

CODIFIED LAW #19
TOWN OF MISSION HILL

REGULATING LOCATION & USE OF BUILDINGS, STRUCTURES AND LAND

WHEREAS, an ordinance of the Town of Mission Hill, South Dakota, regulating the location and use of buildings, structures, and land; the size of buildings and other structures; the size of yards and other open spaces; the density and distribution of population; creating districts for said purposes and establishing the boundaries thereof; providing for the method of administration and amendments; providing for a Board of Zoning Adjustment; and providing for the imposition of penalties for the violation of the provisions of this ordinance.

NOW, THEREFORE, be it enacted by the Town Trustees of the Town of Mission Hill, South Dakota, dated this 14th day of March, 1989.

ARTICLE I
GENERAL PROVISIONS

Section 101: PURPOSE

These regulations shall be for the purpose of implementing the Mission Hill temporary ordinances permitting development, use, construction, and occupancy of land and buildings in prescribed districts in accordance with adopted standards.

Section 102: JURISDICTION

These regulations shall apply for and within the corporate limits of Mission Hill, South Dakota, and an extending to the corporate limits of Mission Hill, South Dakota.

Section 103: ZONING MAP

Purpose of Map: The purpose of the zoning map shall be to delineate zoning district boundaries.

Relation of Map and Text: The official zoning map is a part of these regulations, and the map and the written text together shall be referred to as the zoning regulations. The map and the text shall be considered as separate and complete elements of the zoning regulations, and as such, the map can be amended without affecting the text, or the text can be amended without affecting the map.

Designation: The official zoning map shall be certified by the President of the Board of Trustees and attested by the Finance Officer. Such certificate shall include the date of the enactment and the number of the enacting law. All lawful amendments to the official zoning map shall be certified by the President of the Board of Trustees and attested by the Finance Officer. Such certification shall include the date of enactment and the number of the amending law.

Location of the Map: The official zoning map shall remain in the custody of the Finance Officer. The map shall, at any reasonable time, be subject to inspection by the public. Copies of the map shall be made available at the cost of duplication.

Section 104: DEFINITIONS

For the purpose of this ordinance, certain terms or words used herein shall be interpreted as follows:

The work PERSON includes a firm, association, organization, partnership, trust, company or corporation as well as an individual.

The present tense includes the future tense, the singular number includes the plural, and the plural number includes the singular.

The word SHALL is mandatory; the word MAY is permissive. The words USED or OCCUPIED include the words INTENDED, DESIGNATED, or ARRANGED TO BE USED or OCCUPIED.

The word LOT includes the words PLOT or PARCEL.

The word BUILDING includes the word STRUCTURE.

The word ZONING MAP shall mean the "OFFICIAL ZONING MAP OF MISSION HILL, SOUTH DAKOTA."

Section 105: ACCESSORY BUILDING OR USE

A structure, use, or activity on the same lot with, and of a nature customarily incidental and subordinate to, the principal use of structure. Accessory buildings shall not encroach upon the required front or side yards. Provided further, that on a corner lot, accessory buildings shall not encroach upon the required front or side yards adjacent to the abutting streets. Accessory buildings shall be no closer than 5 (five) feet from the rear lot line or any other building. In residential areas, shall not exceed a height of 20 (twenty) feet.

Section 106: BUILDING

Any structure designed or intended for the support, enclosure, shelter, or protection of persons, animals, chattels, or property and forming a construction that is stable; the word building shall include the word structure.

Section 107: BUILDING DETACHED

A building having no party wall in common with another building.

Section 108: BUILDING HEIGHT OF

The vertical distance from the grade (elevation of the curb, sidewalk, or average elevation of the ground around the structure) to the highest point of the coping of the flat roof, or to the deck line of a mansard roof, or the mean height level between eaves and ridge for gable, hop, or gambrel roofs.

Section 109: BOARD OF ADJUSTMENT

The Board of Trustees of Mission Hill, South Dakota.

Section 110: TRUSTEES

The chief legislative body or governing body of the municipality.

Section 111: DWELLING

A building or portion thereof, used exclusively for residential occupancy, including one-family, two-family, and multi-family dwellings, but not including hotels, motels, lodging or boarding houses, or tourist homes.

Section 112: DWELLING, SINGLE FAMILY

A detached building used for residential occupancy by 1 (one) family.

Section 113: DWELLING, TWO FAMILY

A building or portion thereof used for occupancy by 2 (two) families living independently of each other, and doing their own cooking in said building, including apartments, group houses, or row houses.

Section 114: DWELLING, MULTI-FAMILY

A building(s) used for occupancy by 3 (three) or more families living independently of each other and doing their own cooking in said building, including apartments, group houses, or row houses.

Section 115: DWELLING, MOBILE HOME

For the purpose of this zoning ordinance, a mobile home is a detached residential dwelling unit designed for transportation, after fabrication, on streets or highways on its own wheels or on flatbed or other trailers, and arriving at the site where it is to be occupied as a dwelling complete and ready for occupancy except for minor and incidental unpacking and assembly operations, location on jacks or other temporary or permanent foundations, connections to utilities and the like.

For the purpose of licensing and taxation in the unincorporated area of Yankton County, a mobile home will no longer be licensed as a “mobile home” after being set upon permanent foundations and meeting all requirements of the applicable zoning ordinances.

Section 116: FAMILY

An individual or 2 (two) or more persons related by blood or marriage or a group of not more than 5 (five) persons who need not be related by blood or marriage living together as a single housekeeping unit in a dwelling unit.

Section 117: FLOOR AREA

The sum of the gross horizontal areas of all floors of a building measured from the exterior faced of the exterior walls, or from the centerline of walls separating buildings, but not including cellar or basement space.

Section 118: FRONTAGE

All the property abutting upon one side of a street between the intersecting streets measured along the street line.

Section 119: GARAGE, PRIVATE

An accessory building for primary use of storage of not more than 3 (three) motor vehicles, and not more than one shall be commercial.

Section 120: HOME OCCUPATION OR PROFESSION

Any use or activity customarily conducted entirely within a dwelling and carried on by the occupants thereof, which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character thereof, and in connection with which there is no outside storage or equipment, and not more than 2 (two) persons engaged in such occupation. No home occupation shall be conducted in an accessory building.

Section 121: LOT

A parcel of land occupied or intended for occupancy by a use permitted in this ordinance, including 1 (one) main building together with its accessory buildings and open spaces and parking spaces required by this ordinance, and having its principal frontage upon the street.

Section 122: LOT DEPTH

The mean horizontal distance between the front lot line and rear lot line of a zoning lot. In the case of a corner lot, the lot depth is the greater of the mean horizontal distances between the front lot lines and the respective side lot lines opposite each.

Section 123: LOT WIDTH

The mean horizontal distance between side lot lines measured at right angles to the lot depth.

Section 124: LOT OF RECORD

A lot or parcel of land that has access to a street, the deed to which has been recorded in the Office of the County Registrar of Deeds prior to the adoption of this ordinance and may be used for the uses in the District in which it is located except as hereinafter specified.

Section 125: MOTEL-HOTEL

A building designed for occupancy as the more or less temporary abiding place of individuals who are lodged with or without meals, in which there are 6 (six) or more guest rooms.

Section 126: NONCONFORMING USE

Any building or land lawfully occupied by a use at the time of passage of this ordinance which does not conform with the use regulations of the District within which it is located.

Section 127: PARKING SPACE (OFF STREET)

A space on a lot or parcel accessible from the street, alley, or road, not less than 9 (nine) feet wide and 20 (twenty) feet long, exclusive of passageways.

Section 128: SIGN

Any advertisement, announcement, direction, or communication produced in whole or in part by the construction, erection, affixing, or placing of a structure on any land or any other structure, or produced by painting on or posting or placing any printed, lettered, pictured, figured, or colored material on any building, structure, or surface. Signs placed or erected by governmental agencies or nonprofit civic associations for the public purpose in the public interest shall not be included herein, nor shall this include signs which are a part of the architectural design of a building

Section 129: SPECIAL EXCEPTION

A use not in specific conformity with the provision of this ordinance, which may be allowed by the Mission Hill Board of Adjustment after public hearing.

Section 130: STREET

A public thoroughfare which affords principal means or access to abutting property.

Section 131: TOURIST ACCOMMODATION

A building in which more than 1 (one), but not more than 5 (five), guest rooms are used to provide or offer overnight accommodations to transient guests for compensation.

Section 132: USE, SECONDARY

A use subordinate to primary or principal use and may not occupy more than 45 (forty-five) percent of the street floor (ground) level or a structure on lot area devoted to the primary use.

Section 133: VARIANCE

A modification of the provisions of this ordinance, where strict enforcement of the ordinance would cause undue hardship owing to circumstances unique to the individual property, or do not occur generally to land or buildings in the neighborhood, subsequent to the adoption of this ordinance, whether in violation of the provision hereof or not.

Section 134: YARD

A space on the same lot with a main building, open, unoccupied, and unobstructed by buildings or structures from the ground to the sky, except as otherwise provided in this ordinance.

Section 135: YARD, FRONT

A yard extending along the full length of a front lot line and back to a line drawn parallel to the front lot line at a distance therefrom equal to the depth of the required front yard.

Section 136: YARD, REAR

A yard extending along the full length of the rear lot line and back to a line drawn parallel to the rear lot line at a distance therefrom equal to the depth of the required rear yard.

Section 137: YARD, SIDE

A yard extending along a side lot line and back to a line drawn parallel to the side lot line at a distance therefrom equal to the width of the required minimum side yard, but excluding any area encompassed within a front yard or rear yard. Dimensions of minimum side yards specified in the district regulations of this ordinance refer to the required width of each side yard rather than to the total width of both side yards, unless otherwise specified.

Section 138: NON-CONFORMING STRUCTURES AND USES

Any building or other structure lawfully existing and in use conducted at the time of enactment of this ordinance may be continued, even through such building, structure, or use of land does not conform to the provisions of this ordinance.

Any non-conforming building or structure which may become damaged or destroyed by fire or the other casualty may be repaired and reconstructed with approval of the Board of Adjustment.

Any building or structure, comprising a non-conforming use, which is not used for 12 (twelve) months shall be required to be in complete conformance with the provisions of this ordinance.

Nothing in this ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

**ARTICLE II
ESTABLISHMENT OF DISTRICTS**

Section 201: USE DISTRICTS

Mission Hill, South Dakota, is hereby divided into 7 (seven) zoning districts:

- Single-family Residential
- Multi-family Residential
- Mobile Home Parks
- Commercial
- Agricultural
- Industrial
- Public/Semi-Public

Section 202: DISTRICT BOUNDARIES

Where uncertainty exists as to the boundaries of districts as shown on the official zoning map, the following rules shall apply:

1. Boundaries indicated as approximately following the center lines of streets, highways, or alleys shall be construed as following such lot lines.
2. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.
3. Boundaries indicated as approximately following municipal boundaries shall be construed as following municipal boundaries.
4. Boundaries indicated as parallel to, or extensions of, features indicated in #1 above shall be so construed. Distances not specifically indicated on the official zoning map shall be determined by the scale of the map.

Section 203: EXTENT OF REGULATIONS WITHIN EACH DISTRICT

Except as hereinafter provided:

- No building shall be erected, moved, converted, reconstructed, or enlarged, nor shall any building or land be used, except in conformance with the provisions of this ordinance.
- No lot area shall be so reduced or diminished that the yards or other open spaces shall be smaller than prescribed by this ordinance. Yards or lots created after the effective date of this ordinance shall meet the minimum requirements established by this ordinance.
- No part of a yard, or other open space, or off-street parking or loading space required about, or in connection with, any building for the purpose of complying with this ordinance, shall be included as part of a yard, open space, or off-street parking or loading space similarly required for any other building.

AGRICULTURAL DISTRICT USE REGULATIONS

Section 204: INTENT

This District is to provide for general agricultural use and for the protection of agricultural resources from the detrimental effects of urban development

Section 205: PRINCIPLE PERMITTED USES

- Pasture
- Harvesting hay crop
- Tilled agricultural land

Section 206: MINIMUM LOT AREA, WIDTH AND DEPTH

Agriculture: Area: 1 (one) acre
Width: 100 (one hundred) feet
Depth: 200 (two hundred) feet

RESIDENTIAL DISTRICT USE REGULATIONS

Section 220: INTENT

This district is intended to provide for single-family residential dwellings within the existing ranges of municipal services or where municipal services can be obtained or development economically.

Section 221: PRINCIPLE PERMITTED USES

- Single-family dwellings
- Public parks, playgrounds or playfields
- Community buildings owned and/or occupied by public agencies

Section 222: PERMITTED ACCESSORY USES AND STRUCTURES

- Home occupations
- Private Garage
- Accessory building

Requirements for garages or any accessory buildings:

1. Permanent wood, masonite, vinyl, aluminum siding or new colored metal for exterior walls.
2. Asphalt shingles or new colored metal as roofing material
3. Minimum of 3 (three) feet for concrete foundation footings.
4. Pole type building will require a minimum hole depth of 3 (three) feet with a 6 (six) inch concrete foundation footing.
5. The use of galvanized metal sheeting for exterior walls or roofing material is unacceptable in residential districts and will not be allowed.
6. Minimum required ceiling height of 7 (seven) feet from finished floor for any building or other structure.

Requirements for fences:

1. Maximum height of 4 (four) feet in front yards.
2. Maximum height of 6 (six) feet in side and rear yards.
3. Permitted material shall include: wood, vinyl, aluminum, rubber composite, chain link (all other materials must be approved by the Building Inspector).

Section 223: SPECIAL EXCEPTION USES AND STRUCTURES

- Churches, hospitals, nursing homes, and libraries
- Two-family and multi-family dwellings
- Mortuary or funeral homes
- Public utilities
- Nursery, primary, intermediate and secondary schools

Section 224: REQUIRED OFF-STREET PARKING

- Single-family dwellings: 2 (two) parking spaces per unit
- Two-family and multi-family: 2 (two) parking spaces per unit
- Church and school: 1 (one) parking space for each 4 (four) seats in the principle gathering room
- Hospital convalescent or nursing home: 1 (one) space for each patient room plus 1 (one) space for each staff physician

- Mortuary, funeral home, or library: 1 (one) parking space for each 150 (one hundred and fifty) feet of floor area

Section 225: MINIMUM LOT AREA AND WIDTH

- Single-family dwelling: Area – 12,000 (twelve thousand) square feet
Width -- 90 (ninety) linear feet
- Two-family dwelling: Area – 15,000 (fifteen thousand) square feet
Width -- 120 (one hundred & twenty) linear feet
- Multi-family dwelling: Area – add 3,000 (three thousand) square feet for each additional dwelling unit in excess of 2 (two) units up to 10 (ten) units; add 2,000 (two thousand) square feet for each additional unit in excess of 10 (ten) units.
Width – add 20 (twenty) additional feet for each additional unit over 2 (two).

Section 226: MINIMUM REQUIRED FRONT, SIDE, AND REAR YARDS

- Dwellings: Front -- 25 (twenty-five) feet
Side -- 7 (seven) feet
Rear -- 25 (twenty-five) feet

Section 227: MAXIMUM HEIGHTS

- Single-family -- 35 (thirty-five) feet
- Two-family -- 35 (thirty-five) feet
- Multi-family -- 35 (thirty-five) feet

Section 228: PERMITTED SIGNS

- Name plate on home occupation sign not to exceed 4 (four) square feet and shall be attached to the respective building.
- Temporary sign advertising the sale or lease of the premises not larger than 4 (four) square feet.
- Church and public building bulletin boards not larger than 20 (twenty) square feet.
- All signs shall be maintained in a neat and presentable condition. In the event that they shall become illegible or their use shall cease, they shall be removed within 15 (fifteen) days or be subject to a penalty as set forth in this ordinance.

LOCAL COMMERCIAL DISTRICT USE REGULATIONS

Section 230: INTENT

The commercial district is intended to provide areas for businesses not normally along busy thoroughfares, and do not need major highway access.

Section 231: PRINCIPAL PERMITTED USES

- Retail, business, and finance establishments

- Public agencies
- Cultural and entertainment establishments
- Food and drink services
- Personal and professional services
- Parks and recreation
- Convenience automobile parking
- Lodging facilities

Section 232: PERMITTED ACCESSORY USES AND STRUCTURES

- Residential units as secondary use to primary commercial use

Section 233: SPECIAL EXCEPTION USES AND STRUCTURES

- Automobile, implement, and/or machine repair

Section 234: MINIMUM OFF-STREET PARKING REQUIREMENTS

One (1) parking space shall be required for each 200 (two hundred) square feet of floor space in the building used for commercial purposes. Such parking space may be located on the same lot as the building or within 300 (three hundred) feet of the building, provided it does not cross a divided street or divided highway.

Section 235: MINIMUM LOT AREA AND WIDTH

- Commercial: Area – 7,500 (seven thousand five hundred) square feet
Width -- 56 (fifty-six) linear feet

Section 236: MINIMUM REQUIRED DEPTH AND FRONT, SIDE, AND REAR YARDS

- Commercial: Depth: 100 (one hundred) feet
Front: -0- (zero)
Side: -0- (zero)
Rear: -0- (zero)

Section 237: MAXIMUM HEIGHT

- Commercial: 35 (thirty-five) feet

Section 238: SUPPLEMENTARY REGULATIONS

All commercial establishments shall meet all regulations as required by the South Dakota Department of Environmental Protection and the Federal Environmental Protection Agency.

Business signs are not to exceed 2 (two) square feet of surface area for each 1 (one) linear foot or lot fronting on a public street.

All operations involving storage, except open storage for the sale of automobiles, trailers, boats, and gasoline from service stations, are to be conducted within completely enclosed building. All permitted open storage is prohibited on the town right-of-ways.

HIGHWAY COMMERCIAL DISTRICT USE REGULATION

Section 240: INTENT

The highway commercial district is intended to provide areas for those businesses that normally function along a busy thoroughfare and need major highway access.

Section 241: PRINCIPLE PERMITTED USES

- Retail, business, and finance establishments
- Cultural and entertainment establishments
- Food and drink services
- Personal and professional services
- Parks and recreation
- Warehouses, wholesale establishments, storage units, etc.
- Lodging facilities

Section 242: PERMITTED ACCESSORY USES AND STRUCTURES

Residential units as secondary use to primary commercial use

Section 243: SPECIAL EXCEPTIONS USES AND STRUCTURES

Automobile, implement, and/or machine repair

Section 244: MINIMUM OFF-STREET PARKING REQUIREMENTS

For the purpose of this section, 200 (two hundred) square feet of lot or floor area, which has a means of ingress and egress from an alley or street shall be deemed parking space for 1 (one) vehicle. Such space shall not occupy any part of any required front yard, but where open may be included as part of a required open space for side or rear yard. On corner or through lots, parking space may not be included as part of required yards lying adjacent to either street. Such parking spaces and access driveways shall be paved with asphalt or concrete. Such parking spaces shall be reserved for the sole use of the occupants of buildings or lots and visitors thereto. Churches, theaters, stadiums, auditoriums, and other places of assembly may make arrangements for joint use of parking spaces as hereinafter specified.

In a district every building or structurally altered, enlarged, or increased in capacity, and every land use initiated subsequent to the adoption of this section shall be provided with minimum off-street parking facilities as follows:

1. *Retail Business*
One (1) space for each 200 (two hundred) square feet of gross floor area
2. *Cultural and Entertainment Establishments*
One (1) space for each 5 (five) seats is providing or one (1) space for each 100 (one hundred) square feet of gross floor area where fixed seating is not provided.
3. *Food and Drink Services*
One (1) space for each 3 (three) seats or one (1) space for each 200 (two hundred) square feet of gross floor area, whichever is greater.
4. *Personal and Professional Services*

Barber and beauty shop: 2 (two) spaces per chair;
Medical and dental: 2 (two) spaces for each examining room or 1 (one) space for each 300 (three hundred) square feet of gross floor area, whichever is greater

5. *Automobile, Equipment, and Boat Sales*
One (1) space for each 300 (three hundred) square feet of gross floor area
6. *Hotels, Motels, and Lodging Houses*
One (1) space for each rental unit plus additional spaces that may be required herein for related uses such as restaurants
7. *Warehouses, Wholesale Establishments, Furniture Stores, Storage Units*
One (1) space for each 1,000 (one thousand) square feet of gross floor area

Section 245: OFF-STREET LOADING FACILITIES REQUIREMENTS

One the same lot with every building or part thereof, erected hereafter to be used for other than exclusive dwelling purposes or as an accessory use for dwelling purposes, there shall be provided on the lot, adequate space for motor vehicles in order to avoid undue interference with the public use of street or alleys. Such space, unless otherwise adequately provided for shall include a 10 (ten) foot by 25 (twenty-five) foot loading space within 15 (fifteen) feet height clearance, and 1 (one) such space shall be provided for each 20,000 (twenty thousand) square feet or fraction thereof of floor or lot area used for other than residence purposes.

Section 246: MINIMUM LOT AREA AND WIDTH

Highway Commercial: Area: 10,000 (ten thousand) square feet
50 (fifty) linear feet

Section 247: MINIMUM REQUIRED DEPTH AND FRONT, SIDE AND REAR YARDS

Highway Commercial: Depth: 100 (one hundred) feet
Front: 15 (fifteen) feet
Side: 15 (fifteen) feet
Rear: 15 (fifteen) feet

Section 248: MAXIMUM HEIGHT

Highway Commercial: 35 (thirty-five) feet

Section 249: SUPPLEMENTARY REGULATIONS

All highway commercial establishments shall meet all regulations as required by the South Dakota Department of Environmental Protection and the Federal Environmental Protection Agency.

Business signs are not to exceed 2 (two) square feet of surface area for each 1 (one) linear foot of lot fronting on a public street.

All operations involving storage, except open storage for the sale of automobiles, trailers, boats, and gasoline from service stations, are to be conducted within completely enclosed buildings. All permitted open storage is prohibited on the town right-of-ways.

INDUSTRIAL DISTRICT USE REGULATIONS

Section 250: INTENT

The intent of the industrial district is to provide space for certain commercial and industrial uses and structures which are able to meet specific performance standards. Thus, non-commercial and non-industrial uses are protected from undesirable environmental conditions.

Section 251: PRINCIPLE PERMITTED USES

- The manufacturing, assembling, compounding, packaging, processing, or treatment of products or raw materials conducted within a structure or metal container.

- Warehousing and storage

- Repair of vehicles and machinery

- Freight handling

Section 252: PERMITTED ACCESSORY USES AND STRUCTURES

- Office as secondary use to primary industrial use

Section 253: SPECIAL EXCEPTION USES AND STRUCTURES

- Food service

- Wholesale and retail sales of machinery

Section 254: MINIMUM OFF-STREET PARKING

- Ten (10) percent of lot area

Section 255: PERFORMANCE STANDARDS

- To be permitted industrial use, whether as a permitted use or as an exception, such use must meet the following performance standards:

1. *Fire Hazard*
All flammable substances involved in any activity shall be handled in conformance with the latest edition of the Fire Prevention Code published by the American Insurance Association.
2. *Noise*
Meet EPA standards
3. *Sewer and Liquid Wastes*
Meet EPA standards
4. *Air Contaminants*
Meet EPA standards

5. *Odor*
Meet EPA standards
6. *Gases*
Meet EPA standards
7. *Vibration*
Meet EPA standards

Section 256: MINIMUM LOT AREA AND WIDTH

Industrial: Area - 1 (one) acre
Width – 500 (five hundred feet)

Section 257: MINIMUM REQUIRED DEPTH AND FRONT, SIDE AND REAR YARDS

Industrial: Depth – not to exceed 7.5:1 ratio of lot depth to lot width
Front -- 50 (fifty) feet
Side -- where applicable, there shall be a minimum of 500 (five hundred) feet to the nearest edge of a public or private water course
Rear -- 50 (fifty) feet

Section 258: MAXIMUM HEIGHT REQUIREMENT

Industrial: 35 (thirty-five) feet

Section 259: PROHIBITED USES

- Residential use except caretaker or watchman quarters
- Lodging facilities
- Churches, schools, hospitals, and other public or semi-public users except for trade and vocational schools
- Restaurants, unless for private use of 1 (one) industrial facility located within the district
- Taverns

PUBLIC DISTRICT USE REGULATIONS

Section 260: INTENT

This district is intended to provide for public facilities, to encourage their location and activity with other compatible uses of land, and to preserve land for future needs.

Section 261: PRINCIPLE PERMITTED USES

- Activities dedicated to public use

- Public buildings
- Public recreation facilities

Section 262: PERMITTED ACCESSORY USES AND STRUCTURES

Uses and structures incidental to the principal uses of the district.

ARTICLE III
HEIGHT AND AREA EXCEPTIONS AND MODIFICATIONS

The height and area regulations set forth under District Regulations may be modified under certain special conditions or with respect to certain types of structures as specified herein:

Section 301: LOT AREA AND WIDTH

Any lot of record in any agricultural, residential, or commercial district at the time of passage of this ordinance having less area than herein specified to a minimum of 5,000 (five thousand) square feet of width than herein required may be used for a single dwelling.

Section 302: FRONT YARD

Where 30 (thirty) percent or more of a block is improved with buildings with varying front yards, then any new buildings will be required to have a front yard which shall be the average of the front yards improved with buildings.

Section 303: CORNER LOTS

A corner lot shall have a front yard and side yard adjoining the street of not less than 12 (twelve) feet, except that the building width shall not be reduced to less than 32 (thirty-two) feet, and no accessory building shall project beyond the required front yard on either street.

Section 304: SIDE YARD

For a single-family dwelling, the required side yard shall not be less than 10 (ten) percent of the lot width, provided that no side yard shall be less than 5 (five) feet.

Section 305: REAR YARD

The required rear yard may be built within a required rear yard located at least 5 (five) feet from the rear lot line, when occupying not more than 30 (thirty) percent of the area of such required rear yard, and when located 5 (five) feet from the side lot line, except as permitted by the Board of Adjustment.

Section 306: ALL YARDS

An open, uncovered porch or paved terrace may extend not more than 14 (fourteen) feet into any required front yard.

Cornices, canopies, eaves, outward edge of roof projections and other architectural features may project into required yard a distance not to exceed 36 (thirty-six) inches, and must not project into required side yards.

Section 307: HEIGHT

Chimneys, cooling or water towers, elevators, bulkheads, fire towers, monuments, stacks, stage towers, tanks, spires, church steeples, radio towers, or necessary mechanical apparatus may be erected to any safe height not in conflict with any other ordinance or law (35 (thirty-five) feet).

**ARTICLE IV
ADMINISTRATION, ENFORCEMENT, BUILDING PERMIT, VIOLATION
AND PENALTIES**

Section 401: ADMINISTRATION

An administrative official to be known as Building Inspector shall be designated by the Board of Trustees to administer and enforce this ordinance. He/she may be provided with the assistance of such other persons as the Trustees may direct.

Section 402: ENFORCEMENT

If the Building Inspector shall find that any of the provisions of this ordinance are being violated, he/she shall notify in writing the person and/or his/her agent responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it.

He/she shall order discontinuance of illegal use of land, buildings, or structures or of additions, alterations, or structure changes thereto; discontinuance of illegal use of land, buildings, or structures or of additions, alterations, or structural changes thereto; discontinuance of any illegal work being done, or shall take any other action authorized by this ordinance to insure compliance with or prevent violations of this provision.

Section 403: BUILDING PERMIT REQUIRED

No building or other structure shall be erected, moved, added to, or structurally altered without a permit therefor, issued by the administrative official. No building permit shall be issued except in conformity with the provisions of this ordinance, except after written permission of the Trustees.

The construction or alteration of any building or other structure in excess of \$1,500.00 (fifteen hundred dollars) or any building or other structure over 120 (one hundred and twenty) square feet in size will require a building permit.

Section 404: APPLICATION FOR BUILDING PERMIT

All applications for building permits shall be accompanied by plans in triplicate 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 buildings already existing, if any; any the locations and dimensions of the proposed buildings or alterations. The application shall include such other information as lawfully may be required by the administrative official, including

existing or proposed building or alteration; 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; and such other matters as may be necessary to determine conformance with, and provide for the enforcement of, this ordinance.

One (1) copy of the plans shall be returned to the applicant by the administrative official, after he/she shall have marked such copy either as approved or disapproved and attested to same by his/her signature on such copy. The original and 1 (one) copy of the plans, similarly marked, shall be retained by the administrative official.

Section 405: SCHEDULE OF FEES, CHARGES, AND EXPENSES

The Trustees shall establish a schedule of fees, charges, and expenses, and a collection procedure, for building permits, appeals, and other matters pertaining to this ordinance. This schedule of fees shall be posted in the office of the Administrative Official, and may be altered or amended only by the Trustees.

No permit, certificate, special exception, or variance shall be issued unless or until such costs, charges, fees, or expenses have been paid in full, nor shall any action be taken on proceedings before the Trustees unless or until preliminary charges and fees have been paid in full.

Section 406: VIOLATION AND PENALTIES

Any person, firm, or corporation violating any provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, may be punishable by a fine up to \$100.00 (one hundred dollars) for each and every day during which such illegal location, erection, construction, reconstruction, enlargement, change, maintenance, or use continues.

**ARTICLE V
BOARD OF ADJUSTMENT**

Section 501: CREATION AND APPOINTMENT

In compliance with Section 11-4, South Dakota Statutes, the Trustees shall provide for the appointment of a Board of Adjustment, and in the regulations and restrictions adopted pursuant to the authority of this ordinance, shall provide that the said Board of Adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance.

The Board of Adjustment shall consist of 5 (five) members, each to be appointed for a term of 3 (three) years and removable for cause by the Board of Trustees upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. In lieu of appointment the Board of Adjustment, the governing body of any municipality having adopted and in effect a zoning ordinance may act as and perform all duties and exercise the powers of such Board of Adjustment. The President of the Board of Trustees shall be Chairman of the Board of Adjustment as so composed. The concurring vote of at least two-thirds (2/3) of the members of such Board as so composed shall be necessary to reverse any order, requirements, decision, or determination of any administrative official, or to decide in favor of the appellant on any

matter upon which it is required to pass under any zoning ordinance, or to effect any variation in such ordinance.

Meetings of the Board of Adjustment shall be held at the call of the Chairman and at such other times as the Board may determine. Such Chairman, or in her/her absence, the Acting Chairman may administer oaths and compel the attendance of witnesses. All meetings of such Board shall be open to the public.

The Board of Adjustment 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 immediately be filed in the office of the Board and shall be public record.

Section 502: POWERS

The Board of Adjustment shall have the following powers:

1. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this chapter or of any ordinance adopted pursuant thereto.
2. To hear and decide special exceptions to the terms of the ordinance upon which such Board is required to pass under such ordinance.
3. To authorize upon appeal in specific cases such variance from terms of the ordinance as will not be contrary to the public interest, where, 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 shall be observed and substantial justice done.

Section 503: APPEALS

1. Appeals to the Board of Trustees may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of such Board, by fixing with the officer from whom the appeal is taken and with the Board of Adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appeals from was taken.
2. An appeal to the Board of Trustees stays all proceedings in the action appealed from, unless the officer from whom the appeal is taken shall file a certificate that by reason of facts stated in the certificate a stay would in his/her opinion cause imminent peril of life or property. 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 officer from whom the appeal is taken and on due cause shown.
3. The Board of Trustees shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest and decide the same within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney.
4. In exercising the powers mentioned in paragraph 2, the Board of Trustees may, in conformity with the provisions of this ordinance, reverse or affirm,

wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and that end shall have all the powers of the officer from whom the appeal is taken.

5. The concurring vote of two-thirds (2/3) of the Board of Trustees shall be necessary to revise any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance, or to effect any variation in such ordinance.
6. Any person or person, jointly or severally, aggrieved by any decision of the Board of Trustees, or any taxpayer, or any officer, department, board, or bureau of the municipality, may present to a court of record a petition duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within 30 (thirty) days after the filing of the decision in the office of the Board.

ARTICLE VI LEGAL STATUS PROVISIONS

Section 601: INTERPRETATION AND CONFLICT

In interpreting and applying the provisions of this ordinance, such shall be held to be minimum requirements for the promotion of the public safety, health, convenience, comfort, morals, prosperity, and general welfare. Whenever there regulations require a greater width or size of yards, courts, or other open spaces, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulations, these provisions shall govern.

Whenever the provisions of any other statute of local ordinance or regulation require a greater width or size of yards, courts, or other open spaces, or require a lower height of building or a less number of stories, or other higher standards that are required by the regulations made under authority of this Chapter, the provisions of such statute or local ordinance or regulation shall govern.

Section 602: CHANGES TO THE ORDINANCE

Regulations, restrictions, and boundaries adopted pursuant to this ordinance may from time to time be amended, supplemented, changed, modified, or repealed, provided that such modification or repeal shall in each instance be proposed in an ordinance presented to the Trustees for adoption in the same manner and upon the same notice as required for the adoption of the original ordinance according to Section 11-4-5, South Dakota Statutes.

The Trustees may, by ordinance, require as a condition precedent to the introduction of any ordinance proposing changes in the Zoning Ordinance that there be first filed with the Finance Officer the written consent of the owners of not exceeding 60 (sixty) percent of the aggregate area having the right to protest against such proposed ordinance if adopted, determined as provided by Section 11-4-5, South Dakota Statutes.

The referendum and the right of protest may be involved against an ordinance making changes in the Zoning Ordinance in like manner as against the original ordinance.

Section 603: SAVINGS CLAUSE

Should any section or part of a section of provision of this ordinance be declared invalid or unconstitutional by a court of competent jurisdiction, this shall not affect the validity of any other section, part of section, or provisions of this ordinance, or the ordinance as a whole, other than the part so declared to be invalid or unconstitutional.

Section 604: REPEAL OF CONFLICTING ORDINANCES

All ordinances or parts of other ordinances in conflict with this ordinance are hereby repealed, except where such ordinances or parts of ordinances contain more stringent regulations.

Passed this 14th day of March, 1989 in Mission Hill, South Dakota.

Scott Vanburen
Town Board President

LeAnne J. Cutts
Finance Officer

BOARD REVIEW 7-15-14
ORDINANCE #83