

**CITY OF CUSTER PLANNING AND ZONING COMMISSION
AGENDA**

**Tuesday March 13, 2018 at 5:00 P.M.
Custer City Hall, 622 Crook Street, Custer, SD 57730**

Call to Order - Roll Call:

Approve Agenda: March 13, 2018

Approve Minutes: February 27, 2018

Declaration of Conflict of Interest:

New Business:

Final Plat – Busskohl - Jenniges Subdivision Phase I

Block 125 – Washington Street Right of Way Vacation Request

Old Business:

Proposed Residential District Zoning Ordinance

Proposed Municipal Code Chapter 17.44 – Zoning, Rezoning, and Zoning Ordinance Amendments

Proposed Municipal Code Chapter 17.48 – Variances

Proposed Municipal Code Chapter 17.52 – Conditional Use Permits

Proposed Municipal Code Chapter 17.56 – Board of Adjustment

Discussion Items:

Planning Administrator Updates:

Communications from The Public:

Adjournment:

DRAFT
**MINUTES OF THE February 27th, 2018 MEETING OF THE OF THE CITY OF CUSTER
PLANNING COMMISSION**

Roll Call: 5:00 pm

Members Present: Jerad Tennyson-Chairman; Joe Uhrich-Vice Chairman; Craig Walz; John Dvorak; Jerry Stites; Rick Hudson – 3 Mile Representative.

Members Absent: Tim Behlings - Alternate;

Other Parties Present: Tim Hartmann–Planning Administrator; Larry Maciejewski–Council Representative; Corbin Herman – Mayor

Agenda: Commissioner Dvorak moved, with a second by Commissioner Uhrich, to approve the February 27th, 2018 agenda, Motion unanimously Carried.

Minutes: Commissioner Uhrich moved, with a second by Commissioner Stites, to approve the February 13th, 2018. Motion unanimously carried.

Declaration of Conflict of Interest: None

New Business:

Proposed Residential District Zoning Ordinance – Planning Administrator Hartmann reviewed the proposed changes to the ordinance, including but not limited to the addition of definitions, further clarification of permitted uses and conditional uses, and various changes to the restrictions and requirements. Additional changes discussed by the Planning Commission are planned to be addressed and presented to the Commission at the next available meeting.

Commission Member Uhrich left the meeting at 6:31pm.

Proposed Municipal Code Chapter 17.44 – Zoning, Rezoning, and Zoning Ordinance Amendments - Planning Administrator Hartmann reviewed the proposed changes to the ordinance, including but not limited to restructure of the ordinance and assuring the review process of a zoning ordinance is appropriate for all recommending and approving bodies. Changes discussed by the Planning Commission are planned to be addressed and presented to the Commission at the next available meeting.

Proposed Municipal Code Chapter 17.48 – Variances - Planning Administrator Hartmann reviewed the proposed changes to the ordinance, including but not limited to minor changes to the review process of a variance and further defining of criteria used to review a variance application. Changes discussed by the Planning Commission are planned to be addressed and presented to the Commission at the next available meeting.

Proposed Municipal Code Chapter 17.52 – Conditional Use Permits(CUP) - Planning Administrator Hartmann reviewed the proposed changes to the ordinance; the main change includes but is not limited to the review process of a CUP. The proposed ordinance will designate Planning Commission as the approving body for all CUPs. Changes discussed by the Planning Commission are planned to be addressed and presented to the Commission at the next available meeting.

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Proposed Municipal Code Chapter 17.56 – Board of Adjustment Planning Administrator Hartmann reviewed the proposed changes to the ordinance; the main change includes stream lining the Board of Adjustment roles by directing powers of the Board of Adjustment to be designated in direct correlation with South Dakota Codified Law. Changes discussed by the Planning Commission are planned to be addressed and presented to the Commission at the next available meeting.

Discussion Items:

Planning Administrator Updates

Planning Administrator and commission members gave various updates.

Communications from The Public

No public comments were heard.

Adjournment:

Being no further business before the Commission, Commissioner Dvorak moved, with a second by Commissioner Walz, to adjourn. Motion unanimously carried. The meeting adjourned at 8:00 pm.

Approved:

Jerad Tennyson, Chairman

Attest:

Tim Hartmann, Planning Administrator

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Planning Department
622 Crook Street
Custer, SD. 57730
Phone: 673-4824 Fax: 673-2411
e-mail: timh@cityofcuster.com

Staff Report

Request: Final Plat Busskohl-Jenniges Subdivions Phase 1
Applicant: Jack Knust
Fee Paid: \$125.00
Location: NE of Custer City, Hall Drive Area
Legal Desc: Plat of A,B,C of Tract E of Clark Placer of M.S. 506 and Hall Place M.S. 506
Date Prepared: March 5, 2018
Planning Commission Meeting: March 13, 2018
Prepared by Tim Hartmann, Planning Administrator

GENERAL

This plat is for a subdivision that is not within the corporate limits of the City of Custer but is within the City's extraterritorial jurisdiction. The plat performs a lot line adjustment between the existing Tract Jenniges(2.54ac), Tract 1A(2.33ac), and Balance of Tract E(9.09ac). The proposed plat shifts the lot lines for these three parcels creating Lot A(3.45ac) Lot B(3.08ac) and Lot C(7.36ac). The land in this plat is currently in the county so there is no zoning.

** A map has been provided to provide reference of change from current existing lot lines to the new platted parcels.

ROUTING SHEET RESPONSES

- CC Planning - Various minor spelling and grammatical concerns.
- SD DOT – No Concerns

WATER AND WASTE WATER

The structures on Proposed Lots A and B are currently in the process of connecting to city water. A septic system currently serves the proposed Lots A and B and C with proposed Lot B currently in the process of connecting to city sanitary facilities as well. Proposed Lot A will remain on private septic, and the proposed Lot C will remain of adequate size to provide private water or septic systems if needed. Any of these parcels could also potentially be connected to city facilities using a route established to the south of the area currently being used by the owners of the Proposed Lots A & B.

COMPREHENSIVE PLAN

The comprehensive plan identifies this area as suburban residential.

ACCESS

Main access to the subdivision is gained from US Highway 89 to Hall Drive. Hall Drive is a 30' Public Right of Way originally established in the early 1970s. Staff believes this easement would be most appropriate at 66' in width but do to the existing property lines and past platting done in the area staff believes the 30' Right of Way shall remain. Various minor easements also exist for access to the proposed Lot A via a 50' Access and Utility Easement across proposed Lot B and the Neighboring Tract Busskohl, staff recommends noting this on the proposed plat. Access to the proposed Lot C is given via an existing 30' Access and Utility Easement across Proposed Lot B and the neighboring Lots 8&9. Staff recommends adding "Utility" to the note on the plat.

RECCOMENDED CHANGES TO THE PRELIMINARY PLAT

~~Update notes to clarify easements.~~ Complete

- ◆ ~~Hall Drive is a 30' Dedicated Public Access and Utility Easement.~~ Complete
- ◆ ~~Add note to easement into proposed Lot A.~~ Complete
- ◆ ~~Clarify Access and Utility in note to Proposed Lot C.~~ Complete
- ◆ ~~Identify Highway adjacent to the area.~~ Complete
- ◆ ~~Various minor spelling and grammatical concerns.~~ Complete

PREVIOUS ACTION BY THE PLANNING COMMISSION

The Planning Commission reviewed the preliminary plat and a subdivision variance for this plat at the February 13th meeting. Main discussion included the connection of proposed Lots A&B to city services, the easement along Hall Drive and the shift of lot lines conducted within this plat. After the discussion, Commission members voted unanimously to recommend approval of the subdivision variance and preliminary plat by the City Council.

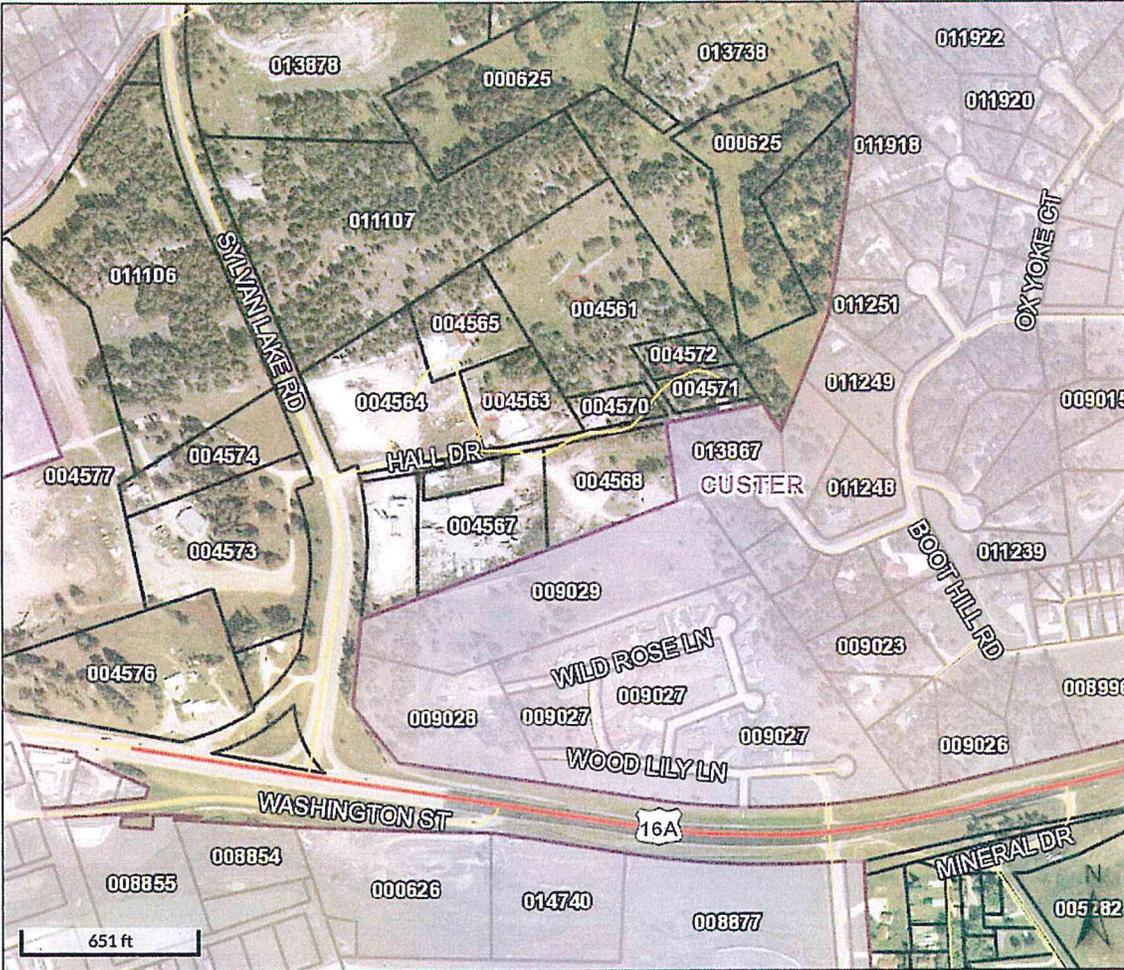
PREVIOUS ACTION BY THE CITY COUNCIL

The City Council reviewed the preliminary plat and Hall Drive subdivision variance at the regular Council meeting on February 20th. The Council voted unanimously to approve the subdivision variance as well as the preliminary plat contingent upon minor spelling and grammar errors being corrected. Such corrections have been completed.

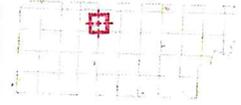
RECCOMENDED ACTION BY PLANNING COMMISSION

Minor changes and items discussed during the preliminary plat phase have been addressed. Staff supports recommending Council approve the final plat.

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Overview



Legend

-  Corporate Limits
- Highways
-  SD Hwy
-  US Hwy
-  Roads
-  Parcels

Parcel ID	000701	Alternate ID	n/a	Owner Address	SPRING KENNETH C
Sec/Twp/Rng	019/0003/005	Class	Agricultural		12372 US HIGHWAY 16A
Property Address		Acres	10.33		CUSTER SD 57730-8373
District	16.1-1-1-0-0				
Brief Tax Description	TR B OF MS #1353 SEC 19 T3 R5 10.33 AC 0030501900000400				
	(Note: Not to be used on legal documents)				

Parcels are not adjusted to match aerial background. GIS information is for reference purposes only and is not a legal document. Data may contain errors.

Date created: 2/9/2018
 Last Data Uploaded: 2/9/2018 12:37:29 AM

 Developed by
 The Schneider Corporation



Planning Department
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Staff Report

Request: Vacation of Washington Street, Contiguous to Lots 1,2,3 & Vacated Alley Block 125
Applicant: SoDak Oz, LLC
Location: See Information Below and attached "Exhibit A"
Date: March 7, 2018
Planning Commission Meeting: March 13, 2018
Prepared by Tim Hartmann, Planning Administrator

GENERAL

The applicant has requested by application and petition to vacate 9' of Washington Street contiguous to Lots 1-3 & 14' of the previously vacated N/S Alley in Block 125. The applicant owns the property adjacent to the proposed vacation including the South 75' of lot 1, all of Lots 2 & 3, and the west 15' of the previously vacated North South Alley. The area within the proposed vacation currently exists as a grassy area and no utilities are believed to exist. The application and petition contain request to vacate the Right-of-Way and extinguish all utility easement.

The applicant wishes to vacate the portion of Washington Street to provide for planned renovations with the existing warehouse building. Please see the attached Request for Vacation of ROW for further information on planned improvements.

I have discussed the proposed vacations with Bob Morrison, Public Works Director. Due to the proposed vacation not containing any utilities, and Washington Street being fully established with hard surfacing, curb and gutter, and adequate sidewalk Public Works has no concerns with the proposed vacation.

LOCATION SURVEY OF THE AREA

The existing building currently sits adjacent to or very near the southern property line. The sidewalk is approximately 10'4" from the buildings foundation on the east side and 10'9" from the sidewalk on the west side.

The south side of the existing building currently contains a concrete loading doc which projects into the Right-of-Way approximately 9'. The proposed vacation would also help resolve this encroachment.

PUBLIC HEARING

A Public Hearing will be held at the next available City Council meeting in conjunction with the appropriate public notifications.

PREVIOUS VACATIONS IN THE AREA

After a review of the area, previous vacations within Block 125 include;

- Resolution – dated April 18th, 1983
 - Entire width of the North South alley contiguous to Lots 3 & 4 between the north line of Washington Street and the South line of the East West alley
 - Subject to public and private utility easements and rights of way, covenants, restrictions and reservations.
- Resolution – dated December 7th, 1998
 - The west 11' of the North-South Alley from the South Line of Mount Rushmore Road to the North line of the East-West alley, and contiguous to lot 10
 - Vacation subject to existent and future easements and rights-of-way, for public and private utilities.

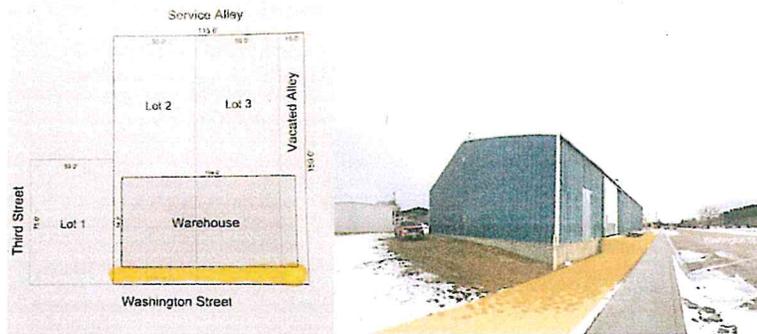
- Resolution 1-3-96A
 - A Portion of Fourth street contiguous to the north 100' of Lot 6 and 25' in width.
 - Vacation subject to existent and future easements and rights-of-way, for public and private utilities.

SUMMARY & RECOMMENDATIONS

This portion of Washington street currently exists as a 115' Right-of-Way with asphalt surfacing, curb gutter and sidewalk on the north side, and all utilities provided outside the proposed vacation. Due to the adequate Right of Way, the street being fully established with drainage and sidewalk staff supports a recommendation to Council for approval of the street vacation.

REASON TO VACATE RIGHT-of-WAY, BLOCK 125

SUBMITTED IN FURTHER SUPPORT of Request to vacate North 9' of the Washington Street ROW contiguous to Lots 1, 2, 3, and 14' of the 15' of vacated North/South alley, all in Block 125, Original Town, now City of Custer, Custer County, South Dakota. This action would leave at least 1 foot and as much as 2 feet behind the curb to any structure. Currently, the area suggested to be vacated is an open & strictly grass space to be mowed by the City. See Block 125 layout below with vacation requested highlighted:



The purpose of the vacation is to enable Washington Street access to the blue warehouse @ the SW corner of 3rd St. & Washington St. The owner's vision is to transform the warehouse into a multi-business and group event facility. The building has a concrete loading dock on the south side (16'x8.7'). When Washington St. was developed, the placement of sidewalk and curb & gutter disabled the use of the loading dock and south-facing door. The Owner's intent is to create a boardwalk of a clear 8' width along the south face of the building for accessible user-access to various businesses, activities and functions inclusive of, but not limited to a bicycle shop (rental, repair, etc.), a food & beverage outlet, and various gathering options including functions of up to 300 people. The Board walk is envisioned to be of post & beam construction, an emulation of the current pole-barn structure.

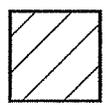
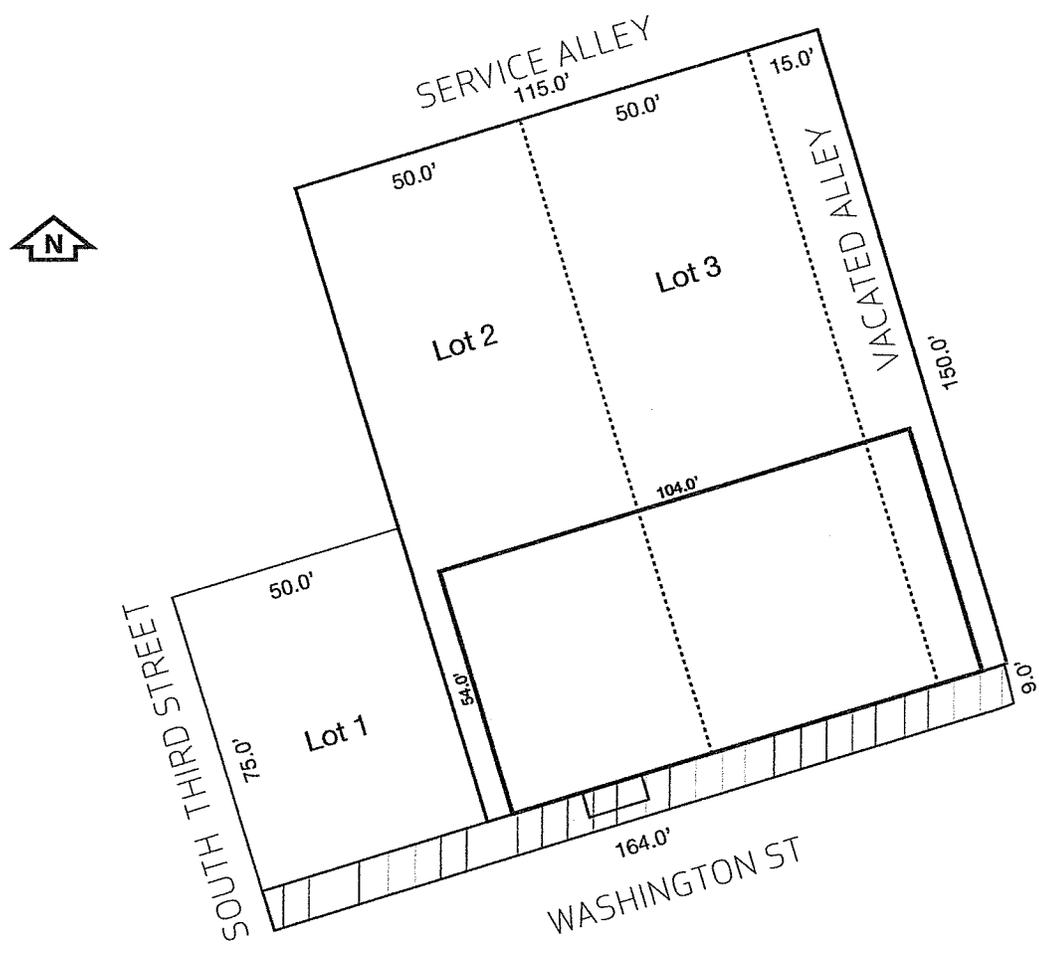
The repurpose of the building with visual presentation and pedestrian access from Washington St. and Michelson Trail will activate this part of town with the eventual uses of the building being planned to attract locals, visitors and especially trail-users of all ages.

Preliminary image of building; boardwalk to be lighter framed wood with railing



EXHIBIT "A"

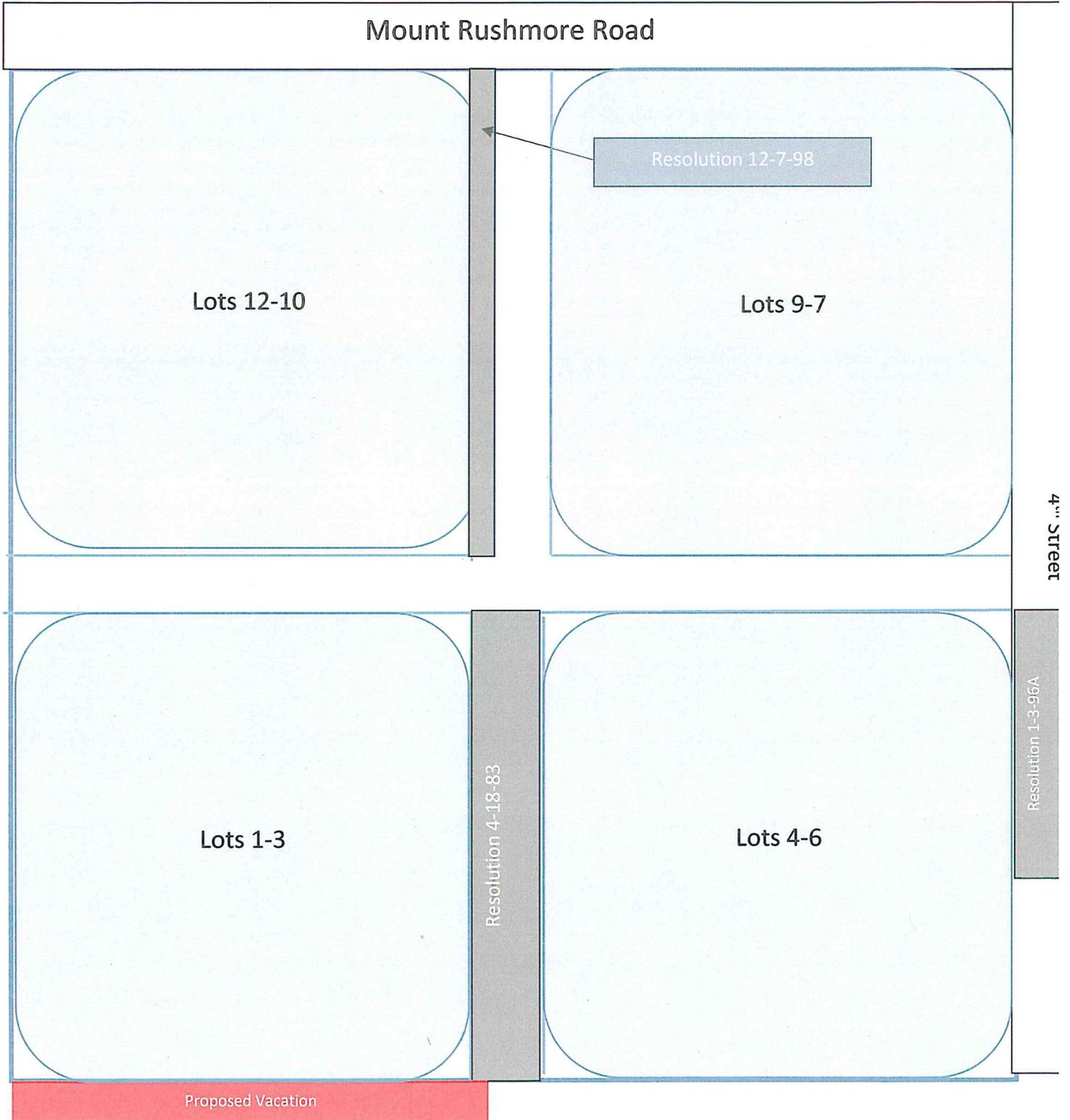
LOTS 1-3, AND VACATED ALLEY IN BLOCK 125 CITY OF CUSTER, SOUTH DAKOTA



REQUEST TO VACATE:

NORTH 9' OF WASHINGTON STREET CONTIGUOUS TO LOTS 1-3 AND THE WESTERN 14' OF THE N/S ALLEY (CONTIGUOUS TO LOT 3), ALL IN BLOCK 125, CITY OF CUSTER, CUSTER COUNTY, SOUTH DAKOTA.

Block 125



Not Drawn to scale. Given as a general layout of the area

Chapter 17.12
RESIDENTIAL DISTRICT (R)

Sections:

- 17.12.010 Intent
- 17.12.020 Definitions
- 17.12.030 Permitted principal uses and structures
- 17.12.040 Permitted accessory uses and structures
- 17.12.050 Permitted conditional uses
- 17.12.060 Prohibited uses and structures
- 17.12.070 Home Occupations
- 17.12.080 Restrictions and requirements

17.12.010 Intent.

The intent of the residential district (R) is to provide for residential uses of varying types and other compatible land uses in a pleasant and stable environment. (Ord. 432 (part), 1995)

17.12.020 Definitions.

“Boardinghouse” means any structure in which one or more rooms are rented by one or more people with a shared common area, lodging and meals may be provided for paying or nonpaying guests.

“Home Occupation” means the conducting of a business in a residential structure. The home occupation is an accessory practice and customarily non-residential use conducted within or administered from a portion of the primary home or its accessory structures.

“Long Term Rental” means the rental of any structure, or any portion of any structure, located within the residential zoning district on long term monthly or yearly basis, for lodging or sleeping purposes for more than thirty (30) consecutive calendar days. For the purpose of this definition, structures shall include all housing types including detached single-family residences, lofts, apartments, guest cottages and cabins, condominiums, duplexes, triplexes, townhomes, and multifamily dwellings.

“Multiple Family Dwelling” means two (2) or more separate housing units that exist on a single lot or tract. The housing units are contained within one or more structures. Multiple Family Dwellings include but are not limited to apartments, duplexes, triplexes, quadplexes, condominiums, guest cottages and cabins, and multiple single-family dwellings.

“Short-term rental” means the rental of any structure, or any portion of any structure, located within the residential zoning district on a nightly or day-to-day basis for lodging or sleeping purposes for less than thirty (30) consecutive calendar days, but shall exclude other permitted conditional uses as defined in 17.12.040. For the purpose of this definition, structures shall include all housing types including detached single-family residences, lofts, apartments, guest cottages and cabins, condominiums, duplexes, triplexes, townhomes, and multifamily dwellings.

“Single family dwelling” means a structure in which one (1) housing unit is contained within the structure. The structure exists on one common lot. The unit shall provide complete independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation.

“Townhouse” means a structure constructed with a continuous roof and foundation containing two (2) or more attached dwelling units in which each unit extends from the foundation to roof with open space on at least two sides. Each separate unit exists on individually platted townhouse lots separated by a common lot line and a common separation wall between each unit.

17.12.030 Permitted principal uses and structures.

The following principal uses and structures shall be permitted in residential districts (R):

- A. Single family dwellings
- B. Townhouse
- C. Manufactured homes in accordance with section 17.40 of this code
- D. Long Term Rentals

E. Home Occupations in compliance with section 17.12.050 of this code. (Ord. 432 (part), 1995)

17.12.040 Permitted accessory uses and structures.

The following accessory uses and structures shall be permitted in residential districts (R):

A. Accessory uses and structures normally appurtenant to the permitted uses and structures when established within space limits of this district. No accessory structure shall be built, erected, or constructed prior to the establishment of the principal structure. (Ord. 432 (part), 1995)

17.12.050 Permitted conditional uses.

After the provisions of this title relating to permitted conditional uses have been fulfilled, the city council may permit as permitted conditional uses in residential districts (R):

- A. Boardinghouses, and short-term rentals;
- B. Multiple-family dwelling;
- C. Churches, synagogues and temples;
- D. Colleges and universities;
- E. Convalescent, nursing and rest homes;
- F. Home occupations not complying with the guidelines as defined in section 17.12.050 of this code.;
- G. Governmental services;
- H. Commercial Horticultural uses and the raising of crops that exceed 192 square feet;
- I. Medical and other health facilities;
- J. Mobile homes under conditions prescribed in Section 1208 of the Custer City comprehensive plan of this title;
- J. Mobile home court in accordance with Section 17.36 of this code.
- K. Childcare, Nursery, primary, intermediate and secondary schools;
- L. Public recreational and park facilities;
- M. Utility substations. (Ord. 434 (part), 1995: Ord. 432 (part), 1995)

17.12.060 Prohibited uses and structures.

All other uses and structures which are not specifically permitted or not permissible as permitted conditional uses shall be prohibited from the residential district.

Home occupations in which the home occupation utilizes more than twenty-five (25) percent of the total area of the lot, tract, or parcel in which the home occupation is located shall be prohibited.

17.12.070 Home Occupations

Home occupations shall be permitted in the residential zone, provided the home occupation complies clearly and obviously with the following requirements:

- A. Such use must be incidental and subordinate to the main use or dwelling unit for residential purposes.
- B. No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors or electrical interference detectable to a person's normal senses while upon the lot. No equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises or causes fluctuations in line voltage off the premises.
- C. There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation other than one sign in accordance with 15.08.110.
- D. The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants and shall utilize not more than twenty-five (25) percent of the total structure area of the property.
- E. All parking is limited to off street parking only.

17.12.080 Restrictions and requirements.

All structures, land and uses in the residential district (R) shall be in compliance with the following restrictions and requirements:

- A. **Minimum Lot Requirements.** The minimum lot area per single-family dwelling unit shall be seven thousand five hundred (7,500) square feet. The minimum lot width shall be fifty (50) feet.

Exception: Dwellings on small lots. Where there is an existing recorded lot which does not meet the minimum lot area requirement, and said lot is not contiguous with other lots under the same ownership, a single-family dwelling may be maintained, continued, constructed or reconstructed provided that one (1) side yard shall not be less than four feet (4) and the sum of the side yards shall not be less than ten feet (10), and provided that all other requirements, except lot size are met.

B. **Minimum Yard (Setback) Requirements.** There shall be a front yard of not less than a depth of ~~twenty-five (25)~~thirty (30) feet. There shall be a rear yard of not less than a depth of twenty-five (25) feet. Each side yard shall not be less than a depth of six (6) feet. Unattached buildings of accessory used shall require a depth not less than twelve (12) feet. All setbacks shall be measured from the platted property line.

C. **Minimum Dwelling Size.** The minimum single-family dwelling size shall not be less than six hundred (600) square-feet.

D. **Maximum Height.** The height of all buildings and structures shall not exceed thirty-five (35) feet.

E. **Townhouse Requirements**

a. Proposed individual townhouse lot line(s) for a townhouse shall be submitted on a site plan and approved prior to issuance of a building permit. Following the start of construction, the final location of individual townhouse lots shall be determined and platted.

b. In order to permit openings in exterior walls, each townhouse structure and its appendage and projections shall have a minimum six-foot setback from individual lot lines which are not common to other individual lots, unless approved otherwise in a planned development or in a use on review permit.

c. Townhouses shall have a six-foot exterior maintenance easement on either side of a common lot line to provide adequate room for maintenance, repair and alterations.

d. **Lot Size.** The minimum lot area per townhouse unit shall be five thousand (5,000) square feet if the unit shares one (1) common wall. The minimum lot area per townhouse unit shall be two thousand five hundred (2500) square feet if the unit contains two (2) common walls. There shall be no minimum lot size of a townhouse development lot or an individual townhouse lot. However, all applicable setback, density and open space requirements of this chapter must be met.

e. **Minimum Yard (Setback) Requirements.** There shall be a front yard of not less than a depth of twenty-five (25) feet. There shall be a rear yard of not less than a depth of twenty-five (25) feet. Each side yard not containing a common townhouse lot line shall not be less than six (6) feet. All setbacks shall be measured from the platted property line.

f. **Minimum Unit Size.** The minimum unit size shall not be less than six hundred (600) square feet.

g. **Maximum Height.** The height of all townhouse units shall not exceed thirty-five (35) feet.

i. **Density.** Maximum density for townhouses shall be seven thousand five hundred (7,500) square feet of land area for first unit and three thousand seven hundred fifty (3,750) square feet for each additional located on the townhouse development lot.

h. **Open Space Requirements.** Individual townhouse lots shall have land area in addition to the area upon which the structure is built. Each individual townhouse lots shall have a minimum of four hundred (400) square feet of open space. A townhouse development lot shall have a minimum of eight hundred (800) square feet of open space per unit overall. Open space does not include driveways, parking or service areas

F. **Sanitation.** All occupied structures shall be connected to municipal sewer and water facilities.

G. **Off-Street Parking.** Off street parking shall be provided per the following.

a. **Single Family Dwelling – One (1) parking space**

b. **Townhouse – One (1) parking space per unit.**

c. **Short Term Rental – On Street parking shall be prohibited.**

-(Ord. 434 (part), 1995; Ord. 432 (part), 1995)

ORDINANCE NO. 789

AN ORDINANCE AMENDING TITLE 17 ZONING BY ADDING SECTION 17.04.12 ADOPTION PROCEDURE FOR PROPOSED ZONING ORDINANCE; ADDING SECTION 17.04.14 DEFINITION OF TERMS; ADDING SECTION 17.04.16 ADMINISTRATION AND ENFORCEMENT; REPEALING SECTION 17.04.070 PROVISIONS OF TITLE DECLARED TO BE MINIMUM REQUIREMENTS AND REPLACING WITH NEW SECTIONS 17.04.070 INTERPRETATION, ABROGATION AND SEVERABILITY AND 17.04.075 CONFLICTS WITH OTHER REGULATIONS AND ORDINANCES; REPEALING SECTION 17.08.040(E); REPEALING CHAPTER 17.44 ZONING BOARD OF ADJUSTMENT AND REPLACING WITH NEW CHAPTER 17.44 ZONING BOARD OF ADJUSTMENT; AND ADDING CHAPTERS 17.45 VARIANCES AND 17.46 CONDITIONAL USE.

Chapter 17.44

17.44 Zoning, Rezoning, and Zoning Ordinance Amendments

Sections

17.44.010 Previous Code Repealed

17.44.020 Definition of Terms

17.44.030 Purpose

17.44.040 Zoning Amendments Application and Fees

17.44.050 Procedures for Review of an Application

17.44.060 Considerations for Approval or Denial

17.44.070 Protests to a Proposed Zoning Ordinance

17.44.040 Procedures for review of an Application

17.44.050 Considerations for Approval or Denial

17.44.10 Previous Code Repealed

Pursuant to SDCL 11-4, Custer Municipal Code 17.08.040(E) is repealed and all zoning ordinances shall only be adopted or renewed by procedures set by **codified law or ordinance**.

17.44.020 Definition of Terms

The definitions set forth in SDCL 11-6-1 shall be applicable to Title 17 of the Custer City Municipal Code.

17.44.030 Purpose

The purpose of this section shall be to provide a process and procedure for review of requests for a new zoning ordinance, a change to the current official zoning ordinances or a change to the official zoning map of the City of Custer City. Adoption of a zoning ordinance shall be completed by the City Council with recommendation from the Planning Commission.

17.44.040 Zoning Amendments Application and Fees

- A. Applications: any person, firm, or corporation may apply for a change or amendment to the zoning by completing an application provided by the City and returned to the Planning Administrator. The completed application shall illustrate:
1. The current zoning district in which the property is currently located.
 2. The current and proposed use of the area included in the proposed zoning.
 3. The current zoning and use of the land directly adjacent to and contiguous to the area included in the application.
- B. Fees: Upon filing any application for a change or amendment to the zoning of the city, the applicant shall pay Custer City the appropriate fee(s) as set forth by the Fee Schedule adopted annually by resolution.

17.44.050 Procedures for Review of an Application

The following shall be the procedures used after the application and the required fees have been submitted to the Planning Administrator:

- A. The Planning Administrator shall review the completed zoning application and determine if approval of the application would be contrary to the intent of the zoning of the city of Custer or negatively affect the continuity of the official zoning map of the city. Additionally, any application not containing and/or addressing all the information required in 17.44.020(A), shall be rejected, and returned to the applicant, along with the fees and the reasons for rejection.
- B. If the Planning Administrator finds the application complies with the application requirements, the Planning Administrator shall present the application to the Planning Commission in a public hearing at the next available scheduled meeting in coordination with the appropriate public notifications. The Planning Administrator shall also present a report indicating the Planning Administrators recommendation concerning the approval of the application. At the public hearing, any interested person shall be given a full, fair, and complete opportunity to be heard.
- a. Notice of the Planning Commission public hearing shall be given by sign, mail, and newspaper.
 - i. Sign: A sign will be furnished by the Planning Administrator and posted by the Planning Administrator. The sign must be posted in plain public view at the property where the zoning application is requested and must be posted no less than ten (10) days prior to the date of the Planning Commission meeting and must remain posted until final action by the City Council is completed. The sign shall comply with SDCL 11-4-4.4.
 - ii. Mail: A minimum of ten (10) days prior to the public hearing, the applicant shall notify all property owners of the property to be zoned or

rezoned and all property owners within one hundred forty (140) feet, exclusive of rights of way and any properties under the same ownership, from any part of the proposed zone or rezone. Mail notification shall be given by Certified Mail or hand-delivered with a receipt signed by the recipient. The Planning Administrator shall provide the applicant a list of landowners to be notified and a "Notice of Hearing" form for this purpose. The applicant shall sign an affidavit certifying that the required mailing or delivery was completed and provide the signed affidavit to the Planning Administrator at least five (5) working days prior to the public hearing.

iii. The Planning Administrator will publish legal notice in the local newspaper at least ten (10) days prior to the City Council meeting.

C. After reviewing the application, the Planning Commission shall make recommendations to the City Council to approve or deny the application.

D. Following the Planning Commission meeting, City Council shall review the zoning application in a public hearing at the next available scheduled meeting in coordination with the appropriate public notifications. At the public hearing, any interested person shall be given a full, fair, and complete opportunity to be heard.

a. After action is taken by the Planning Commission, notice of the City Council public hearing shall be given by sign, mail, and newspaper.

i. Sign: A sign will be furnished by the Planning Administrator and posted by the Planning Administrator. The sign must be posted in plain public view at the property where the zoning application is requested and must be posted no less than ten (10) days prior to the date of the City Council meeting and must remain posted until final action by the City Council is completed. The sign shall comply with SDCL 11-4-4.4.

ii. Mail: A minimum of ten (10) days prior to the public hearing, the applicant shall notify all property owners of the property to be zoned or rezoned and all property owners within one hundred forty (140) feet, exclusive of rights of way and any properties under the same ownership, from any part of the proposed zone or rezone. Mail notification shall be given by Certified Mail or hand-delivered with a receipt signed by the recipient. The Planning Administrator shall provide the applicant a list of landowners to be notified and a "Notice of Hearing" form for this purpose. The applicant shall sign an affidavit certifying that the required mailing or delivery was completed and provide the signed affidavit to the Planning Administrator at least five (5) working days prior to the public hearing.

iii. The Planning Administrator will publish legal notice in the local newspaper at least ten (10) days prior to the City Council meeting.

- E. The City Council shall issue its decision after consideration of review criteria set forth in section 17.43.050 of this code, Planning Administrator recommendation, Planning Commission recommendation, and all public input.

17.44.060 Considerations for Approval or Denial

Generally, the approval of any zoning ordinance shall be in harmony with the general purposes and intent of the zoning ordinance and official zoning map. The following are considerations the City Council and Planning Commission may use in determining the approval or denial of a zoning ordinance:

- A. The following conditions shall be met for all ordinances involving the rezoning of a currently zoned property or properties.
 - a. The zoning amendment shall be necessary because of substantially changed or changing conditions of the area.
 - b. The proposed amendment shall not adversely affect any other part of the city, nor shall any direct or indirect adverse effect result from the amendment.
 - c. The proposed amendment shall be consistent with any large development plans in the area being zoned as well as not in conflict with the comprehensive plan of the city.
- B. The proposed zoning ordinance shall be consistent with the intent of the zoning ordinances of the city.
- C. The proposed zoning ordinance shall be consistent with the official zoning map of the city and refrain from creating discontinuity with the official zoning map.

17.44.070 Protests to a Proposed Zoning Ordinance

Any protests to a proposed zoning ordinance shall follow the following guidelines:

- A. Any written protests to a proposed ordinance must be filed with the Finance Officer and it must be signed by at least forty (40) percent of the owners of equity in the lots included in any proposed district and the lands within two hundred fifty (250) feet from any part of the proposed district. Any written protest must be filed before the date the ordinance becomes effective pursuant to SDCL 9-19-7.
- B. For purposes of determining who is an owner of equity for a written protest, a corporation is construed to be a sole owner, and if parcels of land are in the name of more than one (1) person, ownership representation is in proportion to the number of signers who join in the petition in relation to the number of owners.
- C. If a written protest has been filed correctly, the ordinance does not become effective unless the ordinance is approved by two-thirds of the City Council.
- D. The protest provisions of this section do not apply to any ordinance regulating or establishing flood plain areas.

Chapter 17.48

Variances

Sections

17.48.010 Purpose

17.48.020 Variance Application and Fees

17.48.030 Procedure for Review of an Application

17.48.040 Considerations for Approval or Denial

17.48.050 Variances to b Non-Transferable

17.48.060 Appeals

17.48.070 Invalidation of an Approved Variance

17.48.080 Reapplication after a Denial

17.48.010 Purpose

The purpose of a variance is to allow a deviation from the strict application of the Zoning Ordinances in relation to physical conditions whereby a literal enforcement of the provisions of the zoning ordinance would result in an unnecessary hardship for a property owner. This section shall provide a process and procedure for review of application for a variance. The Board of Adjustment shall approve or deny a variance to the zoning ordinance based on consideration of the review criteria set forth in section 17.48.040 of this code, Planning Administrator recommendation, Planning Commission recommendation, and all public input.

17.48.020 Variance Application and Fees

A. Applications: any person, firm, or corporation may apply for a variance. **If such person, firm, or corporation is acting as an authorized agent, written authorization consenting to the application shall be provided by the property owner.** An application shall be provided by the City and returned to the Planning Administrator. **The completed application along with all supporting documentation shall be submitted to the Planning Administrator at least twenty (20) days prior to the next regularly scheduled Planning Commission meeting and shall illustrate:**

- a. That special conditions and circumstances exist, which are peculiar to the land, structure, or building involved and, which are not applicable to other lands, structures, or buildings in the same zoning district;
- b. That a literal interpretation of the provisions of the zoning ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the zoning ordinance;
- c. that the special conditions and circumstances do not result from the actions of the applicant;

- d. that the granting of the variance requested will not confer on the applicant any special privilege that is denied by the zoning ordinance to other lands, structures, or buildings in the same district; and
- e. that the grounds for the application is not based on nonconforming uses of neighboring lands, structures, or buildings in the same district.

B. Fees: Upon filing any application for a variance, the applicant shall pay Custer City the appropriate fee(s) as set forth by the Fee Schedule adopted annually by resolution.

17.48.030 Procedures for Review of an Application

The following shall be the procedures used after an application for a variance and the required fees have been submitted to the Planning Administration:

- A. The Planning Administrator shall review the completed variance application and determine if granting the variance would be contrary to the public interest. Additionally, any application not containing and/or addressing all the information required in 17.48.020(A), shall be rejected, and returned to the applicant, along with the fees and the reasons for rejection.
- B. If the Planning Administrator finds the application complies with the application requirements, the Planning Administrator shall present the application to the Planning Commission in a public hearing at the next available scheduled meeting in coordination with the appropriate public notifications. The Planning Administrator shall also present a report indicating the Planning Administrators recommendation concerning the approval of the application. At the public hearing, any interested person shall be given a full, fair, and complete opportunity to be heard.
 - a. Notice of the Planning Commission public hearing shall be given by sign, mail, and newspaper.
 - i. Sign: A sign will be furnished by the Planning Administrator and posted by the Planning Administrator. The sign must be posted in plain public view at the property where the zoning application is requested and must be posted no less than ten (10) days prior to the date of the Planning Commission meeting and must remain posted until final action by the City Council is completed. The sign shall comply with SDCL 11-4-4.4.
 - ii. Mail: A minimum of ten (10) days prior to the public hearing, the applicant shall notify all property owners of the property to be zoned or rezoned and all property owners within one hundred forty (140) feet, exclusive of rights of way and any properties under the same ownership, from any part of the proposed zone or rezone. Mail notification shall be given by Certified Mail or hand-delivered with a receipt signed by the recipient. The Planning Administrator shall provide the applicant a list of landowners to be notified and a "Notice of Hearing" form for this purpose. The applicant shall sign an affidavit certifying that the required mailing or

- delivery was completed and provide the signed affidavit to the Planning Administrator at least five (5) working days prior to the public hearing.
- iii. The Planning Administrator will publish legal notice in the local newspaper at least ten (10) days prior to the City Council meeting.
- C. After reviewing the application, the Planning Commission shall make recommendations to the Board of Adjustment to approve, approve with conditions, or deny the application.
- D. Following the Planning Commission recommendation, Board of Adjustment shall review the variance application in a public hearing at the next available scheduled meeting in coordination with the appropriate public notifications. At the public hearing, any interested person shall be given a full, fair, and complete opportunity to be heard.
- a. After action is taken by the Planning Commission, notice of the Board of Adjustment public hearing shall be given by sign, mail, and newspaper.
 - i. Sign: A sign will be furnished by the Planning Administrator and posted by the Planning Administrator. The sign must be posted in plain public view at the property where the variance is requested and must be posted no less than ten (10) days prior to the date of the Board of Adjustment meeting and must remain posted until final action by the Board of Adjustment is completed. The sign shall comply with SDCL 11-4-4.4.
 - ii. Mail: A minimum of ten (10) days prior to the public hearing, the applicant shall notify all property owners within one hundred forty (140) feet, exclusive of rights of way and any properties under the same ownership, from any part of the property being considered for a variance. Mail notification shall be given by Certified Mail or hand-delivered with a receipt signed by the recipient. The Planning Administration shall provide the applicant a list of landowners to be notified and a "Notice of Hearing" form for this purpose. The applicant shall sign an affidavit certifying that the required mailing or delivery was completed and provide the signed affidavit to the Planning Administrator at least five (5) working days prior to the public hearing.
 - iii. The Planning Administration will publish legal notice in the local newspaper at least ten (10) days prior to the Board of Adjustments meeting.
- E. The Board of Adjustment shall issue its decision after consideration of review criteria set forth in section 17.48.040 of this code, Planning Administrator recommendation, Planning Commission recommendation, and all public input. A variance shall be considered approved if the application receives an affirmative vote by two-thirds majority of present voting members of the Board of Adjustment. As a condition of approval, the Board of Adjustment may impose, consistent with the general purpose of the zoning ordinance, appropriate conditions and safeguards to any variance granted.

17.48.040 Considerations for Approval or Denial

Generally, the granting of any variance shall be in harmony with the general purposes and intent of the zoning ordinance and will not be injurious to the neighborhood, detrimental to the public welfare, or be in conflict with the comprehensive plan for development. The following are considered by the Planning Commission and Board of Adjustment for the determination of the approval or denial of a variance:

- A. If the 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 ordinance were to be carried out;
- B. that granting the variance requested will not confer on the applicant any special privilege that is denied by the zoning ordinance to other lands, structures, or buildings in the same district;
- C. that 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;
- D. that variances shall not be granted to allow conditional uses, nor uses otherwise excluded from the particular district in which requested;
- E. that the granting of the variance will not be detrimental to the public welfare or injurious to other people or property in the area in which the property is located, detrimental effects include but are not limited to impairment of an adequate supply of light and air to adjacent property, negative effect to the flow of vehicle and pedestrian traffic in the public streets, increase the danger of fire;
- F. 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;

17.48.050 Variance to be Considered Valid

A variance which has been approved by the Board of Adjustment shall be considered valid for only the property, item, subject, topic or issue in which the variance was approved upon

17.48.060 Appeals

Appeals of a decision of the Board of Adjustment may be taken to the Custer County 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 City, 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.

17.48.070 Invalidation of an Approved Variance

Any order of the Board of Adjustment granting a variance may be declared invalid by the Board of Adjustment unless substantially completed within two (2) years from the date of such order. The Planning Administrator shall notify the property owner of record upon invalidation of a variance.

17.48.080 Reapplication after a Denial

No applicant requesting a Variance whose application includes the same or substantially the same requirements for the same or substantially the same property as that which has been denied by the Board of Adjustment or the Circuit Court shall reapply again before the expiration date of one (1) year from the date of the final action concerning the application. The reapplication for a Variance shall be processed in the same manner as a new application for a Variance.

Chapter 17.52

Conditional Use Permits

Sections

17.52.010 Purpose

17.52.020 Conditional Use Application and Fees

17.52.030 Procedure for Review of an Application

17.52.040 Considerations for Approval or Denial

17.52.050 Appeals of a Decision of the Planning Commission

17.52.060 Amendments to a Conditional Use Permit

17.52.070 Reapplication after a Denial

17.52.080 Conditional Use Permit to be Non-Transferable

17.52.090 Expiration of a Conditional Use Permit

17.52.100 Annual Review of Conditional Use Permits

17.52.110 Suspension or Revocation of Conditional Use Permits

17.52.010 Purpose

Within each zoning district, there are certain uses that are permitted as a conditional use. These listed conditional uses under each district are illustrative of those, which the Planning Commission may approve temporarily, permanently or approve for a specific time interval. Additionally, other conditional uses may be allowed, which are not listed, provided they are not contrary to the overall intent of the Chapter 17 of the Custer Municipal Code.

17.52.020 Conditional Use Application and Fees

- A. Applications: any person, firm, or corporation may apply for a Conditional Use Permit. **If such person, firm, or corporation is acting as an authorized agent, written authorization consenting to the application shall be provided by the property owner.** An application shall be provided by the City and returned to the Planning Administrator. The completed

application along with all supporting documentation shall be submitted to the Planning Administrator at least twenty (20) days prior to the next regularly scheduled Planning Commission meeting and shall illustrate:

1. A written request pertaining to the proposed use;
2. a complete legal description of the property, maps identifying the property, any diagrams of the property; and
3. a site plan that shall include the following information:
 - a. The proposed land uses and any specific services to be offered;
 - b. all property lines and dimensions of the lot(s);
 - c. the adjacent land use;
 - d. the existing and proposed structures, dimensions, and location of all facilities (i.e. pump stations, gas tanks, etc.);
 - e. the proposed and existing improvements, including septic systems, drain fields, wells, cistern systems, parking and roads;
 - f. the proposed and existing signs and their locations;
 - g. the relationship of the proposed development to the surrounding area.

B. Fees: Upon filing any application for a Conditional Use Permit, the applicant shall pay Custer City the appropriate fee(s) as set forth by the Fee Schedule adopted annually by resolution.

17.52.030 Procedure for Review of an Application

The following shall be the procedures used after an application for a conditional use and the required fees have been submitted to the City:

- A. The Planning Administrator shall review the completed conditional use application and determine if granting the conditional use would be contrary to the criteria set forth in section 17.52.040 of this code. Additionally, any application not containing and/or addressing all the information required in 17.52.020, shall be rejected, and returned to the applicant with the reasons for rejection.
- B. If the Planning Administrator finds the application complies with the application requirements, the Planning Administrator shall present the application along with his/her recommendation concerning the granting of a Conditional Use Permit. The application and recommendation shall be presented in a public hearing at the next regularly scheduled Planning Commission meeting. At the meeting, any interested person shall be given a full, fair, and complete opportunity to be heard.
 - a. After the application is added to the Planning Commission agenda, notice of the application shall be given by sign, mail, and newspaper.

- i. Sign: A sign will be furnished by the Planning Administration and posted by the Planning Administration. The sign must be posted in plain public view at the property where the conditional use is requested and must be posted no less than ten (10) days prior to the date of the Planning Commission meeting and must remain posted until final action by the Planning Commission is completed. The sign shall comply with SDCL 11-4-4.4.
- ii. Mail: A minimum of ten (10) days prior to the public hearing, the applicant shall notify all property owners within one hundred forty (140) feet, exclusive of rights of way and any properties under the same ownership, from any part of the property being considered for a Conditional Use Permit. Mail notification shall be given by Certified Mail or hand-delivered with a receipt signed by the recipient. The Planning Administration shall provide the applicant a list of landowners to be notified and a "Notice of Hearing" form for this purpose. The applicant shall sign an affidavit certifying that the required mailing or delivery was completed and provide the signed affidavit to the Planning Administrator at least five (5) working days prior to the public hearing.
- iii. The Planning Administrator will publish legal notice in the local newspaper at least ten (10) days prior to the Planning Commission's meeting.

C. The Planning Commission shall approve or deny the application following a review of the application in accordance with the requirements set forth in section 17.52.040 of this code. The findings of the Planning Commission shall be documented in a written statement that includes the following;

- a. An explanation of whether the criteria listed in section 17.52.040 of this code has or has not been met. If certain criteria do not apply, an explanation of why it does not comply shall also be provided.
- b. A voting record of the Planning Commission and the date of the Planning Commission's action. This information may be included within the regular meeting minutes of the Planning Commission.
- c. If the action is to deny the application, the reasons for such action shall be stated in the minutes of the meeting and a specific reference shall be made to the requirements not met.

17.52.040 Considerations for Approval or Denial

Generally, the granting of any Conditional Use shall be in harmony with the general purposes and intent of the zoning ordinance and will not be injurious to the neighborhood, detrimental to the public welfare, or be in conflict with the comprehensive plan for development. The following are

considerations the Planning Commission may use in determining the approval or denial of a Conditional Use Permit, and supporting documentation may be requested:

- A. that adequate utilities, public safety, water supply, sewage disposal, surface drainage, flood control, soil conservation, access roads, drainage and other necessary facilities have been considered and/or are being provided;
- B. that the Conditional Use is consistent with the surrounding area in terms of character and density;
- C. that the Conditional Use conforms with and is a compatible use within the Comprehensive Plan;
- D. The proposed use shall be in compliance with all other ordinances.
- E. The proposed use shall comply with all specific restrictions and requirements of the zone district.
- F. The proposed use shall be eligible for a Conditional Use Permit based on the Zoning District.
- G. Lighting shall be designed so that it presents a minimal impact to adjacent property. All exterior light sources must be shielded and directed downward.
- H. The proposed use shall have adequate vehicular access and parking to serve the proposed use.
- I. that the Planning Commission may impose reasonable conditions in granting a Conditional Use on the condition that the individual accepting those conditions is bound by them; and that the Commission may consider any public comments and comments from public officials.

17.52.050 Appeals of a Decision of the Planning Commission

The Planning Commission's action taken on a conditional use permit may be appealed to the Board of Adjustment by any person aggrieved by the decision. The appeal shall be completed using the procedure set forth in section 17.56 of this code.

17.52.060 Amendments to a Conditional Use Permit

Amendments to a Conditional Use Permit shall be processed in the same manner as required for a standard Conditional Use Permit.

17.52.070 Reapplication after a Denial

No applicant requesting a Conditional Use Permit whose application includes the same or substantially the same requirements for the same or substantially the same property as that which has been denied by the Planning Commission shall reapply again before the expiration date of six (6) months from the date of the final action on the petition. The reapplication for a Conditional Use Permit shall be processed in the same manner as a new application.

17.52.080 Conditional Use Permit to be Non-Transferable

A Conditional Use Permit which has been approved by the Planning Commission is non-transferable and shall be considered valid for only the property and permitted conditional use in which the Permit was approved upon.

17.52.090 Expiration of a Conditional Use Permit

A Conditional Use Permit which has been approved by the Planning Commission shall expire by limitation and become null and void if;

- A. A transfer of ownership occurs with the property in which the Conditional Use Permit has been granted.
- B. The building, work, or use authorized by such permit is not commenced within one year from the date of the approval. Upon written request to the Planning Administrator and prior to the Conditional Use Permit's expiration date, a one-year time extension for the permit may be granted by the Planning Administrator, subject to the following conditions:
 - a. There was no public objection presented during the public hearing process for the original permit; and
 - b. The land uses for the surrounding properties have not significantly been altered since the original approval date for the permit.

17.52.100 Annual Review of Conditional Use Permits

The Planning Commission may, at their discretion, require the person requesting a Conditional Use Permit provide the commission a written annual report, onsite review, or that the person requesting the permit attend a Planning Commission meeting, or all the above, on each anniversary date of the approval of the Conditional Use Permit. The annual report, onsite review, or attendee at a commission meeting shall update the commission on the permit holder's compliance with the terms, requirements, and conditions stipulated in the approval of the permit.

17.52.110 Suspension or Revocation of Conditional Use Permits

If the Planning Administrator 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 Administrator 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 permit for failure to comply with the terms, conditions, or requirements of the permit.

Chapter 17.56
Board of Adjustment

Sections

17.56.010 Created or Continued

17.56.020 Establishment, Membership, and Powers

17.56.030 Powers

17.56.040 Rules

17.56.050 Legal Advisor

17.56.010 Created or Continued

There is hereby created or continued the Board of Adjustment.

17.56.020 Establishment and Membership

The members of the Board of Adjustment shall be the Mayor and Common Council. The Mayor shall appoint, subject to the approval of the Common Council, a first and second alternate. If a member of the Board of Adjustment is unable to consider an issue due to absence or conflict of interest, the first alternate, or second alternate, in turn, shall serve in the absent members place. The first and second alternate shall be appointed for a term of three (3) years. The alternates may serve two (2) consecutive terms. Vacancies shall be filled for the unexpired term of any alternates whose term becomes vacant. Each alternate shall be a resident of the City of Custer. Members shall serve without compensation for their duties.

17.56.030 Powers

The Board of Adjustment shall have jurisdiction over all matters specifically authorized by codified law or ordinance and shall exercise all powers conferred to in by law or ordinance.

17.56.040 Rules

The Board of Adjustment shall adopt and be governed by rules and procedures kept on file in the office of the Planning Administrator.

17.56.050 Legal Advisor

The City Attorney shall be the legal advisor for the Board of Adjustment.

NOW BE IT ORDAINED that all ordinances or parts thereof in conflict with this ordinance are hereby repealed. Should any section or part of this ordinance be determined to be invalid, the same shall not invalidate the remaining section(s) of this Ordinance.

Dated this ##th day of April 2018

City of Custer City

Corbin Herman, Mayor

Attest _____

Laurie Woodward, Finance Officer

(SEAL)

First Reading: May 1, 2018

Vote:

Second Reading: May 15, 2018

Arseneault: Yes

Maciejewski: Yes

Publication: May 24, 2018

Heinrich: Yes

Blom: Yes

Fischer: Yes

Nielsen: Yes