

ARTICLE 15

ADMINISTRATIVE PROCEDURE AND ENFORCEMENT

Section 1501 Brule County Zoning Administrator

An administrative official who shall be known as the Zoning Administrator and who shall be designated by the Brule County Commission shall administer and enforce this ordinance. They may be provided with the assistance of such other persons as the County Commission may direct.

If the Zoning Administrator shall find that any of the provisions of this Ordinance are being violated, they shall notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. They shall order discontinuance of illegal use of land, buildings or structures; removal of illegal buildings or structures or of illegal additions, alterations, or structural changes; discontinuance of any illegal work being done; or shall take any other action authorized by the Ordinance to insure compliance with or to prevent violation to its provisions. The Zoning Administrator shall report all actions to the Planning Commission and County Commission at the next general meeting of each.

Section 1503 Right of Entry

Whenever necessary to make an inspection to enforce any of the provisions of this ordinance, or whenever the Zoning Administrator or an authorized representative has reasonable cause to believe that there exists in any building or upon any premises an ordinance violation, the Zoning Administrator or an authorized representative may enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon the Zoning Administrator by this ordinance, provided that if such building or premises be occupied, they shall first present proper credentials and request entry; and if such building or premises be unoccupied, they shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. If such entry is refused, the Zoning Administrator or an authorized representative shall have recourse to every remedy provided by law to secure entry.

Section 1505 Planning Commission Appointment and Terms

The Brule County Commission shall appoint a Planning Commission, as provided in SDCL 11-2-2. The County Planning Commission shall consist of an odd number of members, including at least one (1) county commissioner. The term of each of the appointed members of the County Planning Commission shall be for three (3) years; provided, that when the Planning Commission is first appointed, the lengths of the terms shall be varied so that no more than one-third (1/3) of the terms shall expire in the same year. Any appointed member of the County Planning Commission may be removed for cause, after hearing prior to the expiration of their term by a majority vote of the elected members of the Board of County Commissioners. Administrative officials of the county may be appointed as ex officio members of the commission.

The Planning Commission shall adopt rules necessary for the conduct of its affairs and keeping with the provisions of this Ordinance including the selection of a Chairperson and Vice-Chairperson. The Commission shall have a quorum present prior to conducting official business. A quorum shall be defined as fifty one (51) percent of the Commission's total membership. The term of the Chairman and Vice-Chairman shall be for one (1) year. The Planning Commission shall keep a record of all proceedings. Meetings shall be regularly scheduled and held at the call of the Chairman, at such other times as the Planning Commission may determine, but in no event, shall the Commission meet less than once (1) every three (3) months. All meetings of the Planning Commission shall be open to the public except as provided by SDCL 1-25-5. Those meetings designated as public hearings shall allow for testimony from all interested parties.

Section 1507 Planning Commission Voting Requirements

The Planning Commission shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failure to vote indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be a public record and be filed with the County Auditor. All votes shall be by simple majority of the members present. An abstention vote shall not be considered as a vote in the positive or negative. The Planning Commission shall adopt from time to time, additional regulations, as it may deem necessary to carry appropriate provisions of this Ordinance into effect. No official action or vote shall be acted upon without a quorum present in accordance with Section 1505.

Section 1509 Planning Commission Amendment and Rezoning Duties

Upon notification of a request for an amendment or rezone or any part thereof the Planning Commission shall schedule a public hearing. The Commission shall discuss the application and formulate a recommended action. The recommendation should be in the form of a motion clearly stating the Commission's recommended action. The Commission shall forward its recommendation to the County Commission at least ten (10) days in advance of the County Commission meeting at which the application is being considered.

Section 1511 Planning Commission Appeal, Variance, and Conditional Use Duties

The Planning Commission shall review all applications for appeals, variances, or conditional uses at an official public hearing of the Commission. Notice of the time and place of the hearing shall be given pursuant to Section 1603 (3-5). Any person may appear and support or protest the pending action. Upon receipt of an appeal the Commission shall discuss the appeal and formulate a decision. In hearing conditional use and variance applications the Commission shall discuss the application and formulate a recommended action. The recommendation should be in the form of a motion clearly stating the Commission's recommendation. The Commission shall forward its recommendation to the Board of Adjustment at least ten (10) days in advance of the Board of Adjustment meeting at which the application is being considered.

Section 1513 Board of Adjustment Appointment and Terms

The Brule County Commission shall serve as the Board of Adjustment. The Board of Adjustment is hereby designated to hear all requests for variances, conditional uses, and appeals from the Planning Commission.

The County Auditor shall act, as secretary to the Board of Adjustment when acting in zoning cases, but shall take no part in the deliberations. Meetings of the Board of Adjustment acting in zoning cases shall be held at the call of the Chairperson and at such other times, as the Board shall determine.

All meetings of the Board of Adjustment shall be open to the public. Those meetings designated as public hearings shall allow for testimony from all interested parties. The Board, acting in zoning cases, shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent, or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be filed in the office of the County Auditor by 5:00 P.M. the following business day and shall be a public record.

Section 1515 Board of Adjustment Voting Requirements

The Board of Adjustment may, in specific cases to avoid unwarranted hardship which constitutes an unreasonable deprivation of use as distinguished from the mere grant of a privilege, make upon an affirmative vote of two-thirds (2/3) (4 of 5) of the full membership of the Board of Adjustment, overrule the Zoning Administrator or Planning Commission, grant conditional uses or variances to the terms of this ordinance.

Section 1517 Board of Adjustment Appeal, Variance, and Conditional Use Duties

Upon notification of a request for an appeal, variance, conditional use, or any part thereof the Board of Adjustment shall schedule a public hearing. Notice of the time and place of the hearing shall be given pursuant to Section 1703 (5-7). Any person may appear and support or protest the pending action. The Board shall discuss the application and formulate a decision. The decision should be in the form of a motion clearly stating the Board's decision and the reasons supporting said decision. All requests shall be in accordance with Articles 16-18. Appeals of a Board decision shall be done pursuant to Section 1901.

Section 1519 County Commission Amendment and Rezoning Duties

The County Commission may amend, supplement, change, modify, or repeal any regulation, restriction, boundary, or enforcement provision established in the zoning ordinance or Zoning Map. The County Commission shall forward a copy of the proposed changes to the Planning Commission for public review and comment pursuant to Section 1609. Upon receipt of the comments from the Planning Commission the County Commission shall provide a notice of public hearing pursuant to Section 2001. The County Commission shall thereafter either adopt or reject such amendment, supplement, change, modification, or repeal. If adopted the County Commission shall publish a notice of fact of adoption once in a legal newspaper of the County and take effect on the twentieth day after its publication. (SDCL 11-2-30)

Section 1521 Building Permits

No construction shall commence on any building or structure, which meets any one (1) of the criteria listed below without a permit therefore, issued by the Zoning Administrator. A building permit shall not be issued by the Zoning Administrator except in conformity with the provisions of this Ordinance, unless they received a written order from the Board of Adjustment in the form of an administrative review, conditional use, or variance as provided by this Ordinance. All building permits are subject to the appeal process; therefore, any work begun prior to the five (5) day appeal period shall be at the owner's risk.

Building permits are required in the following instances:

1. For any structure or building in which the structure or building is erected, partially erected, moved, added to, or structurally altered;
2. For any structure or building in which the use for that structure or building is significantly changed; or
3. For any structure or building, regardless of cost, if additional land or area is required for the improvements to be sited on.

An exemption/exception from a building permit does not automatically preclude the activity from the remaining zoning regulations. Exceptions to building permits shall be:

1. Remodeling, improvements, or maintenance provided such activity does not include structural alterations or require additional land or space;
2. Concrete slabs on grade;
3. Fences, corrals, and windbreaks pursuant to Section 517;
4. Semi-portable agricultural structures; and
5. A (one) one hundred twenty (120) square foot accessory building without a sub-grade foundation.

Section 1523 Applications for Building Permits, Conditional Uses, Variances, and Amendments

All applications for building permits, conditional uses, variances, amendments, and rezoning must be signed or approved in writing by the owner of record. In the event the owner of record has a binding purchase agreement contingent on the approval of the building permit, conditional use, or variance the potential purchaser may submit and sign all documents required for application. All applications for building permits shall be accompanied by a site plan.

The site development plan shall be drawn to scale and indicate the following:

1. Location and topography of the proposed structure(s), including adjacent property owners and proximity to federal, state highways, and to county, township, or city roads;
2. A north arrow;
3. The actual dimensions and shape of the lot to be built upon;

4. The exact sizes and locations on the lot of buildings already existing, if any, and the location and dimensions of the proposed building or alteration;
5. Property lines and square footage of the proposed structure(s);
6. Location and dimensions of all easements and right-of-ways;
7. General road and pedestrian walkway plan;
8. General utility and sewer plans with proximity and proposed connection to central or individual services; and
9. Site drainage plan and development impact on culverts, etc.

Refer to document entitled Site Plan Requirements for a detailed example of a site plan.

The application shall include such other information as may be lawfully required by the Zoning Administrator, including existing or proposed building or alterations; existing or proposed uses of the building and land; the number of families, housekeeping units, rental units, or animal units the building is designed to accommodate; conditions existing on the lot; and such other matters as may be necessary to determine conformance with, and provide for the enforcement of, this Ordinance. The Zoning Administrator shall return one (1) copy of the application to the applicant after they shall have marked such copy either as approved or disapproved and attested to same by their signature on such copy.

If a building permit is refused, the Zoning Administrator shall state the reasons for such refusal in writing. The Zoning Administrator shall retain the original and one (1) copy of the application, similarly marked. The issuance of a building permit shall in no case be construed as waiving any provisions of this Ordinance.

Section 1525 Expiration of Building Permits, Conditional Uses and Variances

If the work described in any building permit, conditional use, or variance has not begun within one hundred eighty (180) days, or been completed within two (2) years from the date of issuance thereof, said permit shall expire; it shall be canceled by the Zoning Administrator, and written notice thereof shall be given to the persons affected, together with notice that further work, as described in the canceled permit, shall not proceed unless and until a renewed permit has been obtained at no additional cost unless substantial changes have been made to the initial permit application.

Section 1527 Construction and Use to be as Provided in Application, Plans, Permits, and Application for Zoning Compliance

Building permits issued on the basis of plans and applications approved by the Zoning Administrator authorize only the use, arrangement, and construction set forth in such approved plans and applications, and no other use, arrangement or construction. Use arrangement, or construction at variance with that authorized shall be deemed a violation of this Ordinance, and punishable as provided by Section 2303 of this ordinance.

Section 1529 Schedule of Fees, Charges, and Expenses

The Brule County Commission shall establish a schedule of fees, charges, and expenses and a collection procedure for variances, conditional uses, amendments, appeals, and other matters pertaining to this Ordinance. The schedule of fees shall be posted in the office of the Zoning Administrator and may be altered or amended only by the Brule County Commission. Until all application fees, charges, and expenses have been paid in full, no action shall be taken on any application or appeal.

Section 1531 Building Permit in a Conspicuous Place

All building permits issued by the Zoning Administrator must be placed in a conspicuous location on the building site for the duration of the construction of work described.

Section 1533 Agricultural Use Covenant Required

All building permits for residential dwellings, the transference of a residential dwelling within agriculturally zoned lands, or requests for rezoning of agricultural land shall be accompanied by an Agricultural Use Covenant as defined herein. Said covenant must be approved by the County Zoning Administrator and recorded in accordance with SDCL prior to issuance of the building permit or commencement of the rezoning process.

Section 1535 Bad Actor Legislation

The Brule County Commission may reject an application for any permit filed for a building permit, variance, conditional use, amendment, rezoning, or otherwise for the reasons and on the grounds set forth in SDCL 1-40-27, as revised and amended. Such rejection shall be based upon a specific finding by the Commission that the applicant has engaged in the activity identified in the aforesaid statute. The burden on the Commission to make the specific finding provided for herein shall be by a preponderance of the evidence.

ARTICLE 16

PLANNING COMMISSION

Section 1601 Powers and Duties

The Planning Commission shall have the power to hear requests for conditional uses, variances, amendments, change in zone, and appeals of a decision rendered by the Zoning Administrator or other official actions.

Section 1603 Appeals

Any decision rendered by the Zoning Administrator may be appealed to the Planning Commission. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Planning Commission, that by reason of facts stated in the certificate a stay would, in their opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by a court of competent jurisdiction on application or notice to the officer for whom the appeal is taken and on due cause shown.

The Planning Commission shall have the power to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Zoning Administrator based on or made in the enforcement of any zoning regulation or any regulation relating to the location or soundness of structures or to interpret any map. Prior to hearing an appeal the following requirements shall be completed.

1. The applicant or any other person aggrieved by the decision of the Zoning Administrator shall file a written appeal with the Zoning Administrator within five (5) working days of the decision;
2. The Zoning Administrator or from whom the appeal is taken shall forthwith transmit to the Planning Commission all the papers constituting the record upon which the action appealed was taken;
3. Notice of the hearing date shall be given at least ten (10) days in advance by publication in a legal newspaper of the county;
4. Written notice shall be sent to the appellant, applicant, and all owners of real property in accordance with the following provisions:
 - A. Projects within lands zoned Agriculture shall notify all property owners lying within two thousand six hundred forty (2,640) feet of the property on which the appeal is pending, if a particular piece of property is in question.

- B. Projects within lands not zoned Agriculture shall notify all property owners lying within one thousand three hundred twenty (1,320) feet of the property on which the appeal is pending, if a particular piece of property is in question.

The notice shall be given to each owner of record by depositing such notice in the United States Post Office not less than ten (10) days prior to the hearing date;

5. A notification sign shall be posted on the property upon which action is pending at least seven (7) days prior to the hearing date. Such signs shall be placed along the property's access frontage so as to be visible from the nearest public access point. If a property does not have a road frontage, then such signs shall be placed upon the closest available right-of-way and upon the property. Said signs shall be not less than one hundred and eighty-seven (187) square inches in size. It shall be unlawful for any person to remove, mutilate, destroy, or change such posted notice prior to such hearings;
6. The Zoning Administrator or whomever shall present their decision to the Planning Commission for review; and
7. The Planning Commission shall uphold, overrule, or amend the decision pending before the Commission.

Section 1605 Conditional Uses

The Planning Commission shall have the power to hear and make recommendations, in accordance with the provisions of this Ordinance, upon conditional uses. The Commission shall not review a conditional use request unless and until all documents required for said use have been satisfactorily completed and all required fees have been paid in full. The Planning Commission shall review all conditional use applications at an official public hearing of the Commission. Prior to hearing a request for a conditional use the following requirements shall be met.

1. The applicant shall specifically cite, within the application the section of this Ordinance under which the conditional use is sought and stating the grounds on which it is requested;
2. Notice of public hearing shall be given, as in Section 1603 (3-5);
3. The public hearing shall be held. Any party may appear in person, or by agent or attorney;
4. The Planning Commission shall make a finding and recommendation that it is empowered under the section of this Ordinance described in the application, to include:
 - A. Recommend granting of the conditional use;
 - B. Recommend granting with conditions; or
 - C. Recommend denial of the conditional use.

5. Before any conditional use is decided, the Planning Commission shall make written findings certifying compliance with the specific rules governing individual conditional uses and that satisfactory provision and arrangement has been made concerning the following, where applicable:
 - A. Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe;
 - B. Off right-of-way parking and loading areas where required; with particular attention to the items in (A) above and the economic, noise, glare or odor effects of the conditional use on adjoining properties and properties generally in the district;
 - C. Refuse and service areas, with particular reference to the items in (A) and (B) above;
 - D. Utilities, with reference to locations, availability, and compatibility;
 - E. Screening and buffering with reference to type, dimensions, and character;
 - F. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with properties in the district;
 - G. Required yards and other open spaces; and
 - H. General compatibility with adjacent properties and other property in the district and that the granting of the conditional use will not adversely affect the public interest.

Section 1607 Variances

The Planning Commission shall have the power to hear requests for variances from this Ordinance in instances where strict enforcement would cause unnecessary hardship, and to recommend approval only in accordance with this ordinance. The Commission shall not review a variance unless and until all documents required for application for said request have been satisfactorily completed and all required fees have been paid in full.

1. No such variance shall be recommended for approval by the Planning Commission unless it finds:
 - A. The strict application of the ordinance would produce undue hardship;
 - B. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity;

- C. The authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the grant of the variance; and
 - D. The granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit, and caprice.
- 2. No variance shall be recommended for approval unless the Planning Commission finds the condition or situation of the property concerning or the intended use of the property concerned, or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment of this ordinance.
- 3. A recommendation of approval concerning a variance from the terms of this ordinance shall not be founded by the Planning Commission unless and until:
 - A. A written application for a variance is submitted demonstrating 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 district;
 - B. The 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;
 - C. The special conditions and circumstances do not result from the actions of the applicant; and
 - D. The granting of the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structure, or buildings in the same district.
- 4. No 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 shall be considered grounds for the issuance of a variance.
- 5. Notice of public hearing shall be given, as in Section 1603 (3-5).
- 6. The public hearing shall be held. Any party may appear in person for by agent or by attorney.
- 7. The Planning Commission shall make findings that the requirements of this Section have been met by the applicant for a variance; the Commission shall further make a finding that the reasons set forth in the application justify the recommendation of granting the variance, and the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure; the Planning Commission shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this ordinance, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

8. In recommending approval of any variance, the Planning Commission may prescribe appropriate conditions and safeguards in conformity with this ordinance.
9. Under no circumstances shall the Planning Commission recommend granting a variance to allow a use not permissible under the terms of this ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this ordinance in said district.

The recommendation should be in the form of a motion clearly stating the Commission's recommended action. The Commission shall forward its recommendation to the Board of Adjustment at least ten (10) days in advance of the Board of Adjustment meeting at which the application is being considered.

Section 1609 Amendments and Rezoning

The Planning Commission shall have the power to hear and make recommendations, in accordance with provisions of this Ordinance, on requests for amendment or change in zoning. A petition for an amendment or change in zoning will not be acted upon until:

1. All documents required for application for said request have been satisfactorily completed and all required fees have been paid in full.
2. The individual petitioner provides a completed amendment or change in zone request. Said request must clearly state:
 - A. Special conditions and circumstances exist which require the land to be rezoned;
 - B. The special conditions and circumstances do not result from the actions of the applicant; and
 - C. The granting of the amendment or change in zoning will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structure, or buildings in the area.
3. Notice of public hearing shall be given, as in Section 1603 (3-5).
4. The public hearing shall be held. Any party may appear in person or by agent or attorney.
5. The Planning Commission shall make findings that the requirements of this Section have been met by the applicant for an amendment or change in zone, to include:
 - A. The reasons set forth in the application justify a recommendation to approve the amendment or change in zone;
 - B. The amendment or change in zone will make possible the reasonable use of the land, building, or structure;
 - C. A recommendation to grant the amendment or change in zone will be in harmony with the general purpose and intent of this ordinance; and

- D. A recommendation of approval will not be injurious to the neighborhood, or otherwise detrimental to the public welfare as presented and testified to by the applicant.
- 6. No petition for amendment or change in zone shall be recommended for approval unless the Planning Commission finds that the condition, situation or the intended use of the property concerned is unique, required, or necessary as to make reasonably practicable the amendment or change in zone.
 - 7. Before any amendment or petition for rezoning is recommended for approval, the Planning Commission shall make written findings certifying compliance with:
 - A. The Comprehensive Plan;
 - B. Specific rules governing land uses;
 - C. Zoning district regulations; and
 - D. Satisfactory provision and arrangement has been made concerning the following, where applicable:
 - 1. Certification of compliance with all ordinances and regulations regarding licensing and zoning, health, plumbing, electrical, building, fire prevention, and all other applicable ordinances and regulations;
 - 2. Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe;
 - 3. Off right-of-way parking and loading areas where required; with particular attention to the items in (A) above and the economic, noise, glare or odor effects of the amendment or rezone on adjoining properties and properties generally in the district;
 - 4. Refuse and service areas, with particular reference to the items in (A) and (B) above;
 - 5. Utilities, with reference to locations, availability, and compatibility;
 - 6. Screening and buffering with reference to type, dimensions, and character;
 - 7. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with properties in the district;
 - 8. Required yards and other open spaces; and

9. General compatibility with adjacent properties and other property in the district.
8. In recommending approval of any petition for amendment or change in zone, the Planning Commission may prescribe appropriate conditions and safeguards in conformity with this ordinance.

The recommendation should be in the form of a motion clearly stating the Commission's recommendation. The Commission shall forward its recommendation to the County Commission at least ten (10) days in advance of the County Commission meeting at which the application is being considered.

THIS PAGE RESERVED FOR FUTURE USE

ARTICLE 17

BOARD OF ADJUSTMENT

Section 1701 Powers and Duties

The Board of Adjustment shall have the power to hear requests for variances, conditional uses and appeals of a decision rendered by the Zoning Administrator or Planning Commission.

Section 1703 Appeals

The Board of Adjustment shall have the power to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Zoning Administrator or Planning Commission based on or made in the enforcement of any zoning regulation or any regulation relating to the location or soundness of structures or to interpret any map. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of Adjustment, that by reason of facts stated in the certificate a stay would, in their opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by a court of competent jurisdiction on application or notice to the officer for whom the appeal is taken and on due cause shown. Prior to hearing an appeal the following requirements shall be completed.

1. The County, appellant, and Planning Commission shall act upon appeals pursuant to Section 1901.
2. The Planning Commission shall have reviewed the application pursuant to Section 1603 of this Ordinance;
3. The applicant or any other person aggrieved by the decision of the Zoning Administrator or Planning Commission shall file a written appeal with the Zoning Administrator within five (5) working days of the decision;
4. The Zoning Administrator or Planning Commission secretary from whom the appeal is taken shall forthwith transmit to the Board of Adjustment all the papers constituting the record upon which the action appealed was taken;
5. Notice of the hearing date shall be given at least ten (10) days in advance by publication in a legal newspaper of the county;
6. Written notice shall be sent to the appellant, applicant, and all owners of real property in accordance with the following provisions:
 - A. Projects within lands zoned Agricultural shall notify all property owners lying within two thousand six hundred forty (2,640) feet of the property on which the appeal is pending, if a particular piece of property is in question.

- B. Projects within lands not zoned Agricultural shall notify all property owners lying within one thousand three hundred twenty (1,320) feet of the property on which the appeal is pending, if a particular piece of property is in question.

The notice shall be given to each owner of record by depositing such notice in the United States Post Office not less than ten (10) days prior to the hearing date;

7. A notification sign shall be posted on the property upon which action is pending at least seven (7) days prior to the hearing date. Such signs shall be placed along the property's access frontage so as to be visible from the nearest public access point. If a property does not have a road frontage, then such signs shall be placed upon the closest available right-of-way and upon the property. Said signs shall be not less than one hundred and eighty seven (187) square inches in size. It shall be unlawful for any person to remove, mutilate, destroy, or change such posted notice prior to such hearings;
8. The Zoning Administrator or Planning Commission Chairperson shall present their decision to the Board of Adjustment for review; and
9. The Board of Adjustment shall uphold, overrule, or amend the decision pending before the Board.
10. Upon exhaustion of the administrative appeal process as described herein recourse shall be to the Court of competent jurisdiction pursuant to Section 1901.

Section 1705 Conditional Uses

The Board of Adjustment shall have the power to hear and decide, in accordance with the provisions of this ordinance, requests for conditional uses or for decisions upon other special questions upon which the Board of Adjustment is authorized by this ordinance to pass; to decide such questions as are involved in determining whether conditional uses should be granted; and to grant conditional uses with such conditions and safeguards as are appropriate under this ordinance, or to deny conditional uses when not in harmony with the purpose and intent of this ordinance. Prior to hearing a request for a conditional use the following requirements shall be met.

1. The applicant shall specifically cite, within the application the section of this Ordinance under which the conditional use is sought and stating the grounds on which it is requested;
2. The Planning Commission has reviewed the application pursuant to Section 1605 of this Ordinance;
3. Notice of public hearing shall be given, as in Section 1603 (3-5);
4. The public hearing shall be held. Any party may appear in person, or by agent or attorney;

5. The Board of Adjustment shall make a finding that it is empowered under the section of this Ordinance described in the application to:
 - A. Grant the conditional use;
 - B. Grant with conditions; or
 - C. Deny the conditional use.

6. Before any conditional use is issued, the Board of Adjustment shall make written findings certifying compliance with the specific rules governing individual conditional uses and that satisfactory provision and arrangement has been made concerning the following, where applicable:
 - A. Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe;
 - B. Off right-of-way parking and loading areas where required; with particular attention to the items in (A) above and the economic, noise, glare or odor effects of the conditional use on adjoining properties and properties generally in the district;
 - C. Refuse and service areas, with particular reference to the items in (A) and (B) above;
 - D. Utilities, with reference to locations, availability, and compatibility;
 - E. Screening and buffering with reference to type, dimensions, and character;
 - F. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with properties in the district;
 - G. Required yards and other open spaces; and
 - H. General compatibility with adjacent properties and other property in the district and that the granting of the conditional use will not adversely affect the public interest.

The Board of Adjustment shall have the power to hear requests for variances from this Ordinance in instances where strict enforcement would cause unnecessary hardship, and to grant such variances only when the following provisions apply:

1. No such variance shall be authorized by the Board of Adjustment unless it finds:
 - A. The strict application of the ordinance would produce undue hardship;
 - B. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity;
 - C. The authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the grant of the variance; and
 - D. The granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit, and caprice.
2. No variance shall be authorized unless the Board of Adjustment finds that the condition or situation of the property concerning or the intended use of the property concerned, or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment of this ordinance.
3. A variance from the terms of this ordinance shall not be granted by the Board of Adjustment unless and until:
 - A. A written application for a variance is submitted demonstrating 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 district;
 - B. The 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;
 - C. The special conditions and circumstances do not result from the actions of the applicant; and
 - D. The granting of the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structure, or buildings in the same district.
4. No 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 shall be considered grounds for the issuance of a variance.
5. The Planning Commission has reviewed the application pursuant to Section 1607 of this Ordinance.

6. Notice of public hearing shall be given, as in Section 1603 (3-5).
7. The public hearing shall be held. Any party may appear in person for by agent or by attorney.
8. The Board of Adjustment shall make findings that the requirements of this Section have been met by the applicant for a variance; the Board shall further make a finding that the reasons set forth in the application justify the granting of the variance, and the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure; the Board of Adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this ordinance, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.
9. In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this ordinance and punishable under Section 2303 of this ordinance.
10. Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of this ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this ordinance in said district.

THIS PAGE RESERVED FOR FUTURE USE

ARTICLE 18

COUNTY COMMISSION

Section 1801 Powers and Duties

The County Commission shall have the power to hear requests for rezoning and amendment of the Zoning Ordinance.

Section 1803 Amendments or Changes in Zone

The County Commission shall have the power to hear and decide, in accordance with provisions of this ordinance, petitions for amendment or change in zoning. A petition for change in zoning will not be decided until:

1. The individual petitioner provides a completed amendment or change in zone request. Said request must clearly state:
 - A. Special conditions and circumstances exist which require the land to be rezoned;
 - B. The special conditions and circumstances do not result from the actions of the applicant; and
 - C. The granting of the amendment or change in zoning will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structure, or buildings in the area.
2. The Planning Commission has reviewed the application pursuant to Section 1609 of this Ordinance.
3. Notice of public hearing shall be given, as in Section 1603 (3-5).
4. The public hearing shall be held. Any party may appear in person or by agent or attorney.
5. The County Commission shall make findings that the requirements of this Section have been met by the applicant for an amendment or change in zone to include:
 - A. The reasons set forth in the application justify the granting of the amendment or change in zone;
 - B. The amendment or change in zone will make possible the reasonable use of the land, building, or structure;
 - C. The granting of the amendment or change in zone will be in harmony with the general purpose and intent of this ordinance; and
 - D. Approval of the request will not be injurious to the neighborhood, or otherwise detrimental to the public welfare as presented and testified to by the applicant.

6. No petition for amendment or change in zone shall be authorized unless the County Commission finds that the condition, situation or the intended use of the property concerned is unique, required, or necessary as to make reasonably practicable the amendment or change in zone.
7. Before any amendment or petition for rezoning is approved, the County Commission shall make written findings certifying compliance with:
 - A. The comprehensive plan;
 - B. Specific rules governing land uses;
 - C. Zoning district regulations; and
 - D. Satisfactory provision and arrangement has been made concerning the following, where applicable:
 1. Certification of compliance with all ordinances and regulations regarding licensing and zoning, health, plumbing, electrical, building, fire prevention, and all other applicable ordinances and regulations;
 2. Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe;
 3. Off right-of-way parking and loading areas where required; with particular attention to the items in (D(1)) above and the economic, noise, glare or odor effects of the amendment or rezone on adjoining properties and properties generally in the district;
 4. Refuse and service areas, with particular reference to the items in (1) and (2) above;
 5. Utilities, with reference to locations, availability, and compatibility;
 6. Screening and buffering with reference to type, dimensions, and character;
 7. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with properties in the district;
 8. Required yards and other open spaces; and
 9. General compatibility with adjacent properties and other property in the district.

8. In granting any petition for amendment or change in zone, the County Commission may prescribe appropriate conditions and safeguards in conformity with this ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the amendment or change in zone is granted, shall be deemed a violation of this ordinance and punishable under Section 2303 of this ordinance.

Section 1805

If the County Commission or Planning Commission has authorized a study to be conducted or has held or has scheduled a hearing for the purpose of considering adoption or amendment of the Brule County Zoning Ordinance or if new territory for which plans or controls have not been adopted is annexed, the County Commission may adopt an interim ordinance applicable to all or part of its jurisdiction for the purpose of protecting the planning process and the health, safety and welfare of its citizens. The interim ordinance may regulate, restrict, or prohibit any use, development, or subdivision within the jurisdiction or a portion thereof for a period not to exceed one year from the date it is effective.

1. No interim ordinance may halt, delay, or impede a presumptively valid application filed prior to the effective date of the interim ordinance. The County Commission may extend the interim ordinance after a public hearing if necessary based upon Section 2005 (1)(A)(B). The public hearing must be held at least 15 days but no more than 30 days before the expiration of the interim ordinance, and notice of the hearing must be published at least ten days before the hearing. The interim ordinance may be extended for the following conditions and durations:
 - A. Up to an additional 120 days following the receipt of the final approval or review by a federal, state or metropolitan agency when the approval is required by law and the review or approval has not been completed and received by the county at least 30 days before the expiration of the interim ordinance; or
 - B. Up to an additional 120 days following the completion of any other process required by a state statute, federal law, or court order, when the process is not completed at least 30 days before the expiration of the interim ordinance.

THIS PAGE RESERVED FOR FUTURE USE

ARTICLE 19

DUTIES ON MATTERS OF APPEAL

Section 1901 Duties of Zoning Administrator, Planning Commission, Board of Adjustment, and Courts on Matters of Appeal

It is the intent of this Ordinance that all questions of interpretation and enforcement shall be first presented to the Zoning Administrator, then the Planning Commission and that such questions shall be presented to the Board of Adjustment only on appeal from the decision of the Planning Commission. Upon exhaustion of the administrative appeal process as described herein recourse shall be to the Court of competent jurisdiction.

THIS PAGE RESERVED FOR FUTURE USE

