

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

Rules of the City of Watertown Board of Adjustment in the State of South Dakota, as adopted October 9, 2025.

## **Article 1: Authority**

1. The City Council of the City of Watertown, South Dakota (the “City Council”) is authorized by SDCL § 11-6-2 and 11-4-11 to appoint a commission to be known as the Planning Commission for the City of Watertown, South Dakota (the “Commission”).
2. The City Council is authorized by SDCL § 11-4-13 to appoint the Planning Commission to act as the Board of Adjustment for the City of Watertown, South Dakota (the “Board of Adjustment”).
3. Chapter 21.0201 of the Revised Ordinances of the City of Watertown, South Dakota (“City Ordinance”) creates the Planning Commission for the City of Watertown, South Dakota.
4. The City Council is authorized by SDCL § 11-4-13 to appoint the Planning Commission to act as the Board of Adjustment for the City of Watertown, South Dakota (the “Board”).
5. Chapter 21.0202 of City Ordinance appoints the entire membership of the Planning Commission to serve as the membership of the Board of Adjustment. The Mayor shall appoint two (2) alternates to the Board of Adjustment, subject to approval of the City Council.
6. SDCL § 11-4-18 mandates that the Board of Adjustment adopt rules in accordance with City Ordinance, pursuant to SDCL § 11-4. Chapter 21.0202(1)(a) of the Revised Ordinance of the City of Watertown mandates that the Board of Adjustment adopt and follow the rules necessary to the conduct of its affairs and in keeping with the provisions of Title 21 of City Ordinance and State Statutes. The By-Laws contained herein are intended to meet the requirements of SDCL § 11-4-18 and Chapter 21.0202(1)(a).

## **Article 2: Jurisdiction**

1. The City Board of Adjustment shall have jurisdiction in all the territory within the corporate limits of the City of Watertown, South Dakota.

## **Article 3: Membership and Officers**

1. The Board of Adjustment members shall consist of the entire membership of the Planning Commission. Two alternates may be appointed by the Mayor, subject to approval of the City Council, to serve three-year terms
2. Board members may be removed for cause as recommended by the Mayor and approved by the Watertown City Council, pursuant to Chapter 8.03 of City Ordinance. Additional justifications for removal include but are not limited to continuing absence from meetings (three consecutive meetings, or failing to attend at least seventy-five (75) percent of regularly scheduled meetings within a calendar year) and conflicts of interest.
3. If a Board of Adjustment member does not complete their term, the Mayor, with approval

from the Watertown City Council, will appoint another individual to complete the term.

4. The Board shall annually elect a Chairperson and Vice Chairperson from among its members at its first meeting in January for one-year terms with reelection eligibility not to exceed three consecutive years.
5. 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.
6. Chairperson Shall – serves 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.
7. 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.

#### **Article 4: Meetings**

1. Meetings shall be held on the first and third Thursday of each month or to follow the Thursday after the City Council meeting as approved on the annual meeting schedule. Meetings are held in the City Council Chambers at 20 N Maple, Watertown, SD 57201 at 4:15pm. Meeting schedule may be altered or changed at the discretion of the Chair.
2. Special meetings may be called by the Chair or at the request of majority of the Board.
3. Notice of all hearings must comply with public notices requirements of Chapter 21.0202 (2) of City Ordinance.
4. 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.
5. An executive meeting or session is closed to the public with topics of deliberation limited in the manners described in SDCL § 1-25-2.
  - a. No vote in relation to any appeal, variance, conditional use or any other matter the Board of Adjustment is authorized to make shall occur during the executive session.
6. A quorum consists of two-thirds (2/3) of the Board members. Members may participate in person or electronically. All votes require a roll call.
7. Voting Requirements:
  - a. Conditional Use: The affirmative vote of the members of the Board who are present and

voting shall be necessary to decide in favor of an application.

- b. Variance: The concurring vote of at least 2/3 of the members of the Board shall be necessary to decide in favor of the application.
8. If a quorum of the Board of Adjustment is present but less than five (5) members are eligible to vote on a given application, the matter will be postponed until a meeting may be held in which five (5) members that are eligible to vote are able to attend the meeting.
    - a. The City of Watertown will be responsible for any costs associated with the publication of any notices associated with the postponed matter in which a quorum is not present. Applicant may request the matter be postponed, however, in that case, the applicant will be responsible for any costs associated with the publication of any notices associated with the postponed matter.

## **Article 5: Powers and Duties**

1. The Board shall hear and decide appeals from decisions of the Administrative Official.
2. Conditional Use Permits. The Board may grant conditional uses as authorized in the zoning ordinance, following proper procedure, notice, and public hearing.
3. Variances. The Board may grant variances in cases of unnecessary hardship, subject to the criteria outlined in Section 21.0202(2)(c) of City Ordinance.
4. The Board may impose fines per ordinance and SDCL § 9-19-3 violations of the terms of the conditional uses or variances.
5. Upon written request by the applicant and prior to the expiration date, the Board may extend conditional uses and variances by one year if no construction has commenced.
6. Application for Rehearing upon Denial. In denying a Conditional Use or Variance, the Board of Adjustment may, as part of its official decision, establish a time period, not less than 6 month but not to exceed 5 years, during which no applicant may submit a similar request for Conditional Use or Variance at the same location. The decision on whether a request made during the time period established by the Board of Adjustment is similar to one previously submitted shall be made, in writing, by the Building Official whose decisions shall be final with no right to appeal therefrom.

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

### ***Section 6.1: Staff Preparation of Agenda.***

1. Staff are 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. 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 § 1-25-1.1.
2. All applications for appeals, variances, and conditional uses must be filed with the Administrative Official, who compiles pertinent information for the agenda and transmits to the Board

for action.

**Section 6.2: Items to be included in Agenda.**

9. Call Meeting to Order (See Section 6.3)
10. Roll Call
11. Approval of Minutes (See Section 6.4)
12. Disclosure of Conflicts of Interest; Relationship(s) to Applicant; or *Ex Parte* Communication (See Section 6.5)
13. Board members or staff declare items for discussion under new business not on the regular agenda (See Section 6.7)
14. Declaration of intent by members of the public to address the Board during the Open Public Comment Session (See Section 6.6)
15. Approval of the Agenda
16. Regular Agenda: Appeals/Conditional Uses/Variances
17. Open Public Comment (See Section 6.6)
18. New Business
19. Old Business
20. Executive Session
21. Motion to Adjourn

**Section 6.3: Call Meeting to Order.**

1. 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.**

1. 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 the agenda item.

**Section 6.5: Disclosure of Conflicts of Interest; Relationship(s) to Applicant; or Ex Parte Communication and Abstention.** *Sample scenarios referenced in Appendix A, page 17-18.*

1. 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.

2. Members are expected to disclose any conflicts which in their 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.
3. 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.
4. Any member recusing themselves 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 if available as provided for by the City of Watertown Zoning Ordinance

***Section 6.6: Open Public Comment.***

1. The Board of Adjustment may allow up to five (5) minutes to any property owner in City of Watertown to address the Board of Adjustment provided the following:
  - a. The topic of discussion does not relate to or request an appeal of a decision of the Board of Adjustment.
  - b. The topic of discussion does not relate to a “potential” application which has not been properly brought before the Board of Adjustment.
2. 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 Staff and Board Discussion:***

1. Members of the Board of Adjustment and/or staff may request a topic be placed on the agenda prior to a meeting for Board Discussion as New or Old Business. Items formally placed on the agenda twenty-four (24) hours prior to the meeting are not limited to their length of discussion. Board of Adjustment members or staff may place a topic on the agenda prior to the approval of the agenda at the time of the meeting as New or Old Business for a time limitation of 5 minutes per item.
2. Members of the Board of Adjustment may discuss any topic not placed on the agenda provided the following:
  - a. The topic of discussion does not specifically relate to a “potential” application which has not been properly brought before the Board of Adjustment.
  - b. 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.

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

1. The Board of Adjustment shall operate its meetings in accordance with Robert’s Rules of Order unless otherwise stated within these By-Laws.

2. The Chairperson is authorized to suspend the rules for meetings of the Board of Adjustment after stating cause for such suspension.
  - a. Appeals to said suspension may be made in accordance with Robert's Rules of Order.
3. Tabling:
  - a. No matter may be tabled to a later date. If the intent is to delay a vote to a later meeting, a motion to postpone shall be used. (See "postponing")
4. Any matter tabled shall be removed from the table at the same meeting
5. Postponement:
  - a. 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.
  - b. 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 or event or referred to a committee.
6. Reconsideration:
  - a. 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 Board made their original decision.

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

1. All citizens, as well as board members, are expected to exhibit decorum, professionalism, and collegiality during the entirety of the Board's proceedings.
2. Any citizen in attendance should sign the attendance sheet and indicate if they intend 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.
3. Cellular phones should be turned off or silenced.
4. 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.
5. 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.
6. Anyone responsible for disruptive behavior or noise such as clapping, cheering, jeering, or other behavior may be required to leave the meeting.

7. Anyone failing to follow the Rules for Public in Attendance or the Rules for Requests and Public Hearings may be required to leave the 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 they have engaged in discussion or otherwise received testimony outside of the public hearing (i.e. “*ex parte*” communication) regarding a specific request shall summarize the discussion or testimony received.
  - a. Ex-parte discussions with applications, proponents, and opponents are discouraged, and should be divulged by the board members in order to foster both equitable decision-making as well as the perception of equitable decision-making by the Board.
  - b. If another member of the Board of Adjustment feels the testimony or discussion described should result in the abstention of the above-mentioned member it is recommended a statement similar to the following be made:
    - i. *“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.”*
  - c. The Chairperson shall then rule if the relationship should result in the member recusing themselves or abstaining from voting on the matter. The Chairperson may consult with staff or the City’s Attorney prior to making the decision. The decision of the Chairperson may be appealed by the members Board of Adjustment in accordance with Robert’s Rules of Order.
  - d. Although similar, recusal and abstention are distinct. If a board member recuses themselves, or is asked to recuse themselves, they shall take a seat in the gallery and refrain from discussion on the matter entirely (unless they are an applicant, representative of an applicant or party, proponent, or opponent appearing as in their capacity as a private citizen). Abstaining from a vote does not require that a board member remove themselves from the discussion of the board.
2. Motion to approve item.
  - a. Motions are made in the affirmative. Example: “I move to approve...”
  - b. 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. Following staff’s presentation, the Board of Adjustment may ask the staff any questions regarding its report.
4. The Chairperson shall open the public hearing.
  - a. The Chairperson reserves the right to limit or extend the amount of time allowed for testimony prior to the start of the public hearing. Such action by the Chairperson is subject to appeal by the members of the Board.

5. Testimony by applicant or applicant's agent to describe the request.
  - a. Testimonies by applicant or applicant's agent shall not exceed ten (10) 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 Chair.
  - 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 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 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.
      1. 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.
      2. 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 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 for a maximum of one (1) minute.
- 8. Opponent or other interested citizens' 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 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 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.
      - 1. 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.
      - 2. 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 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.
10. The Chairperson closes the public hearing.
11. Board Discussion
  - a. Applicant is called back to answer questions asked by the Board and staff (including questions posed during 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.
    - i. 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 conditional use or variance.
  - c. An “abstain” means a member chooses not to vote and is recorded in the minutes.
  - d. A board member may “pass” on the initial roll call, at which time the Chairperson will call the name of any board member who answered “pass” and allow them to state their vote. Calls for “pass” are not recorded in the minutes.
  - e. 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:
  - b. *“Point of order” [“State your point” – by Chairperson] “The discussions Member Jones engaged in prior to the meeting will bias their decision on this request.”*
  - c. The Chairperson shall then rule if the relationship should result in the member recusing themselves or abstaining from voting on the matter. The Chairperson may consult with

staff or the State's Attorney prior to making the decision. The decision of the Chairperson may be appealed by the Board of Adjustment members in accordance with Robert's Rules of Order.

2. Motion to approve the appeal.
  - a. Motions are made in the affirmative
  - b. Motions are made to approve "as requested by appellant"
  - c. *Example: "I move to approve the appeal of the decision of the administrative official as requested by the appellant."*
  - 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. 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 public hearing.
  - a. The Chairperson reserves the right to limit or extend the amount of time allowed for testimony prior to the start of the hearing.
  - b. 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 Chairperson closes the public hearing.
  - a. Once closed, a public hearing shall not be reopened except upon the passage of a motion to reconsider, which must be made during the same the same meeting requiring a majority of board members present and voting.
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” or “aye” 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. An “abstain” means a member chooses not to vote and is recorded in the minutes. An abstention does not change the number of votes required for a motion to pass.
  - d. A board member may “pass” on the initial roll call, at which time the Chairperson will call the name of any board member who answered “pass” and allow them to state their vote. Calls for “pass” are not recorded in the minutes.
  - e. In the event an appeal does not obtain enough “yes” votes for approval, it is not necessary to make a subsequent motion to deny the appeal.

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

- 1. Applications for certain actions that require public hearings shall be made to the Community Development Division in accordance with the approved deadline schedule posted on the city website.
- 2. Written testimony submitted 24 hours in advance of a publicly noticed meeting will be added to the public agenda, forwarded to all Board members and the applicant.
- 3. Written testimony will not be read into the record at the meeting by staff or the Chair.

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

- 1. The official instruments of the Board of Adjustment are the staff reports, record of notice, the agenda, the minutes, adjacent landowners letter(s) and findings of facts.
- 2. Any and all materials submitted to the Board of Adjustment in accordance with these By-Laws and the City of Watertown Zoning Ordinance regarding an item shall be entered into the public record.
- 3. 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 Board of Adjustment and shall be indexed as a matter of public record subject to SDCL § 1-27-1.5

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

1. City of Watertown adopted its Comprehensive Land Use Plan on April 6, 2020 (Ref: SDCL 11-4-3)
2. City of Watertown adopted its current zoning regulations with Ordinance 683 on June 11, 2001. (Ref: SDCL 11-4-2; 11-4-4)
3. City of Watertown Zoning Ordinance appoints the Planning Commission to act as the Board of Adjustment (Ref: SDCL 11-4-13 and City Ordinance Chapter 21.0202)
4. The City of Watertown Zoning Ordinance has identified the City of Watertown Board of Adjustment as the approving authority relating to conditional uses. (Ref: SDCL 11-1-4.1 and City Ordinance Section 21.0202(2)(b))
5. Required public notices per South Dakota Codified Law and City of Watertown Zoning Ordinance have been met. (Ref: SDCL 11-4-21 and City Ordinance Section 21.0202(2)(b))
6. On the date identified in the public notice a public hearing was held before the City of Watertown Board of Adjustment. (Ref: SDCL 11-4-21 and City Ordinance Section 21.0202(2)(b)(5))
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 (Ref: City Ordinance Section 21.0202(2)(b)(7)):
  - a. Ingress and egress the 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-street parking and loading areas where required, with particular attention to the items in (1) above and the economic, noise, glare, or odor effects of the conditional use on the adjoining properties and properties generally in the district. Refuse and service areas, with particular reference to the items in (a) and (b) above,
  - c. Utilities, with reference to locations, availability, and compatibility.
  - d. Screening and buffering with reference to type, dimensions, and character.
  - e. Signs, if any, and proposed exterior lighting with reference to glare, traffic, safety, economic affect, and compatibility and harmony with properties in the district.
  - f. Required yards and other open space.
  - g. General compatibility with adjacent properties and other property in the district.
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 of the Board of Adjustment. The Board of Adjustment requests the Administrative Official to prepare the findings of fact and issue the conditional use permit to the applicant signed by the Chair. The Administrative Official issues 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 issuance of the conditional use permit by the Board of Adjustment on this matter is considered the official filing date of the decision of the Board of Adjustment.

12. In any case where the holder of a conditional use permit issued under City zoning ordinance has not instituted the use or begun construction, as applicable, within one year of the date of approval, the permit shall be null and void. Similarly, any such conditional use, upon its cessation or abandonment for a period of one year, will be deemed to have been terminated. (Ord 17-37 Add 11-10-17)

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

1. City of Watertown adopted its Comprehensive Land Use Plan on April 6, 2020 (Ref: SDCL 11-4-3).
2. City of Watertown adopted its current zoning regulations with Ordinance 683 on June 11, 2001. (Ref: SDCL 11-4-2; 11-4-4)
3. City of Watertown Zoning Ordinance appoints the Planning Commission to act as the Board of Adjustment (Ref: SDCL 11-4-13 and City Ordinance Chapter 21.0202)
4. The City of Watertown Board of Adjustment is authorized to review and decide upon applications for variance from the terms of the City of Watertown 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: SDCL11-4-17 and City Ordinance Chapter 21.0202(2)(c))
5. Required public notices per South Dakota Codified Law and City of Watertown Zoning Ordinance have been met. (Ref: SDCL 11-4-21 and City Ordinance Chapter 21.0202(c))
6. On the date identified in the public notice a public hearing was held before the City of Watertown Board of Adjustment. (Ref: SDCL 11-4-21 and City Ordinance Chapter 21.0202(c))
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. In granting a variance, the board shall ascertain that the following criteria are met:
  - a. Variances shall be granted only where special circumstances or conditions (such as exceptional narrowness, topography or siting), fully described in the finding of the Board, do not apply generally in the district.
  - b. Variances shall not be granted to allow a use otherwise excluded from the particular district in which requested.
  - c. For reasons fully set forth in the findings of the board, the aforesaid circumstances or conditions are such that the strict application of the provisions of this title would deprive the applicant of any reasonable use of their land. Mere loss in value shall not justify a variance; there must be a deprivation of beneficial use of land;
  - d. Any variance granted under the provisions of this section shall be the minimum adjustment necessary for the reasonable use of the land;
  - e. The granting of any variance is in harmony with the general purposes and intent of this title and will not be injurious to the neighborhood, detrimental to the public welfare, or in conflict with the comprehensive plan for development.
10. Before the Board shall have the authority to grant a variance, the person seeking the variance has the burden of showing:

- a. That the granting of the building permit will not be contrary to the public interest;
  - b. That the literal enforcement of this title will result in unnecessary hardship
  - c. That by granting the building permit contrary to the provisions of the spirit of this title will be observed.
  - d. That granting the permit, substantial justice will be done.
11. 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 Watertown Zoning Ordinance in the applicable Zoning District.
  12. In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with the 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 21.9901 of City Ordinance.
  13. The findings contained herein are 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 City Ordinance 21.0202(c)(8). The Board of Adjustment requests the Administrative Official to prepare the findings of fact and approved by the Board in the minutes of the meeting. The Administrative Official issues the variance and any letters of assurance, building permits or other items associated with said variance.
  14. 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 of the Board of Adjustment. The Board of Adjustment requests the Administrative Official to prepare the findings of fact and issue the conditional use permit to the applicant signed by the Chair. The Administrative Official issues the conditional use permit and any letters of assurance, building permits or other items associated with said conditional use permit.
  15. The date of the issuance of the variance or conditional use permit by the Board of Adjustment on this matter is considered the official filing date of the decision of the Board of Adjustment.
  16. A variance granted by the Board of Adjustment shall expire one (1) year from the date upon which it becomes effective if no construction authorized by the variance has commenced. Upon written request to the Board of Adjustment and prior to the variance expiration date, a one (1) year time extension for the variance may be granted by the Board of Adjustment. (Ordinance 17-37; Rev 11-10-17)

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

1. The Board of Adjustment represents the whole community. Its responsibility is neither to the developer nor to the applicant. Members must be objective and make decisions in accordance with City Ordinance and therefore in the interest of the whole community.
2. Board of Adjustment members must be committed to the concept of planning and zoning.
3. 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.
4. Members of the Board of Adjustment shall take such time as to prepare for hearings and

meetings.

5. If a Board of Adjustment member makes application to the Board of Adjustment on their own behalf, they will be permitted to make their presentation to the Board in the same manner of any other applicant. However, they will abstain from Board discussion and voting related to the item and shall remain in the Council Chamber public gallery during Board discussion and voting.
6. If possible, Board of Adjustment members who cannot attend a scheduled meeting should notify the Administrative Official at their earliest convenience.
7. Board members will not accept gifts from known opponents, proponents, or applicants with matters pending before the board.

**Article 16: Severability**

1. Should any article or portion of an article by the Board of Adjustment by-laws be found to be illegal or unenforceable, the remaining articles and portions of articles shall remain in effect.

**Article 17: Adoption and amendment of by-laws**

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

## ***Appendix to the By-Laws***

The following examples are provided for illustrative purposes only. They are intended to demonstrate how members of the Board of Adjustment might apply the By-Laws in practice. These examples are not binding rules and should be read in conjunction with the By-Laws themselves.

### **Appendix A. Conflicts of Interest (Art. 6, §6.5)**

**Sample 1:** When the board member does not feel a potential conflict of interest should result in the recusal or 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 any manner regarding this request.”*

If another board member feels the potential conflict should result in the recusal or abstention from voting on the specific request of the above-mentioned 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 recusing or abstaining from the vote. The Chairperson may consult with staff or the State’s Attorney prior to making the decision. The decision of the Chairperson may be appealed by the members Board of Adjustment in accordance with Robert’s Rules of Order.

**Sample 2:** 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 recuse or abstain from the vote shall be addressed following the summary of the discussion/information received regarding the matter. See Article 8.

**Sample 3:** When the board member feels a potential conflict of interest should result in the recusal or 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 recusing myself from the discussion and vote/abstaining from voting on that item.”*

**Sample 4:** 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 a 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 predispose me in my decision regarding this request.”