

## **Articles of By-Laws for City of Milbank Board of Adjustment**

By-Laws of the City of Milbank Board of Adjustment in the State of South Dakota, as adopted June 13, 2022.

### ***Article 1: Authority***

- The City Council of the City of Milbank is authorized by SDCL 11-6-2 and 11-4-11 to appoint a commission of five (5) or more members, the total membership of which shall always be an uneven number, to be known as the City Planning and Zoning Commission (described hereinafter as: Planning Commission).
- The City Council of the City of Milbank is authorized by SDCL 11-4-13 to appoint the Planning Commission of the City of Milbank to act as the Board of Adjustment.
- Chapter 17.20 of Ordinance 685, An Ordinance Establishing Zoning Regulations for the City of Milbank, South Dakota, and Providing For The Administration, Enforcement, And Amendment Thereof, In Accordance With The Provisions of Chapters 11-4 and 11-6, 1967 SDCL, And Amendments Thereof, And For The Repeal of all Ordinances In Conflict Therewith, as amended (described hereinafter as: Milbank Zoning Ordinance) appoints the City of Milbank Planning Commission of the City of Milbank to act as the Board of Adjustment.

### ***Article 2: Jurisdiction***

- The Board of Adjustment shall have jurisdiction in all the territory with the boundaries of the City of Milbank, South Dakota as established on the Official Zoning Map of the City of Milbank, as amended.

### ***Article 3: Appointment and terms of members (Planning Commission)***

- The Planning Commission members shall be appointed by the Milbank City Council.
- The Mayor of the City of Milbank, with the approval of the Milbank City Council, shall appoint up to four individuals to serve as alternates on the City of Milbank Board of Adjustment.
- The Planning Commission shall consist of seven (7) members, to be appointed by the Mayor of the City of Milbank, with approval by the Milbank City Council. One member of the City Council shall be appointed by the Mayor to act as liaison

between the Planning Commission and the City Council. This Council member will not be a voting member of Planning Commission. Administrative officials of the City may be appointed as ex-officio members of the Commission by the Mayor. (Section 17.21.02)

- The members of this Planning Commission shall be resident electors of the City of Milbank, qualified by knowledge or experience to act in matters pertaining to the development and administration of the Comprehensive Land Use Plan.
- Because the following conditions impair the quality of decision-making and diminish the integrity of the Board of Adjustment, a member of the commission may be removed for cause. Reasons for dismissal include but are not limited to continuing unpreparedness, continuing absence from meetings (three consecutive meetings or four regular meetings within a calendar year), biased participation, and conflicts of interest.
- If a Board of Adjustment member does not complete their term, the Mayor, with approval by the Milbank City Council, will appoint another member to complete the term.
- At the first regular meeting each calendar year, the Planning Commission and Board of Adjustment shall elect a chairperson and a vice-chairperson.
- The Chairperson of the Planning Commission shall serve as the Chairperson of the Board of Adjustment. The Vice-Chairperson of the Planning Commission shall serve as the Vice-Chairperson of the Board of Adjustment.

#### ***Article 4: Duties of Board of Adjustment officers and members***

- Chairperson – Shall serve as the presiding officer by presiding at all hearings and meetings of the Commission, assures proper order of the Board of Adjustment, and the public in all proceedings, signs all documents of the Commission, calls special meetings of the Commission in accordance with the by-laws, and ensures that all actions of the Commission are properly taken.
- Vice-Chairperson – performs the duties and has the responsibilities of the Chairperson during the absence, disqualification, or disability of the Chairperson. The Vice-Chairperson shall succeed the Chairperson and serve the remainder of the term if the position is vacated before the term is completed.

- Board of Adjustment members – General duties of the Board of Adjustment members include reading mailed materials prior to Commission meetings, maintaining familiarity with the City of Milbank Zoning Ordinance, attending Board of Adjustment meetings, and participating in the deliberation and decision-making processes of the Board of Adjustment.
- Zoning Officer/Administrative Official – Perform duties as outlined in the Zoning Ordinance, serve as Parliamentarian, and prepare the findings of fact as determined by the Board of Adjustment to be reviewed and signed by the Board Chairperson, to prepare and issue any letters of assurance, building permits, documentation or items associated with any decision of the Board of Adjustment.
- City Attorney – Serve as legal counsel to the Planning Commission/Board of Adjustment; prepares memoranda of law as requested by the Planning Commission/Board of Adjustment, and reviews drafts of ordinances, resolutions, and by-laws, and their amendments.

***Article 5: Meetings of the Board of Adjustment***

- Meetings shall be held at the call of the Chairperson and at other such times as the Board of Adjustment may determine.
- The number of meetings per month and a schedule of meeting dates and times shall be established, however said schedule may be altered or changed at the discretion of the Chairperson.
- Though subject to rescheduling, the regular meeting date is hereby established as the first Monday of the month at the Milbank City Visitor Center. Unless otherwise posted at least twenty-four (24) hours before said meeting, the regular meeting time will be 6:00 pm on said date.
- A work session is a noticed official meeting open to the public to discuss specific policies, regulations, or conduct training. The intent of the work session is informational; the Planning Commission and Board of Adjustment may neither take a substantive vote nor deliberate a specific application during a work session.
- Special meetings can be held at any time and may be called by the Chairperson. At least 24-hours' notice should be given to each member of the Commission.

- Any meeting of the Board of Adjustment may be continued or adjourned from day to day or for more than one day. An adjournment can only last until the next regularly scheduled meeting.
- An executive meeting or session is closed to the public with topics of deliberation limited in the manners described in SDCL 1-25-2; and SDCL 9-34-19.
  - No vote in relation to any appeal, variance, conditional use or any other matter the Board of Adjustment is authorized to hear shall be made during executive session.
- A majority of the members of the Board of Adjustment entitled to vote shall constitute a quorum.
  - If a quorum of the Board of Adjustment is present but less than five (5) members are in attendance or eligible to vote on a given application for Conditional Use Permit; the matter will be postponed until a meeting may be held in which five (5) members which are eligible to vote are able to attend the meeting.
    - The City of Milbank will be responsible for any costs associated with the publication of any notices associated with the postponed matter. Applicant may request the matter be postponed until five (5) members may be present, however the applicant will be responsible for any costs associated with the publication of any notices associated with the postponed matter.
    - The Chairperson of the Board of Adjustment may determine that due to illness, recusal, and/or conflict of interest of alternates and appointed board members; five (5) voting members may not be eligible for a specific request. In that event, the maximum number of Board members eligible to vote on the specific Conditional Use Permit shall be in attendance for the application's consideration.
  - If a quorum of the Board is present but less than five (5) members are in attendance or eligible to vote, the applicant may request any variance or appeal of the decision of the Administrative Official/Zoning Officer to be postponed until five (5) members may be present, however the applicant will be responsible for any costs associated with the publication of any notices associated with the postponed matter.
  - If a quorum of the Board is not present, the applicant's request will be postponed until the next meeting at which a quorum may be present and that notice can be provided for. The City of Milbank will be

responsible for any costs associated with the publication of any notices associated with the postponed matter.

## ***Article 6: Standard Agenda for Board of Adjustment Meetings***

### Section 6.1: Staff Preparation of Agenda

- Staff shall be authorized to establish the order of items to be placed on the agenda. In no way shall it be considered a violation of the By-Laws of the Board of Adjustment if any items listed in Section 6.2 are omitted or supplemented to. However, no matter may be considered by the Board of Adjustment if it has not been placed upon an agenda in accordance with South Dakota Codified Law.

### Section 6.2: Items to be included in Agenda

- Call Meeting to Order (See Section 6.3)
- Approval of Minutes (See Section 6.4)
- Items to be added to the agenda by Board members or staff under matters for Board Discussion (See Section 6.7)
- Declaration of intent by members of the public to address the Board during the Open Session (See Section 6.6)
- Disclosure of Conflicts of Interest; Relationship(s) to Applicant; or Ex Parte Communication (See Section 6.5)
- Approval of the Agenda
- Appeals/Conditional Uses/Variances (See Article 9)
- Open (See Section 6.6)
- Matters of Board Discussion (See Section 6.7)
- Staff Report (See Section 6.7)

- Adjourn

### Section 6.3: Call Meeting to Order

- The Chairperson shall call the meeting to order. At this time, the Chairperson will describe or summarize the rules for this meeting; or identify where those in attendance may review the rules for this meeting.

### Section 6.4: Approval of Minutes

- The minutes of any previously held meeting may be amended and/or approved at any meeting. The date of the minutes to be approved or amended shall be listed in the title of this agenda item.

### Section 6.5: Disclosure of Conflicts of Interest; Relationship(s) to Applicant; or Ex Parte Communication and Abstention.

- The Chairperson will ask for the Board of Adjustment members to disclose any potential sources of conflict or ex parte communication that they are aware of which may be perceived by any person aggrieved by a decision of the Board of Adjustment to unacceptably bias that member's decision.
- Members are expected to disclose any conflicts which in his or her interpretation may be relevant to the matter before the Board of Adjustment; for example: relation, contracts, business, private clubs or organizations, etc. shared with the applicant or anyone said member is aware will be testifying at this meeting.
- Members are expected to disclose whether they have had any meetings, conversations, or other opportunities to review testimony or information, which may not have been afforded to the general public regarding any specific matter before the Board of Adjustment since application was made.
- When the Board of Adjustment member does not feel a potential conflict of interest should result in the abstention from voting on a specific request, it is recommended a statement similar to the following be made:

***“John Smith is the applicant for Item “x” on the agenda and is married to my third cousin. I do not feel this relationship will bias my decision in manner regarding this request.”***

- If another member of the Board of Adjustment feels the potential conflict should result in the abstention of the above referenced member, it is recommended a statement similar to the following be made:

**“Point of order” [“State your point” – by Chairperson] “Member Jones’ relationship will bias her decision on this request.”**

- The Chairperson shall then rule if the relationship should result in the member abstaining. The Chairperson may consult with staff or the City Attorney prior to making the decision. The decision of the Chairperson may be appealed by the members of the Board of Adjustment in accordance with Robert’s Rules of Order.
- When the Board of Adjustment member has engaged in discussion regarding a specific request outside of a meeting, but does not feel said discussion will result in a perceived bias which should result in the abstention from voting on a specific request, it is recommended a statement similar to the following be made:

**“John Smith is the applicant for Item “x” on the agenda and spoke with me regarding his application on *date*. I will summarize the discussion prior to testimony regarding this matter. I do not feel this conversation included anything which will not be discussed in the public hearing, nor did it predispose me in my decision in any manner regarding this request.”**

- Any disagreement on whether the specific member should abstain shall be addressed following the summary of the discussion/information received regarding the matter. See Article 8.
- When the Board of Adjustment member feels a potential conflict of interest should result in the abstention from voting on a specific request, it is recommended a statement similar to the following be made:

**“My father, *John Smith*, is a shareholder in the corporation making application in Item “x” on the agenda. This relationship may bias my decision in regarding this request, and therefore I will be abstaining from voting on that item.”**

- When the Board of Adjustment member has engaged in discussion regarding a specific request outside of a meeting and feels said discussion will result in a perceived bias, which should result in the abstention from voting on specific request, it is recommended a statement similar to the following be made:

**“I attended a private party at *John Smith’s* residence 3 days after he made application for Item “x” on the agenda and spoke with him regarding his application. I feel this conversation may have included information which will not be discussed in the public hearing and may have predisposed me in my decision regarding this request.”**

- Any member abstaining from voting on a specific item shall note such abstention prior to the motion to approve the request, leaving his/her seat to be replaced by the alternate as provided for by the City of Milbank Zoning Ordinance.

#### Section 6.6: Open

- In order to address the Board of Adjustment, any property owner or their designee in the City of Milbank may notify and provide feedback and any materials to the Zoning Officer by noon on the Friday before the next scheduled meeting of the Board of Adjustment, this allows the Board of Adjustment adequate follow-up time to address received feedback. Property owners or their designee in the City of Milbank may notify the Board of Adjustment at the appropriate point on the Agenda of the intent to address the Board during the Open.
- The Board of Adjustment may allow up to five (5) minutes to any property owner or their designee in the City of Milbank to address the Board of Adjustment provided the following:
  - The topic of discussion does not relate to or request an appeal of a decision of the Board of Adjustment.
  - The topic of discussion does not relate to a “potential” application which has not been properly brought before the Board of Adjustment.
- The Board of Adjustment is unable to make any formal decisions regarding the information presented to them during the “Open” item on the Agenda.

#### Section 6.7: Matters for Board Discussion

- Members of the Board of Adjustment may request a topic be placed on the Agenda prior to a meeting for Board Discussion. Items formally placed on the Agenda greater than the twenty-four (24) hours prior to the meeting are not limited in their length of discussion. Board of Adjustment members or staff may request a topic to be placed on the Agenda at the appropriate point on the Agenda to add items by the Board or staff.



- Members of the Board of Adjustment may discuss any topic not placed on the agenda provided the following:
  - The topic of discussion does not specifically relate to a “potential” application which has not been properly brought before the Board of Adjustment.
  - No vote or final decision may be made regarding any item which was not formally placed on the agenda greater than twenty-four (24) hours prior to a meeting.

Section 6.8: Staff Report:

- Staff reports to the Board of Adjustment any matters relating to the administration, enforcement, or review of the Zoning Ordinance or provides an update to the Board of Adjustment regarding any other duty of staff.

***Article 7: Establishment of Rules for Meetings of the Board of Adjustment***

- The Board of Adjustment shall operate its meetings in accordance with Robert’s Rules of Order, unless otherwise stated within these By-Laws.
- The Chairperson is authorized to suspend the rules for meetings of the Board of Adjustment after stating cause for such suspension.
  - Appeals to said suspension may be made in accordance with Robert’s Rules of Order.
- Tabling:
  - No matter may be tabled to a later date. If it is the intent to delay a vote to a later meeting, a motion to postpone shall be used. (See “postponing”)
  - Any matter tabled shall be removed from the table at the same meeting.
- Postponing:

- Any motion to “Postpone Indefinitely” shall be ruled out of order when made in reference to any provision of an application before the Board of Adjustment.
- No provision relating to an application before the Board of Adjustment may be postponed beyond the date of the next scheduled regular meeting of the Board of Adjustment, unless postponed pending a specific action/event or referred to a committee.
- Reconsideration:
  - Any decision of the Board of Adjustment may be reconsidered in accordance with Robert’s Rules of Order at the same meeting in which the original decision was made.

***Article 8: Rules for the Public in Attendance***

- Any citizen in attendance should sign the attendance sheet and indicate if he/she intends to address the Board of Adjustment. The length of time allotted per person for testifying will be based upon the number of people indicating their intent to address the Board of Adjustment regarding a request before an item is addressed by the Board of Adjustment.
- Cellular phones should be turned off, silenced, or set on a “vibrate-only” mode.
- Members of the public may only address the Board upon being formally recognized by the Chairperson of the Board. Upon formal recognition, by either having his or her name read to provide testimony or being requested to address the Board by the Chairperson; testimony by said person will only be allowed if made from the area and/or manner designated for testimony after stating his or her name.
- Private conversations should be held outside the meeting room. Any audience member carrying a conversation with another member of the audience that is impairing the Board of Adjustment’s ability to hear testimony or discussion, will be asked to go outside the meeting room.
- Anyone responsible for disruptive behavior or noise such as clapping, cheering, jeering, or other behavior may be required to leave the meeting.

- Anyone failing to follow the rules for public in attendance or the rules for requests and public hearings may be required to leave meeting prior to any further testimony.

**Article 9: Rules for Requests/Public Hearings on Variances and Conditional Use Permits**

1. Any Board of Adjustment member indicating he/she has engaged in discussion or otherwise received testimony outside of the public hearing regarding a specific request shall summarize the discussion or testimony received.
  - a. If another member of the Board of Adjustment feels the testimony or discussion described should result in the abstention of the above referenced member, it is recommended a statement similar to the following be made:

**“Point of order” [“State your point” – by Chairperson] “The discussions Member Jones engaged in prior to the meeting will bias her decision on this request.”**
  - b. The Chairperson shall then rule if the relationship should result in the member abstaining. The Chairperson may consult with staff or the City Attorney prior to making the decision. The decision of the Chairperson may be appealed by the members of the Board of Adjustment in accordance with Robert’s Rules of Order.
2. Motion to approve item.
  - a. Motions are made in the affirmative.
  - b. Motions are made to approve “as presented by staff”.
  - c. Example: **“I move to approve the request for *variance/conditional use as presented by staff.*”**
  - d. Following a “second”, the Chairperson will note the number of votes required to approve the request, unless the Chairperson already stated the number of votes necessary at the beginning of the meeting, **and** the number of votes required has not changed due to abstention.
3. Staff presents its report and makes recommendations. At this time, the Board of Adjustment may ask the staff any questions regarding its report.
4. The Chairperson shall open the public hearing.

- The Chairperson reserves the right to limit or extend the amount of time allowed for testimony prior to the start of the public hearing.
5. Testimony by applicant or applicant's agent to describe the request.
    - a. Testimony by applicant or applicant's agent shall not exceed fifteen (15) minutes.
    - b. The Chairperson reserves the right to limit or extend the amount of time allowed for testimony prior to the start of the public hearing.
  6. Testimony by other governmental or public entities.
    - a. Testimony on behalf of utility providers, school districts, municipalities, townships, water districts, etc. shall not exceed five (5) minutes per entity.
    - b. The Chairperson reserves the right to limit or extend the amount of time allowed for testimony prior to the start of the public hearing.
  7. Proponent testimony
    - a. All comments and questions are to be directed to the Board.
    - b. Any dialogue between the person testifying and the applicant/applicant's agent will be ruled out of order.
    - c. Repetitive testimony is discouraged. If an individual agrees with the previous testimony, the individual will be asked to indicate what point they agree with and asked to provide new testimony or yield the floor.
    - d. For items in which five (5) or more total individuals have identified an intent to testify:
      - i. Staff will call on individuals that indicated an intent to testify in favor of the request one at a time.
      - ii. Individuals representing themselves or represented individually are allowed a maximum of three (3) minutes to address the Board.

- iii. The sharing of an individual's time to testify (one person speaks for one (1) minute and another speaks for five (5) minutes) will not be allowed.
- iv. Representatives of a group of individuals, clubs, citizen organizations, etc. are allowed a maximum of ten (10) minutes to address the Board.
  - The representative shall indicate who is being represented either on a separate form provided by the Board; orally, or by some other means prior to starting testimony.
  - Any individual choosing to testify through a representative will not be allowed to then testify on his or her own behalf.
- e. For items in which fewer than five (5) individuals have identified an intent to testify:
  - i. Individuals or representatives may, upon recognition by the Chairperson, address the Board of Adjustment one (1) time for a maximum of three (3) minutes.
  - ii. The sharing of an individual's time to testify (one person speaks for one (1) minute and another speaks for five (5) minutes) will not be allowed.
- f. Individuals that did not indicate an intent to testify will be allowed to testify upon recognition by the Chairperson one (1) time maximum of one (1) minute.

## 8. Opponent or other

- a. All comments and questions are to be directed to the Board.
- b. Any dialogue between the person testifying and the applicant/applicant's agent will be ruled out of order.
- c. Repetitive testimony is discouraged. If an individual agrees with the previous testimony, the individual will be asked to indicate what point they agree with and asked to provide new testimony or yield the floor.

- d. Staff and Board members will record questions in reference to the application and ask them of the applicant at the appropriate time. The Chairperson reserves the ability to rule any question or testimony out of order or non-germane.
- e. For items in which five (5) or more total individuals have identified an intent to testify:
  - i. Staff will call on individuals that indicated an intent to testify in favor of the request one at a time.
  - ii. Individuals representing themselves or represented individually are allowed a maximum of three (3) minutes to address the Board.
  - iii. The sharing of an individual's time to testify (one person speaks for one (1) minute and another speaks for five (5) minutes) will not be allowed.
  - iv. Representatives of a group of individuals, clubs, citizen organizations, etc. are allowed a maximum of ten (10) minutes to address the Board.
    - The representative shall indicate who is being represented either on a separate form provided by the Board; orally, or by some other means prior to starting testimony.
    - Any individual choosing to testify through a representative will not be allowed to then testify on his or her own behalf.
- f. For items in which fewer than five (5) individuals have identified an intent to testify:
  - i. Individuals or representatives may, upon recognition by the Chairperson, address the Board of Adjustment one (1) time for a maximum of three (3) minutes.
  - ii. The sharing of an individual's time to testify (one person speaks for one (1) minute and another speaks for five (5) minutes) will not be allowed.

- g. Individuals that did not indicate an intent to testify will be allowed to testify upon recognition by the Chairperson one (1) time for a maximum of one (1) minute.
9. Written testimony is referenced and summarized by Staff. (See *Requirements for the submission of applications and testimony, See Article 11.*)
10. Public Hearing is closed.
11. Board Discussion
- a. Applicant is called back to answer questions asked by the Board and staff (including questions posed during the public hearing and deemed relevant).
  - b. Board discusses application, potential conditions, policy, history, etc.
  - c. Board may ask questions of other members of the audience.
  - d. Amendments to the motion may be made.
  - e. Chairperson questions the Board in reference to findings of fact.
  - f. Lack of response by any member is assumed agreement with question or finding read.

12. Roll Call Vote

- a. A “yes” vote is to approve the conditional use or variance.
- b. A “no: vote is to deny the condition use or variance.
- c. In the event an application for conditional use or variance does not obtain enough “yes” votes for approval, it is not necessary to make a subsequent motion to deny the conditional use or variance.

***Article 10: Rules for Requests/Public Hearings on Appeals of the Decision of the Zoning Officer/Administrative Official***

- 1. Any Board of Adjustment member indicating he/she has engaged in discussion or otherwise received testimony outside of the public hearing regarding a specific request shall summarize the discussion or testimony received.

- a. If another member of the Board of Adjustment feels the testimony or discussion described should result in the abstention of the above referenced member it is recommended a statement similar to the following be made:

**“Point of order” [“State your point” – by Chairperson] “The discussions Member Jones engaged in prior to the meeting will bias her decision on this request.”**

- b. The Chairperson shall then rule if the relationship should result in the member abstaining. The Chairperson may consult with staff or the City Attorney prior to making the decision. The decision of the Chairperson may be appealed by the members of the Board of Adjustment in accordance with Robert’s Rules of Order.

2. Motion to approve the appeal.

- Motions are made in the affirmative.
- Motions are made to approve “as requested by appellant”
- Example: **“I move to approve the appeal of the decision of the administrative official as requested by the appellant.”**
- Following a “second”, the Chairperson will note the number of votes required to approve the request, unless the Chairperson already stated the number of votes necessary at the beginning of the meeting, **and** the number of votes required has not changed due to abstention.

3. The City Attorney or other designated official may present a summary of the decision being appealed, establish documents for the record (*See Requirements for the submission of applications and testimony*), and describe the process the Board needs to follow during the appeal. At this time, the Board of Adjustment may ask the City Attorney questions regarding the process, the record, or the summary.

4. The Chairperson shall open the hearing.

- The Chairperson reserves the right to limit or extend the amount of time allowed for testimony prior to the start of the hearing.
- The Chairperson will note that the hearing is limited to testimony by the appellant(s), City Staff, and any other individual or entity the Board of Adjustment may have questions for relating to the interpretation of the matter being appealed.



5. Testimony by appellant or appellant(s)' agent to describe the appeal.
  - a. Testimony by the appellant(s) shall not exceed fifteen (15) minutes per appeal (in the event of multiple appeals related to the same request/matter) or thirty (30) minutes total, whichever is less.
  - b. The Chairperson reserves the right to limit or extend the amount of time allowed for testimony prior to the start of the public hearing.
6. The Hearing is closed.
7. Board Discussion
  - a. Board discusses the appeal, policy, history, etc.
  - b. Board may ask questions of the administrative official/zoning officer, City Attorney, appellant or other members of the audience.
  - c. Amendments to the motion may be made.
8. Roll Call Vote.
  - a. A "yes" vote is to approve the appeal of the applicant and reverse, in whole or in part, the decision of the administrative official/zoning officer.
  - b. A "no" vote is to deny the appeal of the applicant, thereby upholding the decision of the administrative official/zoning officer.
  - c. In the event an appeal does not obtain enough "yes" votes for approval, it is not necessary to make subsequent motion to deny the appeal.

***Article 11: Requirements for the submission of applications and testimony***

- Applications for certain actions that require public hearings shall be made to the Zoning Officer in accordance with the Zoning Ordinance prior to noon on the third Friday of the month.
- Written testimony will be accepted until 12:00 pm (noon), on the Friday prior to the meeting.

- No written testimony provided after 12:00 pm (noon), on the Friday prior to the meeting will be accepted by staff, or the Board of Adjustment. (See exception below)
  - Exception: Petitions may be submitted at the meeting as testimony and admitted into the record provided the grounds for the petition are verbally presented at the meeting by the individual or entity submitting the petition in accordance with the time limits established by these By-Laws or the Chairperson.

### ***Article 12: Instruments and documents of the Board of Adjustment***

- The official instruments of the Board of Adjustment are the staff reports, record of notice, the agenda, the minutes, applicant notification letter, letters of agreement/assurance, and findings of fact. Where in special cases the Board of Adjustment wishes to provide advice to the legislative body or administrative agency, it may do so by resolution.
- Any and all materials submitted to the Board of Adjustment in accordance with these By-Laws and the City of Milbank Zoning Ordinance regarding an item shall be entered into the public record.
- All notices, agendas, requests, agency or consultant letters or reports, citizen petitions, staff reports, minutes of hearings and meetings, and resolutions shall constitute the documents of the Planning Commission/Board of Adjustment and shall be indexed as a matter of public record.

### ***Article 13: Standard Findings of Fact for Approval of Conditional Uses***

1. City of Milbank adopted its Comprehensive Land Use Plan on May 14, 2001 (Ref: SDCL 11-4-3)
2. City of Milbank adopted its current zoning regulations with Ordinance 682 on June 11, 2001. (Ref: SDCL 11-4-2; 11-4-4)
3. City of Milbank Zoning Ordinance appoints the Planning Commission to act as the Board of Adjustment (Ref: SDCL 11-4-13 and City of Milbank Zoning Ordinance (Zon. Ord.) Chapter 17.20.03)
4. The City of Milbank Zoning Ordinance has identified the City of Milbank Board of Adjustment as the approving authority relating to conditional uses. (Ref: SDCL 11-1-4.1 and Zon. Ord. Chapter 17.20.03)

5. Required public notices per South Dakota Codified Law and City of Milbank Zoning Ordinance have been met. (Ref:SDCL 11-4-21 and Zon. Ord. Section 17.22.02.1.B and 17.22.02.1.C)
6. On the date identified in the public notice a public hearing was held before the City of Milbank Board of Adjustment (Ref: SDCL 11-4-21 and Zon. Ord. Section 17.22.02.1.D)
7. That opportunity for testimony both in support and in opposition to the request was provided.
8. The Board reviewed proponent, opponent, and staff testimony.
9. Satisfactory provision and arrangements have been made, or may be made if conditions are placed upon the operation, concerning the following (as in Section 17.22.02.1.F of the Zoning Ordinance):
  - a. Access:
    - i. The roads providing access to the property shall be determined to be adequate to meet the transportation demands of the proposed Conditional Use. The Board of Adjustment may require the applicant to enter into a written contract with the applicable road authority regarding the upgrading and continued maintenance of any roads used for Conditional Use requested prior to issuance of a Conditional Use Permit.
    - ii. Reasonable provisions have been made for safe vehicular and pedestrian entrance and exit of the property for daily and emergency traffic.
  - b. Parking and internal traffic:
    - i. The parking areas and driveways will be covered in materials appropriate for the internal traffic generated by the use.
    - ii. The number of parking spaces is appropriate for the proposed use of the property.
  - c. Utilities and refuse:

- i. The manner by which electricity, water, sewer, natural gas and other utilities will be provided has been described.
  - ii. Consideration has been given to the location of refuse and service areas and manner for disposing of trash, junk, or other debris.
- d. Screening, buffering, and open space:
  - i. The type, dimensions, and character of any fences, walls, hedges or other materials used for screening; and/or open space is appropriate for the proposed use in reference the specific property.
- e. Lighting:
  - i. Lights associated with the use will not create a nuisance nor distract traffic.
  - ii. Brightness, intensity, glare of lights will be similar to lighting which would be customarily used for permitted uses in the applicable zoning district.
- f. General compatibility with adjacent properties and other property in the district.
  - i. Any use listed as a Conditional Use is generally compatible in the district it is listed in.
  - ii. General compatibility is used when prescribing conditions for approval of a permit.

10. The findings contained herein combined with the findings of the Board of Adjustment contained in the motion to approve the Conditional Use Permit serve as the Official Findings of Fact referenced in Section 17.22.02.1.E and 17.22.02.01.F. The Board of Adjustment requests the Zoning Officer to prepare the findings of fact, which are to be approved by the Chairperson of the Board of Adjustment; and for the Zoning Officer to issue the Conditional Use Permit and any letters of assurance, building permits, or other items associated with said Conditional Use Permit.

11. The date of the decision by the Board of Adjustment on this matter is considered the official filing date of the decision of the Board of Adjustment.

12. If no work has commenced, unless otherwise specified by the Board of Adjustment, the Conditional Use Permit shall expire two (2) years from the date upon which the Conditional Use Permit becomes effective or two (2) years following completion of any final appeal of the decision of the Board of Adjustment to issue the permit. (Ref: Zon. Ord. Section 17.22.02I)

**Article 14: Standard Findings of Fact for Approval of Variances**

1. City of Milbank adopted its Comprehensive Land Use Plan on May 14, 2001 (Ref: SDCL 11-4-3)
2. City of Milbank adopted its current zoning regulations with Ordinance 682 on June 11, 2001. (Ref: SDCL 11-4-2; 11-4-4)
3. City of Milbank Zoning Ordinance appoints the Planning Commission to act as the Board of Adjustment (Ref: SDCL 11-4-13 and City of Milbank Zoning Ordinance (Zon. Ord.) Chapter 17.20.01)
4. The City of Milbank Board of Adjustment is authorized to review and decide upon applications for variance from the terms of the City of Milbank Zoning Ordinance as will not be contrary to the public interest, if, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship and so that the spirit of the ordinance is observed and substantial justice is done. (Ref: SDCL 11-4-17 and Zon. Ord. Section 17.20.03)
5. Required public notices per South Dakota Codified Law and City of Milbank Zoning Ordinance have been met. (Ref: SDCL 11-4-21 and Zon. Ord. Section 17.22.02.2 and 17.22.02.03)
6. On the date identified in the public notice, a public hearing was held before the City of Milbank Board of Adjustment. (Ref: SDCL 11-4-21 and Zon. Ord. Section 17.22.02.4)
7. Opportunity for testimony, both in support and in opposition to the request, was allowed.
8. The Board of Adjustment reviewed proponent, opponent, and staff testimony.
9. A written application for a variance was submitted prior to the application deadline and testimony provided which demonstrates (Ref: Zon. Ord. Section 17.22.02.5)

- a. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved, and which are applicable to other land, structures, or buildings in the same district (Ref: Zon. Ord. Section 17.22.02.5.A); and
  - b. That literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance (Ref: Zon. Ord. Section 17.22.02.5.B); and
  - c. That the special conditions and circumstances do not result from the actions of the applicant (Ref: Zon. Ord. Section 17.22.02.5.C); and
  - d. Financial disadvantage of the property owner was not used to constitute conclusive proof of unnecessary hardship within the purposes of zoning (Ref: 17.22.02.5.D); and
  - e. That granting the variance request will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same district (Ref: Zon. Ord. Section 17.22.02.5.E); and
  - f. The approval of this variance is not based upon the nonconforming use of neighboring lands, structures, or buildings in the same district; and no permitted or nonconforming use of lands, structures, or buildings in other districts were considered grounds for the issuance of this variance. (Ref: Zon. Ord. Section 17.22.02.5.F)
10. This variance does not authorize a use not permissible under the terms of this regulation in the district involved, or any use expressly or by implication prohibited by the terms of the City of Milbank Zoning Ordinance in the applicable Zoning District. (Ref: Zon. Ord. Section 17.22.02.7)
11. The granting of the variance with safeguards and conditions, as may be imposed as a condition of granting this variance, will be in harmony with the general purpose and intent of this regulation, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare. (Ref: Zon. Ord. Section 17.22.02.6)
- a. Violation of such conditions and safeguards, if imposed, will be deemed a violation of the City of Milbank Zoning Ordinance and punishable under its terms. (Ref: Zon. Ord. Section 17.22.02.6)

12. The findings contained herein combined with the findings of the Board of Adjustment contained in the motion to approve the variance serve as the Official Findings of Fact referenced in Section 17.22.02.5 of the City of Milbank Zoning Ordinance. The Board of Adjustment requests the Zoning Officer to prepare the Findings of Fact, which are to be approved by the Chairperson of the Board of Adjustment; and for the Zoning Officer to notify the applicant of the Board of Adjustment's decision regarding this variance and any letters of assurance, building permits or other items associated with said variance.
13. The date of the decision by the Board of Adjustment on this matter is considered the official filing date of the decision of the Board of Adjustment.
14. If no work has commenced, unless otherwise specified by the Board of Adjustment, a variance shall expire two (2) years from the date upon which the variance becomes effective or two (2) years following completion of any final appeal of the decision of the Board of Adjustment to issue the variance.

***Article 15: Conduct of the members of the Board of Adjustment***

- The Board of Adjustment represents the whole community. Its principle responsibility is neither to the developer nor to the applicant. Members must be objective and make decisions in accordance with the City of Milbank Zoning Ordinance and therefore in the interest of the whole city.
- Board of Adjustment members must be committed to the concept of planning and zoning.
- Members must have the ability to grasp and discern the essential facts and issues of a problem and without becoming waylaid by side issues. They must have the strength to make decisions.
- Members of the Board of Adjustment shall take such time as to prepare themselves for hearings and meetings.
- If a Board of Adjustment member makes application to the Planning Commission on their own behalf, they will be permitted to make their presentation to the Commission in the same manner that any other applicant would be allowed to do. However, they will abstain from discussion and voting related to the item.

- If at all possible, Board of Adjustment members who will not be able to attend the meeting should notify the Zoning Officer by 5:00 p.m. the day before the meeting or sooner.
- Board of Adjustment members will not accept gifts from known opponents or applicants with matters pending before the Board.

***Article 16: Separability***

- Should any article of the Board of Adjustment By-Laws be found to be illegal, the remaining articles shall remain in effect.

***Article 17: Adoption and Amendment of By-Laws***

- By-law adoption or amendment shall be made following review by the legal counsel.
- The by-laws shall be adopted or amended upon a vote of a majority of the members of the Board of Adjustment.
- Adoption or amendment of by-laws takes effect immediately following a successful vote.