for variances to the Vermillion Planning Commission for review and recommendation.

- (10) The Zoning Administrator shall set the date, time and place for a public hearing to be held by the Board of Adjustment. The Zoning Administrator shall notify the landowner by mail, and shall post notices of the public hearing at ~~the eCity office~~ Hall and on the property affected by the proposed variance no less than seven (7) days prior to the scheduled public hearing. No less than ten (10) days before the public hearing, the Zoning Administrator shall publish notice of the public hearing in a legal newspaper of the eCity.
- (11) The public hearing shall be held. The applicant 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. Written findings certifying compliance with the specific rules governing the action considered at the public hearing shall be completed by the Board. The concurring vote of two-thirds (2/3) of the members of the Board of Adjustment shall be necessary to approve any variance or arrive at any determination.
- (E) *Court review.* Any person aggrieved by any decision of the Board of Adjustment may petition a court of record within thirty (30) days after the filing of the Board's decision as provided by SDCL § 11-4-25.

Adopted this _____ day of _____, 2011.

Mayor

ATTEST:

Finance Officer

Seal

First Reading: _____
Second Reading & Adoption: _____
Publication: _____
Effective Date: _____

Published once at the approximate cost of _____.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF VERMILLION, SD, AMENDING THE ZONING ORDINANCE OF THE CITY OF VERMILLION, SD, BY AMENDING SECTION 155.095, CONDITIONAL USE PERMITS AND SECTION 155.100, BOARD OF ADJUSTMENT.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF VERMILLION, SD:

Section 1. That Section 155.095, of the Zoning Ordinance of Vermillion, SD, is hereby amended to read as follows:

155.095 CONDITIONAL USE PERMITS.

Any conditional use approved by the Planning Commission shall conform to the standards set forth for such uses below. These standards shall be construed to be the minimum requirements for any of the specified conditional uses, and the Planning Commission may require additional reasonable stipulations at their discretion. In all cases, the impact of the proposed use on adjacent properties shall be a major consideration.

- (A) *Procedure.* The Planning Commission may authorize by conditional use permit, those uses specifically designated as conditional uses in §§ [155.030](#) through [155.039](#). The Planning Commission shall impose such conditions as are appropriate and necessary to insure compliance with the Comprehensive Plan and protect the health, safety, and general welfare in the issuance of the conditional use permit.
- (B) *Application.* To obtain a conditional use permit, the applicant shall file an application, therefore, in writing on a form furnished by the Zoning Administrator. Every application shall contain the following information:
 - (1) Legal description of the land on which the conditional use is requested, together with local street address.
 - (2) Name and address of each owner of the property.
 - (3) Name, address, phone number and signature of the applicant.
 - (4) Zoning district classification under which the property is regulated at the time of such application.
 - (5) Be accompanied with a site plan, unless waived by the Zoning Administrator.
 - (6) Any other information concerning the property as may be requested by the Zoning Administrator or the Planning Commission.

- (C) *Fees.* Upon the filing of any application for a conditional use permit with the Zoning Administrator, the applicant shall pay to the City the appropriate fee as designated by resolution by the Vermillion City Council.
- (D) *Information on site plan.*
- (1) In addition to the following information, plans shall be drawn to scale upon substantial paper or provided electronically 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 section and all relevant laws, ordinances, rules and regulations. The Zoning Administrator may waive the submission of plans, if he or she finds that the nature of the work applied for is such that reviewing of plans is not necessary to obtain compliance with this section.
- (a) The address of the property and the legal description.
 - (b) The name of the project and/or business.
 - (c) The scale and north arrow.
 - (d) All existing and proposed buildings or additions.
 - (e) Dimensions of all buildings.
 - (f) Distance from all building lines to the property lines at the closest points.
 - (g) Building height and number of stories.
 - (h) Dimensions of all property lines.
 - (i) Parking lots or spaces; designate each space, give dimensions of the lot, stalls and aisles.
 - (j) Screening; show height, location, and type of material to be used.
 - (k) The landscaped setback and trees; indicate species of trees and material to be used for landscaping.
 - (l) Name and location of all adjacent streets, alleys, waterways and other public places.
- (2) Approved plans shall not be changed, modified, or altered without authorization from the Planning Commission giving final approval, and all work shall be done in accordance with the approved plans.

(E) *Review and public hearing procedure.*

- (1) Prior to the approval of a conditional use permit, the Zoning Administrator shall meet with the applicant to review the application. After review of the application, the Zoning Administrator shall make a recommendation to the Planning Commission to either approve or not approve the application. The Zoning Administrator's recommendation shall include a summary of the application, and the reasons and justification for either approval or disapproval of the application.
- (2) The Zoning Administrator shall set the date, time and place for a public hearing to be held by the Planning Commission. The Zoning Administrator shall notify the landowner by mail, and shall post notices of the public hearing at City Hall and on the property affected by the proposed conditional use permit no less than seven (7) days prior to the scheduled public hearing. No less than ten (10) days before the public hearing, the Zoning Administrator shall publish notice of the public hearing in a legal newspaper of the City.
- (3) The following procedure shall be followed by the Planning Commission in considering the recommendation of the Zoning Administrator:
 - (a) 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.
 - (b) Before any conditional use permit shall be granted, the Planning Commission shall make written findings certifying compliance with the specific rules governing individual conditional uses and that satisfactory provision and arrangement has been made concerning the following, where applicable:
 1. Ingress and egress 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. Off-street parking and loading areas where required;
 3. Refuse and service areas, with particular reference to 1. and 2. above;
 4. Utilities, 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 other properties in the district;
7. Required yards and other open space;
8. General compatibility with adjoining properties and other property in the zoning district in which such use is to be located;
9. The goals and objectives of the most recently adopted comprehensive plan.

(c) The Planning Commission shall decide whether to grant the conditional use with such conditions and safeguards as are appropriate or to deny a conditional use when not in harmony with the purpose and intent of these regulations. The decision of the Planning Commission shall be final unless an appeal is filed in accordance with Section 155.095 (F).

(F) *Appeal of planning commission decision.* The decision rendered by the Planning Commission on a conditional use permit may be appealed to the City Council. The applicant or any other person aggrieved by the decision of the Planning Commission shall file a written appeal with the Zoning Administrator within five working days of the Planning Commission decision. When an appeal is filed, the Zoning Administrator shall present the Planning Commission's decision to the City Council for review. Notice of the meeting shall be given as required by Section 155.095 (E). The City Council shall vote to either uphold, overrule or amend the decision of the Planning Commission.

(G) *Expiration.* A conditional use permit shall expire one year from the date upon which it becomes effective if no work has commenced. Upon written request to the Zoning Administrator and prior to the conditional use permit expiration date, a one-year time extension for the conditional use permit may be granted by the Zoning Administrator, subject to the following conditions:

- (1) The land uses for the surrounding properties have not significantly been altered since the original approval date for the conditional use permit;
- (2) Due to other on-going permitting processes or necessary engineering/planning studies relating to the specific project for the conditional use permit that may impact the one-year schedule for project completion.

A conditional use permit approved in accordance with Section 155.095 shall expire one year after the use discontinues on the premises, or the use is changed to another permitted use in the underlying district.

Section 2. That Section 155.100, of the Zoning Ordinance of Vermillion, SD, is hereby amended to read as follows:

155.100 BOARD OF ADJUSTMENT.

- (A) *Establishment.* A Board of Adjustment is hereby established for the City of Vermillion, which shall consist of the members of the City Council, pursuant to SDCL § 11-4-24.
- (B) *Powers and duties.* The Board of Adjustment shall have the following powers and duties:
 - (1) To hear and decide appeals where it is alleged there is error in any requirement or determination made by the Zoning Administrator in the enforcement of this chapter.
 - (2) To hear and decide upon petitions for variances to vary the strict application of the height, area, setback, yard, parking or density requirements as will not be contrary to the public interest. A variance shall not be allowed to vary the use regulations.
- (C) *Appeal procedure.*
 - (1) Any person or persons, jointly or severally, aggrieved by any decision of the Zoning Administrator, may present to that official, a notice of appeal, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. The notice of appeal shall be filed with the Zoning Administrator of the City of Vermillion, who shall transmit to the Board of Adjustment all information and records concerning the appeal. Such notice of appeal shall be presented to the Zoning Administrator within thirty (30) days after the filing of the decision in the office of the Zoning Administrator.
 - (2) The Board of Adjustment shall keep a public record of all findings and decisions. All meetings shall be held at the call of the chairperson and at such other times as necessary. Each session at which an appeal is to be heard shall be a public meeting. The Zoning Administrator shall notify the appellant by mail, and shall post notices of the public hearing at City Hall and on the property affected by the proposed appeal (if applicable) no less than seven (7) days prior to the scheduled public hearing. No less than ten (10) days before the public hearing, the Zoning Administrator shall publish notice of the public hearing in a legal newspaper of the City.
 - (3) The public hearing shall be held. The appellant 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. Written findings certifying compliance with the specific rules governing the action considered at the public hearing

shall be completed by the Board. The concurring vote of two-thirds (2/3) of the members of the Board of Adjustment shall be necessary to approve any appeal or arrive at any determination.

- (D) *Variances.* The Board of Adjustment shall have the jurisdiction to hear and decide upon petitions for variances to vary the strict application of the height, area, setback, yard, parking or density requirements as will not be contrary to the public interest. For purposes of these regulations, public interest shall include the interests of the public at large within the City, not just neighboring property owners. At all times, the burden shall be on the applicant to prove the need for a variance. The following issues are to be considered, each and all of them, as determining factors in whether or not the issuance of a variance is justified:
- (1) An unnecessary hardship must be established by the applicant who applies for the variance. For purposes of this subsection, an unnecessary hardship is a situation where, in the absence of a variance, an owner can make no feasible or reasonable use of the property. Convenience, loss of profit, financial limitations, or self-imposed hardship shall not be considered as grounds for approving a variance by the Board of Adjustment.
 - (2) Literal interpretation of the provisions of this Chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Chapter.
 - (3) The variance requested is the minimum variance that will alleviate the hardship.
 - (4) Granting of the variance will comply with the general purpose and intent of this Chapter, and will not be offensive to adjacent areas or to the public welfare.
 - (5) No nonconforming use or structure in the same district and no permitted or nonconforming use or structure in other districts shall be considered grounds for the issuance of a variance.
 - (6) Exceptional and extraordinary circumstances apply to the property that do not apply to other properties in the same zone or vicinity and that result from lot size or shape, topography or other circumstances which are not of the applicant's making.
 - (7) In order to preserve the intent of these zoning regulations and to protect the public interest, the Board of Adjustment may attach conditions to a variance. A variance shall remain valid only as long as the property owner complies with any terms and conditions of the variance, as attached by the Board of Adjustment.
 - (8) An application for a variance, available from the Zoning Administrator of the City of Vermillion, shall be completed by the landowner requesting the

variance. Completed applications shall be returned to the Zoning Administrator for review. To be considered completed, the application shall contain the following information:

- (a) Legal description of the land on which such variance is requested, together with local street address;
 - (b) Name and address of each owner of the property;
 - (c) Name, address, phone number and signature of the applicant;
 - (d) Zoning district classification under which the property is regulated at the time of such application;
 - (e) Description of the variance sought from the zoning regulations;
 - (f) Be accompanied with a site plan, unless waived by the Zoning Administrator.
- (9) The Zoning Administrator shall review the application, and shall make a recommendation to the Board of Adjustment to either approve or not approve said application. The Zoning Administrator's recommendation shall include a summary of the application, and the reasons and justification for either approval or disapproval of the application. The Authorized Official or the Board of Adjustment may refer requests for variances to the Vermillion Planning Commission for review and recommendation.
- (10) The Zoning Administrator shall set the date, time and place for a public hearing to be held by the Board of Adjustment. The Zoning Administrator shall notify the landowner by mail, and shall post notices of the public hearing at City Hall and on the property affected by the proposed variance no less than seven (7) days prior to the scheduled public hearing. No less than ten (10) days before the public hearing, the Zoning Administrator shall publish notice of the public hearing in a legal newspaper of the City.
- (11) The public hearing shall be held. The applicant 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. Written findings certifying compliance with the specific rules governing the action considered at the public hearing shall be completed by the Board. The concurring vote of two-thirds (2/3) of the members of the Board of Adjustment shall be necessary to approve any variance or arrive at any determination.
- (E) *Court review.* Any person aggrieved by any decision of the Board of Adjustment may petition a court of record within thirty (30) days after the filing of the Board's decision as provided by SDCL § 11-4-25.

Adopted this _____ day of _____, 2011.

Mayor

ATTEST:

Finance Officer

Seal

First Reading: _____

Second Reading & Adoption: _____

Publication: _____

Effective Date: _____

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