

## **CHAPTER 13 – DESIGNATING LEGAL BOUNDARIES**

### **ARTICLE 2 - EXCEPTIONS AND ENCROACHMENTS**

#### **SECTIONS:**

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Section 13-2-117. Conditional use permits.

Section 13-2-118 to 199, inclusive. Reserved.

**Sections 13-2-101 to 116, inclusive. Exceptions and encroachments - general provisions.**

**Section 13-2-101 Requirement for conforming structures to height limitations.**

Any structure hereafter erected or altered shall comply with the height limitations of the district in which it is located except as specified in this article.

**Section 13-2-102 Certain appurtenances may exceed height limitations - exceptions.**

The following appurtenances may exceed the prescribed height limit provided they are normally required for use permitted in the district in which they are erected or constructed; flagpoles, chimneys, cooling towers, elevator bulkheads, belfries, penthouses for other than living purposes, grain elevators, stacks, silos, storage towers, observation towers, ornamental towers, monuments, cupolas, domes, spires, standpipes and other necessary mechanical appurtenances and their protective housing; provided, however, that any of the above, except flagpoles and chimneys when located in any district with a height limit of 40 feet or less, shall be allowed only upon a finding of the Board of Adjustment that such appurtenances will not be unduly detrimental to the surrounding property.

**Section 13-2-103 Certain electronic towers allowed with permission of the Board of Adjustment.**

Radio, television, microwave and other electronic transmission or receiving towers in excess of height limits may be allowed in any district as a conditional use upon a finding by the Board of Adjustment that topographic or other physical considerations make it necessary that they be located outside a district where they are permitted as a matter of right and that the proposed tower or towers will not be unduly detrimental to surrounding property.

**Section 13-2-104 Restrictions on structures established by FAA or S.D. Division of Aeronautics rules.**

In any district, no structure shall be erected where prohibited or which exceeds the maximum heights permissible under the rules of the Federal Aeronautics Administration or the South Dakota Division of Aeronautics.

**Section 13-2-105 Certain public and semi-public buildings and structures allowed to exceed height limitations with permission of Board of Adjustment.**

Public and semi-public buildings and structures such as hospitals, churches, sanitariums, schools and water reservoir towers may exceed the height limits of the district in which they are located, provided that such buildings and structures shall provide at least one additional foot of yard space on each side for each additional foot that such building or structure exceeds the specified height limit of the district in which it is located and further provided that a finding is made by the Board of Adjustment that such additional height will not be materially detrimental to surrounding property.

**Section 13-2-106 Requirement for conforming buildings and structures to yard space regulations.**

Any building or structure hereafter erected, altered or established shall comply with the yard space requirements of the district in which it is located except as specified below: All residential structures erected or moved into the local business district shall respectively conform to the regulations governing the residential district to which the residence conforms. Any required yard space shall be open from 30 inches above the ground to the sky except as specified herein.

**Section 13-2-107 Allowable yard space encroachments for eaves, cornices and architectural features.**

Eaves, cornices and projecting architectural features may extend two feet into a required yard space except that eaves may encroach 3 feet into a yard space when such yard space is seven feet or ore in width.

**Section 13-2-108 Allowable yard space encroachments for fire escapes.**

Open fire escapes may extend into any required side or rear yard not more than five (5) feet.

**Section 13-2-109 Allowable yard space encroachments for chimneys.**

Chimneys when not more than 4 feet wide may extend two feet into any required yard space.

**Section 13-2-110 Allowable yard space encroachments for porches and terraces - other requirements.**

Open, uncovered porches or terraces no higher than the first floor above grade on the side of the building to which they are appurtenant and in no event higher than 30 inches above grade of the lot on the side of the building where such porch or terrace is located, may extend into any required yard. No railing or other barrier higher than 36 inches shall be placed around such porch or terrace. Any such porch or terrace when located on a lot at the intersection of two streets or a street and an alley shall comply with the provisions designed to insure proper sight distances as set forth in this ordinance for fences and hedges. Enclosed or covered porches shall be considered part of the building in determination of the size of yard or lot coverage.

**Section 13-2-111 Allowable yard space encroachments for accessory buildings or structures.**

Accessory buildings or structures shall be permitted to occupy a required yard with the following restrictions:

1. No such accessory structure shall be closer than 20 feet from any street line.
2. An accessory structure may be constructed within 2 feet of an inside lot line or alley line when the entire structure is not less than 60 feet from the front line, and not less than 6 feet from the principal building. The accessory building may be constructed less than 60 feet from the front lot line if it is entirely to the rear of any principal building on the neighboring lot.

**Section 13-2-112 Certain automobile storage garages excepted from yard space requirements with permission of Board of Adjustment.**

Automobile storage garages may be allowed within a required front or side yard when such garage will be entirely below the grade of the lot and after a finding by the Board of Adjustment that topographic conditions make such a location necessary, that such orientation will not create a hazard to automobile or pedestrian traffic in the street, and that such orientation will be in harmony with the character of development of the neighborhood.

**Section 13-2-113 Certain one-family dwellings allowed on lots smaller than yard space requirements with permission of Board of Adjustment.**

No dwelling may be erected on any lot, separately owned or under contract of sale and containing, at the time of the passage of this ordinance, an area or a width smaller than that required for a one-family dwelling, unless allowed by the Board of Adjustment.

**Section 13-2-114 Requirements for walls, hedges and fences to provide unobstructed view at intersections - exceptions.**

There shall be provided an unobstructed view across the triangle formed by joining points measured 60 feet distant along the property line from the intersection of two streets or 15 feet along both the street and alley line from the intersection of a street and an alley. Where there is a speed limit of 30 miles per hour or less, said distance along the property line for streets shall be twenty feet. Within said triangle, there shall be no sight obscuring or partly obscuring walls, fence or foliage higher than 30 inches above grade or in the case of trees, foliage lower than 8 feet. Vertical measurement shall be made at the top of the curb on the street or alley adjacent to the nearest side of the triangle or if no curb exists, from the edge of the nearest traveled way. This provision does not apply to chain link fences, on which no obstructions are attached thereto.

**Section 13-2-115 Power of Board of Adjustment to grant interim special use permits for certain uses.**

It is recognized that there may be extensive areas of undeveloped land upon which the planned type of development will not take place for a considerable time. It is therefore reasonable and proper that interim uses not in conformity with the land use plan be allowed.

The Board of Adjustment is authorized to grant special use permits for property within the district allowing for uses not allowed as a matter of right in said district under the following conditions:

1. The proposed use shall be an open land type of use and shall not involve the erection of permanent buildings or other permanent improvements and shall be located in an undeveloped area, provided however, that permanent buildings shall be allowed which conform with the zoning in force upon the parcel.
2. The proposed use and the placement thereof upon the land shall be such that it shall not be unsightly to the general public or interfere with the enjoyment or use of neighboring properties.
3. All permanent structures shall comply with all provisions of the district in which the proposed use is located.
4. All temporary uses and structure shall comply with all provisions of the uniform building code.
5. The Board of Adjustment may append reasonable conditions to any special use permit to the end that the objectives of this ordinance may be upheld.

**Section 13-2-116 Procedures, conditions, and restrictions on interim special use permits.**

Before issuing any special use permit, the Board shall hold a public hearing and shall give notice hereof to all property owners within 200 feet and to the planning commission and city commission. The zoning administrator shall enforce compliance with the terms of the special use permit and shall initiate actions for renewal or cessation of the activity at the expiration of the special use permit.

No special use permit shall be issued for a period to exceed two years, provided however, that such special use permit may be renewed for additional periods not to exceed two years each, upon finding that conditions have not changed sufficiently to warrant denial of such a renewal.

No property owner or owner of other interest in the land shall have a vested right in the renewal of any special use permit.

**Source:** R.O. Pierre, Ord. No. 1372, 1995.

### **Section 13-2-117 Conditional use permits.**

The City Commission may authorize by conditional use permit the uses designated in this chapter when located in a zoning district allowing such use. The City Commission shall impose such conditions as are appropriate and necessary to ensure compliance with the comprehensive plan and protect the health, safety and general welfare in the issuance of such conditional use permit. Unless expressly modified by the Board of Adjustment, all regulations of the zoning district in which the use is located shall apply.

1. **Application.** An application shall be filed with the Planning Commission. The owner may be required to submit plans, drawn to scale, indicating the location and dimensions of all existing and proposed buildings or additions, parking, landscaping, building setbacks, screenings, and the use conducted therein or the use of any land.

2. **Notification.** Notification of surrounding property owners, tenants and interested parties shall be accomplished by posting a sign on the property noting the fact that a conditional use permit is pending and by mailing notices of public hearing to neighboring property owners not less than seven days before the public hearing before the planning commission.

3, **Planning Commission Recommendation.** For each application for a conditional use, the City Planning Commission shall report to the City Commission its findings and recommendations, including the stipulation that additional conditions regarding the location, character, or other features of the proposed use or buildings may be imposed when they are deemed necessary for protection of public interest.

4. **Public Hearing.** Upon application and review by the City Planning Commission, the City Commission shall hold a public hearing thereon, after having given a seven-day notification in a daily newspaper of general circulation.

5. **Criteria for Review.** In reviewing applications for conditional use permits, due consideration shall be given to the following:

- a. The location, character and natural features of the property;
- b. The location, character and design of the adjacent buildings;
- c. Proposed fencing, screening and landscaping;
- d. Proposed vegetation, topography, and natural drainage;
- e. Proposed pedestrian and vehicular access, circulation and parking, including that related to bicycles and other unpowered vehicles and provisions for handicapped persons;
- f. Existing traffic and traffic to be generated by the proposed use;
- g. Proposed signs and lighting;

h. The availability of public utilities and services;

I. The objectives of the adopted comprehensive plan and the purpose of the ordinance codified herein;

j. The overall density, yard, height, and other requirements of the zone in which it is located;

k. The effects of noise, odor, smoke, dust, air and water pollution and the degree of control through the use of clarifiers, screening, setbacks and orientation; and

l. The degree to which conditions imposed will mitigate any probably adverse impacts of the proposed use on existing adjacent uses.

**6. Expiration of Conditional Use Permit.** A conditional use permit shall automatically expire if the use permitted has not been started within 12 months or if the use permitted ceases for a period of 12 months.

**7. Preexisting Uses.** An existing use eligible for a conditional use permit which was lawfully established on the effective date of this title shall be deemed to have received a conditional use permit and shall be provided with such permit upon request, and it shall not be a nonconforming use; provided, however, for any enlargement, extension or relocation of such existing use, an application in conformance with this chapter shall be required.

**Source:** Ord. 1444, 1999.

**Section 13-2-118 to 199, inclusive. Reserved.**