

Highlighted items in "bold" and "underline" font are proposed to be added.  
Highlighted items in "strikethrough" font are proposed to be removed.

## **ARTICLE IV ADMINISTRATION**

### **CHAPTER 4.01. GENERAL.**

#### **Section 4.01.01. Permits Required.**

1. No building or other structure shall be erected, moved, added to, ~~or~~ structurally altered, **or used** without a permit issued by the Zoning Officer. The Zoning Officer except in conformity with the provisions of this ordinance shall issue no permit, unless he received a written order from the Board of Adjustment in the form of an administrative review, under conditional use, or variance as provided by this ordinance.
2. It shall be unlawful to commence the excavation for the construction of any building or any accessory building without a permit. A permit is also required for any filling, grading, lagooning, or dredging which is related to site preparation for future construction.

#### **Section 4.01.02. Applications.**

1. All applications for permits shall be accompanied by a site plan ~~drawn to scale~~, showing the actual dimensions and shape of the lot to be built upon; the exact sizes and locations on the lot of the buildings already existing, if any; and the location and dimensions of the proposed building or alteration. **The applicant shall state the existing and intended use of all such buildings, and the location of existing proposed water and sewer facilities. In the case of a change of use, the applicant shall, in writing state the intended change.** The application shall include such other information as lawfully may be required by the Zoning Officer, ~~including legal description, existing or proposed buildings or alterations; existing or proposed uses of the building and land; the number of families, housekeeping units, or rental units the building is designed to accommodate; conditions existing on the lot; existing or proposed water, sewer, electrical facilities; and such other matters as may be necessary to determine conformity with, and provide for the enforcement of, this ordinance.~~ **Such All plans and data accompanying the permit shall be final and conclusive. Deviations shall be deemed a violation of this Ordinance, and punishable as provided in 1.02.03 and shall require a new building and use permit.**

#### **Section 4.01.03. Building/Use Permit.**

1. Issuance of a Building/Use Permit. If the proposed excavation, ~~or~~ construction, **or change of use** as set forth in the application are in conformity with the provisions of this Ordinance, and other regulations of the County then in force, the Zoning Officer shall issue a building/use permit for such excavation, ~~or~~ construction, **or change of use**. If a building/use permit is refused, the Zoning Officer shall **state such refusal in writing, with the cause, and shall thereupon mail** ~~provide the applicant notice, verbally or by mail, of such refusal with the cause for denial~~ **to the applicant at the address indicated upon the application.** The Zoning Officer shall grant or deny the permit within a reasonable time from the date the application is submitted.
2. The issuance of a building/use permit shall, in no case, be construed as waiving any

provisions of this Ordinance. If the work described in any building permit has not been substantially completed within six (6) months of the date of issuance thereof, said permit shall expire and be cancelled by the Zoning Officer 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 new building/use permit has been issued. ~~If substantial progress has been made within six (6) months from the issuance of the permit but has not been completed, the Zoning Officer may extend the building/use permit and additional six (6) months.~~ **A six (6) month extension may be granted one (1) time for a given building/use permit upon request of the applicant. Unless otherwise allowed by this Ordinance, in no instance shall the zoning officer authorize a building/use permit to expire greater than one (1) year from its original issue date.**

#### **Section 4.01.04. Permits Displayed.**

1. Permits Displayed. It shall be unlawful to commence work until the building permit is displayed in a conspicuous place ~~visible from public right-of-way~~. The permit shall be placed upon the premises at all times from the beginning until the completion of such construction, alteration, repair, occupancy or change of use.

#### **Section 4.01.05. Fees.**

1. The Board of County Commissioners shall, by resolution, establish a schedule of fees, charges, and expenses and a collection procedure for building permits, certificates of zoning compliance, appeals, and other matters pertaining to this Ordinance. The schedule of fees shall be posted in the office of the Zoning Officer and may be altered or amended only by the Board of County Commissioners.
2. Until all applicable fees, charges, and expenses have been paid in full, no **decision action** shall be ~~taken~~ **made** on any application or appeal.

### **CHAPTER 4.02. ZONING OFFICER.**

#### **Section 4.02.01. Zoning Officer.**

1. The provisions of this Ordinance shall be administered and enforced by a County Zoning Officer appointed by the Board of County Commissioners, who shall have the power to make inspection of buildings or premises necessary to carry out his duties in the enforcement of this Ordinance.

#### **Section 4.02.02. Duties.**

The powers and duties of the Zoning Officer shall be as follows:

1. Issue all building/use permits and make and maintain records thereof.
2. Conduct inspections of buildings, structures, and the use of land to determine compliance with this Ordinance.
3. Notify in writing persons responsible for violations, indicating the nature of the violation and ordering action necessary to correct.

4. 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 this Ordinance to ensure compliance with or to prevent violation of its provisions.
5. Revoke any permit, which was unlawfully issued, or any permit wherein defective work has been performed, and when such work has not been corrected within ninety (90) days of notification.
6. Maintain permanent and current records of this regulation, including, but not limited to, all maps, amendments, variances, appeals, and applications.
7. Prepare documents, easements, letters of assurance, waivers, etc. as required by this Ordinance, or at the direction of the Codrington County Planning Commission and/or the Codrington County Board of Adjustment and/or Codrington County Commissioners.
8. Provide public information relative to all matters arising out of this Ordinance.
9. Forward to the Planning Commission all plats and/or applications for amendments to this Ordinance.
10. Forward to the Board of Adjustment, applications for appeals, conditional uses, variances, or other matters on which the Board of Adjustment is required to pass under this ordinance.
11. Initiate, direct, and review, from time to time, a study of the provisions of this ordinance, and to make such reports available to the Planning Commission.
12. The Zoning Officer shall receive applications required under this ordinance, specifically but not limited to Building Permits, Conditional Uses, Variances, and Zoning Amendments.
  - a. For building use permits and permitted special use permits, the Zoning Officer shall approve the application only in accordance with the provisions of the County's Zoning Ordinance.
  - b. For Conditional Uses and Variances, the Zoning Officer shall review the application, and shall make recommendations regarding said application to the Board of Adjustment.
  - c. For Zoning Amendments, the Zoning Officer shall review the application, and shall make recommendations regarding said application to the Planning Commission and Board of County Commissioners.

#### **Section 4.02.03. PROCEDURES FOR APPROVAL OF PERMITTED SPECIAL USE PERMIT**

1. **The Permitted Special Use procedure is an administrative review process, where the Zoning Officer shall have the power to review an application for conformance with the applicable standards and approval criteria and issue a Permitted Special Use permit. Requests for permitted special uses may be granted if it has been determined that the prescribed conditions for a specific use have been met or assurance has been provided that the conditions will be met. If any of the performance standards cannot be met, the applicant may apply to variance from the specific standard. A Permitted Special Use Permit shall not be granted unless and until:**

- a. A written application for a permitted special use is submitted, indicating the section of this Ordinance under which the permitted special use is sought and stating the grounds on which it is requested.
- b. The Zoning Officer shall review the application for conformance with this ordinance.
- c. If the application does not meet all of the performance standards for the Permitted Special Use, or the applicant fails to meet any of the prescribed conditions or safeguards; the Zoning Officer shall determine that the application is not in conformance with Section 4.02.03 and appropriate Permitted Special Use Standards. The applicant may then apply for a variance from the applicable requirement as allowed for in Section 4.05.02, or appeal the decision of the Zoning Officer as described in Section 4.04.06
- d. If the Zoning Officer determines that the application is in conformance with the prescribed performance standards, the Zoning Officer shall make written findings certifying compliance with the specific standards governing the specific Permitted Special Use Permit and that satisfactory provisions and arrangements have been made concerning the prescribed conditions for the specific Permitted Special Use Permit. The Zoning Officer shall then issue the Permitted Special Use Permit subject to the applicant agreeing to any conditions prescribed by this ordinance or the zoning officer for the Specific Permitted Special Use Permit.
- e. The Zoning Officer shall publish notice in a newspaper of general circulation in the area affected that the Permitted Special Use Permit has been issued prior to the meeting at which the Zoning Officer reports the issuance of the Permitted Special Use Permit to the Board of Adjustment.
- f. The Zoning Officer shall report the issuance of the Permitted Special Use Permit to the Board of Adjustment at a regularly scheduled meeting where the Board's designee will sign the letter of assurance if applicable.
- g. The Zoning Officer shall then issue any other associated building/use permits.

#### **Section 4.02.034. Right of Entry.**

Whenever necessary to make an inspection to enforce any of the provisions of this regulation, or whenever the Zoning Officer or an authorized representative has reasonable cause to believe that there exists in any building or upon any premises a regulation violation, the Zoning Officer 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 Officer 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 Officer or an authorized representative shall have recourse to every remedy provided by law to secure entry.

When the Zoning Officer or an authorized representative shall have first obtained a proper inspection warrant or other remedy provided by law to secure entry, no owner or occupant or any

other persons having charge, care or control of any building or premises shall fail or neglect, after proper request is made as herein provided, to promptly permit entry therein by the Zoning Officer or an authorized representative for the purpose of inspection and examination pursuant to this regulation.

#### **Section 4.02.045. Stop Order**

Whenever any work is being done contrary to the provisions of this ordinance, the Zoning Officer may order the work stopped by notice in writing served on any persons engaged in the doing or causing such work to be done, and any such persons shall forthwith stop such work until authorized by the Zoning Officer to proceed with the work.

#### **Section 4.02.056. Occupancy Violation.**

Whenever any building or structure regulated by this ordinance is being used contrary to the provisions of this ordinance, the Zoning Officer may order such use discontinued and the structure, or portion thereof, vacated by notice served on any person causing such use to be continued. Such persons shall discontinue the use within the time prescribed after receipt of such notice to make the structure, or portion thereof, comply with the requirements of this ordinance.

### **CHAPTER 4.03. PLANNING COMMISSION.**

#### **Section 4.03.01. Establishment.**

1. The Board of County Commissioners shall appoint a Planning Commission of seven (7) members, at least one (1) member of which shall be a member of the Board of County Commissioners.

#### **Section 4.03.02. Term of Office.**

1. The term of each of the appointed members of the County Planning Commission shall be for four (4) years. The terms shall be varied so no more than one-third of 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 the term by a majority vote of the elected members of the Board of County Commissioners. Zoning Officers of the County may be appointed as ex-officio members of the Commission.

#### **Section 4.03.03. Meetings of the Planning Commission**

1. The Planning Commission shall meet at such times as may be necessary to accomplish the purposes of their duties, but in no event shall they meet less than once every three (3) months.

#### **Section 4.03.04. PerDiem and Expenses of Commission**

1. Per diem and expenses of the County Planning Commission shall be established by the Board of County Commissioners and paid by the County.

#### **Section 4.03.05 Duties of Planning Commission**

#### **The Planning Commission shall have the following duties:**

**1. Comprehensive Land Use Plan:**

**The Planning Commission may prepare, or cause to be prepared, a comprehensive plan for the county including those municipalities within the county which are either unincorporated or which have requested by resolution of the governing board of such municipality to be included. Upon preparation the Planning Commission shall make recommendation to the Board of County Commissioners subject to SDCL11-2-18.**

**2. Zoning Ordinance:**

**To develop and recommend a zoning ordinance, in accordance with the Plan, for the regulation of the height, area, bulk, location, and use of private and public structures and premises, and of population density as may be provided by SDCL 11-2-13 and 11-2-14. Upon preparation the Planning Commission shall make recommendation to the Board of County Commissioners subject to SDCL11-2-18.**

**3. Subdivision:**

**a. To develop and recommend regulations governing the subdivision of land within Codington County.**

**b. To review proposals for subdivision to determine whether such subdivisions comply with the subdivision ordinance of Codington County and make recommendation to the Board of County Commissioners relating to the approval of subdivisions.**

**4. Amendments:**

**The Planning Commission may from time to time propose and make recommendation on amendments to the comprehensive land use plan, zoning ordinance, and subdivision regulations subject to SDCL 11-2-28.**

**Section 4.03.06. Procedures for Meetings.**

**1. The members of the Planning Commission shall select one (1) of their members as Chairperson and another as Vice-chairperson, who shall act as Chairperson in the Chairperson's absence. Both shall serve one (1) year and until their successors have been selected. Meetings of the Planning Commission shall be held at the call of the Chairperson and at such times as the Commission shall determine.**

**2. The Chairperson, or in his or her absence the acting Chairperson, may administer oaths and compel the attendance of witnesses in order to execute the purposes of this article.**

**3. All meetings of the Planning Commission shall be open to the public and conducted in accordance with the rules established by the Planning Commission. The Planning Commission shall keep minutes of its proceedings and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the Codington County Development Office and shall be public record. The Planning Commission shall keep record in the minutes showing the vote of each member upon each question or if absent or failing to vote, indicating that fact.**

4. **A simple majority vote of a quorum of members of the Zoning Board in attendance is required to forward a recommendation, pertaining to its duties described in 4.03.05, on to the Board of County Commissioners.**

## **CHAPTER 4.04. BOARD OF ADJUSTMENT.**

### **Section 4.04.01 Establishment**

Within Codington County outside of incorporated municipalities, the power and jurisdiction related to this article shall be executed by the Board of Adjustment.

1. The Board of Codington County Commissioners shall appoint the Codington County Planning Commission and two (2) **County Commissioners to serve** as alternates to ~~act as~~ the Board of Adjustment. If a Planning Commissioner acting as a Board of Adjustment member is unable to attend a meeting, the first alternate, or second alternate, in turn, shall serve in the member's place. Alternates may be appointed for a term of three (3) years.

### **Section 4.04.02. Procedures for Meetings.**

1. The Board of Adjustment shall adopt rules necessary to the conduct of its affairs and in keeping with the provisions of this Ordinance. Meetings shall be held at the call of the chairman and at such other times as the Board of Adjustment may determine. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public.
2. The Board of Adjustment shall keep minutes of its proceedings and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Zoning Officer and shall be public record. The Board of Adjustment shall keep record in the minutes showing the vote of each member upon each question or if absent or failing to vote, indicating that fact.

### **Section 4.04.03. Powers and Duties of the Board.**

1. The Board of Adjustment shall have the following powers and duties:
  - a. **Administrative Review.** To hear and decide where it is alleged by the appellant that there is error in any order, requirement, permit decision, determination or refusal made by the Zoning Officer or other administrative officers in the carrying out or enforcement of any provision of this Ordinance, and for interpretation of the Zoning Map.
  - b. **Conditional Uses.** To hear and decide applications for conditional uses that are specified in this Ordinance and for decisions on any special questions upon which the Board of Adjustment is specifically authorized to pass.
  - c. **Variance.** To hear and decide applications for variance from the terms of this Ordinance because of unnecessary hardship and to authorize upon appeal in specific cases such variance from the terms of this Ordinance as which will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship.

#### **Section 4.04.04. Power and Jurisdiction Relating to Administrative Review.**

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 an Zoning Officer or agency based on or made in the enforcement of any zoning regulation or any regulation relating to the location of structures or to interpret any map.

#### **Section 4.04.05. Board of Adjustment has Powers of Administrative Officer on Appeals: Reversing Decision of Zoning Officer.**

1. In exercising the above-mentioned powers, the Board of Adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appeal from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the Zoning Officer from whom the appeal is taken.
2. The concurring vote of two-thirds (2/3) of all members of the Board of Adjustment (five (5) votes) shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Officer, or to decide in favor of the applicant on any matter upon which it is required to pass under this ordinance, or to effect any variation in the application of this ordinance.

#### **Section 4.04.06. Appeals, Record of Appeal, Hearing and Stays**

1. It is the intent of this Ordinance that all questions of interpretation and enforcement shall be first presented to the Zoning Officer, and that such questions shall be presented to the Board of Adjustment only on appeal from the decision of the Zoning Officer **and that recourse from the decision of the Board of Adjustment shall be to the courts as provided by the laws of the State of South Dakota.**
2. ~~Appeals~~ **An appeal** to the Board of Adjustment may be taken by any person aggrieved or by an officer, department, board or bureau of the County affected by any decision of the zoning officer, **that is not a ministerial act or other preliminary act to bring an application or matter before the Board of Adjustment for hearing and a final decision.** The applicant shall file with the Zoning Officer a notice of appeal specifying the grounds thereof. The Zoning Officer shall forthwith transmit to the Board of Adjustment all papers constituting the record upon which the action appealed from was taken. Such appeal shall be taken within thirty (30) days. **All appeals relating to a particular action or property shall be consolidated and heard at the time of the initial appeal.**
3. An appeal stays all proceedings in furtherance of the action appealed from, **except ministerial or other preliminary acts necessary to allow consolidated appeals on all matters prior to final decision by the Board of Adjustment,** unless the Zoning Officer from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property.
4. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application on notice to the office from whom the appeal is taken and on due cause shown.



5. The Board of Adjustment shall hear and decide, on not less than ten (10) days public notice prior to an affixed time and place for hearing appeals where it is alleged by the appellant that there is error in any order, requirement, permit decision, determination or refusal made by the Zoning Officer or other administrative officers in carrying out the enforcement of any provision of this Ordinance, and for interpretation of the Zoning Map. At the hearing, any party may appear in person or by agent or attorney.

#### **Section 4.04.07. Duties Of Zoning Officer, Board Of County Commissioners, 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 Officer, and that such questions shall be presented to the Board of Adjustment only on appeal from the decision of the Zoning Officer, and that recourse from the decision of the Board of Adjustment shall be to the courts as provided by the laws of the State of South Dakota.

#### **Section 4.04.078. Appeals to a Court of Record.**

Any person or persons, jointly or severally, ~~aggrieved by any decision of the board of adjustment,~~ or any taxpayer, or any officer, department, board, or bureau of the county, **aggrieved by any decision of the Board of Adjustment** may present to a court of record a petition duly verified, setting forth that the decision is illegal, in whole or in part, specifying the grounds of the illegality. The petition shall be presented to the court within thirty (30) days after the filing of the decision in the office of the Board of Adjustment **(office of the Zoning Officer)**.

### **CHAPTER 4.05. PROCEDURES FOR CONDITIONAL USES, VARIANCES, AND ZONING AMENDMENTS.**

#### **Section 4.05.01. Powers and Jurisdiction Relating to 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 special 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. A conditional use shall not be granted by the Board of Adjustment unless and until:

1. A written application for a conditional use is submitted, indicating the section of this Ordinance under which the conditional use is sought and stating the grounds on which it is requested.
2. **Property owners adjacent to the proposed site shall be notified of the conditional use request** ~~The Zoning Officer shall require the applicant for a conditional use permit to notify adjacent property owners by certified or registered mail, at the cost of the applicant, of the conditional use permit or in lieu of this, at the discretion of the Zoning Officer, obtain written consent from adjacent landowners.~~
3. Notice of hearing shall be published once, ten (10) days prior to the Board of Adjustment public hearing, in a paper of general circulation in the area affected.
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 grant the conditional use, and that the granting of the conditional use will not adversely affect the public interest.
6. The **Before** granting of any conditional use, **by** the Board of Adjustment shall **be based upon make** written findings certifying compliance with the specific rules governing individual conditional uses and that satisfactory provision and arrangements have been made concerning the following, where applicable:
  - ~~a. Entrance and exit 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 street parking and loading areas where required, with particular attention to the items in (a) above and the economic, noise, glare or other effects of the conditional use on adjoining properties and properties generally in the district.~~
  - ~~c. Utilities refuse and service areas, 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 effect 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.~~
  - a. Access:**
    - i. The roads providing access to the property shall be determined to be adequate to meet the transportation demands of the proposed conditional use. The Board of Adjustment may require the applicant to enter into a written contract with the applicable road authority regarding the upgrading and continued maintenance of any roads used for conditional use requested prior to issuance of a Conditional Use Permit.**
    - ii. Reasonable provisions have been made for safe vehicular and pedestrian entrance and exit of the property for daily and emergency traffic.**
  - b. Parking and internal traffic:**
    - i. The parking areas and driveways will be covered in materials appropriate for the internal traffic generated by the use.**
    - ii. The number of parking spaces is appropriate for the proposed use of the property.**
  - c. Utilities and refuse:**
    - i. The manner by which electricity, water, sewer, natural gas and other utilities will be provided has been described.**
    - ii. Consideration has been given to the location of refuse and service areas and manner for disposing of trash, junk, or other debris.**

- d. **Screening, buffering, and open space:**
  - i. **The type, dimensions, and character of any fences, walls, hedges or other materials used for screening; and/or open space is appropriate for the proposed use in reference the specific property.**
- e. **Lighting:**
  - i. **Lights associated with the use will not create a nuisance nor distract traffic.**
  - ii. **Brightness, intensity, glare of lights will be similar to lighting which would be customarily used for permitted uses in the applicable zoning district.**
- f. **General compatibility with adjacent properties and other property in the district.**
  - i. **Any use listed as a Conditional Use is generally compatible in the district it is listed in.**
  - ii. **General compatibility is used when prescribing conditions for approval of a permit.**

7. In granting any conditional use, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this regulation. 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 regulation and punishable under the terms of this regulation
8. The concurring vote of **two-thirds (2/3) of the present and voting five (5)** members of the Board of Adjustment is required to pass any application for a Conditional Use.
9. **Unless otherwise specified by the Board of Adjustment,** a conditional use permit shall expire one (1) year from the date upon which it becomes effective if no work has commenced. ~~Upon written request to the Board of Adjustment and prior to the conditional use permit expiration date, a one (1) year time extension for the conditional use may be granted by the Board of Adjustment.~~

#### **Section 4.05.02. Powers and Jurisdiction Relating to Variances.**

The Board of Adjustment shall have the power, where, by reason of exception, narrowness, shallowness or shape of a specific piece of property at the time of the enactment of this Ordinance, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any regulation under this Ordinance would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon, the owner of such property, to authorize, upon an appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted without substantially impairing the intent and purpose of this Ordinance. A variance shall not be granted by the Board of Adjustment unless and until:

1. A written application for a variance is submitted, indicating the section of this Ordinance under which the variance is sought and stating the grounds on which it is requested.
2. **Property owners adjacent to the proposed site shall be notified of the variance request** ~~The Zoning Officer may require the applicant for a variance to notify adjacent property owners by certified or registered mail, at the expense of the applicant, of the variance request or in lieu of this, at the discretion of the Zoning Officer, obtain written consent from adjacent landowners.~~

3. Notice of hearing shall be published once, ten (10) days prior to the Board of Adjustment public hearing, in a paper of general circulation in the area affected.
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 grant the variance, and that the granting of the variance will not adversely affect the public interest. A variance from the terms of this ordinance shall not be granted if the following occur:
  - a. There are no special conditions and circumstances exist which are peculiar to the land, structure or building involved, and which are applicable to other land, structures, or buildings in the same district;
  - b. The literal interpretation of the provisions of this ordinance would not 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 result from the actions of the applicant;
  - d. Financial disadvantage of the property owner shall not constitute conclusive proof of unnecessary hardship within the purposes of zoning.
  - e. The granting the variance request would confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same district.
  - f. 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.
6. In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this regulation. 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 regulation and punishable under the terms of this regulation.
7. Under no circumstances shall the Board of Adjustment grant a variance to allow 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 this regulation in said district.
8. The concurring vote of five (5) members of the Board of Adjustment is required to pass any application for a variance.

#### **Section 4.05.03. Zoning Amendments.**

1. Whenever the public necessity, safety, and general welfare or good zoning practices justifies such action, and after consideration and recommendation by the Planning Commission, as provided herein, the Board of County Commissioners may change zoning district boundaries, use groups, or the regulations established by this ordinance. A proposed change of zoning district boundaries or regulations may be initiated **in the following manners: by**

a. The Board of County Commissioners, **may direct** the Planning Commission, **to consider a change** or by application of **zoning district boundaries or regulations**

**b. The Planning Commission may initiate a change of zoning district boundaries or regulations:**

c. One (1) or more of the owners of property within the area ~~requested~~ **proposed** to be rezoned; **may present a request to change the zoning district boundaries;**

d. Initiated petitions ~~which create~~ **specifying and requesting** amendments **to the regulations of** this ordinance ~~are required to submit~~ **containing** signatures of **twenty (20) thirty (30)** percent of the landowners in the zoning district or districts ~~requesting change~~ **may be presented to the Zoning Official.**

**2.** Unless otherwise provided for in these regulations, any change in these regulations, shall require Board of County Commissioners approval of an ordinance describing said changes. The Board of County Commissioners may not consider said ordinance until the Planning Commission has delivered a recommendation to either approve or not approve said ordinance amendment.

**1.3.** The following procedure for requesting a Zoning Amendment or Zoning District Boundary Change shall be followed:

**4.** The landowner or other person(s) requesting the Amendment/Boundary change shall complete an application, available from the Zoning Officer. Completed applications shall be returned to the Zoning Officer for review. To be considered by the Planning Commission and Board of County Commissioners, the application form shall be completed and shall be accompanied by the following items:

a. Any required attachments and fees, including Registered or Certified Mail.

b. Any additional information, as requested by the Zoning Officer, as lawfully may be required to determine conformance with and provide for enforcement of this ordinance.

c. The Zoning Officer shall review the application, and shall forward a summary of the application, and his/her comments regarding said application, to the Planning Commission for their review.

d. The Zoning Officer shall set the date, time, and place for public hearings to be held by the Planning Commission and Board of County Commissioners. The Zoning Officer shall publish notice of the public hearing in a newspaper of general circulation in the area affected by the proposed amendment; such notice shall be published not less than ten (10) days prior to each board's (Planning and Zoning, Board of County Commissioners) public hearing. If the proposed amendment will change the boundaries of a zoning district, the Zoning Officer shall notify all owners of property within two hundred fifty (250) feet of the proposed boundary change, by Registered or Certified Mail at the expense of the applicant, at least one (1) week before the public hearing.

e. The public hearing shall be held. Any person may appear in person, or by agent or attorney. Minutes of the public hearing shall be recorded and kept in the records of the Planning Commission.

- f. The Planning Commission shall either recommend **approval** or denial of the amendment to the Board of County Commissioners.
- g. Adoption. Amendments to the zoning ordinance may be adopted by a majority vote unless the amendment has been denied by the Planning Commission in which case a two-thirds (2/3) vote of the Board of Codington County Commissioners is required.
- ~~h. When the Board of County Commissioners approves a proposed amendment affecting the zoning classification of property, affected property owners may file a written protest to stop such an amendment from taking effect. If the protest meets the following standard, such amendment shall not become effective unless the amendment is approved by two-thirds (4 votes) of the Board of County Commissioners.~~
- ~~i. Protest Standard: The protest shall be signed by at least 40% of the owners of equity in the parcels in the area affected by the amendment, and the parcels or parts of parcels within 250 feet of the area affected by the amendment.~~
- i.h.** After passage the Ordinance Amendment shall take effect on the 20th day after its publication in an official newspaper of the County.

#### **Section 4.05.04. Reapplication.**

No application requesting a variance, conditional use, or zoning ordinance amendment or district classification change on any property whose application includes any such property either entirely or substantially the same as that which has been denied by the Board of Adjustment (variances, conditional uses) or Board of County Commissioners (Zoning Amendments, Zoning District Boundary Changes), shall again be considered by the Planning Commission, Board of Adjustment or Board of County Commissioners before the expiration of six (6) months from the date of the final action of the Planning Commission, Board of Adjustment, or Board of County Commissioners.