CITY OF CUSTER PLANNING AND ZONING COMMISSION
AGENDA
Tuesday February 27, 2018 at 5:00 P.M.
Custer City Hall, 622 Crook Street, Custer, SD 57730

Call to Order - Roll Call:

Approve Agenda: February 27, 2018

Approve Minutes: February 13, 2018

Declaration of Conflict of Interest:

~~**Old Business:**~~

New 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 13rd, 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; Jerry Stites; Rick Hudson – 3 Mile Representative.

Members Absent: John Dvorak; Tim Behlings - Alternate;

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

Agenda: Rick Hudson moved, with a second by Joe Uhrich, to approve the February 13rd, 2018 agenda, Motion Carried.

Minutes: Joe Uhrich moved, with a second by Jerry Stites, to approve the January 23rd, 2018. Motion carried.

Declaration of Conflict of Interest: None

New Business:

Preliminary Plat – Phillip Subdivision - Planning Commission and Planning Administrator discussed the Phillips Subdivision Plat. Access into the subdivision and adequate access to the USDA land to the south was discussed, all believed to be sufficient. After the discussion, Rick Hudson moved, with a second by Joe Uhrich, to recommend to City Council approval of the preliminary plat, with a recommendation to forward the final plat directly to City Council for review. Motion unanimously carried.

Preliminary Plat – Tract Williamson Revised of Needles View Sub and Willow Creek Tract - Planning Commission and Planning Administrator discussed the preliminary plat. The adequate access into the parcels was discussed. The small section of easement on the south end of the plat dedicated with this plat and the neighboring access and emergency easements was also discussed. After the discussion, Joe Uhrich moved, with a second by Rick Hudson, to recommend to City Council approval of the preliminary plat, with a recommendation to forward the final plat directly to City Council for review. Motion unanimously carried.

Subdivision Variance Request – Busskohl Jenniges Subdivision Phase 1 – Planning Commission members and Planning Administrator discussed the legal access along the Hall Drive corridor and the desire to establish 66' legal access along collector routes such as this. After some discussion it was determined the 30' would be adequate at this time due to the proposed plat decreasing current density in the area (non-subdivision) and the easement not being needed to provide water and sewer to the area. After the discussion, Joe Uhrich moved, with a second by Jerry Stites, to recommend to City Council approval the Busskohl Jenniges Subdivision Phase 1 variance. Motion unanimously carried.

Preliminary Plat – Busskohl Jenniges Subdivision Phase 1 – Discussion was held to clarify the existing lot lines and where the changes are occurring. The connection of city sewer and water and the route established to bring these services to the area was also discussed. After the discussion, Joe Uhrich moved, with a second by Craig Walz to recommend approval of the preliminary plat by the City Council. Motion unanimously carried.

Discussion Items:

Planning Administrator Updates

Planning Administrator and commission members gave various updates.

Communications from The Public
No publics comments were heard.

Adjournment:
Being no further business before the Commission, Jerry Stites moved, with a second by Joe Uhrich, to adjourn. Motion carried. The meeting adjourned at 6:25 pm.

Approved:

_____
Jerad Tennyson, Chairman

Attest:

_____
Tim Hartmann, Planning Administrator

Chapter 17.12
RESIDENTIAL DISTRICT (R)

Sections:
17.12.010Intent.
17.12.015Definitions.
17.12.020Permitted principal uses and structures.
17.12.030Permitted accessory uses and structures.
17.12.040Permitted conditional uses.
17.12.050Home Occupations
17.12.060Restrictions 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)

17.12.015 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.

17.12.020 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)

17.12.030 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)

17.12.040 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. ~~Mobilehomes under conditions prescribed in Section 1208 of the Custer City comprehensive plan of this title;~~

K. Mobile home court in accordance with Section 17.36 of this code.

L. Childcare. Nursery, primary, intermediate and secondary schools;

M. Public recreational and park facilities;

N. Utility substations. (Ord. 434 (part), 1995: Ord. 432 (part), 1995)

17.12.045 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.

17.12.050 Home Occupations

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

1. Such use must be incidental and subordinate to the main use or dwelling unit for residential purposes.

2. 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.

3. 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.

4. 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 utilizes not more than twenty-five (25) percent of the total structure area of the property.

17.12.060 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 that 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. 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

b. 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.

c. 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.

d. 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.

e. Lot Size. 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.

f. 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.

h. Minimum Structure Size. The minimum structure size shall not be less than six hundred (600) square feet.

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

g. 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 unit 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 lot~~s~~ 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.

1. Single Family Dwelling – One (1) parking space
2. Townhouse – One (1) parking space per unit.
3. Short Term Rental – On Street parking shall be prohibited.

(Ord. 434 (part), 1995: Ord. 432 (part), 1995)

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

Staff Report

Request: Zoning Ordinance Revisions
Location: City-wide
Date Prepared: February 22, 2018
Planning Commission Meeting: February 27, 2018
Prepared by Tim Hartmann, Planning Administrator

GENERAL

Changes are in the process to update the existing procedure for reviewing a zoning ordinance, a zoning variance, and a conditional use permit. Some changes have also been visited to review the responsibilities and powers of the Board of Adjustment. These four ordinance sections have been assigned new chapter numbers to provide proper structure in correlation with the existing zoning chapters of the Custer Municipal Code.

Chapter 17.44 – Zoning, Rezoning and Zoning Ordinance Amendments
Chapter 17.48 – Variances
Chapter 17.52 – Conditional Use Permits (CUP)
Chapter 17.56 – Board of Adjustment

SUMMARY OF CHANGES

Chapter 17.44 – Zoning, Rezoning and Zoning Ordinance Amendments

- Restructured the ordinance to follow standard set with other ordinances (accompanying ordinances, and standard ordinances in the CMC)
- Further defined the process for review of a zoning application/ordinance. Current ordinance defines council as the adopting body for a zoning ordinance with little involvement of the Planning Administrator and Planning Commission. Staff believes Planning Commission shall review and provide recommendation on city zoning matters. Therefore, have defined the process to provide Planning Administrator review, Planning Commission review and recommendation, and public hearing and approval or denial with the City Council.
- Removed Board of Adjustment information to be moved and included in chapter 17.56.

Chapter 17.48 – Variances

Minor Changes have occurred to this chapter.

- After significant research, determined the Planning Commission shall provide recommendation on a variance and the Board of Adjustment shall approve or deny. Board of Adjustment as compared to City Council is an important factor in the review of variance due to the administrative review nature of a variance.
- Have structured the review process as follows; public meeting with PC for review and recommendation, then to Board of Adjustment for a public hearing and then approval or denial. One public hearing is appropriate and thus only requires public notification for the meeting of the approval body saving staff time as well as tax payer money on publication costs. 17.48.030
- Researched considerations for approval or denial of a CUP to assure all criteria are objective and not subjective, as defined below.
    - Objective information or analysis is fact-base, measurable and observable.
    - Subjective information or analysis is based on personal opinions, interpretations, points of view, emotions or judgment. It is often considered ill-suited for scenarios like news reporting or decision making in business or politics.

Chapter 17.52 – Conditional Use Permits

Change has occurred mainly to the review process of a CUP. The currently adopted ordinance specifies that a CUP shall have recommendation provided by the Planning Commission, approval or denial by the Board of Adjustment, and appeals being heard by the Board of Adjustment. Creating an issue with the approving body also acting as the body hearing all appeals.

- Have restructured the review process for a CUP. The proposed process streamlines the process allowing Planning Commission to review and approve or deny CUPs in a public hearing. All Public notification completed prior to the PC meeting. All appeals would then be heard by the Board of Adjustment.
- Researched considerations for approval or denial of a CUP to assure all criteria are objective and not subjective, as defined below.
    - Objective information or analysis is fact-base, measurable and observable.
- Subjective information or analysis is based on personal opinions, interpretations, points of view, emotions or judgment. It is often considered ill-suited for scenarios like news reporting or decision making in business or politics.

Chapter 17.56 – Board of Adjustment

Significant changes are being made to this section in anticipation of streamlining the rules and procedures of the Board of Adjustment in accordance with state statute, and to utilize other area municipalities planning department guidelines which are already established.

Working Doc – Changes Made 2/22/18

Updates completed following discussion Feb 22nd PM

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 Purpose

17.44.030 Zoning Amendments Application and Fees

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 these procedures set under 17.43

17.44.014 Definition of Terms

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

17.44.020 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.

17.44.030 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.

17.44.030 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 in a public meeting at the next regularly scheduled Planning Commission meeting along with a report indicating the Planning Administrators recommendation concerning the approval of the application.

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 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 140 feet, exclusive of rights of way, 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.

17.44.050 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.

17.44.050 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 percent of the owners of equity in the lots included in any proposed district and the lands within two hundred fifty 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 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 Appeals of a Decision of the Board of Adjustment

17.48.060 Invalidation of an Approved Variance

17.48.070 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

C. Applications: any person, firm, or corporation may apply for a variance by completing an application provided by the City and returned to the Planning Administrator. The completed application shall illustrate:

4. 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;

5. 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;
6. that the special conditions and circumstances do not result from the actions of the applicant;
7. 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
8. that the grounds for the application is not based on nonconforming uses of neighboring lands, structures, or buildings in the same district.

D. 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 in a public meeting at the next regularly scheduled Planning Commission meeting along with a report indicating their recommendation concerning the granting of the variance.

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 10 days prior to the public hearing, the applicant shall notify all property owners within 140 feet, exclusive of rights of way, 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 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.

17.48.060 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.

17.48.070 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 Amendments to a Conditional Use Permit

17.52.060 Reapplication after a Denial

17.52.070 Expiration of a Conditional Use Permit

17.52.080 Preexisting Uses

17.52.090 Annual Review of Conditional Use Permits

17.52.100 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 by completing and application 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 (20) days prior to the next regularly scheduled Planning Commission meeting. The completed application 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:

B. 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.

C. 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 10 days prior to the public hearing, the applicant shall notify all property owners within 140 feet, exclusive of rights of way, 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.

D. 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 does 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 one 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 Commissions 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 Expiration of a Conditional Use Permit

A Conditional Use Permit, which has been approved, shall expire by limitation and become null and void if the building, work, or use authorized by such 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.

17.52.090 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.

17.52.100 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 15th day of May, 2017

City of Custer City

_____

Jared Carson, Mayor

Attest _____

Laurie Woodward, Finance Officer

(SEAL)

First Reading: May 1, 2017

Second Reading: May 15, 2017

Publication: May 24, 2017

Vote:

Schleining: Yes	Maciejewski: Yes
Heinrich: Yes	Blom: Yes
Fischer: Yes	Nielsen: Yes