

**COMPREHENSIVE ZONING ORDINANCE
MINER COUNTY, SOUTH DAKOTA**

ORDINANCE NO. 2023-01, AN ORDINANCE AMENDING “THE ZONING ORDINANCE OF MINER COUNTY” AS ESTABLISHED BY ORDINANCE #04-01 AND ALL AMENDMENTS THERETO, WHICH INCLUDES THE OFFICIAL ZONING MAP, IN ACCORDANCE WITH THE PROVISIONS OF CHAPTERS 11-2, 1967 SDCL, AND AMENDMENTS THEREOF, AND FOR THE REPEAL OF ALL RESOLUTIONS AND ORDINANCES IN CONFLICT THEREWITH

WHEREAS, the Miner County, South Dakota, Board of County Commissioners, hereinafter referred to as the Board of County Commissioners, deems it necessary, for the purpose of promoting the health, safety, and the general welfare of the County, to enact zoning regulations and to provide for its administration, and

WHEREAS, the Board of County Commissioners has appointed a County Planning Commission, hereinafter referred to as the Planning Commission, to recommend the district boundaries and to recommend appropriate regulations to be enforced therein, and

WHEREAS, the Planning Commission has divided Miner County into districts, and has established by reference to maps the boundaries of said districts for administration and interpretation; has provided for definitions and for amendments to this Ordinance; has provided for the enforcement; prescribed penalties for violation of provisions; has provided for building permits within the districts; has provided for invalidity of a part and for repeal of regulations in conflict herewith; and has prepared regulations pertaining to such districts in accordance with the county comprehensive plan and with the purpose to protect the tax base, to guide the physical development of the county, to encourage the distribution of population or mode of land utilization that will facilitate the economical and adequate provisions of transportation, roads, water supply, drainage, sanitation, education, recreation, or other public requirements, to conserve and develop natural resources, and

WHEREAS, the Planning Commission has given reasonable consideration, among other things, to the character of the districts and their peculiar suitability for particular uses, and

WHEREAS, the Board of County Commissioners has given due public notice to a hearing relating to zoning districts, regulations, and restrictions, and has held such public hearings, and

WHEREAS, all requirements of SDCL 11-2, 1967, with regard to the preparation of these regulations and subsequent action of the Board of County Commissioners, has been met, and

WHEREAS, copies of said zoning regulations and zoning map have been filed with the Miner County Auditor for public inspection and review during regular business hours, and

WHEREAS, all ordinances or parts of regulations in conflict herewith are hereby expressly repealed;

THEREFORE, BE IT ORDAINED that the Miner County Zoning Ordinance is hereby adopted by the Board of County Commissioners, Miner County, South Dakota.

Adopted this [REDACTED] day of [REDACTED], 2023.

Chairperson
Miner County Board of County Commissioners

ATTEST:

Miner County Auditor

The following are the proposed amendments to the Miner County Zoning Ordinance.

Yellow Bolded Language represents new language to be added

~~Yellow strikeout Language represents language to be deleted~~

Aqua Bolded Language represents existing language moved to a new section

~~Aqua strikeout Language represents existing language stricken from a particular section but moved to another section~~

ARTICLE 1

SHORT TITLE AND APPLICATION GENERAL PROVISIONS

Section 101. Title. This Ordinance may be known and may be cited and referred to as the "Miner County Zoning Ordinance" to the same effect as if the full title were stated.

Section 102. Jurisdiction. Pursuant to SDCL Chapter 11-2, 1967, as amended, the provision of this Ordinance shall apply within the unincorporated areas of Miner County, South Dakota, as established on the map entitled "The Official Zoning Map of Miner County, South Dakota."

Section 103. Provisions of Ordinance Declared to be Minimum Requirements. In their interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements, adopted for the promotion of the public health, safety, morals, or general welfare. Wherever the requirements of this Ordinance are at variance with the requirements of any other lawfully adopted rules, regulations, ordinances, deed restrictions, or covenants, the most restrictive or that imposing the higher standards, shall govern.

Section 104. Purpose

These regulations have been based upon the Miner County Comprehensive Land Use Plan adopted by the Board of County Commissioners and are in conformance with Chapter 11-2 of the South Dakota Compiled Laws. These regulations are designed to carry out the goals and objectives of the plan, but especially to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration or scattering of population; and to encourage a distribution of population or mode of land utilization that will facilitate the economical and adequate provision of transportation, water, drainage, sewerage, schools, parks, or other public requirements.

These regulations have been made with reasonable consideration to the character and intensity of the various land uses and the need for public facilities and services that would develop from those uses. These regulations are necessary for the best physical development of the county. The regulations are intended to preserve and protect existing property uses and values against adverse or unharmonious adjacent uses by zoning all unincorporated land except those areas where joint zoning jurisdiction has been granted to a municipality. **Any land use conducted in conformance with the Miner County Zoning Ordinance is hereby deemed to be consistent with the purpose of this ordinance.**

Section 105. Separability.

Should any article, section or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this Ordinance as a whole, or any part thereof, other than the part so declared to be unconstitutional or invalid.

Section 106. Purpose of Catch Heads.

The catch heads appearing in connection with the foregoing sections are inserted simply for convenience, to serve the purpose of an index and they shall be wholly disregarded by any person, officer, court or other tribunal in construing the terms and provisions of this Ordinance.

Section 107. Effective Date.

This Ordinance shall take effect and be in force from and after its passage and publication according to law.

Section 108. Repeal of Conflicting Ordinances.

All ordinances or resolutions or part of ordinances or resolutions in conflict with this Ordinance or inconsistent with the provisions of this Ordinance are repealed entirely.

ARTICLE 2 DEFINITIONS

Section 201. For the purpose of this Ordinance, certain terms and words are hereby defined. Words used in the present tense shall include the future; the singular number shall include the plural and the plural the singular; the word "building" shall include the word "structure", the word "shall" is mandatory and not discretionary; the word may is permissive; the word person includes a firm, association, organization, partnership, trust, company or corporation, as well as, an individual; the word lot includes the word plat or parcel; and the words used or occupied include the words intended, designed, or arranged to be used or occupied. Any word not herein defined shall be as defined in any recognized Standard English dictionary.

Abandoned Well: A well no longer used or intended to be used as a water source.

Section 202. Accessory Buildings and Uses. A subordinate **building or portion of the principal building**, the use which is incidental to **and customary in connection with** that of the main **principal** building or to the main use of the premises **and which is located on the same lot with such principal building or use.**

Adjacent Property. Any lot, parcel, or property bordering by means of adjoining, abutting, or intersecting a specified lot boundary, and those lots immediately across a public right-of-way from a specified lot (see **Adjacent Property Illustration**).

Adjacent Property Illustration



Adjoining Landowner. The owner of property contiguous to property for which an action by the Zoning Administrator, **Board of Adjustment** or Planning Commission is being considered. For the purposes of this Ordinance, contiguous shall mean touching along a boundary or at a point. Property shall be considered as adjoining even though it may be separated from the property of the petitioner by a public road or highway or touches only a corner of the property. **(see Adjacent Property Illustration).**

Adult. A person, one who has reached the age of eighteen (18).

Adult Amusement or Entertainment Establishment. Any use which has as part of its operations amusement or entertainment which is distinguished or characterized by an emphasis on material depicting, describing, or relating to “specified sexual activities” or “specified anatomical areas” as herein defined, or which features topless dancers, exotic dancers, strippers, male or female impersonators, or similar entertainment.

Adult Bookstores. An establishment having as a substantial or significant portion of its stock and trade, books, magazines, **films or videotapes for sale or viewing on the premises by use of motion picture devices or other coin-operated means,** and other periodicals which are distinguished or characterized by their emphasis on matters depicting, describing, or relating to “specified sexual activities” or “specified anatomical areas” as herein defined, or an establishment with a segment or section devoted to the sale or display of such materials. **Adult bookstores may alternatively or in conjunction with the above stock in trade sell undergarments and other clothing designed for the display of Specified Anatomical Areas or for the enhancement of Specified Sexual Activities. Further, an adult bookstore may alternatively or in conjunction with the above stock in trade sell prosthetic devices, dolls, candles, vibrators and other objects for sexual gratification which take the form of Specified Anatomical Areas and for the purpose of enhancing Specified Sexual Activities.**

Adult Entertainment Cabaret. Means an establishment offering to its patrons, as entertainment, any exhibition or display or any theatrical or other live performances which include topless or go-go dancers, exotic dancers, strippers, male or female impersonators, or similar entertainers, or any persons singing, reading, posing, modeling, or serving food or beverages, where the exhibition, performance, display or dance is intended to sexually arouse the entertainer or the patrons, or where the attire of persons involved is such as to expose specified anatomical areas.

Adult Mini-motion Picture Theater. An enclosed building with a capacity for less than fifty (50) persons used for presenting material for observation by patrons and which excludes minors by virtue of age.

Adult Motion Picture Theater. An enclosed building, **regardless of its seating capacity,** used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to “specified sexual activities” or “specified anatomical areas” as herein defined, for observation by patrons therein.

Adult Photo Studio. An establishment which, on payment of a fee, provides photographic equipment and/or models for the purpose of photographing “specified anatomical areas”, as herein defined.

Adult Use. The term “adult use” shall include adult amusement or entertainment establishment, adult bookstores, adult mini motion picture theaters, adult motion picture theaters, and adult photo studios.

Aggrieved person: a person aggrieved is any person directly interested in the outcome of and aggrieved by a decision or action or failure to act pursuant to this Ordinance who:

- 1. Establishes that the person suffered an injury, an invasion of a legally protected interest that is both concrete and particularized, and actual or imminent, not conjectural or hypothetical;**

2. **Shows that a causal connection exists between the person's injury and the conduct of which the person complains. The causal connection is satisfied if the injury is fairly traceable to the challenged action, and not the result of the independent action of any third party not before the court;**
3. **Shows it is likely, and not merely speculative, that the injury will be redressed by a favorable decision, and;**
4. **Shows that the injury is unique or different from those injuries suffered by the public in general.**

Agribusiness Activities. The use of land for the following commercial purposes related to raising, growing, processing, or storage of farm products (crops): custom fertilizer/herbicide application, custom planting, custom harvesting, grain storage, or processing of agriculturally-related raw products (crops) raised, grown or purchased by the landowner or operator.

Agriculture. The use of land for agricultural purposes including farming, dairying, raising, breeding, or management of livestock, poultry, or honey bees, truck gardening, forestry, horticulture, floriculture, viticulture, and the necessary accessory uses for packaging, treating or storing the produce providing that the operation of any such accessory use shall be secondary to the normal agricultural activities. This definition **shall not** include intensive agricultural activities such as concentrated animal feeding operations and **but not commercially based** agribusiness activities.

Airport/Airstrip. A place where aircraft can land and takeoff, usually equipped with hangers, facilities for refueling and repair, and various accommodations for passengers, including heliports.

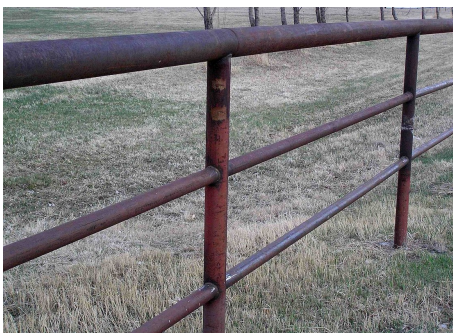
Alley. A narrow service way providing a secondary means of access to abutting property.

Alter or alteration. Any change, addition or modification in construction or occupancy.

Animal or Animals. "Animal" or "Animals" shall mean all living, non-human beings, including but not be limited to, cattle, swine, sheep, goats, farmed cervidae, horses, bison, mules, or other equines, llamas, poultry and/or ratitae. "Animal" or animals" does not include wild game.

Animal Feeding Operation Structure. An anaerobic lagoon, formed manure storage structure, egg wash water storage structure, earthen manure storage basin or animal confinement building.

Animal and Farm Fence: means a fence erected for the purpose of containing livestock, enclosing crops, water areas (excluding private swimming pools), woodlots, buildings, fields or laneways for the operation of agriculture. Common examples may include but are not limited to the images below:



Animal Husbandry. The dairying, raising of livestock, breeding or keeping of animals, fowl or birds as a business for gainful occupation.

Animal Manure. Poultry, livestock, or other animal excreta or mixture of excreta with feed, bedding or other materials.

Animal Waste, Incorporated. Animal waste applied to the land surface and mechanically mixed into the soil within 24 hours.

Animal Waste, Injected. Animal waste injected or tilled into the soil at the time of application.

Animal Waste, Surface Applied. Animal waste applied to the land surface without benefit of incorporation or injection. This shall not include the use of animal waste in irrigation waters.

Animal Manure Management Facilities – Any structure or facility utilized for the storage of manure associated with a concentrated animal feeding operation.

Animal Unit. See Section 1101.08.02

Antenna Support Structure. Any building or structure other than a tower which can be used for location of telecommunications facilities.

Antique Car. An antique car must be at least twenty-five (25) years of age or older.

Applicant. An individual, a corporation, a group of individuals, partnership, joint venture, owners, or a business entity having charge or control of one or more concentrated animal feeding operations who request or seeks application approval under the terms of this ordinance.

Application. The process by which the owner of a parcel of land within Miner County submits a request to use, develop, construct, build, modify upon such parcel of land. Application includes all written documentation, verbal statements, and representations, in whatever form or forum, made by an applicant to Miner County concerning such a request.

Aquaculture. Land devoted to the hatching, raising and breeding of fish or other aquatic plants or animals for sale or personal use.

Aquifer: A geologic formation, group of formations or part of a formation capable for storing and yielding ground water to wells or springs.

Automotive Tow Business. A business engaged in removing or delivering to public or private property a motor vehicle, or an item that was being transported or towed by a motor vehicle, by towing, carrying, hauling, or pushing, including automotive service stations or an auto repair shop that has a tow truck and repairs vehicles on-site. See Section 1631.

Bar/Tavern. An establishment that is licensed to sell alcoholic beverages by the drink.

Basement. A basement has more than one-half (1/2) of its height below grade. A basement is counted as a story for the purpose of height regulations if subdivided and used for dwelling purposes, ~~other than by a janitor.~~

Bed and Breakfast (B & B's). A private single-family residence, which is used to provide, limited meals and temporary accommodations for a charge to the public. **See Section 1625.** ~~Such establishments should be located where there will be minimal impact on surrounding properties and should comply with the following conditions:~~

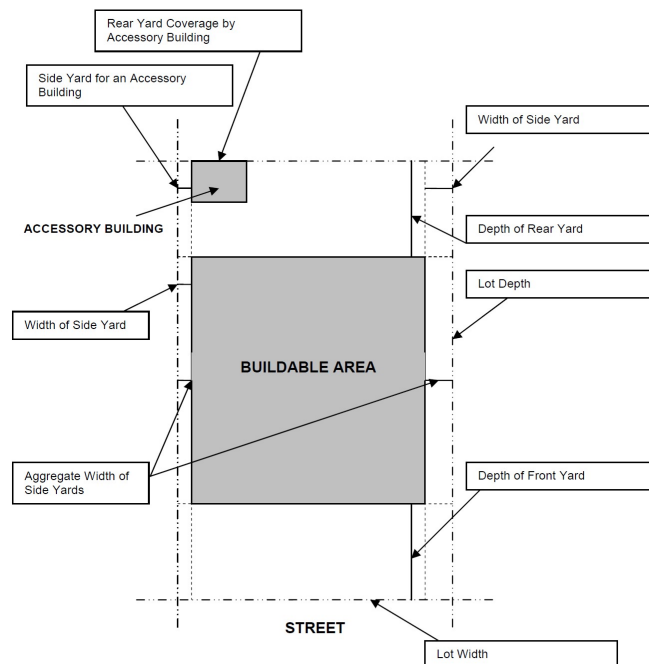
- ~~1. B & B's shall be limited to residential structures with an overall minimum of one thousand eight hundred (1,800) square feet of floor. Preference will be given to structures with historic or other unique qualities.~~
- ~~2. They shall be in compliance with applicable state laws including registration with the South Dakota Department of Health, maintaining a guest list, and providing a smoke detector in each sleeping room.~~
- ~~3. Accessory use signs shall be based on similar requirements for a home occupation permit and shall not be more than two (2) square foot in area.~~
- ~~4. Such uses shall be an incidental use with an owner occupied principal dwelling structure provided that not more than four bedrooms in such dwelling structure shall be used for such purpose.~~
- ~~5. Off-street parking requirements shall be one space per guestroom and shall be in addition to parking requirements for the principal use. Off-street parking shall not be located in a required front or side yard and screening shall be required when adjacent to residentially used property.~~
- ~~6. The length of stay shall not exceed fourteen (14) days during any one hundred twenty (120) day consecutive period.~~
- ~~7. Meals shall be limited to breakfast, which is prepared in a common facility (household kitchen). Meals may be served only to overnight registered guests and cooking is not permitted in the sleeping rooms.~~
- ~~8. The building shall meet all building codes and zoning requirements. A site plan showing the location of guest parking spaces and floor plan showing a location of the sleeping rooms, lavatories, and bathing facilities, and kitchen shall be submitted with application.~~

Best Management Practices. Measures contained in Soil Conservation Service South Dakota Technical Guide, either managerial or structural, that are determined to be the most effective, practical means of preventing or reducing pollution inputs from non-point sources to water bodies.

Board of County Commissioners. The governing body of Miner County.

Buildable Area. The buildable area of a lot is the space remaining after the minimum setback requirements of this Ordinance have been complied with. The diagram below illustrates the buildable area of a hypothetical lot. This diagram is for reference only. Setbacks and other requirements vary from district to district. (see illustration below).

Buildable Area Illustration



Building. Any structure **The word building includes the word structure (permanent or temporary) and is a structure which is entirely separated from any other structure by space or by walls in which there are no communicating doors or windows or similar openings and is** designed for the support, shelter and protection of persons, animals, or property.

Buildings, Height of. The vertical distance from the grade to the **peak** (highest point of the **structure**). coping of a flat roof or to the deck line of a mansard roof, or to the mean height level between the eaves and ridge for gable, hip and gambrel roofs.

Campground. Shall mean a plot of ground for public use **A commercial recreation facility open to the public, for a fee,** upon which two or more campsites are located, established, maintained, advertised, or held out to the public, to be a place where camping units can be located and occupied as temporary living quarters. ~~Campgrounds for tent trailers and recreational vehicles should be sited with consideration for access to the property. The campground should be designed to minimize the impact from adjacent major thoroughfares.~~

Cannabis (or Marijuana. All parts of any plant of the genus cannabis, whether growing or not, in its natural and unaltered state, except for drying or curing and crushing or crumbling. The term includes an altered state of marijuana absorbed into the human body. The term does not include fiber produced from the mature stalks of such plant, or oil or cake made from the seeds of such plant. The term does not include the plant Cannabis sativa L. (hemp) and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent on a dry weight basis.

Cannabis Cultivation Facility. This term is defined as a legally licensed entity that acquires, possesses, cultivates, delivers, transfers, transports, supplies, or sells cannabis and related supplies to a cannabis establishment.

Cannabis Dispensary. This term is defined as a legally licensed entity that acquires, possesses, stores, delivers, transfers, transports, sells, supplies, or dispenses cannabis, cannabis products, paraphernalia, or related supplies and educational materials.

Cannabis Establishment. A cannabis cultivation facility, a cannabis testing facility, a cannabis product manufacturing facility, or a cannabis dispensary.

Cannabis Products. Any concentrated cannabis, cannabis extracts, and products that are infused with cannabis or an extract thereof, and are intended for use or consumption by humans. The term includes edible cannabis products, beverages, topical products, ointments, oils, and tinctures.

Cannabis Product Manufacturing Facility. This term is defined as a legally licensed entity that acquires, possesses, manufactures, delivers, transfers, transports, supplies, or sells cannabis products to a cannabis dispensary.

Cannabis Testing Facility. This term is defined as a legally licensed entity legally authorized to analyze the safety and potency of cannabis.

Certified Crop Advisor. Means any crop advisor/agronomist certified by the American Society of Agronomy.

Change in Operation. Change in operation means a cumulative increase of more than 300 animal units, after June 1, 2000, which are confined at an unpermitted concentrated animal feeding operation.

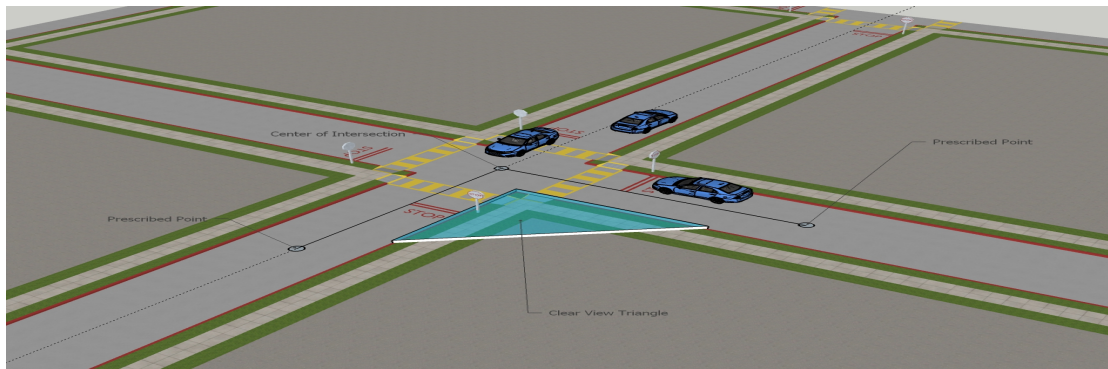
Chemigation. The process of applying agricultural chemicals (fertilizer or pesticides) through an irrigation system by injecting the chemicals into the water.

Church. A building wherein persons regularly assemble for religious worship and which is maintained and controlled by a religious body organized to sustain public worship, together with all accessory buildings and uses customarily associated with such primary purpose. Includes synagogue, temple, mosque, or other such place for worship and religious activities.

Class V Injection Well. A conduit through which potentially contaminated but generally non-hazardous fluids can move below land surface into or above an aquifer. The types of primary concern in Miner County are 5W20--industrial process water and waste disposal wells and 5X28 automobile service station disposal wells. Typically, 5W20 types are commercial/ industrial facility septic tanks used to dispose of more than domestic wastewater. 5X28 types are dry wells for wastes from repair bay drains at facilities servicing internal combustion vehicles and equipment.

Clear View Triangle. A triangular-shaped portion of land established at street intersections and ingress/egress points in which there are restrictions on things erected, placed or planted which would limit or obstruct the sight distance of motorists entering or leaving the intersection (see illustration below).

Clear View Triangle Illustration



Club, Private. Building and facilities owned or operated by a corporation, association, person, or persons for a social, educational, or recreational purpose, but not primarily for profit and not primarily to render a service which is customarily carried on as a business. The structure is not available for public use or participation.

Commercial Public Enterprises: Including but not limited to the following; Music concerts; rodeos; tractor pulls; and animal or vehicle races.

Commercial Vehicles. Any motor vehicle licensed by the state as a commercial vehicle.

Common Ownership. A single, corporate, cooperative, or other joint operation venture.

Comprehensive Plan. The adopted long-range plan intended to guide the growth and development of Miner County.

Concentrated Animal Feeding Operation. (See Section 1108. Concentrated Animal Feeding Operation Regulations.) A Concentrated Animal Feeding Operation is defined as a lot, yard, corral, building or other area where animals have been, are, or will be stabled or confined for a total of forty-five (45) days or more during any twelve (12)-month period, and where crops, vegetation, forage growth, or post-harvest residues are not sustained over any portion of the lot or facility. Two (2) or more animal feeding operations under common ownership are considered a single animal operation if they adjoin each other, or if they use a common area, or if they use a common area or system for land application of manure.

Conditional Use. A conditional use is a use that would not be appropriate generally or without restriction throughout the zoning division or district, but which, if controlled as to number, area, location, or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or general welfare. Such uses may be permitted in such zoning division or district as conditional uses, as specific provisions for such exceptions is made in these zoning regulations **that, owing to certain special characteristics attendant to its operation, may be permitted in a zoning district subject to requirements that are different from the requirements imposed for any use permitted by right in the zoning district.** Conditional uses are subject to evaluation and approval by the approval by the Board of Adjustment and are administrative in nature.

Contamination: The process of making impure, unclean, inferior or unfit for use by introduction of undesirable elements.

Contingency Plans. Detailed plans for control, containment, recovery and clean-up of hazardous materials released during floods, fires, equipment failures, leaks and spills.

Contractor Shops and Yards. Those facilities to include structures and land areas where the outdoor storage of equipment and supplies used for various types of construction are stored. Examples of equipment and supplies include but are not limited to the following – road construction, building construction, gravel operations, and general contracting services.

Convenience Store. Any retail establishment offering for sale pre-packaged food products, household items, and other goods commonly associated with the same, at which a customer typically purchases only a few items during a short visit.

Crematory, Animal. A facility which contains furnaces where animal carcasses are reduced to ashes.

Decommissioning: To return the property to its pre-installation state or better as approved in the decommissioning plan.

Density. The number of families, individuals, dwelling units, or housing structures per unit of land.

Development. The carrying out of any surface or structure construction, reconstruction or alteration of land use or intensity of use.

District, Zoning. A section or sections of the County for which regulations governing the use of buildings and premises, the height of buildings, the size of yards, and the intensity of use are uniform.

Domestic Sanitary Sewage Treatment Facility. Shall mean the structures equipment and processes required to collect, carry away, and treat and dispose of wastewater, industrial wastes, and or sludge.

Dredging. Any of various practices utilizing machines equipped with scooping or suction devices that are used to deepen harbors, lakes, and waterways and in underwater mining.

Dwelling. Any building, including seasonal housing structures, or a portion thereof, which **contains one (1) or more rooms, with sleeping quarters and is further** designed and used exclusively for residential purposes. **This definition does not include a mobile home or manufactured home.**

Dwelling, Farm. Any dwelling farmer owned or occupied by the farm owners, operators, tenants, or seasonal or year-around hired workers.

Dwelling, Multiple-Family. A **residential** building occupied by two (2) or more families **with the number of families in residence not exceeding the number of dwelling units provided.**

Dwelling, Non-Farm. Any occupied dwelling which is not a farm dwelling.

Dwelling, Single-Family. A building occupied exclusively by one (1) family.

Dwelling, Multiple. A building occupied by two (2) or more families.

Dwelling Unit. One (1) or more rooms, containing sleeping quarters in a dwelling occupied as separate living quarters by a single family.

Electric Utility. Any person operating, maintaining, or controlling in this state, equipment or facilities for providing electric service to or for the public including facilities owned by a municipality.

Electrical Substation. A premise which may or may not contain buildings, where the interconnection and usual transformation of electrical service takes place between systems. An electrical substation shall be secondary, supplementary, subordinate, and auxiliary to the main system.

Eligible Building Site (Building Eligibility). A site which fulfills the requirements for the construction or placement of a building.

Engineer. Means any engineer licensed by the State of South Dakota.

Essential Public Utilities and Services. Overhead or underground electrical, gas, petroleum products (i.e. gas, natural gas, oil), steam or water transmission or distribution systems and structures, or collection, communication, supply or disposal systems and structures used by public for protection of the public health, safety or general welfare, including towers, poles, wires, mains drains, sewers, pipes, conduits, cables, satellite dishes, and accessories in connection therewith.

Established Residence (in reference to Section 1101.08). A non-seasonal dwelling established before the siting of new concentrated animal feeding operation or the expansion of an existing animal feeding operation which requires a conditional use permit.

Existing Farmstead. An existing farmstead shall include a livable house occupied by the owner or tenant within the last three (3) years and shall have been existing on the site for at least five (5) years and the site shall have been used in the past as a farmstead for normal farming operation. The Planning Commission may consider defining an identifiable parcel as an existing farmstead if the proposed site meets the following criterion:

1. Evidence that the proposed site was once used for human habitation. This may be determined by existence of buildings/foundations and/or an established shelterbelt **or tax records.** .
2. Information regarding the location of flood plain, access to roads and utilities, and other appropriate site information may be considered by the Planning Commission in determining the suitability of the parcel for development.

Exploration. The act of searching for or investigating a mineral deposit. It includes, but is not limited to, sinking shafts, tunneling, drilling core and bore holes and digging pits or cuts and other works for the purpose of extracting samples prior to commencement of development of extraction operations, and the building of roads, access ways, and other facilities related to such work. The term does not include those activities which cause no or very little surface disturbance, such as airborne surveys and photographs, use of instruments or devices which are hand-carried or otherwise transported over the surface or make magnetic, radioactive, or other work which causes no greater land disturbance than is caused by ordinary lawful use of the land by persons not involved in exploration.

Extended Home Occupation. A home occupation conducted outside of the residence and/or in an accessory building and shall comply with Section 1609.

Facility: Something built, installed or established for a particular purpose.

Family. Any number of individuals living together as a single housekeeping unit in which not more than four (4) individuals are unrelated by blood, marriage or adoption. **One (1) or more persons related by blood, marriage, or adoption occupying a dwelling unit as an individual housekeeping organization. A family may include four (4), but not more than four (4) persons not related by blood, marriage or adoption. This definition shall not include foster families as regulated by the State of South Dakota.**

Farm. An area with or without a dwelling which is used for the growing of the usual farm products, such as vegetables, fruit, trees and grain, and their storage on the area, as well as for the raising, feeding, or breeding thereon of the usual farm poultry and farm animals, such as horses, cattle, sheep and swine. The term "farming" includes the operating of such an area for one or more of the above uses, including dairy farms with the necessary accessory uses for treating or storing the produce; provided, however, that the operation of such accessory uses shall be secondary to that of the normal farming activities.

Feedlot. Feedlot means pens or similar areas with dirt, or concrete (or paved or hard) surfaces. Animals are exposed to the outside environment except for possible small portions affording some protection by windbreaks or small shed type shade areas. Feedlot is synonymous with other industry terms such as open lot pasture lot, dirt lot, or dry lot.

Fence. A structure used as a boundary, screen, separation, means of privacy, protection or confinement, and is constructed of wood, plastic, metal, wire mesh, masonry or other similar material and is used as a barrier of some sort.

Filling. To reclaim land by filling in low-lying ground with soil.

Firearm. A gun that discharges shot, bullet or other projectile by means of an explosive, gas, compressed air, or other propellant.

Frontage. All the property on one (1) side of a street or road.

Fur Farm. a farm on which animals, such as minks, are raised for their pelts.

Game Lodge. A building or group of two (2) or more detached, or semi-detached, or attached buildings occupied or used as a temporary abiding place of sportsmen, hunters and fishermen, who are lodged with or without meals, and in which there are sleeping quarters.

Garage, Private. An accessory building used for the storage of not more than four (4) vehicles owned and used by the occupant of the building to which it is necessary. **Vehicles include cars, pickups, trailers, and boats.**

General Compatibility with Adjacent Properties. All uses listed as permitted or as conditional uses are generally compatible with other property in a specified zoning district. If such uses are not generally compatible, they should be prohibited within the specified district. Conditional uses may only be denied in accordance with definable criteria in order that an applicant may know under which circumstances a permit may be granted in this location. In Miner County, general compatibility refers to the manner of operation of a use. The Board of Adjustment may consider compatibility when prescribing conditions for approval of a permit, but those conditions should be uniformly required of similar uses under similar circumstances throughout the county.

General Permit. South Dakota General Water Pollution Control Permit for Concentrated Animal Feeding Operations

Golf Course. A tract of land for playing golf, improved with tees, greens, fairways, hazards, and which may include clubhouses and shelters.

Government Grain Storage Sites. A grain storage facility owned and operated by a State or Federal governmental entity.

Grade. is established by the average natural grade within fifty (50) feet of the structure.

Grading. The act or method of moving soil to reshape the surface of land or a road to a desired level or grade.

Grandfather"ed" Clause. A clause in a law that allows for the continuation of an activity that was legal prior to passage of the law but would otherwise be illegal under the new law.

Greenhouse. A building whose roof and sides are made largely of glass or other transparent or translucent material and in which the temperature and humidity can be regulated for the cultivation of delicate or out-of-season plants for subsequent sale or for personal enjoyment.

Grey Water. All domestic wastewater except toilet discharge water.

Ground-Mount: A solar energy system mounted on a rack or pole that rests or is attached to the ground.

Ground Water. Subsurface water that fills available openings in rock or soil materials such that it may be considered water saturated.

Group Home. A supervised living or counseling arrangement in a family home context providing for the **twenty-four (24)**-hour care of children or adults.

Hazardous Materials. A material which is defined in one or more of the following categories:

1. **Ignitable:** A gas, liquid or solid which may cause fire through friction, absorption of moisture, or which has low flash points. Examples: white phosphorous and gasoline.
2. **Carcinogenic:** A gas, liquid or solid which is normally considered to be cancer causing or mutagenic. Examples: PCBs in some waste oils.
3. **Explosive:** A reactive gas, liquid or solid which will vigorously and energetically react uncontrollably if exposed to heat, shock, pressure or combinations thereof. Examples: dynamite, organic peroxides and ammonium nitrate.
4. **Highly Toxic:** A gas, liquid or solid so dangerous to man as to afford an unusual hazard to life. Examples: parathion and chlorine gas.
5. **Moderately Toxic:** A gas, liquid or solid which through repeated exposure or in a single large dose can be hazardous to man. Example: atrazine.
6. **Corrosive:** Any material, whether acid or alkaline, which will cause severe damage to human tissue, or in case of leakage might damage or destroy other containers of hazardous materials and cause the release of their contents. Examples: battery acid and phosphoric acid.

High Water Mark. The elevation established by the South Dakota Water Management Board pursuant to SDCL 43-17. In those instances where the South Dakota Water Management Board has not established a high water mark the Board of Adjustment may consider the elevation line of permanent terrestrial vegetation to be used as the estimated high-water mark (elevation) solely for the purpose of the administration of this ordinance. When fill is required to meet this elevation, the fill shall be required to stabilize before construction is begun.

Home Occupation. An occupation engaged in by the occupants of a dwelling provided that: **see Section 1619.**

1. No person other than members of the family residing on the premises shall be engaged in such occupation;
2. The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use of residential purposes by its occupants, and not more than 25 percent of the floor area of the dwelling unit shall be used in the conduct of the home occupation;

- ~~3. There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation other than one sign, not to exceed two (2) square feet in area, non-illuminated;~~
- ~~4. No home occupation shall be conducted in any accessory building in connection with a non farm dwelling. Accessory building use in connection with a farm dwelling shall be agricultural related;~~
- ~~5. No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood, and any need of parking generated by the conduct of such home occupation shall be provided off the street and other than in a required front yard;~~
- ~~6. No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the lot. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in line voltage off the premises.~~
- ~~7. There is no commodity sold upon the premises, except that which is prepared on the premises in connection with such occupation or activity;~~

Horticultural services. Commercial services which are oriented to support the science or practical application of the cultivation of fruits, vegetables, flowers, and plants.

Impound Lot. A lot for the temporary storage of automobiles, trucks, buses, recreational vehicles, and similar vehicles. This use excludes vehicle repair, junkyard/salvage yard or dismantling. See Section 1631.

Incorporation. A soil tillage operation following the surface application of manure which mixes the manure into the upper four (4) inches or more of soil.

Injection. The application of manure into the soil surface using equipment that discharges it beneath the surface.

Institution Farm. Agricultural land wholly owned by a government agency, federal, state, county, or municipality, and used to grow an agricultural commodity.

Inventory (in reference to Section 1101.08). The total number of animal units located on a concentrated animal feeding operation.

Junkyards/Salvage Yards. The use of more than one thousand (1,000) square feet of any land, building, or structure, for commercial purposes, where waste, discarded materials such as scrap metals, used building materials, used lumber, used glass, discarded or inoperable vehicles, paper, rags, rubber, discarded appliances, cordage, barrels, and other similar materials are stored.

Kennel. Any premise or portion thereon where more than five (5) dogs, cats, or other household pets are raised, trained, boarded, harbored, or kept for remuneration. Veterinary clinics, animal hospitals and animal shelters are specifically excluded.

Lagooning. The process of creating a shallow body of water, separated from a larger body of water.

Leaks and Spills. Any unplanned or improper discharge of a potential containment including any discharge of a hazardous material.

Letter of Assurances. A list of conditions signed by the applicant for a permit acknowledging agreement to follow the conditions of the permit.

Light Manufacturing. Those manufacturing processes which are not obnoxious due to dust, odor, noise, vibration, pollution, smoke, heat or glare. These commercial and industrial uses are characterized by generally having all aspects of the process carried on within the building itself.

Lodging House. A building or place where lodging is provided (or which is equipped to provide lodging regularly) by prearrangement for definite periods, for compensation, for three (3) or more persons in contradiction to hotels open to transients.

Lot Area. The lot area is the land in square feet, within the lot line.

Lot, Buildable.

1. A parcel of land occupied or intended for occupancy by a use permitted in this Ordinance, including one (1) **main principal** building together with its accessory buildings, the open spaces and parking spaces required by this Ordinance.
2. **A lot which is a part of a subdivision, the plat of which has been recorded in the office of the Register of Deeds prior to January 1, 2023, or an irregular tract lot described by a deed recorded in the office of the Register of Deeds prior to January 1, 2023; provided that if a lot has less width or area as required by this Ordinance, the lot is not a buildable lot.**

Lot, Depth of. The average horizontal distance between the front and rear lot lines.

Lot Line. A line marking the legal limits of the property of a person. The term property line and lot line shall have the same meaning.

Lot of Record. A subdivision, the plat of which has been recorded in the office of the Register of Deeds, or a parcel of land the deed or agreement to convey to which was recorded in the office of the Register of Deeds prior to January 1, 2023.

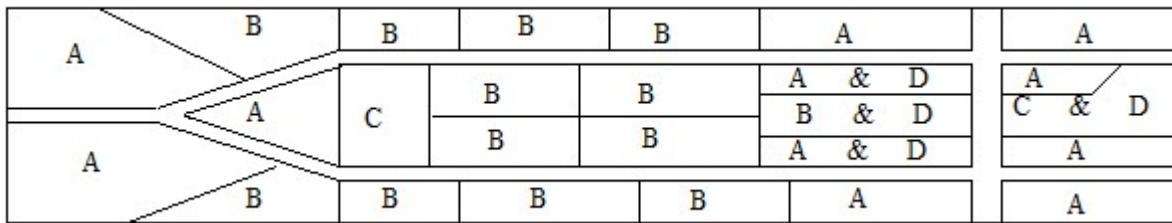
Lot Types: See figure below:

Lot, Corner. A lot abutting upon two (2) or more streets at their intersection. **(Lot A and Lot A & D)**

Lot, Double Frontage. A lot having a frontage of two (2) streets as distinguished from a corner lot. **(Lot C and Lot C & D).**

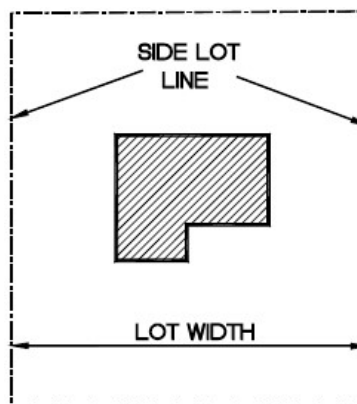
Lot, Interior. Defined as a lot other than a corner lot with only one frontage on a street. (Lot B)

Lot, Through Lot: Defined as a lot other than a corner lot with frontage on more than one street. Through lots abutting two streets may be referred to as double frontage lots. (Lot C and Lot C & D).



Lot Width. The width of a lot is the mean distance between straight side lot lines measured at a point fifty (50) feet back from the front yard lot line thereof (see below).

Lot Width Illustration



Manufactured Home. See Section 1207-1633. An industrialized building unit constructed on a chassis for towing to the point of use and designed to be used for continuous year-round occupancy as a single dwelling. For the purposes of this ordinance manufactured homes are further defined as follows:

Type A Manufactured Home shall:

- (a) Have more than 1,200 square feet of occupied space in a double-section or larger multi-section unit.
- (b) Have been constructed within the last ten (10) years, be structurally sound, and well-maintained.
- (c) The running gear and hitch have been removed
- (d) Has been anchored to a foundation and permanent footing
- (e) The foundation shall be (a) an approved wood basement constructed of 2 x 6 frame-work and treated with water resistant materials; or (b) a foundation shall be constructed with eight inches poured concrete or concrete block. The footing to be a minimum of eight (8) inches thick by sixteen (16) inches wide poured concrete with top of footing to be sixteen (16) inches below grade.
- (f) Have a gabled roof with a pitch of at least 2/12 feet.
- (g) Have siding material of a type customarily used on site-constructed residence.
- (h) Have roofing material of a type customarily used on site-constructed residences.
- (i) The age of the manufactured house may not exceed fifteen (15) years from the date of manufacture.

Type B Manufactured Home shall:

- ~~(a) Have more than 700 square feet of occupied space in a single, double, expando or multi-section unit.~~
- ~~(b) Utilize a permanent perimeter enclosure in accordance with approved installation standards.~~
- ~~(c) Be anchored to the ground, in accordance with manufacturer's specifications.~~
- ~~(d) Be structurally sound and well maintained.~~
- ~~(e) Be placed on a support system, in accordance with approved installation standards.~~
- ~~(f) Have a gabled roof with a pitch of at least 2/12 feet.~~
- ~~(g) Have siding material of a type customarily used on site constructed residence.~~
- ~~(h) Have roofing material of a type customarily used on site constructed residences.~~
- ~~(i) The age of the manufactured house may not exceed fifteen (15) years from the date of manufacture.~~

Manufactured Home Park. Any Manufactured home court, camp, park, site, lot, parcel or tract of land intended for the purpose of supplying a location, or accommodations, for manufactured homes and upon which manufactured homes are parked and shall include all buildings used or intended for use as part of the equipment thereof whether a charge is made for the use of the manufactured home park and its facilities or not. "Manufactured Park" shall not include automobile or manufactured home sales lots on which unoccupied manufactured homes are parked for the purposes of inspection and sale.

Manure. Poultry, livestock, or other animal excreta, bedding, compost and raw materials or other materials commingled with poultry, livestock, or other animal excreta set aside for disposal.

Manure, Incorporated. Animal manure applied to the land surface and mechanically mixed into the soil within twenty-four (24) hours.

Manure, Injected. Animal manure injected or tilled into the soil at the time of application.

Manure, Liquid. A suspension of livestock manure in water in which the concentration of manure solids is low enough to maintain a free-flowing fluid. Liquid manure also includes slurry which is a mixture of livestock manure, bedding and waste feed in water. Liquid manure and slurry is typically applied to fields by pumping through irrigation equipment or by hauling and spreading with a tank wagon. The solids content of liquid manure or slurry is less than ten (10) percent. A practical definition of liquid manure includes any livestock manure mixture that can be pumped through conventional liquid manure handling equipment.

Manure Storage Area. An area for the temporary containment of animal manure. Said area is separate from pens or buildings where animal manure is stored for more than one year.

Manure, Surface Applied. Animal manure applied to the land surface without benefit of incorporation or injection. This shall not include the use of animal manure in irrigation waters.

Milling. The processing or enhancing of a mineral.

Mineral. An inanimate constituent of the earth in a solid, liquid or gaseous state which, when extracted from the earth, is useable in its natural form as a metal, metallic compound, a chemical, an energy source, or a raw material for manufacturing or construction material. For the purpose of these regulations, this definition does not include surface or subsurface water, geothermal resources, or sand, gravel and quarry rock.

Mineral Extraction. The removal of a mineral from its natural occurrence on affected land. The term includes, but is not limited to, underground and surface mining.

Modular Home. See Section ~~1207~~ **1633**.

~~1. Modular homes shall meet the following regulations.~~

- ~~a. Modular homes shall meet or exceed Uniform Building Codes.~~
- ~~b. Modular homes will include all off-site constructed homes, which may be transported to the site in one or more sections.~~
- ~~c. Modular homes shall have more than 1,000 square feet in ranch style and 850 square feet split and be placed on a permanent foundation.~~
- ~~d. Modular homes shall not have attached running gear and a trailer hitch or the capacity to have attached running gear and trailer hitch.~~
- ~~e. Modular homes shall have a minimum of a 4/12 roof pitch.~~
- ~~f. Have siding material of a type customarily used on site-constructed residences.~~
- ~~g. Have roofing material of a type customarily used on site-constructed residences.~~

Motel/Hotel. A series of attached, semi-attached, or detached sleeping or living units, for the accommodation of transient guests and not customarily including individual cooking or kitchen facilities, said units having convenient access to off-street parking spaces for the exclusive use of guests or occupants.

Nonconforming Building or Structure or Use. Any building or land lawfully occupied by a use at the time of passage of this Ordinance or amendment thereto, which does not conform after the passage of this Ordinance or amendment.

Nonstandard Use. The category of nonconformance consisting of lots occupied by buildings or structures or uses which existed immediately prior to the effective date of this ordinance which fail to comply with any of the following: minimum lot requirements for the area, density, width, front yard, side yard, rear yard, height, unobstructed open space, or parking for the district in which they are located, even though the use of the premises conforms to the permitted uses within the district as set out in the provisions of this ordinance.

Nonstandard Concentrated Animal Feeding Operation. A concentrated animal feeding operation existing which is classified as a nonstandard use in accordance with Section 1108.

Nursery. A place where trees, shrubs, vines and/or flower and vegetable plants are grown and/or are offered for sale, to be transplanted onto the lands of the purchaser by the purchaser or by the nursery establishment itself.

Object. Anything constructed, erected, or placed, the use of which does not require permanent location on the ground or attached to something having a permanent location on the ground.

Open Lot. Pens or similar confinement areas with dirt, or concrete (or paved or hard) surfaces. Animals are exposed to the outside environment except for possible small portions affording some protection by windbreaks or small shed type shade areas. Synonymous with pasture lot, dirt lot, dry lot.

Outdoor Storage. The keeping, in an unroofed area, of any goods, junk, material, merchandise, or vehicles in the same place for more than twenty-four (24) hours.

Owner. Any Person with fee title or a long-term (exceeding ten (10) years) leasehold to any parcel of land within Miner County who desires to develop, or construct, build, modify, or erect a structure upon such parcel of land.

Parking Space. An area enclosed or unenclosed, sufficient in size to store one (1) automobile, together with a driveway connecting the parking space with a street or alley.

Parks and Recreation Areas. Public non-commercial recreation facilities open to the general public and requiring minimal structural development, including, but not limited to playgrounds, parks, monuments, green strips, open space, mini-parks, athletic fields, boat launching ramps, piers and docks, picnic grounds, public campgrounds swimming pools, and wildlife and nature preserves, along with any necessary accessory facilities, rest rooms, bath houses, and the maintenance of such land and facilities, but not including private, commercial campgrounds, commercial recreation and/or amusement centers.

Parking Space. An area enclosed or unenclosed, sufficient in size to store one (1) automobile, together with a driveway connecting the parking space with a street or alley.

Pasture. A field providing continuous forage to animals and where the concentration of animals is such that a vegetative cover is maintained during the growing season.

Permit. A permit required by these regulations unless stated otherwise.

Permitted Use. Any use allowed in a zoning district and subject to the restrictions applicable to that zoning district. **Permitted Use. Any use listed as a “permitted use” in a particular zoning district and subject to the restrictions applicable to that zoning district. Permitted uses are allowable by right and simply require the property owner to obtain a permit to establish the use based upon a properly filed application, without further action.**

Person is any natural person, firm, partnership, association, corporation, company, or other legal entity, private or public, whether for profit or not for profit.

Photovoltaic System: An active solar energy system that converts solar energy directly into electricity.

Plat. The map, drawing or chart on which the subdivider’s plan of subdivision is legally recorded.

Potential Pollution Hazard. A Class E Concentrated Animal Feeding Operation of 50 to 499 Animal Units may be required to obtain a conditional use permit when a potential pollution hazard exists. Factors to be considered by the Zoning Administrator in determining a Potential Pollution Hazard include the following:

1. The Concentrated Animal Feeding Operation does not meet the minimum setback and separation distances of these regulations.
2. A Potential Water Pollution Hazard exists due to siting over a shallow aquifer or drainage which contributes to the waters of the State.

Primary Containment Facility. A tank, pit, container, pipe or vessel of first containment of a liquid or chemical.

Principal Structure. The structure in which the principal use of the lot is conducted. For example, a dwelling on a residential lot.

Principal Use. The primary use to which the premises are devoted.

Private Recreation Areas. Any open space or recreational area, other than a public park, owned and operated or maintained in whole or in part for profit by a private individual(s), club or fraternal organization for members only, and may include therein one or more of the following activities: swimming, boat facilities, picnic area, tennis courts, outdoor skating rinks, athletic fields, walking, riding and cross-country skiing, snowmobiling, but does not include the racing of animals, motor vehicles, motorcycles or snowmobiles.

Private Shooting Preserves. An acreage of at least one hundred and sixty (160) acres and not exceeding one thousand two hundred and eighty (1,280) acres either privately owned or leased on which hatchery raised game is released for the purpose of hunting, for a fee, over an extended season.

Private Wind Energy Conversion System (PWECS). A Wind Energy System designed for the purpose of converting wind energy into electrical or mechanical power to be consumed substantially by the permittee. No PWECS installed in accordance with the requirements of these regulations will generate power as an electric utility as defined by SDCL 49-34A-1.

Process Generated Wastewater. Water directly or indirectly used in the operation of an animal feeding operation. The term includes spillage or overflow from watering systems; water and manure collected while washing, cleaning or flushing pens, barns, manure pits or other areas; water and manure collected during direct contact swimming, washing or spray cooling of animals; and water used in dust control.

Process Wastewater: Process wastewater means any process generated wastewater and any precipitation (rain or snow) that comes into contact with the animals, manure, litter or bedding, feed, or other portions of the animal feeding operation. The term includes runoff from an open lot.

Quarter Section. The Northeast, Northwest, Southwest, or Southeast quarter (1/4) section delineated by the United States Public Land Survey or a government lot per such survey, if such lot contains a minimum of one hundred fifty-five (155) acres.

Range (Target/Shooting). Shall be defined as an area for the discharge of weapons for sport under controlled conditions where the object of the shooting is an inanimate object such as, but not limited to, paper, metal or wooden targets. The term range includes archery ranges. This term only applies to commercial ranges or ranges open to the public. See Section 1621.

Range Officer. Means the person designated to be responsible at a Range at any given time during any activity. A Range Officer shall be present on site at any Range when the range is in use.

Recreational Vehicle. A motor home, travel trailer, truck camper, or camping trailer, with or without motor power, designed for human habitation for recreational or emergency occupancy. A recreational vehicle does not include manufactured homes.

Religious Farming Community. A corporation formed primarily for religious purposes whose principle income is derived from agriculture and/or a farm which may or may not be held in collective ownership, in which multiple families reside on-site and use or conduct activities upon the property which are participated in, shared, or used in common by the members of the group residing thereon.

Repair. Reconstruction or renewal of any part of an existing building for the purpose of maintenance. The word “repair” or “repairs” shall not apply to any change of construction.

Resort. This category provides commercial hospitality lodgings in spacious settings that are principally intended for vacationing, relaxation and conference activities for visitors to the community.

Retail Sales and Trade. Establishments engaged in selling products, goods or merchandise to the general public for personal or household consumption; and establishments engaged in providing services or entertainment to the general public including eating and drinking establishments, hotels, motels, repair shops, indoor amusement, copying services, health, professional, educational, and social services, and other miscellaneous services.

Rubble Site. A site for the disposition of refuse as defined by the South Dakota Department of Environment and Natural Resources.

Runoff Control Basin. A structure which collects and stores only precipitation-induced runoff from an animal feeding operation in which animals are confined to area which are unroofed or partial roofed and in which no crop, vegetation, or forage growth or residue cover is maintained during the period in which animals are confined in the operation.

Sale or Auction Yard or Barn. A place or building where the normal activity is to sell or exchange livestock. Livestock normally in yard or barn for one (1) day during sale or auction.

Sand, Gravel, or Quarry Operation. An operation which uses surface excavation techniques in order to extract sand and/or gravel. If the operation is not used for commercial purposes or owned by a governmental entity, the operation is deemed to be a private sand, gravel or quarry operation. See Section 1611.

Sanitary Landfill. A site for the disposal of garbage and other refuse material.

School. Any building or part thereof, whether public or private, which is designed, constructed, or used for instruction in early childhood, elementary, or secondary education.

Seasonal Camp Trailers or Recreational Vehicles. A vehicle designed for temporary seasonal living quarters.

Secondary Containment Facility: A second tank, catchment pit, pipe or vessel that limits and contains a liquid or chemical leaking or leaching from a primary containment area; monitoring and recovery systems are required.

Section Line. A dividing line between two (2) sections of land as identified delineated by the United States Public Land Survey or a government lot per such survey.

Service Station. Any building or premises where automotive fuels are stored and made available for sale and dispensing through fixed equipment into fuel supply tanks or motor vehicles and where automotive supplies and accessories may or may not be available.

Setback. The setback of a building is the minimum horizontal distance between the street line and the front line of the building or any projection thereof, except cornices, unenclosed porches, and entrance vestibules and window bays projecting not more than three and one-half (3 1/2) feet from the building and having no more than fifty (50) square feet area and not extending above the first story of the building.

Setback Between Uses. Unless specifically mentioned within this ordinance, the setback or separation distance between uses is the minimum horizontal distance measured from the wall line of a neighboring principal building to the wall line of the proposed building/structure/use. In regard to Concentrated Animal Feeding Operations the separation distance shall be measured from the wall line of the neighboring principal building to the wall line of the feedlot or structure housing animals and/or manure management facility.

~~Shall (when used in regard to concentrated animal feeding operations).~~ means that the condition is an enforceable requirement of this permit.

Shallow Aquifer: An aquifer ~~vulnerable to contamination because~~ **zero (0) to fifty (50) feet in depth from the earth's surface in which** the permeable material making up the aquifer (a) extends to the land surface so percolation water can easily transport contaminants from land surface to the aquifer, or (b) extends to near the land surface and lacks a sufficiently thick layer of impermeable material on the land or near the land surface to limit percolation water from transporting contaminants from the land surface to the aquifer.

Shelterbelt. A strip or belt of trees or shrubs established to reduce soil erosion and to protect yards, lots, buildings, livestock and residences, recreation and wildlife from wind. For the purposes of this ordinance a shelterbelt shall include ten (10) or more trees planted in a line, **with each tree** separated by a distance of forty (40) feet or less. **Ornamental trees, generally used in front yards and spaced further than thirteen (13) feet apart and further do not extend lineally for a distance of over one hundred fifty (150) feet, are not considered shelterbelts. Ornamental trees maybe placed within fifty (50) feet of the public road right-of-way subject to section 1608.**

Shooting Range shall be defined as an area for the discharge of weapons for sport under controlled conditions where the object of the shooting is an inanimate object such as, but not limited to, paper, metal or wooden targets.

Shorelands. All land within one thousand (1,000) feet of a lake or pond and lands within three hundred (300) feet of a river or stream or to the landward side of the flood plain, whichever distance is greater.

Should (when used in regard to concentrated animal feeding operations). means that the condition is a recommendation. If violations of the permit occur, the County will evaluate whether the producer implemented the recommendations contained in this permit that may have helped the producer to avoid the violation.

Sign. Any device designed to inform or attract the attention of persons not on the premises on which the sign is located, provided, however, that the following shall not be included in the application of the regulations herein:

1. Signs not exceeding one (1) square foot in area and bearing only property numbers, post box number, names of occupants of premises or other identification of premises not having commercial connotations;
2. Flags and insignia of any government except when displayed in connection with commercial promotion;
3. Legal notices; identification, informational, or directional signs erected or required by governmental bodies;
4. Integral decorative or architectural features of buildings, except letters, trademarks, moving parts, or moving lights; and
5. Signs directing and guiding traffic and parking on private property but bearing no advertising matter.

Sign. Off-premises. Any sign identifying or advertising a business, person, activity, goods, products or services at a location other than where such sign has been erected.

Sign, On-premises. Any sign identifying or advertising a business, person, activity, goods, products or services located on the premises where the sign has been erected.

Sign Structure. Any structure which supports, has supported, or is capable of supporting a sign, including decorative cover.

Significant Contributor of Pollution. To determine if a concentrated animal feeding operation meets this definition, **one or more of** the following factors are considered **and/or may be prescribed as conditions of granting a permit:**

1. Size of feeding operation and amount of manure reaching waters of the state;
 2. Location of the feeding operation in relation to waters of the state;
 3. Means of conveyance of manure and process wastewater into waters of the state; and
 4. The slope, vegetation, rainfall and other factors affecting the likelihood or frequency of discharge of animal wastes and process wastewater into waters of the state.
1. **Whether the site has or will obtain a General Water Pollution Control Permit for Concentrated Animal Feeding Operations from the South Dakota Department of Environment and Natural Resources; or**
 2. **Whether the site will obtain a Certificate of Compliance from the South Dakota Department of Environment and Natural Resources; or**
 3. **Whether engineered plans have been prepared/reviewed by an engineer licensed in the State of South Dakota to determine runoff and infiltration of solid waste will not exceed volumes allowed by the State of South Dakota Department of Environment and Natural Resources if a General Water Pollution Control Permit for Concentrated Animal Feeding Operations was applicable; or**
 4. **Whether the changes to the existing manure management system is considered an improvement from existing practices at a site with no substantiated complaints prior to an application being made.**

Sleeping Quarters. A room or an area contained within a dwelling unit utilized for the purpose of sleep.

Solar Collector: A device, structure or a part of a device or structure for which the primary purpose is to transform solar radiant energy into thermal, mechanical, chemical, or electrical energy.

Solar Energy: Radiant energy received from the sun that can be collected in the form of heat or light by a solar collector.

Solar Energy System (SES): A commercial facility that converts sunlight into electricity, whether by photovoltaics (PV), concentrating solar thermal devices (CST), or other conversion technology, for the primary purpose of wholesale sales of generated electricity. A SES is the principal land use for the parcel on which it is located. A SES site may include an array of devices, or structural design features, the purpose of which is to provide for generation of electricity, the collection, storage and distribution of solar energy. See Section 1639.

Special Permitted Use. Any land use listed as a special permitted use within a zoning district that meets the specified criteria for certification.

Specified Anatomical Areas. Means (1) Less than completely and opaquely covered human or animal genitals, pubic region, or pubic hair, buttocks; and female breasts below a point immediately above the top of the areola; and (2) Genitals of humans or animals in a discernible turgid state, even if completely or opaquely covered.

Specified Sexual Activities. Means (1) Human genitals in a state of sexual stimulation or arousal; (2) Acts or representations of acts of human or animal masturbation, sexual intercourse or sodomy, bestiality, oral copulation or flagellation; (3) Fondling or erotic touching of human or animal genitals, pubic region, buttock or female breast; and (4) Excretory functions as part of or in connection with any activities set forth in an Adult Bookstore or "Adult Entertainment Cabaret".

Stable. A building for the shelter and feeding of domestic animals, especially horses and cattle.

Stable, Commercial. A building for the shelter and feeding of domestic animals, especially horses and cattle where such domestic animals are raised, trained, boarded, harbored, or kept for remuneration. Veterinary clinics, animal hospitals and animal shelters are specifically excluded.

Stealth means any Tower or Telecommunications Facility which is designed to enhance compatibility with adjacent land uses, including, but not limited to, architecturally screened roof-mounted antennas, antennas integrated into architectural elements, and Towers designed to look other than like a Tower such as light poles, power poles, and trees. The term Stealth does not necessarily exclude the use of uncamouflaged lattice, guyed, or monopole Tower designs.

Street, Arterial. A street designated as such on the Major Street Plan of the Comprehensive Plan of Miner County, South Dakota.

Street, Collector. A street designated as such upon the Major Street Plan of the Comprehensive Plan of Miner County, South Dakota.

Street, Highway or Road. All property acquired or dedicated to the public and accepted by the appropriate governmental agency for street, highway or road purposes.

Street, Highway or Road Right-of-Way (ROW) Line. A dividing line between a lot or parcel of land and a contiguous street, highway or road. The location of a street, highway or road line shall be as shown on the County Section Plat.

Street, Local. Any street which is not an arterial street or collector street.

Structure. Anything constructed or erected, the use of which requires permanent location on the ground or attached to something having a permanent location on the ground.

Structure, Temporary. Anything constructed or erected, the use of which requires temporary location on the ground or attached to something having a temporary location on the ground.

Telecommunications Facilities means any cables, wires, lines, wave guides, antennas, and any other equipment or facilities associated with the transmission or reception of communications which a Person seeks to locate or has installed upon or near a Tower or Antenna Support Structure. However, Telecommunications Facilities shall not include:

a. Any satellite earth station antenna two (2) meters in diameter or less which is located in an area zoned industrial or commercial; or

b. Any satellite earth station antenna one (1) meter or less in diameter, regardless of zoning category.

Temporary Fireworks Sales Stand. A structure utilized for the licensed resale of fireworks during the time period allowed by South Dakota State Law.

Ten Year Time of Travel Distance: The distance that ground water will travel in ten years. This distance is a function of aquifer permeability and water table slope.

Tower means a self-supporting lattice, guyed, or monopole structure constructed from grade which supports Telecommunications Facilities. The term Tower shall not include amateur radio operators' equipment, as licensed by the FCC.

Tree, Ornamental. A deciduous tree which is typically grown because of its shape, flowering characteristics, or other attractive features, and which grows to a mature height of about twenty-five (25) feet or less.

Tree, Shade. For the purposes of this Ordinance, a shade tree is a deciduous tree which has a mature crown spread of fifteen (15) feet or greater, and having a trunk with at least five (5) feet of clear stem at maturity

Truck Garden. A farm where vegetables are grown for market.

Turbine. The parts of the Wind Energy System including the blades, generator, and tail.

Twin Homes. A two-family dwelling which has a common wall and is platted into two (2) separate lots.

Utility (in reference to Wind Energy Systems) Any entity engaged in this state in the generation, transmission or distribution of electric energy including, but not limited to, a private investor owned utility, cooperatively owned utility, and a public or municipal utility.

Variance. A variance is a relaxation of the terms of the zoning ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the ordinance would result in unnecessary and undue hardship. As used in this ordinance, a variance is authorized only for height, area, and size of structure or size of yards and open spaces; establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of non-conforming in the zoning district or uses in an adjoining zoning district.

Veterinary Clinic. Any premises to which animals are brought, or where they are temporarily kept, solely for the purpose of diagnosis or treatment of any illness or injury, which may or may not have outdoor runs.

Violation. The failure of a structure/use or other development to be fully compliant with this ordinance.

Waters of the State means all waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, situated wholly or partly within or bordering upon the state.

Water Surface Elevation. The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, (or other datum, where specified) of floods of various magnitudes and frequencies in the flood plains of coastal or riverine areas.

Well, Shallow Well: A well which is located in a shallow aquifer. An artificial excavation or opening in the ground, made by means of digging, boring, drilling, jetting, or by any other artificial method, for the purpose of obtaining groundwater. Any series of openings, borings, or drillings developed and pumped collectively by a single pump unit shall be considered as one well. (SDCL 46-1-6)

Well, Abandoned. A well which is in either such a state disrepair that its original purpose cannot be reasonably achieved, or which has not been used for water production in the past two (2) years.

Well, Established. A water producing well that is either registered with the State of South Dakota or has well logs on file with the South Dakota Department of Environment and Natural Resources or has been used for human consumption for more than one week within one (1) year prior to the application date for a proposed concentrated animal feeding operation.

Wetlands. Any area where ground water is at or near the surface a substantial part of the year; the boundary of which shall be defined as that area where the emergent aquatic vegetation ceases and the surrounding upland vegetation begins.

Wind Energy System (WES). A commonly owned and/or managed integrated system that converts wind movement into electricity. All of the following are encompassed in this definition of system:

1. Tower or multiple towers,
2. Generator(s),
3. Blades,
4. Power collection systems, and
5. Electric interconnection systems.

Windward Row. Of or on the side exposed to prevailing winds. Regarding shelterbelts, on the north and west side of a public right-of-way, the windward row of the shelterbelt is northernmost or westernmost row of trees. On the south and east side of a public right-of-way, the windward row of the shelterbelt is southernmost and easternmost row of trees.

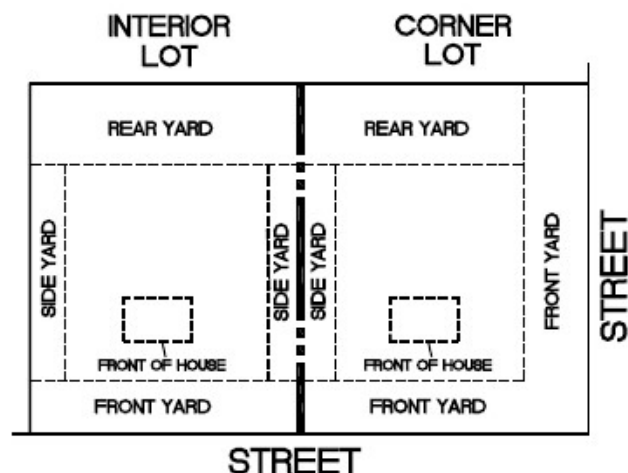
Yard. An open space on the same lot with a building, unoccupied and unobstructed. In measuring a yard for the purpose of determining the width of a side yard, the depth of a front yard, or the depth of a rear yard, the minimum horizontal distance between the lot line and bearing wall of the main building shall be used. **(See Front, Side, and Rear Yard Illustration Below)**

Yard, Front. A yard extending across the front of a lot between the side yard lines, and being the minimum horizontal distance between the road right-of-way line and the main bearing wall of the main building or any projections thereof other than the projections of the usual steps, unenclosed balconies or open porch. **(See Front, Side, and Rear Yard Illustration Below)**

Yard, Rear. Any yard extending across the rear of a lot measured between the side lot lines, and being the minimum horizontal distance between the rear lot line and the rear of the main building or bearing wall or any projections other than steps, unenclosed porches, or unenclosed balconies. On corner lots the rear yard may be to the rear of either street, provided that the minimum rear yard depth requirement shall be calculated on the longest average lot dimension. On interior lots the rear yard shall in all cases be at the opposite end of the lot from the front yard. **A yard across the whole width of a lot, extending from the rear line of the building to the rear line of the lot. . (See Front, Side, and Rear Yard Illustration Below)**

Yard, Side. A yard between the main building and the sideline of the lot being the minimum horizontal distance between the bearing wall of the building and the side yard line and extending from the front lot line to the rear yard line. **. (See Front, Side, and Rear Yard Illustration Below)**

Front, Rear and Side Yard Illustration



Zone of Contribution: The entire area around a well or wellfield that contributes to the well or wellfield.

Zoning Administrator The individual(s) appointed by the Board of County Commissioners and designated to administer and enforce the zoning ordinance.

ARTICLE 3
ESTABLISHMENT OF DISTRICTS

Section 301. Districts. For the purpose of this Ordinance, the unincorporated areas of the County are divided into ~~four types of~~ **the following** zoning districts, ~~as follows:~~

A	Agricultural District
AP	Aquifer Protection Overlay District
CI	Commercial/Industrial District
TD	Town District
PR	Planned Residential District

Section 302. Provision for Official Zoning Map.

1. The unincorporated area of the County is hereby divided into zones, or districts, as shown on the Official Zoning Map which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this Ordinance. The Official Zoning Map shall be identified by the signature of the ~~Chairman~~ **Chairperson** of the Board of County Commissioners attested by the County Auditor, and bearing the seal of the County under the following words: "This is to certify that this is the Official Zoning Map referred to in Section 302 of Ordinance 04-01 adopted May 4, 2004 by Miner County, South Dakota."

2. Regardless of the existence of purported copies of the Official Zoning Map which may from time to time be made or published, the Official Zoning Map, which shall be located in the office of the County Zoning Administrator, shall be the final authority as to the current zoning status of land and water areas, buildings, and other structures in the County.

Section 302.01. Amendment of the Official Zoning Map.

If, in accordance with the provisions of this Ordinance, changes are made in district boundaries or other matter portrayed on the Official Zoning Map, such changes shall be entered on the Official Zoning Map promptly after the amendment has been approved by the Board of County Commissioners, with an entry on the Official Zoning Map as follows: "On **(date of adoption)** by official action of the Board of County Commissioners, the following change(s) were made in the Official Zoning Map." (brief description of nature of change), which entry shall be signed by the Chairman of the Board of County Commissioners and attested by the County Auditor. No amendment to this Ordinance which involves matter portrayed on the Official Zoning Map shall become effective until after such change and entry has been made on said map.

No changes of any nature shall be made on the Official Zoning Map or matter shown thereon except in conformity with the procedures set forth in this Ordinance. Any unauthorized change of whatever kind by any person or persons shall be considered a violation of this Ordinance.

Section 302.02. Changes and/or Replacement of Official Zoning Map.

In the event the Official Zoning Map becomes damaged, destroyed, lost, or difficult to interpret because of the nature or number of changes and additions, the Board of County Commissioners may, **by Ordinance**, adopt a new Official Zoning Map which shall supersede the prior Official Zoning Map. The new Official Zoning Map shall be identified by the signature of the Chairman of the Board of County Commissioners attested by the County Auditor, and bearing the seal of the County under the following words: "This is to certify that this Official Zoning Map supersedes and replaces the Official Zoning Map adopted (date of adoption of map being replaced) for Miner County, South Dakota."

~~Regardless of the existence of purported copies of the Official Zoning Map which may, from time to time, be made or published, the Official Zoning Map, which shall be located in the office of the Zoning Administrator, shall be the final authority as to the current zoning status of land and water areas, buildings, and other structures in the County.~~

Unless the prior Official Zoning Map has been lost, or has been totally destroyed, the prior map or any significant parts thereof remaining shall be preserved, together with all available records pertaining to its adoption or amendment.

In the event that the Official Zoning Map becomes difficult to interpret because of the nature or number of changes and additions, the Board of County Commissioners may by resolution adopt a new Official Zoning Map, which shall supersede the prior Official Zoning Map. The new Official Zoning Map shall contain previous changes and additions to the previous Official Zoning Map and may correct drafting or other errors or omissions in the prior Official Zoning Map.

Amendments to the Official Zoning Map shall require amendment of this regulation by ordinance, as provided for in Article 9.

Section 303. Interpretation of District Boundaries.

Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning Map, the following rules shall apply:

1. A district name or letter symbol shown on the district map indicates that the regulations pertaining to the district designated by that name or symbol extend throughout the whole area in the unincorporated portions of the County bounded by the district boundary lines.
2. Boundaries indicated as approximately following the center lines of streets, roads, or streams shall be construed as following such center lines, and if the actual location of streets, roads or streams varies slightly from the location on the district map, then the actual location shall control.
3. Boundaries indicated as parallel to or extensions of street lines or physical features shall be so construed.
4. Boundaries indicated as following railroad lines shall be construed to be in the center of the railroad right-of-way.

5. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.
6. Boundaries in unsubdivided property shall be construed as following the district boundary line on the Official Zoning Map accompanying and made a part of this Ordinance. Distances not specifically indicated on the Official Zoning Map shall be determined by the scale of the map.
7. **Boundaries indicated as approximately following city limits shall be construed as following such city limits;**
8. **Boundaries indicated as following shore lines shall be construed to follow such shore lines, and in the event of change in the shore line shall be construed as moving with the actual shore line; boundaries indicated as approximately following the center lines of streams, rivers, canals, lakes, or other bodies of water shall be construed to follow such center lines;**
9. **Where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map, or in other circumstances not covered by subsections 1 through 8 above, the Board of Adjustment shall interpret the district boundaries.**

Section 304. Disincorporation. All territory which may hereafter become a part of the unincorporated area of the County by the disincorporation of any village, town or city, or for some other reason may fall within the zoning jurisdiction of the County, shall automatically be classified in the "TD" Town District until within a reasonable time following disincorporation, or acquisition of zoning jurisdiction, the territory shall be appropriately classified by Ordinance.

Section 3045. Application of District Regulations. Except as hereafter provided:

1. No building shall be erected, converted, enlarged, reconstructed, moved, or structurally altered, nor shall any building or land be used except for a purpose **permitted listed as a permitted use, special permitted use or conditional use** in the district in which the building or **use of** land is located.
2. No building shall be erected, converted, enlarged, reconstructed, moved, or structurally altered to exceed the height limit established for the district in which the building or land is located.
3. 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.
4. No yard or lot existing at the time of passage of this Ordinance shall be reduced in dimensions or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this ordinance shall meet at least the minimum requirements established by this Ordinance.
5. All sign sizes, lighting, and locations shall, at a minimum, meet all State and Federal laws and regulations.

Section 3056. Prohibited uses.

All uses and structures not specifically listed as a permitted use or permitted by special permitted use, or conditional use in a particular zoning district shall be prohibited in said district.

ARTICLE 4
NONCONFORMING USE OR LOTS OF RECORD

Section 400. Purpose and Intent: Within the districts established by this Ordinance or amendments that may later be adopted, there exist lots, structures, uses of land and structures, and characteristics of use, which were lawful before this Ordinance was passed or amended but which would be prohibited, regulated, or restricted under the terms of this Ordinance or future amendments. **The purpose of this article is to provide for the regulation of nonconforming uses, buildings, and structures, and to specify those circumstances under which they shall be permitted to continue.** It is the intent of this Ordinance to permit these nonconformities to continue until they are removed, but not to encourage their survival. It is further the intent of this Ordinance that nonconformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

Section 401. When a nonconforming use has been changed to a conforming use, it shall not be changed subsequently to any nonconforming use.

Section 402. Discontinuance of Nonconforming Use. No nonconforming use, building, structure or premises, if once changed to conform to the requirements of this ordinance for the district in which it is located, shall ever be changed back so as to be nonconforming. In the event that a nonconforming use is discontinued for more than one (1) year, any subsequent use shall thereafter be in conformity with the regulations of the district in which it is located. In the event that a nonconforming use of any building or premises is, in fact, discontinued or its normal operation stopped for a period of one (1) year, the Board of Adjustment may adopt, after notice by registered or certified mail to the property owners, an amortization schedule to bring about the gradual elimination of such nonconforming use or occupancy.

Section 403. Extension or Enlargement. No existing building devoted to a use not permitted by this Ordinance, in the district in which such building is located, except when required to do so by law, shall be enlarged, extended, converted, reconstructed or structurally altered, unless such use is changed to a use permitted in the district in which the building is located.

Section 404. Restoration After Damage. When a building, the use of which does not conform to the provisions of this regulation, is damaged by fire, **act of God**, explosion, or the public enemy, to the extent of more than sixty percent (60%) of its fair market **cash** value, it shall not be restored except in conformity with the regulations of the district in which the building is situated. **Such repair or reconstruction of such building shall be begun within six (6) months after such casualty and completed within a reasonable time thereafter. The loss in value shall be computed as the difference between the actual cash value of the structure immediately before and after the casualty. Cash value shall be the same as that used for insurance purposes as approved by the State of South Dakota Insurance Code.**

Section 405. Effect on Use Which is Illegal Under Prior Law. Nothing in this Ordinance shall be interpreted as authorization for, or approval of, the continuance of the use of a building or premises in violation of zoning regulations in effect at the time of the effective date of this Ordinance.

Section 406. Nonconforming Lots of Record.

- 1. In any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this Ordinance, notwithstanding limitations imposed by other provisions of this Ordinance. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district, provided that yard dimensions and requirements other than those applying to area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located. Variance of yard requirements shall be obtained only through action of the Board of Adjustment.**
- 2.** If two (2) or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendments of this Ordinance, and if all or part of the lots do not meet the requirements established for lot width and area, the lands involved shall be considered to be an undivided parcel for the purposes of this Ordinance, and no portion of said parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by this regulation, nor shall any division of any parcel be made which creates a lot width or area below the requirements stated in this Ordinance.

Section 407. Repairs and Maintenance. On any nonconforming structure or portion of a structure containing a nonconforming use, work may be done on ordinary repairs, or on repairs or replacement of non-bearing walls, fixtures, wiring, or plumbing, provided that the nonconformity of the structure shall not be increased.

Section 408. Unsafe Nonconforming Use. If a nonconforming structure or portion of a structure containing a nonconforming use becomes physically unsafe or unlawful due to the lack of repairs and maintenance, and is declared by any duly authorized official to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired, or rebuilt except in conformity with the regulations of the district in which it is located.

Section 409. Continuation of Nonconforming Uses. Subject to the provisions of this article, the lawful use of a premise existing immediately prior to the effective date of this ordinance may be continued although such use does not conform to the provisions hereof.

Section 410. Use Becoming Nonconforming by Change in Law or Boundaries. Whenever the use of a premises becomes a nonconforming use through a change in zoning ordinance or district boundaries, such use may be continued, although the use does not conform to the provisions thereof.

Section 411. Powers of the Planning Commission/Board of Adjustment. Nothing contained in this Section shall be so construed as to abridge or curtail the powers of the County Planning Commission or Board of Adjustment as set forth elsewhere in this Ordinance.

Section 412. Continuation of Nonstandard Uses. Nonstandard uses existing immediately prior to the effective date of this ordinance may be continued, although such uses do not conform to the provisions hereof. Nonstandard buildings or structures may be enlarged or extended, converted, reconstructed, or structurally altered as follows:

- 1. Structural alteration of buildings or structures may be made if such changes do not further encroach into an existing front yard, side yard, or rear yard which is less than the minimum required yards for the district in which they are located.**
- 2. Enlargement, extension, conversion of buildings or structures may otherwise be made if such changes comply with the minimum required yards, lot area, height, landscaping, parking, and density for the district in which they are located.**

**ARTICLE 5
BOARD OF ADJUSTMENT,
APPEALS, VARIANCES, AND CONDITIONAL USES**

Section 501. Members, Terms, Meetings, Rules

1. The Miner County ~~Planning~~ Commission shall serve as the Board of Adjustment. **The Board of County Commissioners may also appoint two (2) alternates to the Board of Adjustment. Alternates may be appointed for a term of three (3) years.** ~~The Board of Adjustment is hereby designated to hear all requests for variances, conditional uses, and zoning appeals.~~ The County Auditor shall act as secretary to the Board of Adjustment but shall take no part in the deliberations.
2. **The Board of Adjustment shall adopt rules necessary to the conduct of its affairs and in keeping with the provisions of this Ordinance.**
3. Meetings of the Board of Adjustment shall be held at the call of the Chairperson and at such other times as the Board shall determine. Such Chairperson, or in their absence, the Acting Chairperson, may administer oaths and compel the attendance of witnesses.
4. All meetings of the Board of Adjustment shall be open to the public. The Board shall keep and publish minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the County Auditor and shall be a public record. The Board of Adjustment shall adopt from time to time, subject to the approval of the County Commission, such rules and regulations as it may deem necessary to carry the appropriate provisions of this ordinance into effect.
5. **A quorum of the Board of Adjustment consists of four (4) members physically present or participating remotely. The Board of Adjustment shall take no action on any item at a meeting where a quorum of the Board is not physically present or participating remotely.**
6. **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 Administrator 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 502. Appeals to Board of Adjustment, Record of Appeal, Hearing and Stays.

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

1. It is the intent of this Ordinance that all questions of interpretation and enforcement shall be first presented to the Zoning Administrator, and that such questions shall be presented to the Board of Adjustment only on appeal from the decision of the Zoning Administrator 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. 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 Administrator, 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. Such appeals shall be taken within a reasonable time, as provided by the rules of the Board of Adjustment by filing with the Zoning Administrator from whom the appeal is taken and with the Board of Adjustment a notice of appeal specifying the grounds thereof. The Zoning Administrator from whom the appeal is taken shall forthwith transmit to the Board of Adjustment all the papers constituting the record upon which the action appealed from was taken. Such appeal shall be taken within thirty (30) days.
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 Administrator 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 Administrator 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 503. (Reserved)

Section 504. Powers 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 administrative official or agency~~ **the Zoning Administrator** based on or made in the enforcement of any zoning regulation or any regulation relating to the location or soundness of structures or to interpret any map. An appeal will not be heard until:

1. The applicant or any other person aggrieved by the decision of ~~an administrative official or agency~~ **the Zoning Administrator** shall file a written appeal with the Board of Adjustment within five working days of the decision.
2. The ~~administrative official or agency~~ **Zoning Administrator** from whom the appeal is taken shall forthwith transmit to the Board of Adjustment all the papers constituting the record upon which the action appealed was taken.
3. Notice of public hearing shall published once, ten (10) days prior to the Board of Adjustment public hearing, in a paper of general circulation in the area affected. Written notice shall be given to the appellant seven (7) days prior to meeting.
4. The ~~administrative official~~ **Zoning Administrator** ~~or agency~~ shall present their decision to the Board of Adjustment for review.
5. ~~The Board of Adjustment shall either uphold, overrule or amend the decision of the Zoning Administrator. The concurring vote of two-thirds (2/3) of the full membership (four (4) members) of the Board of Adjustment is required to overrule or amend the decision of the Zoning Administrator.~~
(Reserved)
6. The Board of Adjustment may 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 to that end shall have all the powers of the officer from whom the appeal is taken. **The concurring vote of two-thirds (2/3) of the full membership (four (4) members) of the Board of Adjustment is required to overrule or amend the decision of the Zoning Administrator.**

Section 505. 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 conditional uses should be granted; and to grant conditional uses with such conditions and safeguards as are appropriate under this Ordinance, or to deny conditional uses when not in harmony with the purpose and intent of this Ordinance. A conditional use shall not be granted 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. Notice of public 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. The owner of the property for which conditional use is sought or his agent and all adjoining landowners shall be notified by mail.
3. The public hearing shall be held. Any party may appear in person, or by agent or attorney.
4. 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, grant with conditions, or deny the conditional use, and that the granting of the conditional use will not adversely affect the public interest.
5. **The** ~~Before~~ **granting of** any conditional use ~~is granted,~~ **permit,** ~~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 arrangement has been made concerning the following, where applicable:
 - ~~a. Entrance to and exit from 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, odor or other effects of the conditional use on adjoining properties and properties generally in the district.~~
 - ~~c. Refuse and service areas, with particular reference to the items in (a) and (b) above.~~
 - ~~d. Utilities, with reference to locations, availability, and compatibility.~~
 - ~~e. Screening and buffering with reference to type, dimensions, and character.~~
 - ~~f. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with properties in the district.~~
 - ~~g. Required yards and other open spaces.~~
 - ~~h. 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.

h. The roads providing access to the property are 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 any affected township or other governmental unit regarding the upgrading and continued maintenance of any roads used for the conditional use requested prior to issuance of a Conditional Use Permit.

6. Conditional uses will be void if not utilized within two (2) years. Expiration of a Conditional Use Permit:
- a. 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 actual construction 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.
 - b. If a decision by the Board of Adjustment to grant a conditional use permit is appealed to circuit court the conditional use permit that was granted does not expire for a period of two years following completion of any final appeal of the decision.
7. The concurring vote of two-thirds (2/3) of the full membership (four (4) members) An affirmative majority vote of the present and voting members of the Board of Adjustment is required to pass any application for a Conditional Use Permit.
8. In granting the Conditional Use Permit, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this Ordinance regulation. Violation of such conditions and safeguards, when made a part of the terms under which the variance conditional use permit is granted, shall be deemed a violation of this ordinance and punishable under Section 813 of this ordinance. The Board of Adjustment may, after notice and hearing, revoke a conditional use permit in the event of a violation of any of the conditions upon which such permit was issued. In addition, the conditional use permit may not be transferred during any violation.
9. Reapplication: No applicant requesting a special exception permit whose application includes the same or substantially the same requirements for the same or substantially the same property which has been denied by the Board of Adjustment shall be again considered by the Board of Adjustment before the expiration date of six (6) months from the date of the final action on the petition. The Board of Adjustment may, after notice and hearing, revoke a conditional use permit in the event of a violation of any of the conditions upon which such permit was issued. In addition, the conditional use permit may not be transferred during any violation.
10. Any alteration, construction, use of earthmoving equipment, or other change pursuant to a zoning permit or allowed land use on neighboring land that began after the date on which an application for a conditional use is received, and that causes the application to fail to meet one or more of the criteria or requirements for conditional use under the zoning ordinance, does not cause the request for a conditional use permit to be considered nonconforming until a final disposition of the conditional use request is determined pursuant to SDCL 11-2-61 or SDCL 11-2-65. If the conditional use permit is granted, the conditional use shall be considered a lawful use, lot, or occupancy of land or premises and may be continued even though the use, lot, or occupation does not conform to the provisions of the ordinance. If the conditional use is not pursued by the applicant for a period of more than one year, any subsequent use, lot, or occupancy of the land or premises shall conform with the zoning ordinance.

Section 506. Powers and Jurisdiction Relating to Variances

The Board of Adjustment shall have the power, ~~to hear requests for variances from this Ordinance in instances where strict enforcement would cause unnecessary hardship, and to grant such variances only when the following provisions apply:~~ **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. No such variance shall be authorized by the Board of Adjustment unless it finds that the strict application of the ordinance would produce undue hardship; such hardship is not shared generally by other properties in the same zoning district and the same vicinity; the authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the grant of the variance; and the granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit, and caprice.
2. No variance shall be authorized unless the Board of Adjustment finds that the condition or situation of the property concerning or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment of this ordinance.
3. A variance from the terms of this ordinance shall not be granted by the Board of Adjustment unless and until a written application for a variance is submitted demonstrating that special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings, in the same district; that literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance; that the special conditions and circumstances do not result from the actions of the applicant; and that granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structure, or buildings in the same district.
4. No non-conforming use of neighboring lands, structures, or buildings in the same district, and no permitted or non-conforming use of lands, structures or buildings in other districts shall be considered grounds for the issuance of a variance.
5. Notice of public hearing shall published once, ten (10) days prior to the Board of Adjustment public hearing, in a paper of general circulation in the area affected. The owner of the property for which a variance is sought, and all adjoining landowners shall be notified by mail.
6. The public hearing shall be held. Any party may appear in person, or by agent or attorney.

7. The Board of Adjustment shall make a finding that the requirements of this Section have been met by the applicant for a variance; the Board shall further make a finding that the reasons set forth in the application justify the granting of the variance, and the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure; the Board of Adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this ordinance, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.
8. In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this ordinance **and punishable under Section 813 of this ordinance.**
9. Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of this ordinance in the district involved or any use expressly or by implication prohibited by the terms of this ordinance in said district.
10. The concurring vote of two-thirds (2/3) of the full membership (four (4) members) of the Board of Adjustment is required to pass any variance.
11. ~~A variance that is granted but not used within one (1) year shall be considered invalid unless an extension has been requested and approved by the Board of Adjustment.~~ **does not expire for a period of two (2) years following completion of any final appeal of the decision. Unless otherwise specified by the Board of Adjustment, a variance shall expire if no construction has commenced at the time of the variance's expiration date**
12. Limitations. Any order of the Board of Adjustment granting a variance may be declared invalid by the Board of Adjustment unless substantially completed within two years from the date of such order. The Zoning Administrator shall notify the property owner of record upon invalidation of a variance.

Section 507. Appeals to a Court of Record. Any person or persons, jointly or severally or any taxpayer, landowner, or any officer, department, board, or bureau of the County, **aggrieved by any decision of the Board of Adjustment,** may ~~appeal as provided by State law.~~ **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. The Board of Adjustment shall respond to the petition within thirty (30) days of receiving the notice of the filing and shall simultaneously submit the complete record of proceedings of the board appealed from, in the form of a return on a petition for writ, without need for a court order or formal issuance of writ.**

Section 508. Reapplication.

1. **No applicant requesting a variance or conditional use permit whose application(s) include the same or substantially the same requirements for the same or substantially the same property which has been denied by the Board of Adjustment shall be again considered by the Board of Adjustment before the expiration date of six (6) months from the date of the final action of the Board of Adjustment.**

ARTICLE 6 (RESERVED)

**~~DUTIES OF ZONING ADMINISTRATOR, BOARD OF ADJUSTMENT,
AND COURTS ON MATTERS OF APPEAL~~**

Section 601. Duties of Zoning Administrator, Board of Adjustment and Courts on Matters of Appeal.

It is the intent of this Ordinance that all questions of interpretation and enforcement shall be first presented to the Zoning Administrator, and that such questions shall be presented to the Board of Adjustment only on appeal from the decision of the Zoning Administrator, and that recourse from the decisions of the Board of Adjustment shall be to the courts as provided by state law.

ARTICLE 7

SCHEDULE OF FEES, CHARGES, AND EXPENSES

Section 701. Schedule of Fees, Charges, and Expenses.

The County Commission shall by resolution establish a schedule of fees, charges, and expenses and a collection procedure for building permits, variances, conditional uses, amendments, appeals, **administrative fees** and other matters pertaining this Ordinance. The schedule of fees shall be posted in the office of the Zoning Administrator and may be altered or amended only by the Miner County Commission.

Until all applicable fees, charges, and expenses have been paid in full, no action shall be taken on any application or appeal.

ARTICLE 8
ADMINISTRATIVE PROCEDURE AND ENFORCEMENT

Section 801. ~~Provision for Zoning Administrator~~ Administration and Enforcement.

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

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

Section 801.01. Zoning Administrator Duties.

The powers and duties of the Zoning Administrator 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 Miner County Planning Commission and/or the Miner County Board of Adjustment and/or Miner 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 Administrator shall receive applications required under this ordinance, specifically but not limited to Building Permits, Conditional Uses, Variances, and Zoning Amendments.**
 - a. For building permits, the Zoning Administrator shall approve the application only in accordance with the provisions of the County's Zoning Ordinance.**
 - b. For Conditional Uses and Variances, the Zoning Administrator shall review the application, and shall make recommendations regarding said application to the Board of Adjustment.**
 - c. For Zoning Amendments, the Zoning Administrator shall review the application, and shall make recommendations regarding said application to the Planning Commission and Board of County Commissioners.**

Section 8021.02. Right of Entry.

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

When the Zoning Administrator 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 Administrator or an authorized representative for the purpose of inspection and examination pursuant to this Ordinance.

Section 801.03. Stop Order.

Whenever any work is being done contrary to the provisions of this ordinance, the Zoning Administrator 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 Administrator to proceed with the work.

Section 801.04. Occupancy Violation.

Whenever any building or structure regulated by this ordinance is being used contrary to the provisions of this ordinance, the Zoning Administrator 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.

Section 802. Procedures For Approval Of Special Permitted Use Permit

- 1. The special permitted 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 special permitted use permit. Requests for special permitted 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. A special permitted use permit shall not be granted unless and until:**
 - a. A written application for a special permitted use is submitted, indicating the section of this Ordinance under which the special permitted 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 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 special permitted use permit and that satisfactory provisions and arrangements have been made concerning the prescribed conditions for the special permitted use permit.**
 - d. The Zoning Officer shall then issue the special permitted use permit subject to the applicant agreeing to any conditions prescribed by this ordinance or the Zoning Officer for the specific special permitted use permit.**
 - e. The Zoning Officer shall then issue any other associated building/use permits.**
 - f. If the application does not meet all of the prescribed performance standards for the special permitted use, the Zoning Officer shall determine that the application is not in conformance with this Section and appropriate special permitted use standards and shall deny the application. The applicant may, as appropriate:**

- i. Apply for a variance from lot area, size of structure(s) or size of yards and open spaces
 - ii. Apply for conditional use permit, if eligible.
 - iii. Appeal the decision of the Zoning Officer in accordance with Section 502.
- g. A special permitted use permit shall expire one (1) year from the date upon which it becomes effective if no actual construction has commenced. Upon written request to the Zoning Officer and prior to the special permitted use expiration date, a one (1) year time extension for the special permitted use may be granted by the Zoning Officer.
- h. If a decision by the Zoning Officer to issue a special permitted use permit is appealed to circuit court the special permitted use permit that was granted does not expire for a period of two (2) years following completion of any final appeal of the decision.

Section 803. Miner County Planning Commission.

~~Within Miner County, outside of incorporated municipalities, the power and jurisdiction related to this article shall be executed by the Miner County Planning Commission. The Miner County Planning Commission shall consist of the five (5) members of the Miner County Commission.~~

All meetings of the Planning Commission shall be open to the public. 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 office of the County Auditor and shall be public record. The Planning Commission shall keep in the minutes showing the vote of each member upon each question or if absent or failing to vote, indicating that fact.

The County Auditor shall act as secretary to the Planning Commission but shall take no part in the deliberations. Meetings of the Planning Commission shall be held at the call of the Chairperson and at such other times as the Board shall determine. Such Chairperson, or in his/her absence, the Acting Chairperson, may administer oaths and compel the attendance of witnesses.

~~Upon notification of a proposed revision, modification, change or amendment to the zoning ordinance or any part thereof the Planning Commission shall schedule a public hearing. Said public hearing shall be given once at least ten (10) days in advance by publication in a legal newspaper of the county. Any person may appear and request or protest the proposed change.~~

Section 805. ~~Miner County Commission.~~ (RESERVED)

~~The Miner County Commission may amend, supplement, change, modify, or repeal any regulation, restriction, boundary, or enforcement provision established in the comprehensive plan or adjuncts thereto. The county shall publish a notice of public hearing once at least ten (10) days in advance by publication in a legal newspaper of the county and hold a hearing to receive public comment. The County Commission shall thereafter either adopt or reject such amendment, supplement, change, modification, or repeal. If adopted the County Commission shall prepare a summary of the action. Upon completion of the summary the states attorney shall review same and direct the County Auditor to have said summary published once in the official newspapers.~~

Section 806. Building Permits Required.

No building or other structure shall be erected, **partially erected**, moved, added to, **structurally altered**, or used **changed** without a permit issued by the Zoning Administrator. No building permit shall be issued by the Zoning Administrator except in conformity with the provisions of this ordinance unless the Zoning Administrator has received a written order from the Board of Adjustment in the form of an administrative review, conditional use, or variance as provided by this ordinance.

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 807. Application for Building Permit.

1. All applications for building permits must be signed or approved in writing by the owner of record. In the event the owner of record has a binding purchase agreement contingent on the approval of the building permit, the potential purchaser may submit and sign all documents required for application. All building permit applications shall be accompanied by a site plan including but not limited to the following items: **drawn to scale, including** a north arrow, **showing the** property lines, 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; and the location and dimensions of the proposed building or alteration.
2. The application shall include such other information as may be lawfully required by the Zoning Administrator, including: existing or proposed building or alterations; existing or proposed uses of the building and land; the number of families, housekeeping units, rental units, or animal units the building is designed to accommodate; conditions existing on the lot; and such other matters as may be necessary to determine conformance with, and provide for the enforcement of, this Ordinance.
3. One copy of the plans shall be returned to the applicant by the Zoning Administrator after they shall have marked such copy either as approved or disapproved and attested to same by their signature on such copy. If a building permit is refused, the Zoning Administrator shall state the reasons for such refusal in writing. The original and one copy of the plans, similarly marked, shall be retained by the Zoning Administrator. The issuance of a building permit, shall, in no case, be construed as waiving any provisions of this ordinance. **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 Section 813 and shall require a new building and use permit.**

Section 808. Expiration of Building Permit

If the work described in any building permit has not begun within one hundred and eighty (180) days or has not been substantially completed within two (2) years of the date of issuance thereof, said permit shall expire; it shall be canceled by the Zoning Administrator and written notice thereof shall be given to the persons affected. The notice shall state that further work as described in the canceled permit shall not proceed unless, and until, a new building permit has been obtained. **If substantial progress has been made within two (2) years from the issuance of the permit but has not been completed, the Zoning Administrator may extend the building/use permit and additional twelve (12) months.**

Section 809. Construction and Use to be as Provided in Application, Plans, Permits, and Application for Zoning Compliance.

Building permits issued on the basis of plans and applications approved by the Zoning Administrator authorize only the use, arrangement, and construction set forth in such approved plans and applications, and no other use, arrangement or construction. Use, arrangement, or construction at variance with that authorized shall be deemed a violation of this ordinance, and punishable as provided by Section 813 of this Ordinance.

Section 810. Building Permit in a Conspicuous Place.

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

Section 811. Bad Actor Legislation.

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

Section 812. Complaints Regarding Violations.

Whenever a violation of this Ordinance occurs, or is alleged to have occurred, any person may file a complaint. Such complaint stating fully the causes and basis thereof shall be filed with the Zoning Administrator. The Zoning Administrator shall record properly such complaint with the Board of Adjustment and investigate and take action thereon as provided by this Ordinance.

~~If the Zoning Administrator shall find that any of the provisions of this Ordinance are being violated, he/she shall notify, in writing by certified mail with return receipt, the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. The party responsible for the violation shall respond within seven (7) working days from receipt of the letter; otherwise, they will be considered in violation and punishable under Section 813.~~

Section 813. ~~Penalties for Violations~~ Violation and Penalty.

~~The owner or agent of a building or premises in or upon which a violation of any provisions of this Ordinance has been committed or shall exist, or lessee or tenant of an entire building or entire premises in or upon which such violation shall exist, shall be guilty of a Class II misdemeanor and shall be punished by a fine not to exceed two hundred dollars (\$200) or imprisonment for not more than thirty (30) days, or both, and in addition shall pay all costs and expenses involved in the case. Each day such violation continues shall be a separate offense.~~

Any architect, engineer, builder, contractor, agent or other person who commits, participates in, assists in or maintains such violation may each be found guilty of a separate offense and suffer the penalties herein provided.

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure or land is used in violation of this Ordinance, appropriate authorities of the county may institute any appropriate action or proceedings to prevent such unlawful erection, construction, alteration, repair, conversion, maintenance, or use; to restrain, correct or abate such violation; to prevent the occupancy of said building, structure or land; or to prevent any illegal act, conduct, business or use in or about such premises.

1. Violations of the ordinance shall be treated in the manner specified below.

- a. Any person who starts work for which a permit (building, conditional use, variance, rezoning) is required by this Zoning Ordinance, without first securing such permit and paying the prescribed fee, shall be charged an administrative fee according to the provisions of this section. All administrative fees assessed there under shall be rounded to the nearest whole dollar.
 - i. Upon finding such violation, the Miner County Zoning Administrator shall notify the owner of property involved verbally or by sending a written notification of the requirement that a permit be obtained to the owner of the property involved by certified mail with return receipt requested. If application for said permit is filed within seven (7) working days from the verbal notification or date of receipt of the letter, an administrative fee shall be assessed in the amount of one hundred percent (100%) of the normal fee for the associated building permit, conditional use permit, variance, and/or rezoning plus the cost of the postage for mailing the aforementioned notice. In no case shall this administrative fee be less than five dollars (\$5.00), including the postage costs.
 - ii. If application for said permit is filed after the deadline of seven (7) working days following the verbal notice or receipt of the notification of the requirement therefore, there shall be imposed an administrative fee in the amount of two (2) times the normal fee for the associated building permit, conditional use permit, variance, and/or rezoning plus the cost of the postage for mailing the aforementioned notice. The payment of the administrative fee shall not relieve such person from the provisions of paragraph (b) below.
 - iii. Any administrative fee or penalty imposed under the provisions of this Zoning Ordinance shall be in addition to any other fees or charges required under this Zoning Ordinance.
- b. It is declared unlawful for any person to violate any of the terms and provisions of these regulations or other official control adopted by the Board of County Commissioners pursuant thereto. Any person who violates, disobeys, omits, neglects or refuses to comply with or resists the enforcement of any provision of this Zoning Ordinance may be subject to a civil or criminal penalty. The penalty for violation of this Zoning Ordinance shall be five hundred dollars (\$500.00) or imprisonment for not more than thirty (30) days, or both, and in addition the violator shall pay all costs and expenses involved in the case. Each and every day that such violation continues after notification may constitute a separate offense. All fines for violation shall be paid to the County Auditor and shall be credited to the General Fund of the County.

The owner or tenant of any building, structure, premises, or part thereof, any architect, builder, contractor, agent, or other person who commits, participates in, assists in, or maintains such violation may each be found guilty of a separate offense and suffer the penalties herein provided. Nothing herein contained shall prevent the County from taking such other lawful action as is necessary to prevent or remedy any violation.

- c. In the event, any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of these regulations, the appropriate authorities of Miner County in addition to other remedies, may institute injunction, mandamus or other appropriate actions or proceedings in a court of competent jurisdiction to prevent, restrain, correct or abate such violation or threatened violation; to prevent the occupancy of said building; structure or land; or to prevent any illegal act, conduct, business or use in or about such premises.
- d. Any taxpayer of the County may institute mandamus proceedings in Circuit Court to compel specific performance by the proper official or officials of any duty required by these regulations.

ARTICLE 9 AMENDMENTS

Section 901. Amendments to Zoning Ordinance.

The comprehensive plan, subdivision Ordinance, official zoning map or enforcement provisions adopted by the Board of County Commissioners may from time to time be amended, supplemented, changed, modified, or repealed by action of the Board of County Commissioners. Such changes may be initiated by petition of an individual landowner, a petition by thirty percent (30%) of the landowners in a zoning district or districts, by the Board of County Commissioners or by the County Planning Commission. Any petition for change shall be considered within forty five (45) days of receipt.

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, or the regulations established by this ordinance. A proposed change of zoning district boundaries or regulations may be in the following manners:

a. The Board of County Commissioners may direct the Planning Commission, to consider a change 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 specifying and requesting amendments to the regulations of this ordinance containing signatures of twenty (20) percent of the landowners in the zoning district or districts may be presented to the Zoning Administrator.

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.

Section 902. Procedure for Amendments.

Prior to consideration of amending, supplementing, changing, modifying or repealing this Ordinance by the Board of County Commissioners, notice and public hearing shall be provided for as follows:

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

1. If an individual landowner petitions the board to change the zoning of all or any part of the landowner's property, notice by mail shall be given to all other adjoining landowners at least seven (7) days prior to any public hearing held thereon by the Board of County Commissioners.

2. The Planning Commission and Board of County Commissioners shall have published at least once ten (10) days before the date of the public hearing in the official county newspapers a notice of the time, place, and subject matter of such hearing.
3. The Planning Commission shall hold the public hearing, review the proposed amendment(s) and make recommendations to the County Commission.
4. The Board of County Commissioners shall hold a public hearing, review the proposed changes, consider public input, and by ordinance deny or pass the amendment(s).
5. If the changes are adopted, the Board of County Commissioners shall prepare a summary of the changes and forward the summary to the States Attorney.
6. The States Attorney shall review the changes and forward them to the County Auditor for publishing.
7. The summary of changes must be published once in the official county newspapers. The changes will take effect twenty (20) days after publication.

1. The landowner or other person(s) requesting the Amendment/Boundary change shall complete an application, available from the Zoning Administrator. Completed applications shall be returned to the Zoning Administrator 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 Administrator, as lawfully may be required to determine conformance with and provide for enforcement of this ordinance.**
- c. **The Zoning Administrator 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 Administrator shall set the date, time, and place for public hearings to be held by the Planning Commission and Board of County Commissioners. The Zoning Administrator 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 Commission, Board of County Commissioners) public hearing. If the proposed amendment will change the boundaries of a zoning district, the Zoning Administrator 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. The Board of County Commissioners shall either approve or deny the ordinance describing the proposed changes to these zoning regulations, in accordance with standard procedures for reading, approval, publication, and effective date.

h. After passage the Ordinance Amendment shall take effect on the 20th day after its publication in the official newspaper of the County.

Section 903. Reapplication. No application requesting a zoning 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 County Commissioners, shall again be considered by the Planning Commission before the expiration of six (6) months from the date of the final action of the Board of County Commissioners.

ARTICLE 10
LEGAL STATUS PROVISIONS
RESERVED

Section 1001. Separability.

Should any article, section or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this Ordinance as a whole, or any part thereof, other than the part so declared to be unconstitutional or invalid.

Section 1002. Purpose of Catch Heads.

The catch heads appearing in connection with the foregoing sections are inserted simply for convenience, to serve the purpose of an index and they shall be wholly disregarded by any person, officer, court or other tribunal in construing the terms and provisions of this Ordinance.

Section 1003. Effective Date.

This Ordinance shall take effect and be in force from and after its passage and publication according to law.

ARTICLE 11
“A” AGRICULTURAL DISTRICT

Section 1101.

Section 1101.01. Purpose

The intent of “A” Agricultural Districts is to protect agricultural lands and lands consisting of natural growth from incompatible land uses in order to preserve land best suited to agricultural uses and land in which the natural environment should be continued and to limit residential, commercial, and industrial development to those areas where they are best suited for reasons of practicality and service delivery.

Section 1101.02. Permitted Uses. **The following principal uses and structures shall be permitted in the Agricultural District:**

1. Agricultural activities and farm related buildings including Class D ~~but excluding Classes A, B, and C~~ Concentrated Animal Feeding Operations;
2. Farm dwelling, secondary farm residences for family and farm employees;
3. Site-built single-family residences
4. Type A manufactured homes
5. Modular homes
6. Type B manufactured homes as secondary residences on existing farm sites;
7. Fisheries services and game propagation areas;
8. Horticultural services;
9. Orchards, tree farms, truck gardening, nurseries and greenhouses;
10. Public parks and recreation areas;
11. Home occupations.
12. Shelterbelts ~~meeting~~ **provided they meet the requirements of** Section 1608 ~~requirements.~~
13. Accessory buildings and structures normally associated with permitted use.

14. Temporary roadside stands for sales of agricultural products grown or produced on the premises.

15. Private Wind Energy Conversion System (PWECS provided they meet the requirements of Section 1624.

Section 1101.03. Conditional Uses

1. Airports and airstrips;
2. Church or cemetery;
3. Golf course, **clubhouse**, golf driving range;
4. Sand, gravel or quarry operation; Mineral exploration and extraction; Rock crushers, concrete and asphalt mixing plants; provided **they meet requirements of Section 1611.**

a. ~~The site meets the requirements of the State Department of Environment and Natural Resources.~~

b. ~~A site plan is provided indicating the following information:~~

- ~~i. Present topography, soil types, depth to groundwater.~~
- ~~ii. Location of existing water drainage, existing buildings, existing shelterbelts.~~
- ~~iii. Identification of roads leading to the site.~~
- ~~iv. Proposed changes at the site such as new shelterbelts, new buildings, changes in topography, new fence lines.~~
- ~~v. Proposed monitoring wells, etc.~~
- ~~vi. A requirement for receiving a permit for extractive/mining operations shall include a haul road agreement between the applicant and appropriate governmental entity (Federal, State, County, Township, or Municipality).~~
- ~~vii. The applicant may be required to provide information regarding how potential air, noise, and water pollution would be minimized.~~
- ~~vii. A minimum of one thousand (1,000) feet from the mineral exploration and extraction; rock crushers; and concrete and asphalt mixing plants property line to the nearest residence; excluding the residence of the above said uses operator.~~
- ~~ix. Mineral exploration and extraction; rock crushers; and concrete and asphalt mixing plants shall be set back at least one hundred (100) feet from any public right of way.~~

5. **(Reserved) Agribusiness activities provided they meet the requirements of Section 1637.**

6. **(Reserved) Automotive Tow Business/Impound Lot provided they meet requirements of 1631.**

7. Sanitary landfills, rubble sites, composting sites, waste tire sites, restricted use sites, and other sites governed by South Dakota Department of Environment and Natural Resources permits for solid waste provided **they meet the requirements of Section 1628;**

a. ~~The site meets the requirements of the State Department of Environment and Natural Resources.~~

b. ~~A site plan is provided indicating the following information:~~

- ~~i. Present topography, soil types, depth to groundwater.~~
- ~~ii. Location of existing water drainage, existing buildings, existing shelterbelts.~~
- ~~iii. Identification of roads leading to the site.~~
- ~~iv. Proposed changes at the site such as new shelterbelts, new buildings, changes in topography, new~~

- v. Proposed monitoring wells, etc.
- e. A minimum of one thousand (1,000) feet from the landfill property line to the nearest residence; excluding: the residence of the landfill operator.
8. Land application of petroleum-contaminated soils;
9. Institution farms, including religious farming communities;
10. Bed and breakfast home provided they meet the requirements of Section 1625;
11. Domestic sanitary Sewage treatment plant/facility provided they meet requirements of Section 1629.
12. Commercial stables, fur farms and dog/cat kennels;
13. Veterinary clinics;
14. Junkyards/salvage yards, provided that they meet the following minimum requirements and other restrictions that the County Planning Commission may deem appropriate of Section 1629:
 - a. Storage for junkyards shall be set back a minimum of two hundred (200) feet from any adjoining road right-of-way.
 - b. Junkyards shall be screened on all sides by a solid wall, with construction materials and design to be approved by the Board of Adjustment, at least two (2) feet above the highest stock pile or by a shelterbelt of shrubs and trees as approved by the Board of Adjustment; screening must be maintained in good repair.
 - c. No junkyards will be allowed within one thousand (1,000) feet from the junkyard property line to the nearest residence; excluding: the residence of the junkyard operator.
 - d. All junkyards must have a minimum lot of ten (10) acres.
15. Water pumping stations, elevated tanks and similar essential public utilities and service structures.
16. Wireless Telecommunication Towers and Facilities provided they meet requirements of Section 1612;
17. Commercial public entertainment enterprises not normally accommodated in commercial areas, including but not limited to, the following: music concerts, rodeos, tractor pulls, and animal and vehicle races;
18. Seasonal retail stands, including fireworks stands that require a permanent structure;
19. Extended home occupation (see Section 15609) provided they meet requirements of Section 1609;
20. Caretaker residences associated with public or private enterprise;
21. Sale or auction yard or barn;
22. (Reserved) Target/shooting Ranges provided they meet the requirements of Section 1621;

23. Type B mobile manufactured homes used as single-family residences not connected to an existing farmstead **provided, they meet the requirements of Section 1633;**
24. **Private** Campgrounds, **game lodges, game farms, shooting ranges, and shooting preserves** **provided they meet the requirements of Section 1627.**
25. Grain elevators.
26. **(Reserved) Game Lodges**
27. Classes A, B, and C Concentrated Animal Feeding Operations **provided they meet the requirements of (See Section 1108).**
28. Wind Energy Systems (WES) **provided they meet the requirements of Section 1607.**
29. On-Site Sign.
30. Animal Crematory.
31. **Solar energy systems provided they meet the requirements of Section 1639.**
32. **Game farms and shooting preserves.**
33. **Religious farming communities provided they meet the requirements of Section 1638;**

Section 1101.04. District Area Regulations

1. Non-residential permitted and uses permitted by conditional use shall have minimum lot area and yards as determined by the Board of Adjustment.
2. Lot Size: All residential lots shall be a minimum of five (5) acres not including public road right-of-way.
Exception. A residential lot of less than five acres may be allowed if said lot complies with all of the following:
 - a. **Lot contains at least three (3) acres; and**
 - b. **Lot contains a residence; and**
 - c. **Lot was used as the base of a farming operation in the last fifty years; and**
 - d. **Lot is to be platted; and**
 - e. **The creation of the new lot will not result in new conforming structures.**

3. Front Yard

All buildings be set back from road right-of-way lines and lot line to comply with the following requirements:

The minimum depth of the front yard shall be not less than seventy-five (75) feet and in no case shall an accessory building be located or extended into the front yard. In the case of a corner lot, front yards shall be provided on both streets.

4. Side Yard

There shall be a side yard on each side of building having a width of not less than fifty (50) feet.

5. Rear Yard

There shall be a rear yard having a depth of not less than fifty (50) feet.

6. Intensity of Use

No more than four (4) non-farm dwellings per quarter section are permitted.

7. All lots shall have a minimum lot width of one hundred fifty (150) feet.

Section 1101.05. District Height Regulations

No main buildings shall exceed two and one-half (2 1/2) stories or thirty-five (35) feet in height. Exceptions include the following:

1. Agricultural buildings;

2. Chimneys, smokestacks, cooling towers;

3. ~~Radio and TV towers~~ **Wireless Telecommunications Towers and Facilities.**

4. Water tanks;

5. Elevators;

6. **Wind Energy System (WES).**

6.7. Others, **as determined by the Board of Adjustment,** providing that they are not used for human occupancy.

Section 1101.06. Access

1. The driveway serving the parcel shall be separated from adjacent driveways on the same side of the road by the following distances depending upon road types:
 - a. Local road: 100 feet;
 - b. Collector road: 300 feet;
 - c. Arterial: 500 feet;
 - d. Minimum distance from intersection of two or more of the above: 100 feet
2. For all proposed uses and structures adjacent to a State highway, an access permit from the State of South Dakota Department of Transportation shall be required prior to the filing of a plat or the issuance of a building/use permit

Section 1101.07. Easements/Waivers

1. An Agricultural easement must be filed with Register of Deeds on all property to be used as a site for a newly constructed residence (farm and non-farm) prior to issuance of a building permit. **(See Section 1620).**
2. Applicants for residential development (farm and non-farm) are required to obtain a written waiver from the owner/operator of any existing concentrated animal feeding operation which is closer than one-half (1/2) mile from the proposed residential building site. This waiver shall be filed with the Register of Deeds. **If the applicant is unable to obtain the written waiver, he/she shall be required to file a waiver with the Register of Deeds waiving any or all common law challenges to future expansions of the said existing concentrated animal feeding operation. (See Section 1622). Exception: This requirement does not apply to lots of record with existing residential development that are destroyed by an act of God (wind, fire, flood) and subsequently are rebuilt.**

Section 1101.08. Concentrated Animal Feeding Operation Regulations.

Section 1101.08.01. Intent

An adequate supply of healthy livestock, poultry and other animals is essential to the well-being of county citizens and the State of South Dakota. However, livestock, poultry, and other animals produce manure which may, where improperly stored, transported, or disposed, negatively affect the County's environment. **Concentrated Animal Feeding Operations (CAFOs) and the Animal manure generated from those facilities** must be controlled where it may add to air, surface water, ground water, or land pollution. The following regulations have been adopted to provide protection against pollution caused by manure from domesticated animals. All new and proposed expansions of Concentrated Animal Feeding Operations shall comply with the regulations as outlined herein.

It is the intention of the Board of Adjustment in the enforcement of this ordinance that when an operator of an existing Concentrated Animal Feeding Operation applies for a permit to expand to another class level, the standards that apply to the expansion will not be applied to existing structures that were built in compliance with zoning regulations in existence at the time of the construction of such facilities.

Section 1101.08.02. Animal Units

Miner County uses an animal unit equivalency ratio to determine the head count of a specific animal species for the purpose of defining the specific class of Concentrated Animal Feeding Operation by animal unit. The animal species equivalents are based upon a species' manure production. The standards for determining an animal unit to animal head count equivalency are derived from the Environmental Protection Agency and the State of South Dakota General Permit. Table 1101.08.1 details the classes of concentrated animal feeding operations and the specific animal unit equivalency ratio. Note that the figures in Table 1101.08.1 relate to inventory rather than annual production.

Animal species and number of a species required to equal 500, 1,000 and 2,000 animal units. Note that these figures relate to inventory rather than annual production. Other animal species equivalents which are not listed will be based on species' waste production.

EQUIVALENT NUMBER OF A SPECIES TO EQUAL:

<u>ANIMAL SPECIES</u>				<u>ANIMAL UNIT</u>
	<u>500 AU</u>	<u>1,000 AU</u>	<u>2,000 AU</u>	<u>EQUIVALENT</u>
				<u>SPECIES/AU</u>
Feeder or Slaughter Cattle	500 hd	1,000 hd	2,000 hd	1.0
Mature Dairy Cattle	350 hd	700 hd	1,400 hd	1.4
Finisher Swine (over 55 lbs)	1,250 hd	2,500 hd	5,000 hd	0.4
Nursery Swine (less than 55 lbs)	5,000 hd	10,000 hd	20,000 hd	0.1
Farrow-to-Finish (sows)	135 hd	270 hd	540 hd	3.7
Swine Production Unit (Sows	1,060 hd	2,130 hd	4,260 hd	0.47
Breeding, Gestating & Farrowing)				
Horses	250 hd	500 hd	1,000 hd	2.0
Sheep	5,000 hd	10,000 hd	20,000 hd	0.1
Turkeys	27,750 hd	55,000 hd	110,000 hd	0.018
Laying Hens and Broilers	50,000 hd	100,000 hd	200,000 hd	0.01
(continuous overflow watering				
in facility)				
Laying Hens and Broilers (liquid	15,150 hd	30,000 hd	60,000 hd	0.033
handling system in confinement				
facility)				
Ducks	2,500 hd	5,000 hd	10,000 hd	0.2

Table 1101.08.1
Number of Animals to Define Classes of Concentrated Animal Feeding Operations

Animal Species	Class A CAFO (Over 2,000 Animal Units)	Class B CAFO (1,000-1,999 Animal Units)	Class C CAFO (50 to 499 Units – Zone A Shallow Aquifer)	Class D CAFO (50 to 999 Units – No Aquifer)	Animal Unit Equivalency Ratio
	Animal numbers equal to or more than:	Animal numbers equal to:	Animal numbers equal to:	Animal numbers equal to:	
Cattle other than mature dairy cows or veal calves ^{1,2}	2,000	1,000 to 1,999	50 to 499	50 to 999	1.0
Mature Dairy Cattle (milked or dry)	1,400	700 to 1,399	35 to 349	35 to 699	1.43
Swine (weighing over 55 lbs.)	5,000	2,500 to 4,999	125 to 1,249	125 to 2,499	0.4
Swine (weighing less than 55 lbs.)	20,000	10,000 to 19,999	500 to 9,999	500 to 9,999	0.1
Horses	1,000	500 to 999	25 to 249	25 to 499	2.0
Sheep or lambs	20,000	10,000 to 19,999	1,000 to 4,999	1000 to 9,999	0.1
Turkeys	110,000	55,000 to 109,999	2,775 to 27,499	2,775 to 54,999	0.018
Chickens, other than laying hens using other than liquid manure handling system	250,000	125,000 to 249,999	6,250 to 62,499	6,250 to 124,999	.008
Laying hens using other than liquid manure handling system	164,000	82,000 to 163,999	4,100 to 40,999	4,100 to 81,999	.0122
Laying Hens & Broilers using liquid manure handling system	60,000	30,000 to 59,999	1,500 to 14,999	1,500 to 29,999	.0333
Ducks Using liquid manure Handling system	10,000	5,000 to 9,999	250 to 2,499	250 to 4,999	0.2
Ducks using other than liquid manure handling system)	60,000	30,000 to 59,999	1,500 to 14,999	1,500 to 29,999	.0333
Geese	60,000	30,000 to 59,999	1,500 to 14,999	1,500 to 29,999	.0333

1. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs.
2. Animals are counted individually once they are separated from the mother
3. Only in accordance with Article 11 Aquifer Protection District.

Section 1101.08.03. Classes of Concentrated Animal Feeding Operations

A Concentrated Animal Feeding Operation is defined as a lot, yard, corral, building or other area where animals have been, are, or will be stabled or confined for a total of 45 days or more during any 12-month period, and where crops, vegetation, forage growth, or post harvest residues are not sustained over any portion of the lot or facility. Two or more animal feeding operations under common ownership are a single animal operation if they adjoin each other, or if they use a common area, or if they use a common area or system for disposal of manure.

For the purpose of these regulations, Concentrated Animal Feeding Operations are divided into the following classes:

ANIMAL UNITS

Class A	2,000 or more
Class B	1,000 to 1,999
Class C	500 to 999 50 to 499 (Situated over Zone A Shallow Aquifer)
Class D	50 to 499
Class E	50 to 499 (Potential Pollution Hazard)

Section 1101.08.04. Concentrated Animal Feeding Operation Permit Requirements

Owners of Class A, Class B, Class C, and Class ~~E~~ **D**, Concentrated Animal Feeding Operations are required to complete **where applicable, a building permit, permitted and/or conditional use** permit application whenever any of the following occur:

1. A new ~~concentrated animal feeding operation~~ **concentrated animal feeding operation** is proposed where one does not exist.
2. An expansion **of a concentrated animal feeding operation** is proposed ~~beyond what a current permit allows~~ **that exceeds the number of animal units allowed by an existing county-issued permit.**
3. An expansion in the number of animal units of an ~~existing, non-permitted~~ Concentrated Animal Feeding Operation, **without a county-issued permit, that existed prior to** ~~after June 1, 1997~~ **January 1, 2023**, which would result in the creation of either a Class A, B, C, or D concentrated animal feeding operation.
4. A change in ownership in a permitted Class A or Class B Concentrated Animal Feeding Operation will require a permit application and approval. This requirement does not apply if the transfer of ownership is between family members with one degree of consanguinity. **If a Class A or B concentrated animal feeding operation, which has a previously issued county permit, changes ownership, the new owner has sixty (60) days in which to apply for a transfer of ownership in order to keep the current permit valid. The new owner will be required to abide by the permit requirements and letter of assurances that were issued under the permit application. If no transfer is completed within sixty (60) days, the new owner will be required to submit a new application for approval.**

5. An existing concentrated animal feeding operation is to be restocked after being idle for five (5) or more years.
6. A signed complaint has been received by the Zoning Administrator or South Dakota Department of Environment and Natural Resources and after inspection reveals that the Concentrated Animal Feeding Operation is in violation of County or State regulations.
7. **A change in ownership of any concentrated animal feeding operation with a history of pollution documented by the County Zoning Office or State of South Dakota.**
8. **Notwithstanding 1101.08.04.4 (above) a change in ownership of a Class A or Class B concentrated animal feeding operation which does not have a previously issued county-permit.**

Section 1101.08.05. Concentrated Animal Feeding Operation Control Requirements

1. No Significant Contribution of Pollution

In general, no concentrated animal feeding operation shall be constructed, located, or operated so as to create a significant contribution of pollution **as determined by the South Dakota Department of Environment and Natural Resources.**

2. State General Permit

Classes A and B concentrated animal feeding operations shall obtain a State General Permit. ~~pertaining to the animal species of the Concentrated Animal Feeding Operation.~~ A County permit **for a concentrated animal feeding operation** may be approved conditioned on receiving a State **General** permit. **The issuance of a State General Permit satisfies the county's requirements for an approved nutrient management plan and manure management plan.**

~~Classes C, D and E concentrated animal feeding operation will be required to obtain a State General Permit or approval from NRCS National Resource Conservation Service if the following occur:~~

~~a. If an earthen storage basin or lagoon is used for manure storage,~~

~~b. The Board of Adjustment decides potential environmental impacts dictate a State permit or NRCS approval.~~

It shall be at the discretion of the Zoning Administrator and/or the Board of Adjustment to require an applicant to submit plans for a Class C or Class D concentrated animal feeding operation to be reviewed to determine general compliance with standards adopted for a State General Permit

3. Nutrient Management Plan.

~~Classes A, B, C, and E Concentrated Animal Feeding Operations shall submit a Nutrient Management Plan. The applicant shall develop, maintain, and follow a nutrient management plan to ensure safe disposal of manure and protection of surface and ground water. The South Dakota Department of Environment &~~

Natural Resources must approve the plan prior to land application of any wastes. Due to crop rotation, site changes, and other operational changes, the producer should update the plan annually to reflect the current operation and crops grown on the application sites. The applicant shall collect, store, and dispose of liquid and solid manure according to recognized practices of good agricultural management. The economic benefits derived from agricultural operations carried out at the land disposal site are secondary to the proper and safe disposal of the manure.

A generic management plan that the applicant may use in developing a nutrient management plan is available from the South Dakota Department of Environment & Natural Resources. The generic nutrient management plan is based on application of nitrogen. The applicant may use other plans, provided the alternate plan contains all the information necessary to determine compliance with conditions of this general permit. Nitrogen, in addition to that allowed in the nutrient management plan, may be applied up to the amounts as indicated by soil or crop nitrogen test results that are necessary to obtain the realistic crop yield.

The South Dakota Department of Environment & Natural Resources recommends and encourages producers to develop nutrient management plans for other nutrients such as phosphorous and potassium. Over application of these nutrients may lead to water quality problems in area lakes and streams and result in potential damage to the producer's land and crop.

The applicant must maintain records to show compliance with the plan.

The plan must comply with County Manure Application Setbacks.

Land spreading agreements shall be provided if applicant does not have minimum acreage to apply animal manure.

- a. New Class A, B, and C concentrated animal feeding operations are required to have a nutrient management plan.
- b. Nutrient management plan(s) for Class A and Class B concentrated animal feeding operations shall be reviewed and approved by the South Dakota Department of Environment & Natural Resources. The issuance of a State General Permit satisfies the county's requirements for an approved nutrient management plan.
- c. The nutrient management plan(s) for Class C concentrated animal feeding operations shall be developed by a Certified Crop Advisor and meet the current Natural Resources Conservation Service (NRCS) South Dakota Technical Nutrient Management Standards and all other applicable South Dakota Department of Environment & Natural Resources and Miner County regulations.
- d. The applicant must maintain records to show compliance with the approved nutrient management plan.
- e. The applicant must comply with Manure Application Setbacks found in 1101.08.05.8.
- f. Documentation of land spreading agreements shall be available upon request by the County.

4. Manure Management and Operation Plan

New Classes A, B, C and **E D (with more than eight hundred (800) animal units)** Concentrated Animal Feeding Operations ~~shall submit~~ **are required to have** a Manure Management and Operation Plan.

The manure management and operation plan for Class A and Class B concentrated animal feeding operations reviewed and approved by the South Dakota Department of Environment & Natural Resources. The issuance of a State General Permit satisfies the county's requirements for an approved manure management and operation plan.

Manure Management and Operation Plans for Class C & Class D (with more than eight hundred (800) animal units) shall at a minimum meet the current Natural Resources Conservation Service (NRCS) Standards and all applicable SDDENR and Miner County Zoning Standards.

a. **Manure Management and Operation** Plan must include:

- i. The location and specifics of proposed animal manure **management** facilities.
- ii. The operation procedures and maintenance of manure **management** facilities.
- iii. Plans and specifications must be prepared or approved by a registered professional engineer, or a Natural Resource Conservation Service (NRCS) engineer. ~~Waste~~ **Manure management** treatment facilities will require inspection by an engineer. ~~and as-built plans to be submitted to the County Zoning Administrator.~~
- iv. ~~Animal~~ manure shall not be store longer than two **(2)** years unless approved by Board of Adjustment.
- v. Manure **management** containment structures shall provide for a minimum design volume of **three hundred sixty-five (365)** days of storage. **In addition, open outdoor storage shall include minimum storage for direct precipitation and/or runoff from a 25-year, 24-hour storm.**
- vi. ~~The Applicant shall keep records on manure applications on individual fields which document acceptable manure and nutrient management practices have been followed. These records shall include soils test results for surface two feet of soil, actual and projected crop yields, nutrient analysis of manure, and information about date, rate and method of manure applications for individual fields.~~ **Manure management facilities utilizing methane digesters may receive on and off-site generated manure and/or organic wastes.**
- vii. **The applicant will provide information regarding how manure from the concentrated animal feeding operation site will be transported to fields identified in the nutrient management plan. This may require the need for a haul road agreement and/or the applicable agreement for pipes to occupy the right-of-way or private property. Unless otherwise agreed to between the Road Authority and the applicant, the applicant to abide by minimum requirements of the adopted findings of facts for the applicable size of operation.**

- b. As a condition of the permit, the **County Zoning Administrator and/or** Board of Adjustment may require the **producer applicant** to participate in environmental training programs **and become a certified livestock manager.**

5. Management Plan for Fly and Odor Control

New Classes A, B, C, and D Concentrated Animal Feeding Operations shall dispose of dead animals, manure and wastewater in such a manner as to control odors or flies. A management plan is required for submission of a permit. The **Zoning Administrator and/or County** Board of Adjustment will review the need for control measures on a site-specific basis, **taking into consideration prevailing wind direction and topography.** The following procedures to control flies and odors **should shall** be considered in a management control plan:

- a. Operational plans for manure collection, storage, treatment **and how said plans** **and use must be kept will be** updated and implemented.
- b. Methods to be utilized to dispose of dead animals **should shall** be included **in the management plan.**
- c. **Plant trees and shrubs to reduce wind movement of odors away from buildings, manure storage ponds and/or lagoons. Location of existing and proposed tree/shrub plantings.**

d. The County recommends the following Best Management Practices in the development of a fly and odor management plan:

D.i. Provide adequate slope and drainage to remove surface water from pens and keep pen area dry so odor production is minimized.

E.ii. Store solid manure in containment areas having good drainage to minimize odor production.

F.iii. Remove manure from open pens as frequently as possible to minimize odor production.

H.iv. Avoid spreading manure on weekends, holidays and evenings during warm season when neighbors may be involved in outdoor recreation activities.

I.v. Avoid spreading during calm and humid days, since these conditions restrict the dispersion and dilution of odors.

e. To assist in mitigating odors, the County may require any or all of the following:

G.i. consider U Use of covers on open storage systems for liquid manure systems to reduce odor production.

ii. The storage of solid manure in self-contained containment areas to minimize odor production.

iii. The use of bio-filters or other proven odor mitigation technologies on enclosed concentrated animal feeding operation barns/structures to reduce odor production. The design and installation of said bio-filters shall be reviewed by specialists at South Dakota State University or others designated by the Board of Adjustment.

6. Required Setbacks and Separation Distance for New ~~Class A, B, C, D, Concentrated Animal Feeding Operations~~ concentrated animal feeding operations and those existing, non-permitted ~~Concentrated Animal Feeding Operations~~ concentrated animal feeding operations expanding into a Class A, B, C, or D Concentrated animal Feeding Operations after ~~June 1, 2000~~ (April 4, 2023) See Table 1108.01.2.

MINIMUMS

	CLASS A	CLASS B	CLASS C	CLASS D
	(2,000 or more)	(1,000 to 1,999)	(500 to 999)	(50 to 499)
Established Residences	2,640 feet	2,640 feet	1,320 feet	1,320 feet
	+220 feet for each addnl. 1,000 or portion thereof			
Churches, Businesses and Commercially Zoned Areas	2,640 feet	2,640 feet	1,320 feet	1,320 feet
	+220 feet for each addnl. 1,000 or portion thereof			
Incorporated Municipality Limits and "TD" Town District Boundaries	5,280 feet plus 440 feet for each addnl. 1,000 AU over 2,000 or portion thereof	5,280 feet	2,640 feet	1,320 feet
Lakes and Streams classified as Fisheries as identified by the State	500 feet	500 feet	200 feet	200 feet
Federal, State & County Road ROW — Confinement	300 feet	300 feet	200 feet	200 feet
Federal, State & County Road ROW — Open Lot	150 feet	150 feet	150 feet	150 feet
Township Road ROW — Confinement	150 feet	150 feet	150 feet	150 feet
Township Road ROW — Open Lot	150 feet	150 feet	150 feet	150 feet

Table 1108.01.2
REQUIRED MINIMUM SEPARATION DISTANCES AND SETBACKS^{1,4}

<u>Number of Animal Units</u>	<u>Under 500 Animal Units</u>	<u>500 to 999 Animal Units</u>	<u>1,000 to 1,999 Animal Units</u>	<u>2,000 to 9,999 Animal Units</u>	<u>Over 10,000 Animal Units</u>
<u>Established Residences²</u>	<u>1,320 feet</u>	<u>1,320 feet</u>	<u>2,640 feet</u>	<u>2,640 feet plus 220' for each 1,000 animal units over 2,000 animal units or portions thereof</u>	<u>4,400 feet plus 220' for each 1,000 animal units over 10,000 animal units or portions thereof</u>
<u>Churches, Businesses and Commercially Zoned Areas</u>	<u>1,320 feet</u>	<u>1,320 feet</u>	<u>2,640 feet</u>	<u>2,640 feet plus 220' for each 1,000 animal units over 2,000 animal units or portions thereof</u>	<u>4,400 feet plus 220' for each 1,000 animal units over 10,000 animal units or portions thereof</u>
<u>Incorporated Municipality Limits³</u>	<u>1,320 feet</u>	<u>2,640 feet</u>	<u>5,280 feet</u>	<u>5,280 feet</u>	<u>5,280 feet plus 440' for each 1,000 animal units over 10,000 animal units or portions thereof</u>
<u>High Water Mark of Lake Carthage</u>	<u>1,320 feet</u>	<u>2,640 feet</u>	<u>7,920 feet</u>	<u>7,920 feet</u>	<u>7,920 feet</u>
<u>Established Private Water Well⁵</u>	<u>1,000 feet</u>	<u>1,000 feet</u>	<u>1,000 feet</u>	<u>1,000 feet</u>	<u>1,000 feet</u>
<u>Existing Public Water Well^{5,6}</u>	<u>1,000 feet</u>	<u>1,000 feet</u>	<u>1,000 feet</u>	<u>1,000 feet</u>	<u>1,000 feet</u>
<u>Lakes and Streams classified as Fisheries as identified by the State</u>	<u>200 feet</u>	<u>200 feet</u>	<u>500 feet</u>	<u>500 feet</u>	<u>500 feet</u>
<u>Federal, State & County Road ROW</u>					
<u>Confinement</u>	<u>200 feet</u>	<u>200 feet</u>	<u>300 feet</u>	<u>300 feet</u>	<u>300 feet</u>
<u>Open Lot</u>	<u>150 feet</u>	<u>150 feet</u>	<u>150 feet</u>	<u>150 feet</u>	<u>150 feet</u>
<u>Township Road ROW</u>					
<u>Confinement</u>	<u>150 feet</u>	<u>150 feet</u>	<u>150 feet</u>	<u>150 feet</u>	<u>150 feet</u>
<u>Open Lot</u>	<u>150 feet</u>	<u>150 feet</u>	<u>150 feet</u>	<u>150 feet</u>	<u>150 feet</u>

- 1 Two (2) or more CAFOs under common ownership are a single concentrated animal feeding operation if they adjoin each other (within one mile) or if they use a common area or system for disposal of manure. Required setbacks for the two (2) or more CAFOs treated as a single operation shall not be less than the minimum setback required for each operation if said operations were treated as individual operations.
- 2 Established residences do not include any residence established after June 1, 1997 less than one-half (1/2) mile from any Concentrated Animal Feeding Operation which was active at the time of the residence's construction.
- 3 The Board of Adjustment may allow a setback of less than the minimum required provided a written waiver by the entity deriving the benefit of the setback is filed with the application
- 4 The Board of Adjustment may utilize Section 1108.7 to increase or decrease the required setback.
- 5 Setback does not apply to the wells of the CAFO operator.
- 6 Established private water wells refer to wells used as a source of potable water for human consumption for at least one (1) week within one (1) year prior to application date for the proposed CAFO.

7. **Exemptions to Separation and/or Setback Distance Requirements**

a. **Exceptions Exemptions**

- i. **A Concentrated Animal Feeding Operation constructed prior to June 1, 2000 which does comply with the recommended distance separation which continues to operate, but and is not expanded: A concentrated animal feeding operation that satisfies any of the criteria below shall be exempt from the applicable separation or setback distance with no variance required by the Board of Adjustment.**
- ii. A Concentrated Animal Feeding Operation structure which is expanded or constructed, if the title holder of the land benefiting from the distance separation requirement executes a written waiver with the title holder of the land where the structure is located, under such terms and conditions which parties may negotiate. The written waiver becomes effective only upon the recording of the waiver in the office of the Register of Deeds in the county. The **benefited title holder of the land benefitting from the distance separation requirement** is the residence, commercial enterprise, **individual or individuals, governmental entity, bonafide** religious institution, **or** educational institution from which separation is required. **The waiver shall be binding upon the heirs, successors, and assigns of the title holder and shall pass with the land.**
- iii. A Concentrated Animal Feeding Operation constructed or expanded closer than the required separation distance within the corporate limits of a city **an incorporated community**, if the incorporated community approves a **written** waiver **which shall be stated in writing. The written waiver becomes effective only after recording with the Register of Deeds.**
- iv. A Concentrated Animal Feeding Operation structure which is located within any distance from an **existed prior to the creation of residence,** educational institution, commercial enterprise, **bonafide** religious institution, incorporated community, if the **residence,** educational institution, commercial enterprise or **bonafide religious** institution was constructed or expanded or the boundaries of the incorporated community were expanded, after the date that the **concentrated** animal feeding operation was established. The date that the Concentrated Animal Feeding Operation was established is the date on which the Concentrated Animal Feeding Operation commenced operating. A change in ownership or expansion shall not change the date of operation.
- v. **A Concentrated Animal Feeding Operation which is expanded or constructed less than the suggested setback from a right-of-way (ROW) provided approval of the applicable road authority is submitted to the Zoning Administrator prior to issuance of any applicable building permits or stocking of the Concentrated Animal Feeding Operation if no building permits are required. County Highway Department (County right-of-way), Township Board of Supervisors (Township right-of-way), or State Department of Transportation (state right-of-way) are authorized to provide approval on behalf of the respective road authority. Other entities may provide approval on behalf of the listed entities if documentation of their authority to grant such approval is submitted.**

vi.

All Concentrated Animal Feeding Operations in operation prior to January 1, 2023 which do not comply with the suggested minimum setback/separation requirements, but continue to operate, and are not expanded in a manner which will result in the one of the following examples are exempt from the suggested separation distance:

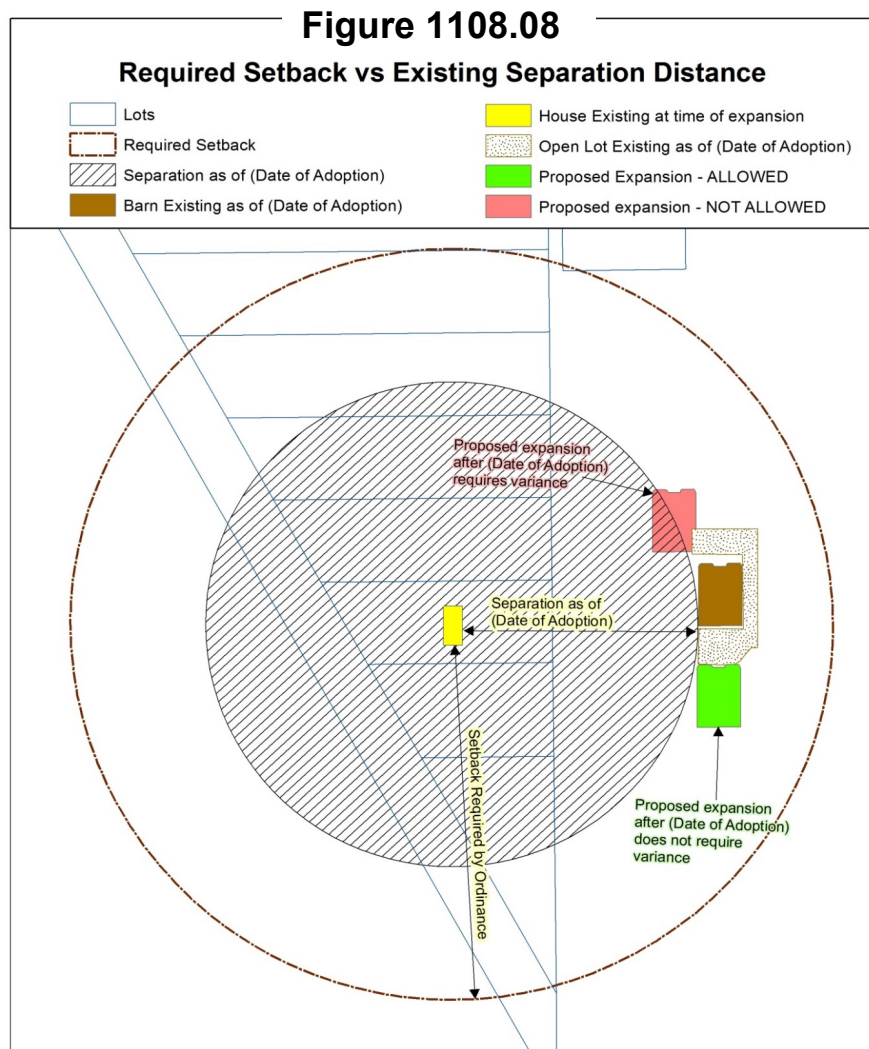
a. Example 1: A Class D CAFO expands to a Class A or B CAFO

b. Example 2: A Class B CAFO expands to a Class A CAFO.

c. Example 3: A Class A CAFO expands by 10% of the number of animal units

Provided, that the expansion does not further encroach the setback/separation distance existing on January 1, 2023. See Figure 1108.8.

vii. Any Concentrated Animal Feeding Operation in operation as of January 1, 2023 which does not comply with the suggested minimum setback/separation distance requirements is allowed to be replaced in the event of a calamity without obtaining a variance. Provided, that the replacement does not further encroach the setback/separation distance existing at the time of the calamity. See Figure 1108.8.



8. Additional Setback and Separation Distance Requirements for Class A, B, C and D CAFOs

5. Each application for a new or expanded Concentrated Animal Feeding Operation will be reviewed by the Board of Adjustment on a site-specific basis. The Board of Adjustment reserves the right to increase or decrease the minimum required setbacks and separation distance on a site-specific review, based on one or more of the following considerations.

1. a. Considerations to Increase Setbacks and/or Separation Distances

i. **Existing Concentration** - A concentration of CAFOs in the area exists or would occur which may pose an air or water quality concern. **A Concentrated Animal Feeding Operation of two thousand (2,000) or more animal units is proposed to be located in an area where a concentration of two thousand (2,000) animal units currently exists within one (1) mile of the proposed Concentrated Animal Feeding Operation site.**

ii. **In the event the Board determines that a concentration of animal units already exists and an increase in animal units may pose air or water quality concerns, the Board may utilize the South Dakota Odor Footprint Tool or other instrument developed and/or accepted by South Dakota State University and the Board of Adjustment to determine the need to increase setback and/or separation requirements.**

iii. **Due to topography and/or prevailing wind direction, and/or concentration of animal units, an additional setback and separation distance is appropriate to safeguard air or water quality. The South Dakota Odor Footprint Tool or other instrument developed and/or accepted by South Dakota State University and the Board of Adjustment may be utilized to determine the need to increase setback and/or separation requirements.**

iv. **Siting of a Concentrated Animal Feeding Operation is in excess of 2,000 animal units. In the event the Board determines that the siting of a concentrated animal feeding operation, where one did not previously exist, with more than two thousand (2,000) animal units may pose air or water quality concerns, the Board may utilize the South Dakota Odor Footprint or other instrument accepted by the Board of Adjustment to determine the need to increase the suggested setback and/or separation requirements.**

v. **Review of past management practices and proposed improvements to manure handling facilities.**

b. Variances Considerations to Decrease Setbacks/Separation Distances

i. **The Board of Adjustment will consider variances to setback and separation distance requirements after considering the following: The Board of Adjustment may reduce recommended setback/separation distances of any new or existing Concentrated Animal Feeding Operation proposing to expand based upon any or all of the following considerations:**

1. Public input relating to the variance requested;
2. Site specific review dealing with drainage, topography, and wind direction; and
3. Review of the operation of the Concentrated Animal Feeding Operation as it pertains to the type of waste handling system and waste application methods to be used.

(a) The Board of Adjustment may reduce setback/separation distances of any new or existing Concentrated Animal Feeding Operation proposing to expand based upon any or all of the following considerations:

1. The South Dakota Odor Footprint Tool or other comparable instrument accepted by the Board of Adjustment may be utilized to determine the need to decrease suggested setback and/or separation distances.

2. Review of the operation of the Concentrated Animal Feeding Operation as it pertains to the type of manure handling system and manure application methods to be used.

a) Due to the type of manure handling and management of the concentrated animal feeding operation, little or no impact on adjacent property is expected. The use of Bio-filters, neoprene lagoon covers, and/or methane digesters are examples of improvements which may result in the reduction of suggested setbacks and separation distances.

b) Due to topography and/or prevailing wind direction little or no impact on adjacent property is expected

c) By limiting the proposed expansion to specific number of animal units no adverse impacts are expected.

8. Manure Application Setbacks

- A. **Table 1108.05.8 provides** the following manure application setbacks apply to all classes of Concentrated Animal Feeding Operations.

Table 1108.05.8**COUNTY MANURE APPLICATION SETBACKS**

CATEGORY	SURFACE APPLIED	INCORPORATED OR INJECTED
Lakes, Rivers and Streams Classified as Fisheries	300 feet*	100 feet* (lake) 50 feet (river & stream)
Streams and Lakes Classified as Drinking Water Supplies	1,000 feet	300 feet
Public Roads	25 feet (surface) from right-of-way 300 feet (irrigation) from right-of-way	10 feet from right-of-way
Area of 10 or More Residences	300 feet (surface) 1,000 feet (irrigation)	300 feet
Public Wells	1,000 feet	1,000 feet
Established Private Water Well	250 feet	250 feet
A Residence Other Than the Operator	300 feet (surface) 1,000 feet (irrigation)	300 feet
Natural or Manmade Surface Drainage	200 feet*	50 feet

*Or as prescribed within the South Dakota General Permit for Manure Application on Saturated, Snow Covered, or Frozen Soil

- B. The County Board of Adjustment may require liquid manure to be incorporated or injected in order to minimize air and water quality impacts.
- C. The County Board of Adjustment may require greater setbacks for surface applied manure where they deem appropriate for residences.
- D. Requests for application of liquid manure by means of irrigation will be reviewed by the Board of Adjustment on a site-specific basis. Impact on air and water quality will be taken into consideration.

9. Standards for Conditional Uses

- 1.A. The County Board of Adjustment may request information relating to a Concentrated Animal Feeding Operation not contained in these regulations.
- 2.B. The County Board of Adjustment may impose, in addition to the standards and requirements set forth in these regulations additional conditions which the Board of Adjustment considers necessary to protect the public health, safety and welfare.

3.C. Conditional use permits **for concentrated animal feeding operations** shall be in effect only as long as sufficient land specified for spreading purposes is available for such purposes and other provisions of the permit are being adhered to.

4.D. When considering an application, the **County** Board of Adjustment will take into consideration current and past violations, **documented by the Environmental Protection Agency, the South Dakota Department of Environment and Natural Resources, or similar applicable agency in other states,** in relating to Concentrated Animal Feeding Operations that the applicant has **or had** an interest in.

5.E. **Conditional Use** Permit applicants will be required to file a letter of assurances as required by the Board of Adjustment. The letter of assurances will be prepared by the Zoning Administrator **and/or Board of Adjustment** and signed by both the applicant and the Zoning Administrator **or Board of Adjustment's designee. The permit for the concentrated animal feeding operation is based upon compliance with the regulations herein, and associated letter of assurances. Any violation of these regulations or non-compliance with the letter of assurances shall be cause for revoking a permit. If a violation of these regulations or non-compliance with the letter of assurance occurs, permit holders will be notified by registered mail and a hearing before the Board of Adjustment will be held concerning status of the permit. The Board of Adjustment shall either revoke the permit or set a timeline for compliance. If compliance is not met, the permit shall be revoked, and the permit holder ordered to cease operations.**

10. **Information Required for Class A and B Concentrated Animal Feeding Operation Permit. The following information may be requested and reviewed by the Board of Adjustment prior to the issuance or as a condition to the issuance of a conditional use permit for any class of CAFO.**

- a. Owner's **/Applicant(s)** name, address and telephone number
- b. Legal descriptions of site and site plan.
- c. Number and type of animals.
- d. **Preliminary** Nutrient management plan, **if required.**
- e. **Preliminary** Manure management and operation plan, **if required.**
- f. **Preliminary** Management plan for fly and odor control.
- g. Information on ability to meet designated setback requirements **including site plan to scale.**
- h. **As a condition of approval of any Concentrated Animal Feeding Operation over 1,000 animal units or as determined by the Board of Adjustment, the documentation of an approved** General Permit from **the** South Dakota Department of Environment & Natural Resources for animal species **is required. The issuance of a State General Permit satisfies the county's requirements for an approved nutrient management plan and manure management plan.**

- i. ~~Review of plans and specifications and nutrient management plan by the South Dakota Department of Environment & Natural Resources~~ **Documentation of notice to public water supply officials.**
- j. Information on soils, shallow aquifers, designated wellhead protection areas, and 100- year floodplain designation.
- k. ~~Notification~~ **Documentation of notice to** whomever maintains the access road (township, county and state). ~~Notification of public water supply officials~~
- l. Any other information as contained in the application and requested by the County Zoning Administrator.

~~11. Information Required for Class C and E Concentrated Animal Feeding Operation Permit.~~

- a. ~~Owner's name, address and telephone number.~~
- b. ~~Legal descriptions of site and site plan.~~
- c. ~~Number and type of animals.~~
- d. ~~Nutrient management plan.~~
- e. ~~Manure management and operation plan.~~
- f. ~~Management plan for fly and odor control.~~
- g. ~~Information on ability to meet designated setback requirements, including site plan to scale.~~
- h. ~~Review of plans and specifications and nutrient management plan by the South Dakota Department of Environment & Natural Resources if using lagoon or earthen storage basin.~~
- i. ~~Information on soils, shallow aquifers, designated wellhead protection areas, and 100-year floodplain designation.~~
- j. ~~Notification of whomever maintains the access road (township, county and state). Notification of public water supply officials.~~
- k. ~~Any other information as contained in the application and requested by the Zoning Administrator.~~

ARTICLE 12
"CI" COMMERCIAL/INDUSTRIAL DISTRICT

Section 1201.01. Purpose

The "CI" District is intended for commercial and industrial uses which due to their size and nature require highway access.

Section 1201.02. Permitted Use

1. ~~None~~ **Field crops and grasslands.**
2. Orchards and tree farms.
3. Cannabis Dispensary (subject to Section 1613).
4. **Temporary structures used for sales of agricultural products provided that there have been no past violations regarding previous sales.**
5. **Accessory Uses and buildings subordinate to uses listed as a permitted use or conditional use.**
6. **Temporary structures used for the sale of fireworks during times of the year specified in SDCL 34-37 provided that there have been no past violations regarding previous sales.**
7. **On-premise signs provided they meet the requirements of Section 1604.**

Section 1201.03. Conditional Uses

1. Implement, automobile and machinery sales and service;
2. Truck terminals and freight warehouses;
3. ~~Farm products~~ **Seed sales and grain storage, fertilizer and chemical** storage and sales;
4. Highway and street maintenance shops **operated by a government institution;**
5. Gas, oil and liquid propane stations including bulk stations;
6. Public and private utilities;
7. Contractors' shops and yards;
8. Wholesale distributing companies;
9. Eating and drinking establishments;

10. Motels /hotels;
11. Ag processing;
12. Retail sales establishments;
13. Funeral and cremating services;
14. On and Off-Site premise Signs provided they meet the requirements of Section 1604.;
15. Adult Uses provided they meet requirements of Section 1623;
16. Raw Agricultural Products Processing Facilities.
17. Seed sales and grain storage, fertilizer and chemical storage and sales.
18. Welding and machine shops.
19. Livestock sales.
20. Recreation vehicle sales and park.
21. Commercial stables.
22. Kennel with or without animal grooming.
23. Veterinary clinics.
24. Wireless telecommunication towers and facilities provided they meet requirements of Section 1612.
25. Convenience store/service station.
26. Seasonal retail stands utilizing a permanent structure
27. Commercial orchards, tree farms, truck gardening, and greenhouses – with retail sales.
28. Light manufacturing.
29. Agri-business Activity provided they meet requirements of Section 1636.
30. Private wind energy conversion system (PWECS) provided they meet requirements of Section 1624.
31. Automotive tow business/Impound lot provided they meet requirements of Section 1631;
32. Temporary structures used for the sale of fireworks during times of the year specified in SDCL 34-37 where there have been no past violations regarding previous sales.

33. **Temporary structures used for sales of agricultural products where have been past violations regarding previous sales.**

Section 1201.04 Minimum Lot Area and Yard Regulations. See Table 1201.

1. **Lot Area.** Lot area shall be determined by need, setback, side yards, rear yards, parking requirements, freight handling requirements, building site and future expansion; however, in no case shall a lot have less than two (2) acres. An applicant for a conditional use shall provide a proposed site plan which can be reviewed by the Board of Adjustment. For commercial and industrial uses, buildings shall occupy no more than twenty-five percent (25%) of the lot.
2. **Front Yard.** There shall be a front yard on each street which a lot abuts, and which yard shall be not less than one hundred (100) feet in depth.
3. **Side Yards.** On lots adjacent to a residential area, all buildings and incidental areas shall be located so as to provide a minimum side yard of one hundred (100) feet, which shall be landscaped on the side adjacent to the residential area. All other side yards shall be a minimum of fifty (50) feet.
4. **Rear Yards.** No building shall be constructed within fifty (50) feet of the rear lot line. The rear yard shall be one hundred (100) feet if the lot abuts a major highway.

Table 1201

	Minimum Lot Area⁵	Minimum Lot Width	Minimum Front Yard¹	Minimum Side Yard³	Minimum Rear Yard⁴
Uses on Lots of Record²	2 Acres	100 Feet	100 Feet	50 Feet	50 Feet
Uses on lots created after January 1, 2023²	5 Acres	200 Feet	100 Feet	50 Feet	50 Feet

1. **Two (2) Front yards required on all corner lots**
2. **Multiple Single-family dwellings on a single lot shall have sufficient lot area to comply with SDLRC Administrative Rule 74:53:01**
3. **On lots adjacent to a residential area, all buildings and incidental areas shall be located so as to provide a minimum side yard of one hundred (100) feet, which shall be landscaped on the side adjacent to the residential area.**
4. **The rear yard shall be one hundred (100) feet if the lot abuts a State or County asphalt paved/concrete highway.**
5. **For commercial and industrial uses, buildings shall occupy no more than fifty percent (25%) of the lot.**

6. Section 1201.05 Height Regulations

1. No main building shall exceed two and one-half (2 1/2) stories or thirty-five (35) feet in height. Exceptions include the following structures:
 - a. Chimneys, smokestacks, cooling towers;
 - b. **Radio and TV towers Wireless Telecommunications Towers and Facilities;**
 - c. Water tanks;
 - d. Wireless Telecommunications Towers and Facilities;

e. **Wind Energy Systems (WES)**

f. **Private Wind Energy Systems (PWES)**

e-g Others, providing that they are not used for human occupancy.

Section 1201.056 Access

1. The driveway serving the parcel shall be separated from adjacent driveways on the same side of the road by the following distances depending upon road types:
 - a. Local road: 100 feet;
 - b. Collector road: 300 feet;
 - c. Arterial: 500 feet;
 - d. Minimum distance from intersection of two or more of the above: 100 feet
2. For all proposed uses and structures adjacent to a State highway, an access permit from the State of South Dakota Department of Transportation shall be required prior to the filing of a plat or the issuance of a building/use permit

Section 1201.07. Access. It is recommended that all property in the "HC" District have access to an asphalt paved or concrete State or County Highway.

Section 1201.08. Service or Access Roads. Service or access roads may be required at the discretion of the Board of Adjustment.

Section 1201.09. Sewage Disposal Systems. Individual and small on-site wastewater systems are regulated by South Dakota Department of Environment & Natural Resources guidelines for sewage disposal (Title 74, Chapter 74:53:01). In addition, the applicant shall provide the name of the certified installer that is responsible for supervision.

Section 1201.10. Storage. All outdoor storage within five hundred (500) feet of a residential dwelling must be completely enclosed in a building or by a solid walled fence at least two (2) feet above the highest point of the stockpile which fence shall be maintained in safe and good repair. The County may require asphalt or concrete surfacing of parking lots.

Section 1201.11.. Section Performance Standards.

1. **Noise. All noise shall be muffled so as not to be objectionable due to intermittence, beat frequency or shrillness.**

2. Air Pollution. State emission standards shall be met by all possible sources of air pollution. In any case, there shall not be discharged from any sources whatsoever such quantities of air contaminants, smoke or detriment, nuisance or annoyance to any considerable number of persons or to the public in general to endanger the comfort, health or safety of any such considerable number of persons or have a natural tendency to cause injury or damage to business, vegetation or property.
3. Odor. The emission of odorous matter in such quantities as to be readily detectable at any point along lot lines or to produce a public nuisance or hazard beyond lot lines is prohibited.
4. Glare, Heat or Radiation. Every use shall be so operated that there is no emission of heat, glare or radiation visible or discernable beyond the property line.
5. Vibration. Every use shall be so operated that the ground vibration inherently and recurrently generated is not perceptible, without instruments, at any point on the property line.
6. Sewage and Liquid Wastes. No operation shall be carried on which involves the discharge into a sewer, watercourse, river or the ground of liquid wastes of any radioactive nature, or liquid wastes of chemical nature, which are detrimental to normal sewage plant operations or corrosive or damaging to sewer pipes and installations.
7. Fire Hazard. All flammable substances involved in any activity or use, shall be handled in conformance with the standard of the National Board of Fire Underwriters and any additional regulations that may from time to time be adopted by the County Commissioners
8. Physical Appearance. All operations shall be carried on within an enclosed building except that new or operable equipment may be displayed or stored in the open and waste materials stored in enclosed containers not readily visible from the street.

ARTICLE 13
"TD" TOWN DISTRICT

Section 1301.01 Purpose

The Town District is established to provide for orderly low-density residential development, together with certain public facilities, and commercial/industrial uses which are not detrimental in the unincorporated towns of Argonne, Epiphany, and Fedora **and Roswell**.

Section 1301.02 Permitted Uses

1. Single-family residential usage, including Type A and Type B manufactured homes, provided that provisions of Section 1505 are met.
2. Public parks.
3. Agriculture and horticulture uses, excluding Concentrated Animal Feeding Operations.
4. Home occupations.

Section 1301.03 Conditional Uses

1. Retail and service business.
2. Light manufacturing.
3. Bar or tavern.
4. Warehouse.
5. Multi-family housing.
6. Contractors' offices, shops and yards.
7. Manufactured home court.
8. **The Board of Adjustment may permit other uses in its opinion are not detrimental to other uses. These may include manufacturing and processing uses.**

Section 1301.04 Area Regulations

Residential **Uses/Lots** - Structures on all corner lots shall observe two (2) front yards. The depth of the front yard on each street which the lot abuts, shall be as follows.

Minimum Yard Requirements:

Front – Twenty-five (25) feet

Side -- Fifteen (15) feet

Rear – Twenty-five (25) feet

Minimum Lot Size:

Public Water Supply/Septic Tank — 20,000 sq. ft.

Well/Septic Tank ----- 43,560 sq. ft.

Public Water Supply/Public Sewer -- 9,600 sq. ft.

Commercial **Uses/Lots**

Lot size shall be determined by off-street parking needs; availability of water and sewage disposal systems; adjacent land uses; need for screening; and type of business. Front, side and rear yards shall be determined by the Board of Adjustment ~~after recommendation from the Planning Commission.~~

Industrial **Uses/Lots**

Lot size shall be determined by off-street parking needs; impact of adjoining land use and need for screening or buffering from residential areas; availability of water and sewage disposal facilities; type of manufacturing or storage facilities. **Front, side, and rear yards shall be determined by the Board of Adjustment.**

ARTICLE 14
"PR" PLANNED RESIDENTIAL DISTRICT

Section 1401. Intent.

The Planned Residential District is to provide for residential subdivisions which, through their design and development, will limit the amount of agricultural land that is taken out of production, will not require additional public expenditures for roads or other improvements and services, and which will minimize the conflict between farm and non-farm land uses.

Section 1402. Planned Development Standards and Requirements.

1. The use of land in the Planned Residential District shall be limited to non-farm single family dwelling units and their supporting services. A manufactured **home** court may be developed as a Planned Residential District.
2. The Planned Residential District shall not be permitted on a parcel of land less than ten (10) acres in area.
3. All roads, common facilities, and open spaces within the Planned Residential District shall be maintained by a homeowner's association.
4. Planned Residential Districts within one (1) mile of an incorporated community will be submitted to the community governing body for review and comment.
5. Where a proposed Planned Residential District is within one (1) mile of an incorporated area or sanitary district, the Miner County Planning Commission may request the developer to construct proposed improvements to specifications approved by the community or sanitary district.
6. Strip or linear development proposals along a road or highway will not qualify as a Planned Residential District.
7. The overall density of a Planned Residential District shall not be less than one (1) housing unit per acre of land.
8. Minimum lot size shall not be less than that required by the South Dakota Department of Environment and Natural Resources regulations on Private Sewage Disposal Systems (Chapter 34:04:01) as amended.
9. In addition to the Miner County Zoning Regulations, any proposed Planned Residential Districts are subject to platting and subdivision regulations of the county.
10. Access to public dedicated streets and roads shall be limited. **Dwelling units shall not have direct access to public road right-of-ways. Dwelling unit access shall be provided through the interior street/road system.**
11. Planned Residential Districts must have access to a paved County or State highway.

12. **Covenants/Waivers per 1101.07 of this ordinance shall be required to be placed on any lot in a Planned Development District in order to protect agricultural operations or practices in the adjoining areas**

Section 1403. Procedure for Planned Development.

The following shall be observed when a planned development proposal is submitted for consideration:

1. An applicant for consideration under the terms of this district, who must be owner, lessee, or the holder of a written purchase option of the tract of land under consideration, shall submit six (6) copies of a preliminary development plan to the commission for study at least seven (7) days prior to the commission meeting at which it is to be considered. The preliminary plan shall include the following information:
 - a. Location map showing the relationship of the proposed district to existing roads and property lines;
 - b. Proposed land uses, building locations, and housing unit densities;
 - c. Proposed circulation pattern indicating the status of street ownership;
 - d. Proposed open space uses;
 - e. Proposed grading and drainage pattern;
 - f. Proposed method of water supply and sewage disposal;
 - g. Relation of the proposed development to the surrounding area and comprehensive plan.
2. Copies of the proposed water and sewer system will be submitted to the South Dakota Department of Environment and Natural Resources for study and comment.
3. A list and schedule of improvements to be completed by the developer must be submitted.
4. In reviewing the plan, the Commission shall need to determine that:
 - a. Resulting development will not be inconsistent with the comprehensive plan objectives or zoning provisions of the area;
 - b. The plan can be completed within a reasonable period of time;
 - c. The streets are adequate to support the anticipated traffic and the development will not overload the roads outside the planned area;
 - d. Proposed utility and drainage facilities are adequate for the population densities proposed.

5. If, in the opinion of the Planning Commission, the foregoing provisions are satisfied, the proposal shall be processed according to this section. If the Commission finds to the contrary, they may recommend the application be denied or return the plan to the applicant for revision.
6. In addition to the requirements of this section, the Commission may attach conditions it finds are necessary to carry out the purpose of this ordinance.
7. Before approving a planned development, the Planning Commission must have copies of proposed deed restrictions, agreements for maintenance by the homeowners' association of common facilities and open spaces, guarantees (surety bonds, etc.) by the developer for the completion of the development in accordance with the approved plan, and an agreement binding successors who may take over completion of the development to conditions of the plan approval.
8. The Planning Commission shall follow the procedure for considering an amendment to the Miner County Official Zoning Map before approving a Planned Residential District.
9. Permits for construction in a planned development shall be issued only on the basis of the approved plan. Any changes in the approved plan shall be submitted to the Commission for processing as an amendment to this Ordinance.
10. Following amendment of the Official Zoning Map by the Board of County Commissioners, the Zoning Administrator may, upon proper application, issue a building permit for the construction of the planned unit in accordance with the approved plan.

Section 1404. Subsequent Performance.

~~Following issuance of a building permit for the planned development unit by the Zoning Administrator, the applicant shall begin construction within a period of six (6) months. Failure to do so shall invalidate the building permit. Construction shall follow precisely the plan approved by the Board of County Commissioners to which modifications may be granted only by the Board of County Commissioners upon the filing of an amended plan.~~ Failure to follow the approved plan on the part of the applicant or his agent shall be considered a violation of these regulations, punishable as herein prescribed.

ARTICLE 15
“AP” AQUIFER PROTECTION OVERLAY DISTRICT

Section 1501. Purpose and Intent

The Miner Planning and Zoning Commission and Board of County Commissioners recognize (1) that residents of Miner County rely on ground water for a safe drinking water supply and (2) that certain land uses in Miner County can contaminate ground water particularly in shallow aquifers.

The purpose of the Aquifer Protection Overlay District is to protect public health and safety by minimizing contamination of the shallow aquifers of Miner County. It is the intent to accomplish aquifer protection, as much as possible, by public education and securing public cooperation. Appropriate land use regulations will be imposed, however, which are in addition to those imposed in the underlying zoning districts or in other county regulations. Any use existing at the time this ordinance is adopted is grandfathered.

Section 1502. Definitions for Aquifer Protection Overlay District (Reserved)

1. Abandoned Well: A well no longer used or intended to be used as a water source.
2. Concentrated Animal Feeding Operation: (See Concentrated Animal Feeding Operations, Article XI).
3. Animal Units: (See Concentrated Animal Feeding Operations, Article XI).
4. Aquifer: A geologic formation, group of formations or part of a formation capable for storing and yielding ground water to wells or springs.
5. Best Management Practices: Measures contained in Soil Conservation Service South Dakota Technical Guide, either managerial or structural, that are determined to be the most effective, practical means of preventing or reducing pollution inputs from non-point sources to water bodies.
6. Chemigation: The process of applying agricultural chemicals (fertilizer or pesticides) through an irrigation system by injecting the chemicals into the water.
7. Class V Injection Well: A conduit through which potentially contaminated but generally non-hazardous fluids can move below land surface into or above an aquifer. The types of primary concern in Miner County are 5W20—industrial process water and waste disposal wells and 5X28—automobile service station disposal wells. Typically, 5W20 types are commercial/ industrial facility septic tanks used to dispose of more than domestic wastewater. 5X28 types are dry wells for wastes from repair bay drains at facilities servicing internal combustion vehicles and equipment.
8. Contamination: The process of making impure, unclean, inferior or unfit for use by introduction of undesirable elements.
9. Contingency Plans: Detailed plans for control, containment, recovery and clean-up of hazardous materials released during floods, fires, equipment failures, leaks and spills.
10. Development: The carrying out of any surface or structure construction, reconstruction or alteration of land use or intensity of use.
11. Facility: Something built, installed or established for a particular purpose.
12. Hazardous Materials: A material which is defined in one or more of the following categories:
 - a. Ignitable: A gas, liquid or solid which may cause fire through friction, absorption of moisture, or which has low flash points. Examples: white phosphorous and gasoline.
 - b. Carcinogenic: A gas, liquid or solid which is normally considered to be cancer causing or mutagenic. Examples: PCBs in some waste oils.

- c. Explosive: A reactive gas, liquid or solid which will vigorously and energetically react uncontrollably if exposed to heat, shock, pressure or combinations thereof. Examples: dynamite, organic peroxides and ammonium nitrate.
 - d. Highly Toxic: A gas, liquid or solid so dangerous to man as to afford an unusual hazard to life. Examples: parathion and chlorine gas.
 - i. Moderately Toxic: A gas, liquid or solid which through repeated exposure or in a single large dose can be hazardous to man. Example: atrazine.
 - e. Corrosive: Any material, whether acid or alkaline, which will cause severe damage to human tissue, or in case of leakage might damage or destroy other containers of hazardous materials and cause the release of their contents. Examples: battery acid and phosphoric acid.
- 13. Manure Storage Area: An area separate from pens or building where animal manure is stored for more than one year.
 - 14. Leaks and Spills: Any unplanned or improper discharge of a potential contaminant including any discharge of a hazardous material.
 - 15. Pasture: A field providing continuous forage to animals and where the concentration of animals is such that a vegetative cover is maintained during the growing season.
 - 16. Primary Containment Facility: A tank, pit, container, pipe or vessel of first containment of a liquid or chemical.
 - 17. Secondary Containment Facility: A second tank, catchment pit, pipe or vessel that limits and contains a liquid or chemical leaking or leaching from a primary containment area; monitoring and recovery systems are required.
 - 18. Shallow Aquifer: An aquifer vulnerable to contamination because the permeable material making up the aquifer (1) extends to the land surface so percolation water can easily transport contaminants from land surface to the aquifer, or (2) extends to near the land surface and lacks a sufficiently thick layer of impermeable material on the land or near the land surface to limit percolation water from transporting contaminants from the land surface to the aquifer.
 - 19. Ten Year Time of Travel Distance: The distance that ground water will travel in ten years. This distance is a function of aquifer permeability and water table slope.
 - 20. Zone of Contribution: The entire area around a well or wellfield that contributes to the well or wellfield.

Section 1503. Establishment/Delineation/Regulation of Aquifer Protection Overlay Zones

Boundaries for the aquifer protection zones for the Aquifer Protection Overlay District are shown on maps prepared by the South Dakota Geologic Survey, Vermillion, South Dakota. **the South Dakota Department of Environment and Natural Resources, Division of Financial and Technical Assistance, Geological Survey created a map entitled "First Occurrence of Aquifer Materials Map 12" dated March 3, 2003.** Said maps are hereby adopted by reference as part of this Ordinance as if the maps were fully described herein.

The Aquifer Protection Overlay District is divided into a single zone. The shallow/ surficial aquifer boundary for Zone A **was mapped by the South Dakota Geological Survey. is represented on the First Occurrence of Aquifer Materials Map 12 as alluvium and sand and gravel which occurrence is generally less than or equal to 50 feet below land surface.**

Section 1504. Zone A -- Aquifer Secondary Impact Zones

Zone A is being protected because (1) the aquifer is a valuable natural resource for future development, (2) the aquifer provides drinking water supply for individual domestic users, (3) contamination is not justified just because this area is not currently used for public water supply, and (4) contaminants from this area could eventually enter into a public water supply.

Section 1505. Permitted Uses in Zone A

1. All “**Permitted**” uses **permitted in** the underlying districts provided that they can meet the Performance Standards as outlined for the Aquifer Protection Overlay Zones.

Section 1506 Conditional Uses in Zone A

1. All conditional uses allowed in underlying districts may be approved by the Board of Adjustment provided they can meet Performance Standards outlined for the Aquifer Protection Overlay Zones with the exception of those expressly prohibited.
2. New Class **E-C** and expansion of existing Class **E-C** up to 999 animal units (Class **E-D**). The County will require soil borings to determine impermeable materials between land surface and aquifer.
3. Earthen storage basins and lagoons.

Section 1507. Prohibited Uses in Zone A

The following uses are expressly prohibited in Zone A:

1. Fall application of nitrogen fertilizer, except spreading of manure.
2. Application of nitrogen fertilizer in excess of 200 pounds of actual nitrogen per acre per year.
3. Land spreading of petroleum contaminated soil;
4. Land spreading or dumping of waste oil;
5. Industrial process water and waste disposal wells--5W20 type Class V injection wells;
6. Automobile service station disposal wells--5X28 type Class V injection wells.
7. New and/or expansion of Class A or B Concentrated Animal Feeding Operations.

Section 1508. Performance Standards for Aquifer Protection Overlay Zones

The following standards shall apply to land uses in Zone A of the Aquifer Protection Overlay Districts:

1. New or replacement septic tanks and associated drain fields for containment and disposal of human waste must conform with regulations established by the State Department of Environment and Natural Resources.
2. Non-agricultural commercial or industrial liquid waste ponds containing any solid or liquid material or waste will not be permitted without a secondary containment system except for community wastewater lagoons.
3. Manure storage areas must be constructed in conformance with all State and Federal regulations.
4. Petroleum products stored at one locality in a tank or series of tanks must be elevated; such tanks must have a secondary containment system where it is deemed necessary by the County Zoning Office.
5. When pastured animals are concentrated for winter feeding and the number of animal units exceeds two hundred (200) within 1/4 mile of a public water supply well or five hundred (500) in the remainder of Zone A, measures shall be employed to prevent runoff of manure.
6. Manure brought into Zone A must be applied within thirty (30) days. Any manure brought into Zone A and stockpiled before spreading, may not be stockpiled within five hundred (500) feet of a public water supply well or surface water body. When applying manure alone or in conjunction with other fertilizer, the total Nitrogen must not exceed one hundred fifty (150) pounds per acre per year. In Zone A, this rate must not exceed 200 pounds per acre per year. Best management practices should be observed with regard to the levels of phosphorus when spreading manure adjacent to surface water bodies.
7. Discharge of industrial process water is prohibited without County Zoning Office approval.
8. Auto service, repair or painting facilities and junk or salvage yards shall meet all State and Federal standards for storage, handling and disposal of petroleum products and shall properly dispose of all other potentially hazardous waste materials.
9. Any facility required to file material safety data sheets as part of SARA Title III must prepare and have on file in the County Zoning Office an acceptable contingency plan for preventing hazardous chemicals from contaminating the shallow aquifer. Agricultural operations are exempt unless they have more than 10 employees.
10. Any non-agricultural commercial or industrial facility involving collection, handling, manufacture, use, storage, transfer or disposal of hazardous materials, in excess of 1,000 pounds or 100 gallons, must be constructed to prevent hazardous materials from contaminating the shallow aquifer should equipment failure, floods, fire or other natural catastrophes occur. Stored petroleum products are exempt from this performance standard.
11. The County Zoning Office and Department of Environment and Natural Resources shall be informed as soon as possible within 12 hours of any leak, spill or release of materials that might potentially contaminate groundwater.

12. Since it is known that improperly abandoned wells can become direct conduit for contamination of groundwater by surface water, all abandoned wells should be plugged in conformance with South Dakota Well Construction Standards, Chapter 74:02:04:67-70.
13. Secondary containment for all chemigation tanks is recommended but not required in Zone A.

Section 1509. Exceptions

1. Storage of liquids, chemicals and fertilizers used in agricultural operations during planting and crop cultivation are exempt from the requirements of this ordinance March 1 to October 1. However, Best Management Practices are encouraged.
2. Storage of liquid or dry fertilizer in amounts equal to or less than 1,000 pounds or 100 gallons, stored indoors by each farm operator is exempt from the requirements of this ordinance.
3. A non-conforming facility in Zone A will become a prohibited use if such facility is inactive for five years.
4. A proposed facility not permitted in Zone A may be allowed by conditional use exception provided the applicant can show the facility will not be located over the shallow aquifer and runoff of all potential contaminants will be contained on site. A minimum of three test holes must be drilled to a minimum depth of 30 feet.

Section 1510. Grant of Permit, Alteration of Use

Before a permit is granted, the Zoning Administrator must examine an application and determine that the proposed use, activity or development meets the provisions of this ordinance.

When securing a use permit, the owner/developer agrees to make future improvements which may become necessary to prevent contamination of shallow aquifers and the owner/developer must allow County personnel to inspect any improvements to verify they meet the performance standards.

Whenever any person has an existing use, activity or development and thereafter desires alteration or expansion of the authorized use, such persons shall apply for a permit except for the normal upkeep, replacement and repair of existing facilities. The owner may appeal a Zoning Administrator's decision to modify or deny a requested permit to the Planning and Zoning Commission/Board of Adjustment.

Section 1511. Limitation of County Liability

Nothing in this ordinance shall be construed to imply that Miner County, by issuing a permit, has accepted any of an owner's/developer's liability if a permitted development contaminates water in shallow/surficial aquifers.

Section 1512. Underlying Zones.

Underlying zoning restrictions apply along with restrictions set forth in the Aquifer Protection Overlay District.

Section 1513. Saving Clause.

Should any section or provision of this ordinance be declared invalid, such decision shall not affect the validity of the ordinance as a whole or any other part thereof.

ARTICLE 16 SUPPLEMENTARY REQUIREMENTS

Pursuant to the purpose of this regulation are certain general requirements that are not provided for under Articles 11, 12, 13, 14, and 15. These requirements are set forth under this Article.

Section 1601. Screening.

Where any "C" **commercial or industrial Zoning District** use is adjacent to any residential use, that use (building, parking or storage) shall be appropriately screened from the residential use district by **a fence or planting, approved by the Board of Adjustment,** except where planting may be in conflict with **vision clearance** **Section 1602.**

Section 1602. Vision Clearance on Corner Lots.

On a corner lot in all districts, nothing shall be erected, placed or allowed to grow in such a manner as materially to impede vision between a height of two and one-half (2 ½) and ten (10) feet above the centerline grades of the intersecting streets in the area bounded by the street lines of such corner lots and a line joining points along said street lines fifty (50) feet from the point of the intersection.

Section 1602. Visibility at Intersections. On any corner lot in any zoning district, no planting, structure or obstruction to vision shall be placed or maintained within the triangular area formed by the intersection road right-of-way lines and a straight line connecting points on said road right-of-way line each of which is one hundred (100) feet distance from the point of intersection (Clear View Triangle). Exception: In the Town District, and Planned Residential District, the Clear View Triangle shall be formed by the intersection road right-of-way lines and a straight line connecting points on said road right-of-way line each of which is fifty (50) feet distance from the point of intersection.

Section 1603. Refuse.

In all zoning districts, refuse (rubbish, garbage, trash, wastes, or debris) shall be kept within a complete enclosed building or specially designed closed container made for such purpose. Owners of vacant lots shall be responsible for keeping their property free of trash. Normal farming operations excluded.

Section 1604. Signs and Outdoor Advertising.

Section 1604.01 On **Premise and Off –**Site-Premise** Signs**

1. No private sign shall be erected or maintained which:
 - a. Creates a hazard due to collapse, fire, collision, decay, or abandonment; or
 - b. Creates traffic hazards, by either:
 - i. Confusing or distracting motorists; or

- ii. Impairing the driver's ability to see pedestrians, obstacles or other vehicles, or
- iii. Impairing the driver's ability to see and interpret any official traffic sign, signal or device; or
- iv. Creates a nuisance to persons using a public right-of-way; or
- v. Constitutes a nuisance to occupancy of adjacent and contiguous property by its brightness, size, height, or movement

c. Any vehicle or trailer parking on public right-of-way, public property or private property so as to be visible from the public right-of-way and which displays an advertising message, unless said vehicle is used in the regular course of a business is prohibited.

2. Signs shall be permitted in all zoning districts, subject to the following provisions:

- a. Wall signs may be located anywhere on the wall of a building.
- b. Freestanding signs shall not project over public property.
- c. Freestanding signs shall not be erected adjacent to a corner of two intersecting streets, unless such signs are constructed to not obstruct the view of said intersection.
- d. Each sign – size, lighting, and location - in the County shall at least meet the standards established by the South Dakota Department of Transportation.
- e. Other than utility fixtures or holiday decorations, no signs, awnings, or display shall be suspended, hanged, or placed so that the same shall hang over any part of a street or sidewalk, used for vehicular or pedestrian travel unless a written application for a permit is made to the **Administrative Official Zoning Administrator** and the said Official grants a permit therefore.

3. The **Administrative Official Zoning Administrator** shall take into consideration factors that would make the proposed structure likely to endanger the property or personal safety of passerby traveling the streets or sidewalks in question, and whether or not such structure complies **with National Building Codes** relating to outdoor advertising.

4. On-**Site premise** Signs: Each sign erected as an on-**site premise** sign in those districts where permitted shall have a maximum surface area of eighty (80) square feet and shall observe all yard and height requirements of the district in which it is located. **unless specified elsewhere in this ordinance, conform to the following requirements:**

- a. **Unless otherwise specified herein, each sign erected as an on-premise sign in those districts where permitted shall have a maximum surface area of eighty (80) square feet and shall observe all yard and height requirements of the district in which it is located. Each sign shall meet clear view triangle standards identified in Section 1602. The maximum cumulative amount of all on-premise signage allowed shall not exceed eighty (80) square feet.**

b. No on-premise sign may be converted to an off-premise sign.

5. Off-**Site Premise** Signs: Off **Site premise** signs erected in those districts where permitted shall conform to the following requirements:

- a. Each sign shall have a maximum surface area of one thousand two hundred (1,200) square feet, and maximum dimensions of thirty (30) feet in height, and ~~sixty (60)~~ **forty (40)** feet in length.
- b. Each sign shall not be closer than three hundred (300) feet from any street intersection and five hundred (500) feet from another permitted off-~~site premise~~ sign on the same side of the street or road.
- c. Each sign shall not be closer than thirty (30) feet from any street right-of-way.

d. Height of sign is the vertical distance from the top of the sign or sign structure, whichever is greater, to the ground in a straight line directly below, measured from a point equidistant from the sides or edges of the sign.

e. Stacked signs (two or more signs stacked vertically on a single sign structure are prohibited.

f. Each sign shall not be closer than two hundred fifty (250) feet from adjoining property lines.

6. Temporary signs, may be displayed on any lot under the following conditions:

a. Temporary signs shall be readily movable and attached to the ground or another permanent structure;

b. Temporary signs shall be constructed with a material capable of withstanding impacts, winds or blown snow;

d. Temporary signs shall consist of a flat construction with a maximum of two display sides;

e. Temporary signs shall not be placed within a required clear view triangle or a required parking area;

f. Additional Locations and Area Regulations are regulated by Table 1604.1.

Table 1604.1. Location and Area Regulations

		All Zoning Districts
Minimum Distance from Edge of Right-of-Way (Front Yard Setback)		1'
Rear Yard		Same as setback for accessory structures in underlying zoning district
Front Yard		Same as setback for accessory structures in underlying zoning district
Number of Signs on a Lot	(A) Maximum throughout year except as in (B)	One (1) plus one (1) per frontage
	(B) Maximum during the period sixty (60) days before and five (5) days after an election	6
Maximum Height		3'
Maximum Area per sign (a)		6 sq. ft

Section 1605. Moved-in Buildings.

- Any building to be moved requires a building permit. **The Zoning Administrator may attach conditions to the issuance of the moved-in building permit.**
- Any residence moved into any use district must have signature by petition of fifty percent (50%) of the landowners within two hundred (200) feet. EXCEPTION: A new residence to be used for first occupancy, constructed off the property and moved to location shall not require adjoining landowners' approval.
- At the discretion of the Zoning Administrator, the applicant may also be required to file with the County Auditor a sufficient bond conditioned so that the applicant will indemnify the County and any public utility for any damage done to any property, street, alley or public grounds. No building shall be moved other than during the period from daylight to sundown. Before any permit is granted under this section, the applicant must furnish proof that all taxes legally assessed against the property have been paid. If a building or structure is to be moved onto any lot within the county, the Zoning Administrator shall have the power to deny the granting of a moving permit on the grounds that the intended use of the structure or location thereof is contrary to the provisions of this section.**

Section 1606. Minimum Water and Sewer Requirements.

A water and sewer system cannot be approved until it meets the following standards:

- All public utilities and facilities shall be located, elevated, and constructed to minimize or eliminate flood damage; and
- All new or replacement water supply systems and sanitary sewage systems, in addition to meeting the requirements of the South Dakota Department of Environment and Natural Resources **Administrative Rule Chapter 74:53:01**, must be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.

3. All subsurface absorption systems shall be at least one hundred (100) feet from any water supply well, eighty (80) feet from any lake, stream, or water course, and twenty-five (25) feet from property lines.
4. The bottom of the drain area or tile field should be at least four (4) feet above the maximum high ground water level and five (5) feet above rock or impervious soil strata and not more than five (5) feet below ground surface.
5. All structures used for human habitation or commercial or industrial use must be connected to a sewage disposal system which meets South Dakota Department of Environment and Natural Resources Administrative Rules and be approved by the Zoning Administrator. If a public sewer is available, all such structures must be connected to said public sewer.

Section 1607. Wind Energy System (Wes) Requirements

Section 1607.01 Applicability

The requirements of these regulations shall apply to all WES facilities except private facilities with a single tower height of less than seventy-five (75) feet and used primarily for on-site consumption of power.

Section 1607.02 Federal and State Requirements

All WESs shall meet or exceed standards and regulations of the Federal Aviation and South Dakota State Statutes and any other agency of federal or state government with the authority to regulate WESs.

Section 1607.03 General Provisions

1. Mitigation Measures
 - a. Site Clearance. The permittees shall disturb or clear the site only to the extent necessary to assure suitable access for construction, safe operation and maintenance of the WES.
 - b. Topsoil Protection. The permittees shall implement measures to protect and segregate topsoil from subsoil in cultivated lands unless otherwise negotiated with the affected landowner.
 - c. Compaction. The permittees shall implement measures to minimize compaction of all lands during all phases of the project's life and shall confine compaction to as small an area as practicable.
 - d. Livestock Protection. The permittees shall take precautions to protect livestock during all phases of the project's life.
 - e. Fences. The permittees shall promptly replace or repair all fences and gates removed or damaged during all phases of the project's life unless otherwise negotiated with the affected landowner.

f. Roads

- i. Public Roads. Prior to commencement of construction, the permittees shall identify all state, county or township “haul roads” that will be used for the WES project and shall notify the state, county or township governing body having jurisdiction over the roads to determine if the haul roads identified are acceptable. The governmental body shall be given adequate time to inspect the haul roads prior to use of these haul roads. Where practical, existing roadways shall be used for all activities associated with the WES. Where practical, all-weather roads shall be used to deliver cement, turbines, towers, assemble nacelles and all other heavy components to and from the turbine sites.
- ii. The permittees shall, prior to the use of approved haul roads, make satisfactory arrangements with the appropriate state, county or township governmental body having jurisdiction over approved haul roads for construction of the WES for the maintenance and repair of the haul roads that will be subject to extra wear and tear due to transportation of equipment and WES components. The permittees shall notify the County of such arrangements upon request of the County.
- iii. Turbine Access Roads. Construction of turbine access roads shall be minimized. Access roads shall be low profile roads so that farming equipment can cross them and shall be covered with Class 5 gravel or similar material. When access roads are constructed across streams and drainageways, the access roads shall be designed in a manner so runoff from the upper portions of the watershed can readily flow to the lower portion of the watershed.
- iv. Private Roads. The permittees shall promptly repair private roads or lanes damaged when moving equipment or when obtaining access to the site, unless otherwise negotiated with the affected landowner.
- v. Control of Dust. The permittees shall utilize all reasonable measures and practices of construction to control dust.
- vi. Soil Erosion and Sediment control Plan. The permittees shall develop a Soil Erosion and Sediment Control Plan prior to construction and submit the plan to the County. The Soil Erosion and Sediment Control Plan shall address the erosion control measures for each project phase, and shall at a minimum identify plans for grading, construction and drainage of roads and turbine pads; necessary soil information; detailed design features to maintain downstream water quality; a comprehensive revegetation plan to maintain and ensure adequate erosion control and slope stability and to restore the site after temporary project activities; and measures to minimize the area of surface disturbance. Other practices shall include containing excavated material, protecting exposed soil, stabilizing restored material and removal of silt fences or barriers when the area is stabilized. The plan shall identify methods for disposal or storage of excavated material.

2. Setbacks

Wind turbines shall meet the following minimum spacing requirements.

- a. Distance from existing off-site residences, business and public buildings shall be one thousand (1,000) feet. Distance from on-site or lessor's residence shall be five hundred (500) feet. Distance from participating and non-participating residences, businesses, churches, schools, buildings owned and/or operated by a governmental entity, centerline of public roads and property lines shall be in accordance with Table 1607-1.
- b. Distance from public right-of-way shall be equal to the height of the wind turbines, measured from the ground surface to the tip of the blade when in a fully vertical position.
- a. Distance from any property line shall be equal to the height of the wind turbine, measured from the ground surface to the tip of the blade when in a fully vertical position unless wind easement has been obtained from adjoining property owner.
- b. Distance from participating and non-participating residences, businesses, churches, schools, buildings owned and/or operated by a governmental entity, centerline of public roads and property lines shall be in accordance with Table 1607-1.

Table 1607-1
WES Setbacks

	Setback Distance*
Participating Residence, business, church, school, building owned and/or operated by a governmental entity	1,000 Feet**
Non-Participating Residence, business, church, school, building owned and/or operated by a governmental entity	1,000 Feet
Municipal Boundaries existing at the time of Conditional Use Permit Application	5,280 Feet
Distance from Public Right-of-Way	500 Feet or 110% of the vertical height of the wind turbine, whichever is greater***
Distance from Property Line	500 Feet or 110% of the vertical height of the wind turbine, whichever is greater ****

* Setback distance to be measured from the wall line of the neighboring principal building to the base of the WES tower. The vertical height of the wind turbine is measured from the ground surface to the tip of the blade when in a fully vertical position.

** No less than 110% of the vertical height of the wind turbine if agreed upon by participating entity

*** The horizontal setback shall be measured from the base of the tower to the public right-of-way.

**** The horizontal setback shall be measured from the base of the tower to the adjoining property line unless wind easement has been obtained from adjoining property owner.

3. Electromagnetic Interference. The permittees shall not operate the WES so as to cause microwave, television, radio, or navigation interference contrary to Federal Communications Commission (FCC) regulations or other law. In the event such interference is caused by the WES or its operation, the permittees shall take the measures necessary to correct the problem.
4. Lighting. Towers shall be marked as required by the Federal Aviation Administration (FAA). There shall be no lights on the towers other than what is required by the FAA. This restriction shall not apply to infrared heating devices used to protect the monitoring equipment. **Upon commencement of construction of a Tower, in cases where there are residential uses located within a distance which is three hundred (300) percent of the height of the Tower from the Tower and when required by federal law, dual mode lighting shall be requested from the FAA. The preferred manner of lighting is by means of an Aircraft Detection Lighting System (ADLS). Subject to FAA approval, applicants will install an ADLS within one (1) year of approval by FAA for the specified project. In the event FAA does not approve an ADLS system, the turbine owner will comply with all lighting and markings otherwise required by FAA.** Beacon lighting, unless required by FAA, shall not be utilized.
5. Turbine Spacing. The turbines shall be spaced no closer than **three (3) two and one-half (2.5)** rotor diameters (RD) **within a string and 10 RDs between strings (measurement of blades tip to tip) within a straight line.** If required during final micro siting of the turbines to account for topographic conditions, up to 10 percent of the towers may be sited closer than the above spacing but the permittees shall minimize the need to site the turbines closer.
6. Footprint Minimization. The permittees shall design and construct the WES so as to minimize the amount of land that is impacted by the WES. Associated facilities in the vicinity of turbines such as electrical/electronic boxes, transformers and monitoring systems shall to the greatest extent feasible be mounted on the foundations used for turbine towers or inside the towers unless otherwise negotiated with the affected landowner.
7. **Electrical Cables Collector Lines. Collector lines are the conductors of electric energy from the Wind Energy System to the feeder lines. When located on private property,** the permittees shall place electrical lines, known as collectors, and communication cables underground **when located on private property. The exception to this requirement is when the total distance of collectors from the substation require an overhead installation due to line loss of current from an underground installation.** Collectors **lines** and cables shall ~~also~~ be placed within or immediately adjacent to the land necessary for turbine access roads unless otherwise negotiated with the affected landowner. This paragraph does not apply to feeder lines.
8. Feeder Lines. **Feeder lines are the conductors of electric energy from the collector lines to the main electric terminal. They may be located either above or below ground.** The permittees shall place overhead electric lines, known as feeders, on public rights-of-way, if a public right-of-way exists. Changes in routes may be made as long as feeders remain on public rights-of-way and approval has been obtained from the governmental unit responsible for the affected right-of-way. If no public right-of-way exists, the permittees may place feeders on private property. When placing feeders on private property, the permittees shall place the feeder in accordance with the easement negotiated with the affected landowner. The permittees shall submit the site plan and engineering drawings for the feeder lines before commencing construction. **Feeder line support structures (power poles) shall be placed on**

private property where concrete or other similar materials are used as an exposed or above-ground permanent foundation.

9. Decommissioning/Restoration/Abandonment

- a. Decommissioning Plan. ~~Within 120 days of completion of construction, the permittees shall submit to the County a decommissioning plan describing the manner in which the permittees anticipate decommissioning the project.~~ **At least thirty (30) days prior to construction, the applicant shall file a decommissioning plan for Board approval** in accordance with the requirements of paragraph (b) below **this Section**. The plan shall include **an acceptable financial assurance plan which estimates** the ~~estimated~~ decommissioning cost per turbine and a description of the manner in which the permittees will ensure that it has the financial capability to carry out these restoration requirements when they go into effect. The permittees shall ensure that it carries out its obligation to provide for the resources necessary to fulfill these requirements. The County may at any time request the permittees to file a report with the County describing how the permittees are fulfilling this obligation.
- b. Site Restoration. ~~Upon expiration~~ **The decommissioning of the WES shall begin within eight (8) months of the expiration** of this permit or ~~upon~~ earlier termination of operation of the WES. The permittees shall have the obligation to dismantle and remove from the site all towers, turbine generators, transformers, overhead and underground ~~cables~~ **collector and feeder lines**, foundations, buildings and ancillary equipment to a depth of four **(4)** feet. To the extent possible the permittees shall restore and reclaim the site to its pre-project topography and topsoil quality. All access roads shall be removed unless written approval is given by the affected landowner requesting that one or more roads, or portions thereof, be retained. Any agreement for removal to a lesser depth or for no removal shall be recorded with the County and shall show the locations of all such foundations. All such agreements between the permittees and the affected landowner shall be submitted to the County prior to completion of restoration activities. The site shall be restored in accordance with the requirements of this condition within eighteen months after expiration.
- c. **Financial Assurance. The Board shall require a performance bond, surety bond, escrow account, letter of credit, corporate guarantee or other form of financial assurance that is acceptable to the Board to cover the anticipated costs of decommissioning the WES facility. The financial assurance plan is subject to the following provisions:**
 - i. **A decommissioning account is to be funded by the turbine owner annually at a rate of five thousand dollars (\$5,000) per turbine for a period of thirty (30) years.**
 - ii. **The Board may allow a decreased annual payment, if the Board determines the full rate as identified in the financial assurance plan is not necessary to cover costs of decommissioning.**
 - iii. **All interest earned by any financial assurance account remains in the account.**
 - iv. **A financial assurances statement is to be provided upon request to the Zoning Administrator.**
 - v. **The financial assurance plan follows ownership of the wind turbines.**

vi. The financial assurances are not subject to foreclosure, lien, judgment, or bankruptcy.

vii. Beginning in year ten (10) following the beginning of operation and each fifth year thereafter, the turbine owner shall submit to the Board an estimated decommissioning date, if established, and estimated decommissioning costs and salvage values. Based on the verification of the information in this filing the Board may change the annual financial assurance funding rate to more closely match the estimated amount needed for decommissioning.

viii. Funds from the financial assurances are to be paid to the turbine owner at the time of decommissioning. Said funds are to be paid as decommissioning costs are incurred and paid for by the turbine owner.

ix. If the turbine owner fails to execute the decommissioning requirement, the funds are payable to the landowner as the landowner incurs and pays decommissioning costs.

d. Cost Responsibility. The owner or operator of a WES is responsible for decommissioning that facility and for all costs associated with decommissioning that facility and associated facilities.

10. Abandoned Turbines. The permittees shall advise the County of any turbines that are abandoned prior to termination of operation of the WES. The County may require the permittees to decommission any abandoned turbine.

11. Height from Ground Surface. The minimum height of blade tips, measured from ground surface when a blade is in fully vertical position, shall be twenty-five (25) feet.

12. Towers.

a. Color and Finish. The finish of the exterior surface shall be non-reflective and non-glass.

b. All towers shall be ~~singular~~ tubular design.

13. Noise. Noise level shall not exceed 50 dBA, including constructive interference effects at the property line of existing ~~off-site~~ non-participating residences, businesses, and buildings owned and/or maintained by a governmental entity. residences, businesses, and public buildings.

Noise level measurements shall be made with a sound level meter using the A-weighting scale, in accordance with standards promulgated by the American National Standards Institute. A L90 measurement shall be used and have a measurement period no less than ten (10) minutes unless otherwise specified by the Board of Adjustment.

14. Permit Expiration. The permit shall become void if no substantial construction has ~~been completed~~ commenced within ~~two (2)~~ three (3) years of issuance; or if a State Permit from the South Dakota Public Utility Commission has not been issued within two (2) years of issuance of the permit.

15. Flicker Analysis. A Flicker Analysis shall include the duration and location of flicker potential for all schools, churches, businesses and occupied dwellings within a one (1) mile radius of each turbine within a project. The applicant shall provide a site map identifying the locations of shadow flicker that may be caused by the project and the expected durations of the flicker at these locations from sunrise to sunset over the course of a year. The analysis shall account for topography but not for obstacles such as accessory structures and trees. Flicker at any receptor shall not exceed thirty (30) hours per year within the analysis area.

- a. **Exception:** The Board of Adjustment may allow for a greater amount of flicker than identified above if the participating or non-participating landowners agree to said amount of flicker. If approved, such agreement is to be recorded and filed with the Miner County Register of Deeds. Said agreement shall be binding upon the heirs, successors, and assigns of the title holder and shall pass with the land.

15.16 Required Information for Permit.

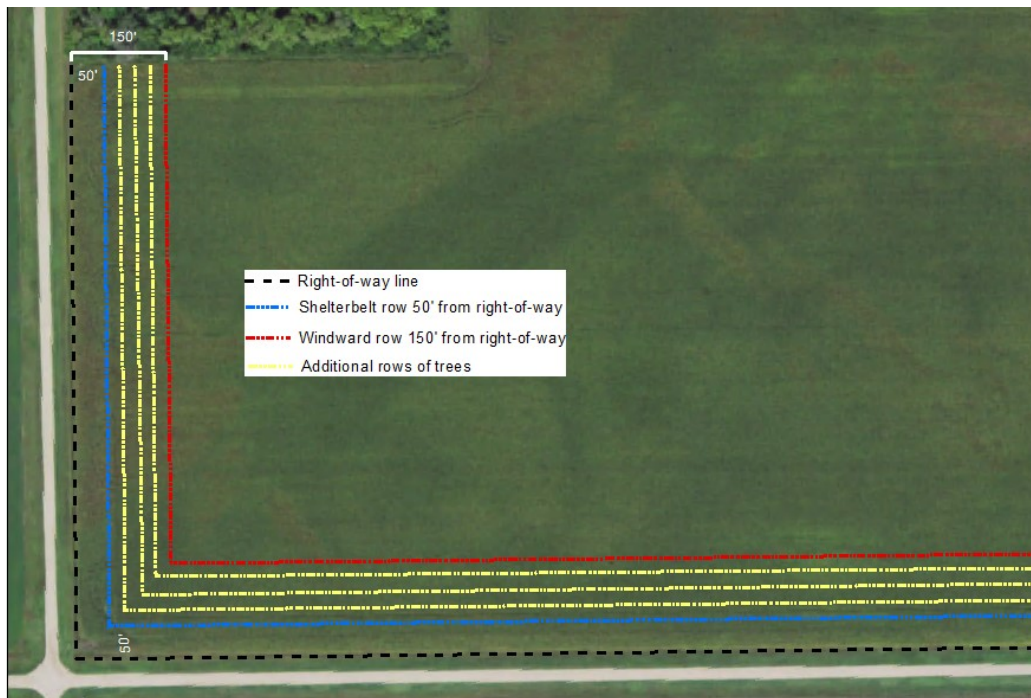
- a. Boundaries of the site proposed for WES and associated facilities on United States Geological Survey Map or other map as appropriate.
- b. Map of easements for WES.
- c. ~~Copy of easement agreements with landowners.~~ **Affidavit attesting that necessary easement agreements with landowners have been obtained.**
- d. Map **including any** occupied residential structures, businesses, churches and buildings **owned and/or maintained by a governmental entity within one (1) mile of the project area.**
- e. **Preliminary map of** map of sites for WES, access roads and utility lines. **Final map of sites for WES, access roads and utility lines is required prior to the issuance of any building permits associated with the conditional use permit.**
- f. Proof of utility right-of-way easement for access to transmission lines **and/or utility interconnection to be submitted prior to construction**
- g. Location of other WES in general area.
- h. Project schedule.
- i. ~~Mitigation measures.~~ **Final haul road agreements to be submitted prior to construction.**
- j. **Evidence of consultation with State and Federal wildlife agencies regarding project-specific environmental concerns (e.g. native habitat, rare species, and migratory routes) shall be included in the application.**
- k. **Final haul road agreements to be submitted prior to construction.**

Section 1608. Shelterbelt Setback Requirements.

A shelterbelt, consisting of one (1) or more rows shall not be established within seventy-five (75) feet of a public road right-of-way line. Shelterbelts shall not be established within seventy-five (75) feet of adjoining property lines without written permission of adjoining property owners. ~~Ornamental and shade trees, generally used in front yards and spaced further than thirteen (13) feet apart and further do extend lineally for a distance of over one hundred fifty (150) feet, are not considered shelterbelts. Township approval is required prior to the issuance of any variance of the shelterbelt setback from township public right-of-ways.~~

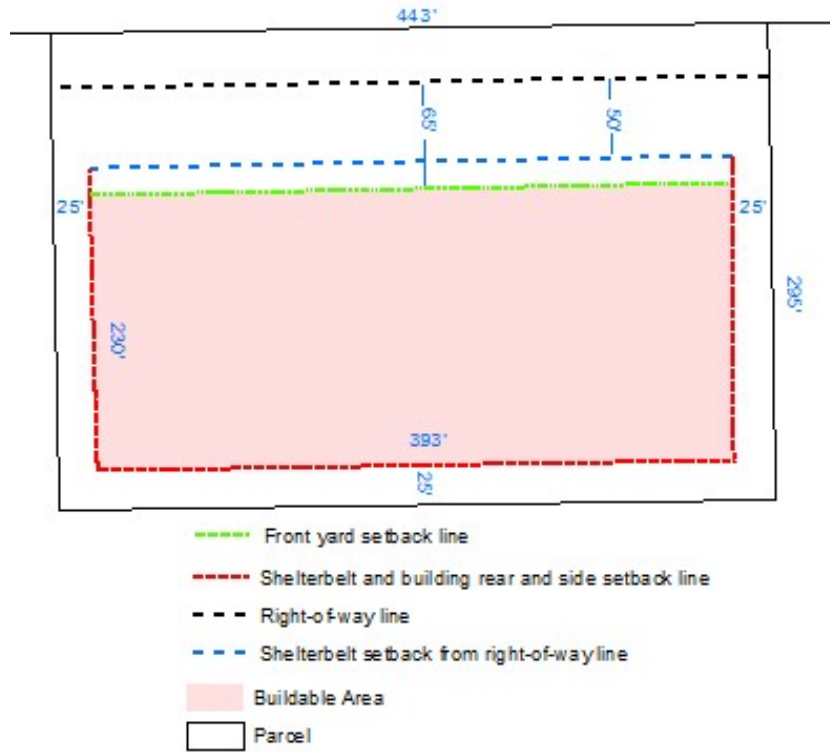
1. Permits are required for all shelterbelt plantings.
2. A shelterbelt, consisting of a single rows of trees shall not be established within one hundred fifty (150) feet of a public road right-of-way line.
3. A shelterbelt may be established within fifty (50) feet of the public road right-of-way line if the windward row of trees is established one hundred fifty (150) feet from the public road right-of-way line. Further, the shelter belt will consist of at least three (3) rows of trees with the windward row of trees consisting of shrubbery or tree species which aid in the containment of snow. See Figure 1608.1.

Figure 1608.1



4. The setback requirements also apply to volunteer trees that the landowner allows to grow.
5. Shelterbelts shall not be established within twenty (25) feet of adjoining property lines without written permission of adjoining property owners. See Figure 1608.2

Figure 1608.2



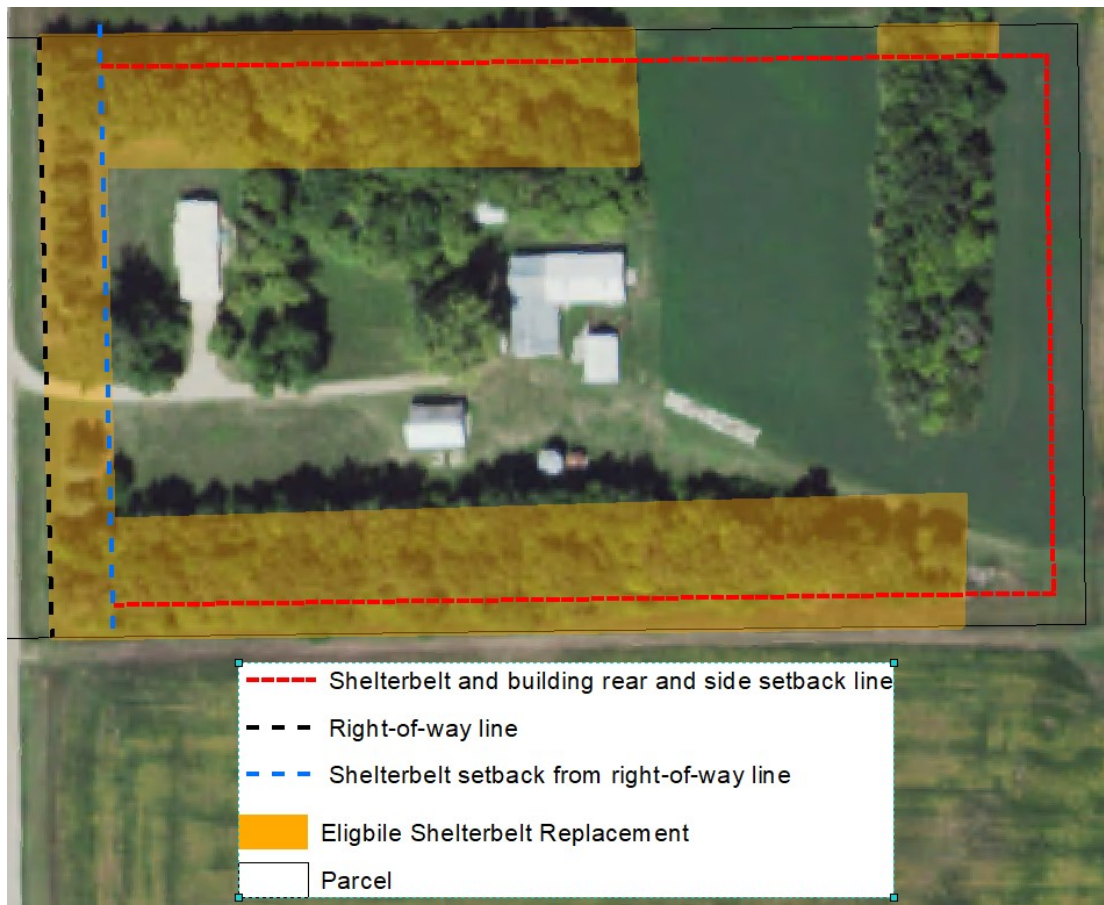
6. Shelterbelts around building sites shall not be established within fifty (50) feet of the right-of-way line. See Figure 1608.2 without written permission of Road Authority
7. Shade trees, ornamental trees or shrubs generally used for landscaping and windbreak are allowed in a controlled area. The controlled area is defined as the area within one hundred (100) feet of homes or farm buildings, but not closer to the right-of-way than fifty (50) feet. Except for the following, plantings within the controlled area are exempt from this regulation. Four or more trees in a row are not allowed with the controlled area. Deciduous trees which are spotted or staggered within the controlled area can be no closer than twenty (20) feet. Conifer trees which are spotted or staggered within the controlled area can be no closer than twenty-five (25) feet. The distance between trees shall be determined by measuring distance between tree trunks. See Figure 1608.3

Figure 1608.3 Controlled Area Illustration



8. A recommendation from the Road Authority is required prior to the issuance of any variance of the shelterbelt setback from a public right-of-way.
9. Shelterbelts existing prior to January 1, 2023. Shelterbelts which do not conform to the regulations of this Section may be replaced, but not enlarged, subject to Zoning Officer and/or Road Authority approval. See Figure 1608.4

Figure 1208.4 Eligible Shelter Belt Replacement Illustration



Section 1609. Extended Home Occupation.

There are significant differences between home occupations on small tracts and agricultural **extended** home occupations. The nature of resources available for use, the benefits and disadvantages created by home occupations, and the problems generated necessitate a distinction between urban home occupations and farm home occupations. Each concept **While each use** is based on supplementing income, but the district in which each is practiced has unique characteristics. For the aforesaid reasons, different home occupations may be permitted in agricultural zoning districts than are permitted in the urban residential districts. **the location and type of business in which each is practiced has unique characteristics. Specifically, a home occupation is conducted within the primary structure (residence) while an extended home occupation is conducted in an accessory building.**

1. For the purposes of this section, provided all requirements are met, the following shall be considered extended home occupations:

- a. ~~Welding repair conducted in a safe manner;~~
- b. ~~Veterinarian's office;~~
- c. ~~Blacksmith;~~
- d. ~~Service office;~~
- e. ~~Others which, in the opinion of the Board of Adjustment would not conflict with adjoining land uses.~~

- a. **Those businesses that support agricultural needs to include but not limited to vehicle and implement repair, implement sales, welding repair conducted in a safe manner; Veterinarian's office; Seed Sales; and others, which in the opinion of the Board of Adjustment, would not conflict with adjoining land uses.**

2. Performance Standards

- a. **A home occupation may not be changed to another home occupation except by the issuance of a separate conditional use permit.**
- b. **Individuals engaged in such occupation shall consist of family members residing on the premises and up to three (3) non-family employees.**
- c. **There shall be no change in the outside appearance of the buildings or premises, or other visible evidence of the conduct of such home occupation other than one on-premise sign, not to exceed sixteen (16) square feet in area, non-illuminated.**
- d. **Off premise signage for extended home occupations shall be limited to South Dakota Department of Transportation (SDDOT) commercial, directional signs, also known as "TOD Signs". These signs, with SDDOT approval, may be located adjacent to State and Federal Highways.**
- e. **The only retail sales allowed shall consist of the sale of commodities/products prepared on the premises in connection with such occupation or activity. Exception: Seed Sales.**

- f. There shall be no outdoor storage of materials, vehicles, etc. related to the extended home occupation unless the aforementioned storage is placed behind a fence approved by the Board of Adjustment.
- g. Extended home occupations should be agriculturally related and be conducted in an accessory building.
- h. No traffic shall be generated by such extended home occupation in greater volumes than would normally be expected in a residential neighborhood, and any need of parking generated by the conduct of such extended home occupation shall be provided off the street and other than in a required front yard.
- i. No equipment or process shall be used in such extended home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the lot. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in line voltage off the premises.

Section 1610. ~~Soil Erosion and Sedimentation Control.~~ (Reserved)

- 1. ~~Before issuing a building permit, the Miner Zoning Administrator may require a filing of a certificate of intent to adhere to the county soil loss standards developed by the Miner County Conservation District. The Zoning Administrator shall consult the Miner County Soil Erosion and Sedimentation Control Ordinance that was developed pursuant to SDCL 38-8A before determining if the proposed activity requires such a certificate of intent.~~
- 2. ~~If a complaint is received regarding a violation of the county soil loss standards caused by non-agricultural activity, the Zoning Administrator shall undertake those actions outlined in the Miner County Soil Erosion and Sedimentation Control Ordinance in order to bring about compliance.~~

Section 1611. ~~Mineral Exploration and Development Sand, Gravel or Quarry Operation; Rock Crushers; Mineral Exploration and Development and Concrete and Asphalt Mixing Plants Requirements.~~ Separate permits are required for mineral extraction and milling. The applicant for a permit must meet the following minimal conditions as they pertain to the permit for which application is made.

Section 1611.01. Application.

- 1. In addition to the application and required fee for a Conditional Use Permit, the applicant shall provide submit a site plan indicating the following information:
 - a. A description of the mineral or minerals which are the subject of the mining or milling.

- b. **A detailed site** Map(s) showing
 - i. **The general area within which the mining or milling operation will be conducted.**
 - ii. **Present topography, soil types, and depth to groundwater.**
 - iii. **Location of existing water drainage, existing buildings, existing shelterbelts.**
 - iv. **Identification of roads leading to the site.**
 - v. **Proposed changes at the site such as new shelterbelts, new buildings, changes in topography, new fence lines.**
 - vi. **Proposed monitoring wells.**
 - ~~c. A detailed description of the regional environmental conditions, to include surface land use and vegetation as well as a detailed description of the area's geologic formations and hydrology from the best available scientific sources are required for mining or milling permits.~~
 - ~~d. An environmental assessment which establishes base line conditions for radioactive and toxic material in air, ground and surface water, soil vegetation and animals is required for mining or milling permits. This requirement does not apply to sand and gravel operations.~~
2. The applicant shall provide maps indicating the location of affected sites to the nearest section of land, a technical description of the mining or milling process, the types of equipment to be used, and the estimated timetable for each phase of work and for final completion of the program.
 3. The applicant shall provide:
 - a. A description of the major environmental impacts upon air quality, water quality and quantity, and land use modification presented by the proposed mining or milling.
 - b. A description of the proposed plan to address the identified environmental impacts to include all measures to be taken to prevent soil erosion, water contamination, air contamination, disruption of the area's ecological balance and any other related hazard to public health and safety.
 4. The applicant shall provide for a plan for land reclamation of the land after mining is completed. Measures to be taken for surface reclamation shall take into account the impact on adjacent land uses and natural resources, and the proposed future use of the lands mined and adjacent lands. The reclamation plan shall include:
 - a. A reclamation schedule.
 - b. Methods of plugging drill holds.
 - c. Methods of severing and returning topsoil and subsoil.
 - d. Methods of grading, backfilling and contouring of exploration sites, access roads, and mining sites.
 - e. Methods of waste management and disposal, including liquid and solid wastes.
 - f. Method of revegetation.

5. The applicant ~~shall~~ **may be required** to post a surety performance bond in an amount to be determined by the County Commission to assure that sufficient funds will be available to carry out required reclamation and, if necessary, decontamination of affected ground and surface waters. The amount shall be set by the County Commission based on an estimate of the cost of reclamation and decontamination. The bond shall be released five (5) years after mining and milling has ceased unless the Commissioners find, for good cause shown, that the water quality of the affected area has not been restored or the reclamation plan has not been completed. The amount of the surety bond may be reduced by the Commissioners if a bond is held by the State of South Dakota for the same purpose, by the same amount of the latter bond.
6. The applicant shall identify specific phases when monitoring and inspection of the mining and milling activities shall be conducted by County, State, or Federal personnel or their representatives to assure compliance with all applicable rules and regulations. If the conditional use permit is granted, the permit shall identify such inspection and it shall be the responsibility of the applicant to notify said agency when monitoring or inspection is required. The applicant shall bear the burden of the cost of the monitoring and inspection program as determined by the Planning Commission. **(Reserved)**
7. A conditional use permit shall be issued only after all conditions specified herein have been met. Evidence of violation of the regulations, including but not limited to air and water contamination, shall be cause for an immediate cessation of mining and milling activities.
8. Solution mining, in situ mining of an ore body with circulation of chemicals through injection and recovery wells, for minerals is prohibited.

Section 1611.02 State and Federal Requirements.

1. **All applicants for sand, gravel or quarry operations; mineral exploration and extraction operations; rock crushers; and concrete/ asphalt mixing plants shall demonstrate prior to the commencement of operation that the site meets the requirements of the State Department of Environment and Natural Resources.**
2. The applicant shall identify specific phases when monitoring and inspection of the mining and milling activities shall be conducted by County, State, or Federal personnel or their representatives to assure compliance with all applicable rules and regulations. If the conditional use permit is granted, the permit shall identify such inspection and it shall be the responsibility of the applicant to notify said agency when monitoring or inspection is required. The applicant shall bear the burden of the cost of the monitoring and inspection program as determined by the Board of Adjustment.

Section 1611.03 Setbacks

1. Sand, gravel or quarry operation; Mineral exploration and extraction operations; rock crushers; and concrete/ asphalt mixing plants will not be allowed within one thousand (1,000) feet of a residence. The setback will be measured from the mineral exploration and extraction operations; rock crushers; and/or concrete and asphalt mixing plant's property line to the nearest residence. The exception to

this standard would apply to residences owned and lived in by the operator of the mineral exploration and extraction operations; rock crushers, and/or concrete/asphalt mixing plants.

2. Sand, gravel or quarry operation; Mineral exploration and extraction; rock crushers; and/or concrete and asphalt mixing plants shall be set back at least one hundred (100) feet from any public right-of-way.
3. Sand, gravel or quarry operation; Mineral exploration and extraction; rock crushers; and/or concrete and asphalt mixing plants shall be set back a minimum of twenty-five (25) feet from all property lines (excluding public right-of-way). EXCEPTION: The Board of Adjustment may allow excavation of minerals, sand, or gravel provided the following conditions are met:
 - a. Any excavation performed less than twenty-five (25) feet from any rear or side property line may be allowed with a maximum slope of three (3) feet horizontal for each one (1) foot vertical.
 - b. No excavation is allowed within five (5) feet of any rear or side property line.
 - c. The applicant shall obtain the written consent of all property owners owning property adjacent to the property line for which the exception is requested.

Section 1611.04 General Provisions:

1. Haul Roads. A requirement for receiving a permit for extractive/mining operations shall include a haul-road agreement between the applicant and appropriate governmental entity (Federal, State, County, Township, or Municipality).
2. Noise Pollution. The applicant may be required to provide information regarding how potential noise, pollution would be minimized.
3. Utilities/Easements. No excavation shall occur within recorded easements. The Board of Adjustment may specify a maximum slope at which excavation may occur in relation to any utility pole or recorded easement.
4. The applicant shall further provide:
 - a. A description of the major environmental impacts upon air quality, water quality and quantity, and land use modification presented by the proposed mining or milling.
 - b. A description of the proposed plan to address the identified environmental impacts to include all measures to be taken to prevent soil erosion, water contamination, air contamination, disruption of the area's ecological balance and any other related hazard to public health and safety.

CHAPTER 1612. WIRELESS TELECOMMUNICATIONS TOWERS AND FACILITIES

Section 1612.01 Purpose

The general purpose of this Section is to regulate the placement, construction, and modification of Towers

and Telecommunications Facilities in order to protect the health, safety, and welfare of the public, while at the same time not unreasonably interfering with the development of the competitive wireless telecommunications marketplace in the County. Specifically, the purposes of this Ordinance are:

1. To regulate the location of Towers and Telecommunications Facilities in the County;
2. To protect residential areas and land uses from potential adverse impact of Towers and Telecommunications Facilities;
3. To minimize adverse visual impact of Towers and Telecommunications Facilities through careful design, siting, landscaping, and innovative camouflaging techniques;
4. To promote and encourage shared use/co-location of Towers and Antenna Support Structures as a primary option rather than construction of additional single-use Towers;
5. To promote and encourage utilization of technological designs that will either eliminate or reduce the need for erection of new Tower structures to support antenna and Telecommunications Facilities;
6. To avoid potential damage to property caused by Towers and Telecommunications Facilities by ensuring such structures are soundly and carefully designed, constructed, modified, maintained, and removed when no longer used or are determined to be structurally unsound; and
7. To ensure that Towers and Telecommunications Facilities are compatible with surrounding land uses.

Section 1612.02 Definitions-Reserved

The following words, terms, and phrases, when used in this Section, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

1. ~~Antenna Support Structure~~ means any building or structure other than a Tower which can be used for location of Telecommunications Facilities.
2. ~~Applicant~~ means any Person that applies for a Tower development permit.
3. ~~Application~~ means the process by which the Owner of a parcel of land within the County submits a request to develop, construct, build, modify, or erect a Tower upon such parcel of land. Application includes all written documentation, verbal statements, and representations, in whatever form or forum, made by an Applicant to the County concerning such a request.
4. ~~Engineer~~ means any engineer licensed by the State of South Dakota.
5. ~~Owner~~ means any Person with fee title or a long term (exceeding ten (10) years) leasehold to any parcel of land within the County who desires to develop, or construct, build, modify, or erect a Tower upon such parcel of land.
6. ~~Person~~ is any natural person, firm, partnership, association, corporation, company, or other legal entity, private or public, whether for profit or not for profit.
7. ~~Stealth~~ means any Tower or Telecommunications Facility which is designed to enhance compatibility with adjacent land uses, including, but not limited to, architecturally screened roof mounted antennas, antennas integrated into architectural elements, and Towers designed to look other than like a Tower such as light poles, power poles, and trees. The term Stealth does not necessarily exclude the use of uncamouflaged lattice, guyed, or monopole Tower designs.
8. ~~Telecommunications Facilities~~ means any cables, wires, lines, wave guides, antennas, and any other

~~equipment or facilities associated with the transmission or reception of communications which a Person seeks to locate or has installed upon or near a Tower or Antenna Support Structure. However, Telecommunications Facilities shall not include:~~

~~a. Any satellite earth station antenna two (2) meters in diameter or less which is located in an area zoned industrial or commercial; or~~

~~b. Any satellite earth station antenna one (1) meter or less in diameter, regardless of zoning category.~~

~~9. Tower means a self-supporting lattice, guyed, or monopole structure constructed from grade which supports Telecommunications Facilities. The term Tower shall not include amateur radio operators' equipment, as licensed by the FCC.~~

Section 1612.03. Development of Towers

1. Towers are exempt from the maximum height restrictions of the districts where located. Towers shall be permitted to a height of one hundred and fifty (150) feet. Towers may be permitted in excess of one hundred and fifty (150) feet in accordance with "Criteria for Site Plan Development Modifications."
2. No new Tower shall be built, constructed, or erected in the County unless the Tower is capable of supporting three other Persons' operating Tele-communications Facilities comparable in weight, size, and surface area to the Telecommunications Facilities installed by the Applicant on the Tower within six (6) months of the completion of the Tower construction. No tower shall charge co-location fees in excess of commercially reasonable industry amounts. Each tower constructed shall upon the request of **Moody Miner** County mount law-enforcement or public safety communications apparatus.
3. An Application to develop a Tower shall include:
 - a. The name, address, and telephone number of the Owner and lessee of the parcel of land upon which the Tower is situated. If the Applicant is not the Owner of the parcel of land upon which the Tower is situated, the written consent of the Owner shall be evidenced in the Application.
 - b. The legal description, folio number, and address of the parcel of land upon which the Tower is situated.
 - c. The names, addresses, and telephone numbers of all owners of other Towers or usable Antenna Support Structures within a one-half (½) mile radius of the proposed new Tower site, including County-owned property.
 - d. A description of the design plan proposed by the Applicant. Applicant must identify its utilization of the most recent technological design, including microcell design, as part of the design plan. The Applicant must demonstrate the need for Towers and why design alternatives, such as the use of microcell, cannot be utilized to accomplish the provision of the Applicant's telecommunications services.
 - e. An affidavit attesting to the fact that the Applicant made diligent, but unsuccessful, efforts to install or co-locate the Applicant's Telecommunications Facilities on Towers or usable Antenna Support Structures owned by other Persons located within a one-half (½) mile radius of the proposed Tower site. In the event that one reason for the unsuccessful efforts to install or co-locate is that fees to be

charged are not commercially reasonable, an explanation shall be provided why said charges are commercially unreasonable.

- f. Written technical evidence from an Engineer(s) that the proposed Tower or Telecommunications Facilities cannot be installed or co-located on another person's Tower or usable Antenna Support Structures owned by other Persons located within one-half (½) mile radius of the proposed Tower site.
 - g. A written statement from an Engineer(s) that the construction and placement of the Tower will not interfere with public safety communications and the usual and customary transmission or reception of radio, television, or other communications services enjoyed by adjacent residential and non-residential properties.
 - h. Written, technical evidence from an Engineer(s) that the proposed structure meets the standards set forth in, "Structural Requirements," of this Ordinance.
 - i. Written, technical evidence from a qualified Engineer(s) acceptable to the Fire Marshall and the building official that the proposed site of the Tower or Telecommunications Facilities does not pose a risk of explosion, fire, or other danger to life or property due to its proximity to volatile, flammable, explosive, or hazardous materials such as LP gas, propane, gasoline, natural gas, or corrosive or other dangerous chemicals.
 - j. The FCC has sole jurisdiction of the field of regulation of RF emissions and does not allow the County to condition or deny on the basis of RF impacts the approval of any Telecommunications Facilities (whether mounted on Towers or Antenna Support Structures) which meet FCC standards. In order to provide information to its citizens, the County shall make available upon request copies of ongoing FCC information and RF emission standards for Telecommunications Facilities transmitting from Towers or Antenna Support Structures. Applicants shall be required to submit information on the proposed power density of their proposed Telecommunications Facilities and demonstrate how this meets FCC standards.
 - k. No application shall be accepted from landowners or on property on which there are current or past unresolved violations outstanding.
4. The Board of Adjustment may require an Applicant to supplement any information that the Board considers inadequate or that the Applicant has failed to supply. The Board of Adjustment may deny an Application on the basis that the Applicant has not satisfactorily supplied the information required in this subsection. Applications shall be reviewed by the Board in a prompt manner and all decisions shall be supported in writing setting forth the reasons for approval or denial.

Section 1612.04. Setbacks

- 1. All Towers up to one hundred (100) feet in height shall be set back on all sides a distance equal to the underlying setback requirement in the applicable zoning district.
- 2. Towers in excess of one hundred (100) feet in height shall meet the following:

- a. Distance from existing off-site residences, business and public buildings shall be one thousand (1,000) feet. Distance from on-site or lessor's residence shall be five hundred (500) feet.
 - b. Distance from public right-of-way shall be equal to the height of the tower.
 - c. Distance from any property line shall be equal to the height of the tower.
3. Setback requirements for Towers shall be measured from the base of the Tower to the property line of the parcel of land on which it is located.
4. Setback requirements may be modified, as provided in, when placement of a Tower in a location which will reduce the visual impact can be accomplished. For example, adjacent to trees which may visually hide the Tower.

Section 1612.05 Structural Requirements

All Towers must be designed and certified by an Engineer to be structurally sound and, at minimum, in conformance with the Building Code, and any other standards outlined in this Ordinance. All Towers in operation shall be fixed to land.

Section 1612.06 Separation or Buffer Requirements

For the purpose of this Section, the separation distances between Towers shall be measured by drawing or following a straight line between the base of the existing or approved structure and the proposed base, pursuant to a site plan of the proposed Tower.

Proposed Towers must meet the following minimum separation requirements from existing towers or towers which have a development permit but are not yet constructed at the time a development permit is granted pursuant to this Ordinance:

1. Monopole Tower structures shall be separated from all other Towers, whether monopole, self-supporting lattice, or guyed, by a minimum of seven hundred and fifty (750) feet.
2. Self-supporting lattice or guyed Tower structures shall be separated from all other self-supporting or guyed Towers by a minimum of fifteen hundred (1,500) feet.
3. Self-supporting lattice or guyed Tower structures shall be separated from all monopole Towers by a minimum of seven hundred and fifty (750) feet.
4. **The separation requirements contained in 1612.06 shall not be required of existing Towers or Towers which have a development permit but are not yet constructed at the time a development permit is granted pursuant to this Ordinance.**

Section 1612.07 Method of Determining Tower Height

Measurement of Tower height for the purpose of determining compliance with all requirements of this

Section shall include the Tower structure itself, the base pad, and any other Telecommunications Facilities attached thereto which extend more than twenty (20) feet over the top of the Tower structure itself. Tower height shall be measured from grade.

Section 1612.08 Illumination

Towers shall not be artificially lighted except as required by the Federal Aviation Administration (FAA). Upon commencement of construction of a Tower, in cases where there are residential uses located within a distance which is three hundred (300) percent of the height of the Tower from the Tower and when required by federal law, dual mode lighting shall be requested from the FAA. Beacon lighting, unless required by FAA, shall not be utilized.

Section 1612.09 Exterior Finish

Towers not requiring FAA painting or marking shall have an exterior finish which enhances compatibility with adjacent land uses, as approved by the appropriate reviewing body.

Section 1612.10 Modification of Towers

1. A Tower existing prior to the effective date of this Ordinance, which was in compliance with the County's zoning regulations immediately prior to the effective date of this Ordinance, may continue in existence as a nonconforming structure. Such non-conforming structures may be modified or demolished and rebuilt without complying with any of the additional requirements of this Section, except for Sections "Separation or Buffer Requirements", "Certification and Inspections", and "Maintenance," provided:
 - a. The Tower is being modified or demolished and rebuilt for the sole purpose of accommodating, within six (6) months of the completion of the modification or rebuild, additional Telecommunications Facilities comparable in weight, size, and surface area to the discrete operating Telecommunications Facilities of any Person currently installed on the Tower.
 - b. An Application for a development permit is made to the Board of Adjustment which shall have the authority to issue a development permit without further approval. The grant of a development permit pursuant to this Section allowing the modification or demolition and rebuild of an existing nonconforming Tower shall not be considered a determination that the modified or demolished and rebuilt Tower is conforming.
 - c. The height of the modified or rebuilt Tower and Telecommunications Facilities attached thereto do not exceed the maximum height allowed under this Ordinance.

2. Except as provided in this Section, a nonconforming structure or use may not be enlarged, increased in size, or discontinued in use for a period of more than one hundred eighty (180) days. This Ordinance shall not be interpreted to legalize any structure or use existing at the time this Ordinance is adopted which structure or use is in violation of the Code prior to enactment of this Ordinance.

Section 1612.11 Certifications and Inspections

1. All Towers shall be certified by an Engineer to be structurally sound and in conformance with the requirements of this ordinance and all other construction standards set forth by federal and state law
2. The County or its agents shall have authority to enter onto the property upon which a Tower is located, between the inspections and certifications required above, to inspect the Tower for the purpose of determining whether it complies with this ordinance and all other construction standards provided by federal and state law.
3. The County reserves the right to conduct such inspections at any time, upon reasonable notice to the Tower owner. All expenses related to such inspections by the County shall be borne by the Tower owner.

Section 1612.12 Maintenance

1. Tower owners shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.
2. Tower owners shall install and maintain Towers, Telecommunications Facilities, wires, cables, fixtures, and other equipment in substantial compliance with the requirements of the National Electric Safety Code and all FCC, state, and local regulations, and in such manner that will not interfere with the use of other property.
3. All Towers, Telecommunications Facilities, and Antenna Support Structures shall at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the life or property of any Person.
4. The property in which Towers, Telecommunications Facilities, and Antenna Support Structures are situated shall be maintained in a manner to control noxious weeds.
5. All maintenance or construction of Towers, Telecommunications Facilities, or Antenna Support Structures shall be performed by licensed maintenance and construction personnel.
6. All Towers shall maintain compliance with current RF emission standards of the FCC.
7. In the event that the use of a Tower is discontinued by the Tower owner, the Tower owner shall provide written notice to the County of its intent to discontinue use and the date when the use shall be discontinued.

Section 1612.13 Criteria for Site Plan Development Modifications

1. Notwithstanding the Tower requirements provided in this Ordinance, a modification to the requirements may be approved by the Board of Adjustment as a conditional use in accordance with the following:

- a. In addition to the requirement for a Tower Application, the Application for modification shall include the following:

A description of how the plan addresses any adverse impact that might occur as a result of approving the modification.

- i. A description of off-site or on-site factors which mitigate any adverse impacts which might occur as a result of the modification.
 - ii. A technical study that documents and supports the criteria submitted by the Applicant upon which the request for modification is based. The technical study shall be certified by an Engineer and shall document the existence of the facts related to the proposed modifications and its relationship to surrounding rights-of-way and properties.
 - iii. For a modification of the setback requirement, the Application shall identify all parcels of land where the proposed Tower could be located, attempts by the Applicant to contract and negotiate an agreement for co-location, and the result of such attempts.
 - iv. The Board of Adjustment may require the Application to be reviewed by an independent Engineer under contract to the County to determine whether the antenna study supports the basis for the modification requested. The cost of review by the County's Engineer shall be reimbursed to the County by the Applicant.
2. The Board of Adjustment shall consider the Application for modification based on the following criteria:
 - a. That the Tower as modified will be compatible with and not adversely impact the character and integrity of surrounding properties.
 - b. Off-site or on-site conditions exist which mitigate the adverse impacts, if any, created by the modification.
 - c. In addition, the board may include conditions on the site where the Tower is to be located if such conditions are necessary to preserve the character and integrity of the neighborhoods affected by the proposed Tower and mitigate any adverse impacts which arise in connection with the approval of the modification.
 3. In addition to the requirements of subparagraph (2) of this Section, in the following cases, the Applicant must also demonstrate, with written evidence, the following:
 - a. In the case of a requested modification to the setback requirement, that the setback requirement cannot be met on the parcel of land upon which the Tower is proposed to be located and the alternative for the Person is to locate the Tower at another site which is closer in proximity to a residentially zoned land.

- b. In the case of a request for modification of the separation and buffer requirements from residential use of land of, if the Person provides written technical evidence from an Engineer(s) that the proposed Tower and Telecommunications Facilities must be located at the proposed site in order to meet the coverage requirements of the Applicant's wireless communications system and if the Person is willing to create approved landscaping and other buffers to screen the Tower from being visible to residentially used property.
- c. In the case of a request for modification of the height limit for Towers and Telecommunications Facilities or to the minimum height requirements for Antenna Support Structures, that the modification is necessary to:
 - i. Facilitate co-location of Telecommunications Facilities in order to avoid construction of a new Tower; or
 - ii. To meet the coverage requirements of the Applicant's wireless communications system, which requirements must be documented with written, technical evidence from an Engineer(s) that demonstrates that the height of the proposed Tower is the minimum height required to function satisfactorily, and no Tower that is taller than such minimum height shall be approved.

Section 1612.14 Abandonment

1. If any Tower shall cease to be used for a period of 365 consecutive days, the Planning ~~and Zoning~~ Commission shall notify the Owner, with a copy to the Applicant, that the site will be subject to a determination by the Planning ~~and Zoning~~ Commission that such site has been abandoned. The Owner shall have thirty (30) days from receipt of said notice to show, by a preponderance of the evidence, that the Tower has been in use or under repair during the period. If the Owner fails to show that the Tower has been in use or under repair during the period, the Planning ~~and Zoning~~ Commission shall issue a final determination of abandonment for the site. Upon issuance of the final determination of abandonment, the Owner shall, within seventy-five (75) days, dismantle and remove the Tower.
2. To secure the obligation set forth in this Section, the Applicant [and/or Owner] may be required to post a bond.

Section 1612.15. Action of the Board of Adjustment.

1. **Miner County shall approve or deny an application for co-location within ninety (90) days of the submission date of a complete application. Failure to act by the Board of Adjustment within the prescribed time frame entitles the applicant the ability to file a court action. The court action is to be filed within thirty (30) days from the required date of action of the Board of Adjustment.**
2. **Miner County shall approve or deny an application for a new wireless telecommunications facility within one hundred fifty (150) days of the submission date of a complete application. Failure to act by the Board of Adjustment within the prescribed time frame entitles the applicant the ability to file a court action. The court action is to be filed within thirty (30) days from the required date of action of the Board of Adjustment.**

3. The Board of Adjustment may not deny the application on the basis that a competing provider already provides coverage.

Section 1613. Cannabis Dispensaries.

1. Maximum Number of Cannabis Dispensaries.

- a. In the development and execution of these regulations, it is recognized that there are some uses which because of their very nature, are recognized as having serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances thereby having a potential deleterious effect upon the adjacent areas. Special regulation of these uses is necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. The primary control or regulation is for the purpose of preventing a concentration of these uses in any one area.
- b. The County shall allow up to three (3) cannabis dispensaries provided the time, place, and manner of said dispensaries comply with this ordinance.

2. Required Separation Distances

- a. A cannabis dispensary shall be located not less than one thousand (1,000) feet from a public or private school existing before the date of the cannabis dispensary application;
- b. A cannabis dispensary shall be located not less than one thousand (1,000) feet from a church, residence, and/or public park and recreation area existing before the date of the cannabis dispensary application;
- c. Exemption from separation requirements. Any separation distance requirement, other than the State requirement from schools (1,000 feet), may be waived, provided:
 - i. The applicant provides documentation waiving the setback requirement from the title holder of the land benefiting from the separation.
- d. Prescribed separation/setback distances from certain existing uses are to be measured from the lot line of the property where the dispensary is proposed

3. Other Locational Requirements

- a. Permanent or temporary dispensaries are prohibited in all other zoning districts and not eligible for a home occupation use.
- b. It shall be unlawful to operate a dispensary in a building which contains a residence or a mixed-use building with commercial and residential uses.

4. Controlled Access - No cannabis establishment shall share premises with or permit access directly from another cannabis establishment, business that sells alcohol or tobacco, or, if allowed by law, other cannabis establishment.
5. Hours of operation:
 - a. Cannabis dispensaries are allowed to be open on Monday through Sunday between the hours of 8 a.m. and 10 p.m.
6. Documentation of State Licensure.
 - a. No cannabis dispensary shall acquire, possess, store, deliver transfer, transport, supply or dispense cannabis, cannabis products, paraphernalia without providing documentation of licensure from the State of South Dakota.
7. The zoning official is authorized to issue permits (building/use) for cannabis dispensaries subject to following:
 - a. Submission of a site plan containing the following:
 - i. Any information required for applicable building permit,
 - ii. Ingress and egress plan
 - iii. Parking plan
 - iv. Lighting plan (including security lighting)
 - v. Screening/security fencing plan,
 - vi. Refuse plan;
 - vii. Hours of Operation;
 - viii. Any other information as lawfully may be required by the Zoning official to determine compliance with this ordinance.
 - b. Documentation of ability to meet setback/separation requirements.
 - c. Documentation of State Licensure.
8. All Cannabis Establishments are required to be constructed in conformance with the 2021 Edition of the International Building Code and International Fire Code.

Section 1614. Erection of More than One Principal Structure on a Lot.

In any district, only one (1) structure housing a permitted or permissible principal use may be erected on single lot, provided that yard and other requirements are met. Exception: Secondary residences in the Agricultural Zone and commercial/industrial buildings in the Commercial/Industrial District may be allowed provided that yard and other requirements are met

Section 1615. Structures to Have Access. Every building hereafter erected or moved shall be on a lot adjacent to a street and all structures shall be so located on lots as to provide safe and convenient access for servicing, fire protection and required off-street parking.

Section 1616. UTILITY EASEMENTS.

No building or addition thereto shall be erected over or across any existing public utility or upon any platted easement.

Section 1617. UNLICENSED VEHICLES. Vehicles not in use and without current license may not be kept in any uncovered or unscreened area or other than a designated junk, salvage yard, or designated collection site. EXCEPTION: 1. Vehicles used in normal farming operations and 2. Antique cars being refurbished shall not be required to be kept in a covered area or in above designated areas.

Section 1617. FENCES.

Section 1617.01. Purpose.

The regulation of fences is intended to protect the public safety and welfare, provide privacy, buffer noise, and allow adequate air, light and vision.

Section 1617.02. Permit required.

- 1. Except for customary farm and animal fencing in the Agricultural District, all fences, and walls-shall require a building permit. Customary farm and animal fencing is exempt from the requirements of this Section.**

Section 1617.03. Location/Construction Requirements.

- 1. Except for customary farm and animal fencing in the Agricultural District, all fences, and walls-shall require a building permit. Customary farm and animal fencing are exempt from the requirements of this Section.**
- 2. Notwithstanding other provisions of this Ordinance, fences, walls, and hedges may be permitted in any required yard. Except fences, walls, and hedges which are more than thirty (30) percent solid shall meet the requirements of Section 1602. Further, the aforementioned fence, wall, or hedge shall not be constructed within twenty-five (25) feet of a public right-of-way or private road.**

3. Fences, with a maximum height of not more than eighty inches (80) inches, may be erected on any part of a lot other than in the required front yard which shall be limited to a height of forty-eight (48) inches.
4. The County does not provide surveying services. The property owner is responsible for locating property lines.
5. In Town and Planned Residential Districts:
 - a. Fences may be built no closer than one (1) foot up to the property line, not to include the public right-of-way. Fences constructed within an identified easement face the potential of removal in the event of necessary work to be conducted within the easement. Replacement of the removed fence is the responsibility of the owner of said fence.
 - b. The “finished side” of the fence shall face neighboring properties or the road.
 - c. Approved fencing materials include stone, brick, wood, vinyl, and chain link. No barbed wire or electric fences shall be allowed in conjunction with residential uses in the Town or Planned Residential Districts, unless approval has been given by the adjoining property owner.
6. Hedges or other plantings which create a fence effect are subject to the same regulations as fences.
7. Fences can be built on the property line when the fence is shared between property owners.

Section 1619. HOME OCCUPATIONS. Home occupations shall be subject to the following requirements:

1. No person other than members of the family residing on the premises shall be engaged in such occupation.
2. Such use shall be clearly incidental and secondary to the use of the dwelling for dwelling purposes and shall not change the residential character thereof.
3. The total area used for such purposes shall not exceed the equivalent of one-fourth (1/4) the floor area, in square feet, of the first floor of the user’s dwelling unit, if any, otherwise of the main floor of such dwelling unit; but in any instance a maximum of three hundred (300) square feet shall be allowed.
4. There shall be no advertising, display or other indications of a home occupation on the premises except as follows: (1) non-lighted and non-reflecting name plate not more than sixteen (16) square feet in area, which name plate may designate the home occupation carried on within.
5. There shall be no offensive noise, vibration, smoke, dust, odors, heat or glare noticeable at or beyond the property line.

6. A home occupation, including studios or rooms for instruction, shall provide an additional off-street parking area adequate to accommodate needs created by the home occupation of not less than two (2) parking spaces plus the parking spaces required for the dwelling unit. Such parking shall be provided on the same lot as the home occupation.
7. Off premise signage for home occupations shall be limited to South Dakota Department of Transportation (SDDOT) commercial, directional signs, also known as "TOD Signs". These signs, with SDDOT approval, may be located adjacent to State and Federal Highways.
8. No home occupation shall be conducted in any accessory building.
9. The only retail sales allowed shall consist of the sale of commodities/products prepared on the premises in connection with such occupation or activity.

Section 1620. RIGHT TO FARM NOTICE COVENANT.

The following easement is to be utilized as required for farm and non-farm residential development within the Agricultural and Planned Residential Districts.

Prepared by:

Miner County Zoning Administrator (or by Grantor or Grantor's Attorney)

Zoning Administrator Address (or Grantor's or Grantor's Attorney's address)

Howard, SD 57349 (or Grantor's or Grantor's Attorney's city)

RIGHT TO FARM NOTICE COVENANT

You are hereby notified that the property you are purchasing or constructing upon is in or near agricultural land, agricultural operations or agricultural processing facilities or operations. You may be subject to inconvenience or discomfort from lawful agricultural operations permitted by Miner County zoning regulations. Agricultural operations may include, but are not limited to, the following: the cultivation, harvesting, and storage of crops; livestock production; ground rig or aerial application of pesticides or herbicides; the application of fertilizer, including animal manure; the operation of machinery; the application of irrigation water; and other accepted and customary agricultural activities conducted in accordance with Federal, State, and County laws. Discomforts and inconveniences may include, but are not limited to noise, odors, fumes, dust, smoke, burning, vibrations, insects, rodents, and/or the operation of machinery (including aircraft) during any 24-hour period. If you live near an agricultural area, you should be prepared to accept such inconveniences or discomforts as a normal and necessary aspect of living in an area with a strong rural character and an active agricultural sector. You are also notified that there is the potential for agricultural operations to expand. This notification shall extend to all landowners, their heirs, successors or assigns and because it is required pursuant to obtaining a building permit, may not be removed from the record title without consent of the Miner County Board of Adjustment.

Legal Description:

Signature

STATE OF SOUTH DAKOTA COUNTY OF MINER

On this the day of , 20 , before me, , the undersigned officer, personally appeared , known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that executed the same for the purposes contained.

In witness whereof I hereunto set my hand and official seal.

My commission expires

Section 1621. RANGE REQUIREMENTS.

Section 1621.01. Conditional Use Permits.

No Range shall be established within the Miner County without first obtaining a Conditional Use Permit.
Section 1621.02. General Regulations for All Ranges.

No Conditional Use Permit shall be approved for any Range unless all of the following conditions are met (unless specifically waived by the Board of Adjustment):

1. A safety plan shall be submitted along with the application. The plan, once approved, shall be posted in a prominent place at the site. Any changes to the safety plan shall be submitted to the County Board of Adjustment for approval. At a minimum the safety plan must state:
 - a. A method of identifying the Range Officer when the Range Officer is present at the site. Additionally, a permanent log identifying the Range Officer who is present when required at the facility must be maintained and available for inspection by the County or local law enforcement officers.
 - b. The authority of Range Officers to carry out the rules and regulations on the site and to enforce penalties.
 - c. The policy for the site for the use of alcohol.
 - d. Controlled substances are prohibited on the site.
 - e. Rules for the safe handling of weapons.
 - f. A building and grounds maintenance plan.

- g. Administrative Rules to include regulations that normally govern range schedules, parking, guest policies, member/user responsibilities, hours of operation, security, program development, range supervision and other items such as sign-in procedures.
- h. Regulations on the type of weapon, shooting activity, caliber, shot size or type of target to ensure safety for range users and others.

i. The penalties that are in force for violations of the safety plan.

j. The method used to control trespass or unauthorized access to the range or preserve.

2. On an annual basis, applicants must provide proof of insurance.

3. Applicants shall continuously keep the County informed as to the current names and telephone numbers of the officers of any organization having an interest in the Range. Any changes to the names or telephone numbers of the officers shall be reported to the County within thirty (30) days of the change.

4. All Ranges must control entrance to their sites.

5. No alcohol licenses shall be granted to any site which has a Range.

6. Parking space for all members, owners or guests must be on-site and is not allowed on public streets or roads.

Section 1620.03. Special Regulations for Ranges.

Applications for all ranges, in addition to any other requirements of this Ordinance, must also show:

1. A survey delineating the layout of all individual Ranges.

2. Setbacks to all property lines.

3. Method of containing projectiles within each individual range (such as earthen berms or other method).

4. Methods to be employed to reduce noise, including impulse noise.

a. The maximum noise that may escape the range into areas not controlled by the owner is 125 dB.

5. All Ranges shall be designed using the NRA Range Source Book as a guideline.

Section 1621.04. Application Requirements.

Each application for a Range shall, at a minimum, include the following:

1. A description of specific activities to be conducted on-site.

2. The hours and days of operation.
3. The maximum number of people using the facility at any one time.
4. A plan, if applicable, for collecting and recycling used shot.
5. A delineation of any special events, if any.
6. A sewage, water and solid waste management plan.

Section 1621.05. Area Regulations.

1. Minimum Lot Size: Ten (10) acres.
2. Minimum Front Yard: One hundred fifty (150) feet.
3. Minimum Side Yard: Three hundred (300) feet.
4. Back of the Range Setback: A minimum of one thousand (1000) feet from any buildings and/or roads.
5. Setback from Residences: One-quarter (1/4) mile to be measured from the firing line to the nearest residential dwelling.
6. Setback from Commercial Uses: One-quarter (1/4) mile to be measured from the firing line to the nearest commercial structure.
7. Setback from Churches and Schools: One-quarter (1/4) mile to be measured from the firing line to the nearest church or school.
8. Setback from Municipalities: Three (3) miles to be measured from the firing line to the corporate limits of the municipality.

Section 1621.06. Miscellaneous Regulations.

1. In the event that any provision of this Chapter or the Conditional Use Permit is violated, or the County otherwise reasonably believes that the health, safety or general welfare of the public is endangered by the use, or if the County reasonably believes that a public nuisance has been created, then, upon ten (10) days written notice, the County may originate action to either modify or cancel any Conditional Use Permit.

Section 1622. WAIVER OF SETBACK FROM EXISTING CONCENTRATED ANIMAL FEEDING OPERATION

The following waiver is to be utilized as required for farm and non-farm residential development in the Agricultural and Planned Residential Zoning Districts which is located within three-quarter mile of an existing concentrated animal feeding operation in the Agricultural Zoning District (See Section 4.09.b)

Prepared by:

Miner County Zoning Administrator (or by Grantor or Grantor's Attorney)

Zoning Administrator Address (or Grantor's or Grantor's Attorney's address)

Howard, SD 57439 (or Grantor's or Grantor's Attorney's city)

**WAIVER OF SETBACK FROM
EXISTING CONCENTRATED ANIMAL FEEDING OPERATION**

The following waiver is to be used when a dwelling (Farm or Non-Farm) is proposed to be constructed within three-quarter (3/4) mile of an existing Concentrated Animal Feeding Operation. The waiver shall be filed with the Register of Deeds. Grantors are the owner(s) of property applying for the proposed residential development.

1. Purpose. This waiver is required for any dwelling to be constructed within one-half (1/2) mile of an existing concentrated animal feeding operation as defined by the Miner County Zoning Ordinance.

2. Waiver:

("Grantors") are the owners of real property described as follows:

In accordance with the conditions set forth in the decision of Miner County, dated 20 , approving a plat with a residential dwelling development right or by the issuance of a permit for a residential dwelling either to be located within one-half (1/2) mile of the existing concentrated animal feeding operation located at the following property, and in consideration of such approval, Grantors agree to the perpetual non-exclusive easement as follows:

1. The Grantors, their heirs, successors, and assigns acknowledge that the location of a residential development/dwelling on (legal description) is within one-half (1/2) mile of an existing concentrated animal feeding operation. This easement waives the Grantors, their heirs, successors, and assigns common law rights to object to the existing concentrated animal feeding operation's, located at the above legal description, potential need for a variance from the setback requirements of the Miner County Zoning Ordinance.

2. Further, the grantors hereby waive all common law rights to appeal any decision of Miner County Board of Adjustment relating to the issuance of a variance regarding separation setbacks from the existing concentrated animal feeding operation located at above legal description.

IN WITNESS WHEREOF, , 20

Grantors (Print)

Grantors (Signature)

STATE OF SOUTH DAKOTA

SS:

COUNTY OF MINER

This instrument was acknowledged before me on _____, 20____ by _____
(Grantors).

Notary Public

My Commission Expires: _____

Section 1623. ADULT USE REGULATIONS.

In the development and execution of these regulations, it is recognized that there are some uses which because of their very nature, are recognized as having serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances thereby having a deleterious effect upon the adjacent areas. Special regulation of these uses is necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. These special regulations are itemized in this section. The primary control or regulation is for the purpose of preventing a concentration of these uses in any one area.

Section 1623.01. Setbacks.

1. None of the following uses may be established, operated or maintained within one thousand (1,000) feet of a residence, a church, a school meeting all the requirements of the Compulsory Education Laws of the State of South Dakota, or a public park.

a. Adult bookstore.

b. Adult motion picture theater.

c. Adult photo studio.

d. Adult Entertainment Facility.

e. Any use which has as a part of its operation an adult use component including but not limited to, a restaurant or eating place, a bar, lounge or tavern.

f. Any use intended to provide adult amusement or entertainment.

2. Not more than two of the following uses may be established, operated or maintained within one thousand (1,000) feet of each other:

a. Adult bookstore.

b. Adult motion picture theater.

c. Adult photo studio.

d. Adult entertainment facility.

e. Any use which has as a part of its operation an adult use component including but not limited to, a restaurant or eating place, a bar, lounge or tavern.

f. Any use intended to provide adult amusement or entertainment.

g. A bar.

h. A liquor store.

3. The 1,000-foot restriction provided for in 1623.01.2 above may be waived and a conditional use permit issued upon proper application if the Board of Adjustment finds:

a. That the proposed use will not be contrary to the public interest or injurious to nearby properties and that the spirit and intent of these regulations will be observed.

b. That the proposed use will not enlarge or encourage the development of a 'skid row' area.

c. That all applicable regulations will be observed.

Section 1623.02. Required License.

It shall be unlawful for any person to engage in the business of operating an adult use in Miner County without first having obtained a license from the Miner County Commissioners.

Section 1623.03. Application; Standards for Issuance.

1. Application for an adult use license shall be made in writing and shall state the following:

a. The name, address, telephone number and age of the applicant and the registered agent of the applicant if the applicant is a corporation.

b. The location of the adult use business.

c. The exact nature of the adult use to be conducted and of the proposed place of business and the facilities related thereto.

d. A statement by the applicant that he is familiar with the provisions of this article and is in compliance with them.

e. A statement of whether the business will be conducted by a manager and, if so, the name, address, telephone number, and age of each such manager.

- f. A statement that no manager or principal operating the business has been convicted of any offense of prostitution, soliciting for prostitution, or obscenity or public indecency as defined in the South Dakota Compiled Statutes within the last two (2) years, and that the applicant has not had any license for an adult use in any other community revoked within the last two (2) years.
2. Within fifteen (15) days after receipt of an application for an adult use license, the Miner County Commissioners shall investigate the information contained in the application and shall determine the following:
 - a. That the premises designated by the applicant as the location of the business are in full compliance with all applicable ordinances of Miner County, including zoning ordinances.
 - b. That the premises and each manager and employee comply with the provisions of Section 1623.03.1 as such provisions apply to them.
 - c. That the applicant, each manager and each employee are over twenty-one (21) years of age.
 - d. That no manager or principal operator of the business has been convicted of any offense of prostitution, solicitation for prostitution, or obscenity or public indecency, as defined in the South Dakota Compiled Statutes within the last two (2) years, and that the applicant has not had any license for an adult use revoked within the last two (2) years.
3. If the investigation shows the compliance of the applicant for an adult use license, the premises upon which the business is to be conducted and each manager and employee, if applicable, with each of the requirements established in subsections (1) and (2) of this section, and with the conditions and regulations set forth in Section 1623.03 within fifteen (15) days after completion of such investigation, the Miner County Commissioners shall issue a license, and upon payment by the applicant of the license fee required under this article, the license shall be issued.
4. If the investigation shows that the applicant for an adult use license, the premises on which the business is to be conducted, or the managers and employees, if applicable, do not comply with each of the requirements established in subsection (1) of this section, and with the conditions and regulations set forth in Section 1623.03 within fifteen (15) days after completion of such investigation, the Miner County Commissioners shall notify the applicant in writing that the license has been denied. Such denial shall be the final administrative action of the County with respect to the license application, and shall be subject to the immediate appeal by the applicant to the circuit court.

Section 1623.04. Conditions & Regulations Governing Operation; Violation; Penalty.

1. The following regulations shall govern and control the business of operating an adult use in Miner County:
 - a. No person under twenty-one (21) years of age shall be allowed on the licensed premises.
 - b. At all times during the hours of operation there shall be present a manager or other employee of the licensee who shall be not less than twenty-one (21) years of age.

- c. Upon a change of any manager conducting business for the licensee, the licensee shall, within ten regular business days, give the County Commissioners written notice of such change by actual delivery or by registered or certified mail. The licensee shall, thereafter, as promptly as practicable, but in any event within five (5) regular business days, provide the information concerning the new manager which is required in Section 1623.03.
 - d. No adult use shall be located on-premises for which a license to sell alcoholic liquor has been issued, and no alcoholic liquor shall be permitted on such premises.
 - e. No adult use shall be permitted unless the premises on which such business is located complies with the requirements of the zoning ordinance.
 - f. No licensee or manager under the provisions of this article shall knowingly permit any person to remain in or upon licensed premises who commits any act of public indecency or obscenity as defined in the South Dakota Compiled Statutes.
 - g. No licensee or manager under the provisions of this article shall permit any act of prostitution, solicitation for prostitution or patronization of a prostitute on the licensed premises.
 - h. No sign shall be posted on the licensed premises which depicts, displays or refers to specified anatomical areas or specified sexual activities, as defined in this article.
2. In addition to the requirements established in Section 1623.04.1, the following regulations shall govern and control the operation of an adult bookstore which offers any films or videotapes for viewing on-premises by use of motion picture devices or other such operations means:
- a. All viewing areas, which shall be defined as the area where a patron or customer would ordinarily be positioned while watching a film or viewing device, shall be visible from a continuous main aisle or public room and shall not be obscured by any curtain, door, wall or other enclosure.
 - b. There shall be no aperture whatsoever in any wall or partition between viewing areas.
 - c. Each viewing area shall be lighted at a minimum level of ten (10) foot candles in all parts thereof.
3. In addition to the requirements established in Section (1) of this section, the following regulations shall govern and control the operation of an adult entertainment cabaret:
- a. All performers shall be at least twenty-one (21) years of age.
 - b. All performances, exhibitions or displays shall take place on a platform raised at least two (2) feet from the level of the floor and located at least ten (10) feet from any patron.
 - c. No performer shall fondle or caress any patron or other performer and no patron shall fondle or caress any performer.

d. No patron shall be permitted to pay or give any gratuity to any performer, and no performer shall solicit any pay or gratuity from any patron.

4. It shall be unlawful for any person licensed to engage in the business of operating an adult use within the County to fail to comply with the conditions and regulations set forth in subsections 1623.03 and 1623.04 of this section as they are applicable to the licensed business, or to suffer or permit noncompliance with such conditions and regulations on or within the licensed premises. In this regard, any act or omission of an employee shall be deemed the act or omission of the owner if such act or omission occurred either with the authorization, knowledge or approval of the owner or as a result of the owner's negligent failure to supervise the employee's conduct. All conduct occurring while on the premises shall be presumed to be the responsibility of the owner.

5. Any person convicted of a violation of this section shall be subject to a fine pursuant to Section 1.02.03 of this Ordinance.

Section 1623.05 Suspension or Revocation.

Nothing in the terms of this article shall preclude the right of the Miner County Commissioners to suspend or revoke the license of the licensee, as follows:

1. The Miner County Commissioners may temporarily suspend any license issued under the terms of this article when he has reason to believe that the continued operation of a particular licensed premises will immediately threaten the welfare of the community or create an imminent danger of violation of applicable law. In such case, he may, upon the issuance of a written order stating the reason for such determination, and without notice or hearing, order the licensed premises closed for not more than seven (7) days; provided, that the licensee shall be given an opportunity to be heard in a public hearing during the seven (7)-day period, and further provided that if such licensee shall also be engaged in the conduct of other business on the licensed premises, such order shall not be applicable to such other businesses.

2. The Miner County Commissioners may suspend or revoke any license issued under the terms of this article upon ten (10) days notice to the licensee of the time and place of a public hearing, and a public hearing at which the licensee may appear and present evidence, if the Miner County Commissioners determines upon such hearing that the licensee has failed or refused to comply with the terms of this article, has failed or refused to comply with other law applicable to the business of operating an adult use, has knowingly permitted the failure of any manager or employee on the premises to comply with the terms of this article or with other law applicable to the business of operating an adult use, has knowingly furnished false or misleading information on any application required for any license under this section or has suffered or caused another to furnish or withhold such information on his behalf, or has been convicted by a court of competent jurisdiction of a violation of any provision of this section.

Section 1624. PRIVATE WIND ENERGY CONVERSION SYSTEMS (PWECS).

The regulations regarding Private Wind Energy Conversion Systems (hereafter referred to as PWECS) shall be as follows:

- 1. Limited Use. No PWECS installed in accordance with the requirements of these regulations shall generate power as a commercial enterprise as defined by the Public Utility Commission.**
- 2. Setback Requirements. The minimum distance between the property line, overhead utility lines or another wind turban, and any tower support base of a PWECS shall be equal to the proposed tower height (plus the radius of the rotor for the horizontal access machines).**
- 3. Contiguous property owners and planned developments may construct a PWECS for their use in common. If property held by more than one (1) single owner is used to meet the setback requirements, a site plan establishing easements or reserved areas must be submitted to the Board of Adjustment for their approval.**
- 4. Tower Access. Climbing access to the PWECS tower shall be limited either by means of a fence six (6) feet high around the tower base with a locking portal, or by limiting tower climbing apparatus so there is access to it no lower than twelve (12) feet from the ground.**
- 5. Electromagnetic Interference. If a PWECS is installed in any location along or within the major access of an existing microwave communications link, the person desiring to install the PWECS shall be required to provide a letter from the business whose link they are within or adjacent to stating that the business whose link is affected would have no objection to the installation of the PWECS.**
- 6. Air Space. A PWECS shall be located or installed in compliance with the guidelines of the Federal Aviation Administration Regulations with regard to Airport Approach Zones and clearance around VOR stations.**
- 7. Interconnect. The PWECS, if interconnected to an electric utility distribution system, shall meet the interconnect requirements of the electric utility company.**

Section 1625. BED AND BREAKFAST ESTABLISHMENTS.

The regulations regarding Bed and Breakfast Establishments (hereafter referred to as B & B's) shall be as follows:

- 1. B & B's shall be limited to residential structures with an overall minimum of one thousand eight hundred (1,800) square feet of floor. Preference will be given to structures with historic or other unique qualities.**
- 2. They shall be in compliance with applicable state laws including registration with the South Dakota Department of Health, maintaining a guest list, and providing a smoke detector in each sleeping room.**

3. Accessory use signs shall be based on similar requirements for a home occupation permit and shall not be more than two (2) square foot in area.
4. Such uses shall be an incidental use with an owner occupied principal dwelling structure provided that not more than four (4) bedrooms in such dwelling structure shall be used for such purpose.
5. Off-street parking requirements shall be one (1) space per guestroom and shall be in addition to parking requirements for the principal use. Off-street parking shall not be located in a required front or side yard and screening shall be required when adjacent to residentially used property.
6. The building shall meet all building codes and zoning requirements. A site plan showing the location of guest parking spaces and floor plan showing a location of the sleeping rooms, lavatories, and bathing facilities, and kitchen shall be submitted with application.
7. The length of stay shall not exceed fourteen (14) consecutive days during any one hundred twenty (120) day period.
8. Meals shall be limited to breakfast, which is prepared in a common facility (household kitchen). Meals may be served only to overnight registered guests and cooking is not permitted in the sleeping rooms.

Section 1626. Pipeline Structures.

Any above ground structure associated with a pipeline requiring South Dakota Public Utilities Commission approval shall also require a Miner County conditional use permit and building permit. The conditional use permit shall be issued by the Board of Adjustment if the applicant adheres to all requirements of the South Dakota Public Utilities Commission which may include various Miner County recommendations regarding such issues such as but not limited to right-of-way, haul roads, and building permits. The requirement of the conditional use permit may be waived in the event said permit requirement is contrary to federal law.

Section 1627 Private Campground

Section 1627.01 Purpose.

The purpose of this section is to provide for areas in the county for recreational vehicles to be located and occupied as temporary living quarters in a campground setting.

Section 1627.02 Minimum Requirements.

1. A private campground shall comply with the following conditions:
 - a. A private campground may not be permitted on a parcel that contains an existing single-family residence.
 - b. The minimum lot area for a private campground facility shall be five (5) acres.
 - c. Each campsite shall contain at least two thousand (2,000) square feet.

- d. Access roads shall be provided to each campsite and all access roads shall have a minimum unobstructed width of fourteen (14) feet for all one-way roads, and twenty (20) feet for all two-way roads.
- e. No manufactured homes shall be located in the campground.
- f. The campground(s) shall be supplied with a potable water supply and sewage disposal facilities, including washing, toilets and bathing facilities, and similar facilities, and all of which shall meet all applicable State and County codes and regulations.
- g. Garbage and rubbish storage and disposal shall be handled in such a manner so as not to create a health hazard, rodent harborage, insect breeding areas, accident or fire hazards, or air pollution. The campground shall provide a sanitary method of disposing of solid waste, in compliance with state laws, rules and regulations. It is recommended that one (1) refuse collection station shall be provided, with a minimum of one (1) two-yard dumpster situated on a concrete pad, screened on four sides, for each twelve (12) tenants or fractions thereof, conveniently located to serve tenants not more than one hundred fifty (150) feet from any camper served, and to be conveniently located for collection.
- h. The grounds shall be kept free of rubbish, trash, or debris, which could become a safety hazard.
- i. The growth of brush, weeds, and grass shall be controlled. All areas shall be maintained to prevent the growth of ragweed, poison ivy, poison oak, poison sumac and other noxious weeds considered detrimental to health.
- j. A private campground shall have a responsible person on duty at all times.
- k. The owner of the private campground shall keep accurate record of guests. Such a record shall be available for inspection and copying by the Secretary of Health or Zoning Administrator for the purpose of protecting the health or life of persons or for an emergency which may affect the public health. The registry shall contain the name of the guest, the number in the party, the place of permanent residence of the guest, the date of registration, the date of departure, and the motor vehicle license number of the registrant. The record shall also include each rate, price, or fee charged to the guest for the guest's stay at the campground. These records shall be kept for a minimum of one (1) year.
- l. Public Safety Access – The owner of the private campground shall allow Law Enforcement and Miner County personnel immediate access to determine if the terms and conditions within the conditional use permit are complied with.
- m. In the event the private campground does not comply with the terms of the conditional use permit and said permit is revoked, the owner of the private campground shall provide for, at their expense, the restoration of the site to its original condition, including the removal of all campers or RV's, dumpsters, and other related vehicles, or to a use permitted by the zoning ordinance in a time frame to be determined by the Board of Adjustment.
- n. All applicable requirements of the South Dakota Department of Health shall be met.
- o. The Board of Adjustment may impose other conditions to ensure that the use of property related to the private campground is conducted in a manner to be compatible with the surrounding neighborhood.

Section 1627.03 Application Requirements. An application for a private campground shall be filed with the Zoning Administrator. The application shall contain the following:

1. The address and legal description of all property upon which the campground is to be located, together with the name, residence and mailing address of the recorded owners of all such property.
2. Plans for supplying potable water including the source, amount available and location of outlets.
3. The plans for providing toilet and bathing facilities including the source, number and location, type and the means of disposing of waste deposited.
4. The plans for holding, collecting and disposing of solid waste material.
5. The plans, if any, to illuminate the campground, including the source and amount of power and the location of lamps.
6. A sketch plan of the property showing:
 - a. Location of Camping Pads/sites.
 - b. All amenities (bathrooms, showers, drinking water, outlets, light poles, roads, storm shelter)
 - c. All existing and proposed buildings or additions.
 - d. Dimensions of all buildings.
 - e. Distance from all campsites/buildings to the property lines at the closest points.
 - f. Dimensions of all property lines.
 - g. Parking lots or spaces; designate each space, give dimensions of the lot, stalls and aisles.
 - h. Name and location of all adjacent streets, alleys, waterways and other public places.
 - i. Proposed grading and drainage pattern.
 - j. Proposed interior circulation pattern indicating the status of street ownership and maintenance agreement.
 - k. Proposed open space uses.
 - l. Utility (water, sewer, electricity) plans.
 - m. Relation of the proposed development to the surrounding area and comprehensive plan.

Section 1628. Sanitary Landfills, Rubble Sites, Composting Sites, Waste Tire Sites, and Restricted Use Sites Requirements.

- 1. The site meets the requirements of the State Department of Environment and Natural Resources.**
- 2. A site plan is provided indicating the following information:**
 - a. Present topography, soil types, depth to groundwater.**
 - b. Location of existing water drainage, existing buildings, existing shelterbelts.**
 - c. Identification of roads leading to the site.**
 - d. Proposed changes at the site such as new shelterbelts, new buildings, changes in topography, new fence lines.**
 - e. Proposed monitoring wells.**
 - f. A minimum of two thousand six hundred forty (2,640) feet from the property line of the sanitary landfill, rubble site, composting site, waste tire site, and restricted use site to the nearest residence or commercial use; excluding: the residence of the landfill operator.**
 - g. The Board of Adjustment may impose other conditions to ensure that the use of property related to the sanitary landfill, rubble site, composting site, waste tire site, and restricted use site is conducted in a manner to be compatible with the surrounding neighborhood.**

Section 1629. Domestic Sanitary Sewer Treatment Plant/Facility Requirements.

- 1. The site meets the requirements of the State Department of Environment and Natural Resources.**
- 2. A site plan is provided indicating the following information:**
 - a. Present topography, soil types, and depth to groundwater.**
 - b. Location of existing water drainage, existing buildings, existing shelterbelts.**
 - c. Identification of roads leading to the site.**
 - d. Proposed changes at the site such as new shelterbelts, new buildings, changes in topography, new fence lines.**
 - e. Proposed monitoring wells.**
 - f. No sewage treatment plant/facility will be allowed within one thousand three hundred twenty (1,320) feet from the property line of the sewage treatment plant/facility to the nearest residence; excluding: the residence of the sewage treatment plant/facility operator**

- g. The Board of Adjustment may impose other conditions to ensure that the use of property related to the domestic sanitary sewer treatment plant/facility is conducted in a manner to be compatible with the surrounding neighborhood.

Section 1630. Junkyards/Salvage Yards Requirements.

1. Storage for junkyards/salvage yards shall be set back a minimum of three hundred thirty (330) feet from any adjoining property line or road right-of-way.
2. Junkyards/salvage yards shall be screened on all sides by a solid wall, with construction materials and design to be approved by the Board of Adjustment, at least two (2) feet above the highest stock pile or by a shelterbelt of shrubs and trees as approved by the Board of Adjustment; screening must be maintained in good repair.
3. No junkyards/salvage yards will be allowed within one thousand (1,000) feet from the property line of the junkyard/salvage yard to the nearest residence; excluding: the residence of the junkyard/salvage yard operator.
4. All junkyards/salvage yards must have a minimum lot of ten (10) acres.
5. The Board of Adjustment may impose other conditions to ensure that the use of property related to the junkyard/salvage yard is conducted in a manner to be compatible with the surrounding neighborhood.

Section 1631. Automotive Tow Business/Impound Lot Requirements. Impound lots, incident to the operation of an automotive tow business, may be established within districts pursuant to the zoning laws of the County for the storage of vehicles under the following conditions and requirements:

1. The area used for an impound lot must be free of debris and regularly maintained.
2. The area used for an impound lot must be completely enclosed by a fence or natural vegetation having a minimum height of six (6) feet or a fence which is two (2) feet higher than the tallest vehicle being stored, whichever height is greater; and constructed with a material or have vegetation so dense that ensures that the interior of the impound lot cannot be viewed from adjoining properties.
3. An impound lot may be used for the temporary storage of vehicles from which major parts have not been removed, and which are capable of being made fully operable.
4. An impound lot may be used for the storage of not more than twenty (20) vehicles at any one time.
5. Vehicle parts shall not be stored within an impound lot.
6. Vehicle parts shall not be taken or sold from vehicles stored within an impound lot.

7. Vehicles stored in an impound lot must be parked neatly in rows and meet or exceed all County, State and Federal laws governing the same.
8. The Board of Adjustment may impose other conditions to ensure that the use of property related to the automotive tow business/impound lot is conducted in a manner to be compatible with the surrounding neighborhood.

Section 1632. MANUFACTURED HOME PARKS.

It shall be unlawful for any person to place or maintain a manufactured home park in the unincorporated area of Miner County.

Section 1633. MANUFACTURED AND MODULAR HOME REGULATIONS.

Section 1633.01 Type A and Type B Manufactured Homes

1. A manufactured home is an industrialized building unit constructed on a chassis for towing to the point of use and designed to be used for continuous year-round occupancy as a single dwelling. For the purpose of this Ordinance, manufactured homes will be regulated by types. Two (2) types of homes are defined under these regulations.

a. Type A manufactured home shall:

- i. Have more than 1,100 square feet of occupied space in a double-section or larger multi-section unit.
- ii. Be anchored to a permanent foundation (permanent perimeter enclosure) and permanent footing.
- iii. The age of the manufactured house may not exceed twenty (20) years from the date of manufacture.
- iv. Have a gabled roof with a pitch of at least 2/12 feet.
- v. Have siding material of a type customarily used on site-constructed residences.
- vi. Have roofing material of a type customarily used on site-constructed residences.

b. Type B manufactured home shall:

- i. Have more than 700 square feet of occupied space in a single, double, expando or multi-section unit. Minimum width for a Type B mobile home is fourteen (14) feet.
- ii. Utilize a perimeter enclosure of metal, vinyl, wood or styrofoam in accordance with manufacturer's specifications.

- iii. The age of the manufactured house may not exceed fifteen (15) years from the date of manufacture.
- i. Be anchored to the ground, in accordance with manufacturer's specifications, or as prescribed by the Defense Civil Preparedness Agency TR-75, issued June 1972, by the U.S. Department of Defense or by the NFPA 225 Model Manufactured Home Installation Standards.
- iv. Have siding material of a type customarily used on site-constructed residences.
- v. Have roofing material of a type customarily used on site-constructed residences.
- vi. Be placed onto a support system, in accordance with approved installation standards, as specified in subsection (2), Installation Standards.

2. Installation Standards.

a. Support System.

- i. All HUD-Code manufactured homes of the Type A classification shall be installed with load bearing foundations in conformance with the manufacturer's installation specifications.
- ii. Type B manufactured homes not placed on a permanent foundation shall be installed on a support system in conformance with the manufacturer's installation specifications or with the support systems regulations in the NFPA 225 Model Manufactured Home Installation Standards.

b. Foundation/Skirting

- i. Those manufactured homes designated in this Ordinance (Type A), as requiring a permanent foundation and permanent perimeter enclosure must have footings and crawl space or basement walls.
 - a. A crawl space must be constructed of concrete or masonry block grouted solid with one (1) number four or (1/2") horizontal rebar, continuous tied to number four or (1/2") rebar verticals placed in the footing four feet (4') on center.
 - b. The foundation shall be (a) an approved wood basement constructed of 2 x 6 framework and treated with water resistant materials; or (b) a foundation shall be constructed with eight inches poured concrete or concrete block.
 - c. The footing to be a minimum of eight (8) inches thick by sixteen (16) inches wide poured concrete with top of footing to be sixteen (16) inches below grade and the bottom of the footing to be below the frost line.
 - d. The space between the floor joints of the home shall be completely enclosed with the permanent perimeter enclosure (except for required openings).

- ii. All manufactured homes without a permanent perimeter enclosure (Type B) shall have an approved foundation/siding/skirting enclosing the entire perimeter of the home.

3. Replacement of Nonconforming Homes.

Thereafter, upon application to the Zoning Administrator and subsequent approval thereof, a Type A or Type B manufactured home, located upon any lot or lots of record at the time of the adoption of this ordinance, deemed a legal nonconforming use, may be replaced by a manufactured home, provided the replacement is of an equal or higher type. Equal or higher type means a Type B manufactured home could be replaced with a Type A or B manufactured home; a Type A manufactured home could be replaced with another Type A manufactured home.

1. Variance from Maximum Age Requirement

Type A and B manufactured homes may receive a variance from the maximum age requirement. The Board of Adjustment may grant a variance if the manufactured home meets the following requirements:

- a. The applicant shall provide a photograph of the manufactured home's exterior and interior.
- b. That it shall have been shown to the satisfaction of the Zoning Administrator that the said manufactured home complies with the gas, plumbing, electrical, and construction requirements of Miner County.
- c. That the applicant shall obtain the written consent of sixty-six (66) percent of property owners owning property immediately adjacent (excluding streets and alleys) to the proposed building site and the consent of fifty (50) percent of the property owners within two hundred (200) feet (excluding streets and alleys) of said proposed location has been received.

Section 1633.02. MODULAR HOMES

1. Modular homes shall meet the following regulations.

- a. Modular homes shall meet or exceed Uniform Building Codes.
- b. Modular homes will include all off-site constructed homes, which may be transported to the site in one or more sections.
- c. Modular homes shall have more than one thousand (1,000) square feet in ranch style and eight hundred fifty (850) square feet split and be placed on a permanent foundation.
- d. Modular homes shall not have attached running gear and a trailer hitch.
- e. Modular homes shall have a minimum of a 4/12-roof pitch.
- f. Have siding material of a type customarily used on site-constructed residences.

- g. Have roofing material of a type customarily used on site-constructed residences.

Section 1634. PERMANENT FOUNDATIONS REQUIRED FOR DWELLINGS.

No dwelling shall be constructed, installed, or moved into the area under the jurisdiction of these regulations, unless said dwelling is constructed upon, installed on or moved onto a permanent foundation, as defined in these regulations. Exempted from this requirement are manufactured homes as defined herein.

Section 1635. ACCESSORY BUILDINGS.

1. Only specifically authorized accessory uses allowed; accessory uses must be subordinate to principal use.
2. No accessory use shall be permitted in any district unless such principal use is specifically authorized by this Ordinance. No accessory use shall be deemed to be authorized by this Ordinance unless such use is in fact subordinate to and on the same zoning lot with the principal use in conjunction with which it is maintained.
3. No accessory building shall be erected in any required yard, and no separate accessory building shall be erected within five (5) feet of any other building.
4. No accessory building may be used for residential dwelling purposes at any time.
5. Agricultural District. In any Agricultural district, any accessory use customarily incident to the principal permitted use or conditional use shall be permitted, except those uses specifically prohibited in the district.
6. Commercial and Industrial Districts. In any Commercial or Industrial district, any accessory use customarily incident to the principal permitted use or conditional use shall be permitted, except those uses specifically prohibited in the district.
7. Town and Planned Residential Districts. Accessory uses shall be permitted for the principal permitted uses and conditional uses of the Town and Planned Residential Districts only in accordance with the provisions of the Table 1635.1.
8. Agricultural District. In any Agricultural district, any accessory use customarily incident to the principal permitted use or conditional use shall be permitted, except those uses specifically prohibited in the district.

Table 1635-1

Permitted Accessory Uses: TD and PR Districts

Principal Use	Permitted Accessory Uses
Single-family dwellings; duplexes; townhouses and multiple-family dwellings; nursery schools and Day care centers	1. Private garages. a. Attached and unattached garages shall be limited to maximum dimensions contained herein and conform to the design of the house. b. Attached garages shall be limited to maximum sidewalls of ten (10) feet; and a maximum of 4/12 roof pitch or to conform to the design of the house. c. Unattached garages shall be limited to maximum sidewalls of twelve and one-half (14) feet; and a maximum of 4/12 roof pitch or to conform to the design of the house. 2. Buildings or structures for customary residential storage purposes not over ten (10) feet in height and not exceeding one hundred fifty (150) square feet in gross floor area. 3. Readily moveable sports, recreation, or outdoor cooking equipment. 4. Permanent sports or recreational structures or facilities, such as tennis courts, swimming pools, barbeque pits, and similar improvements provided a site plan for such facility is approved. 5. Home occupations but only as defined herein. 6. Non-commercial greenhouses provided that greenhouses over one hundred (100) square feet in floor area must have an approved site plan. 7. Off-street parking and storage of vehicles.
Churches, Convents and Monasteries	1. All customarily incidental uses reasonably necessary to allow the free exercise of religion, but not to include commercial use.
All conditional uses	1. All customarily incidental uses reasonably necessary to promote the primary purposes of the principal use, provided that such use must be specifically authorized by the Board of Adjustment for the principal use.
All other items	1. No accessory uses permitted.

Section 1636. YARDS.

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.

Section 1636.01. Yards, Reduction in Size.

No yard or lot existing at the time of passage of this ordinance shall be reduced in dimension or area below the minimum requirements set forth herein. Yards and lots created after the effective date of this ordinance shall meet at least the minimum requirements established by this ordinance.

Section 1636.02. Additional Yard Requirements.

The following yard requirements must be observed in addition to the yard requirements of the various districts:

- 1. A corner lot must have a front yard on both streets.**
- 2. On developed property, in the TD – Town District and PR-Planned Residential District, fronting on one side of the street between two streets where one or more residences already exist, no building shall hereafter be erected and no existing building shall be reconstructed or altered in such a way that any portion thereof shall be closer to the street line than the average improved building front on that street in that block, but in no case shall the set-back line be less than twelve (12) feet from the front lot line.**
- 3. In the TD and PR Districts, on through lots and reversed frontage lots, a front yard must be provided on both streets.**
- 4. In the TD and PR Districts, required front yards shall be devoted entirely to landscaped area except for the necessary paving or driveways and sidewalks to reach parking or loading areas in the side or rear yard.**

Section 1636.03. Exceptions to Yard Requirements.

The following exceptions may be made to the yard requirements in the LP and PRL Districts:

- 1. Air conditioning units, sills, chimneys, cornices, and ornamental features may project into a required yard a distance not to exceed twenty-four (24) inches.**
- 2. In commercial and industrial districts, filling station pumps and pump islands may occupy required yards, provided, however, that they are not less than fifteen (15) feet from all lot lines.**
- 3. An accessory building may be located in a rear yard but not occupy more than 30 percent of a rear yard.**
- 4. Any accessory buildings closer than ten (10) feet to a main building shall be considered as part of the main building and shall be provided with the same side and rear yard requirements as the main building.**

Section 1637. Agribusiness Activities:

Section 1637.01. Intent

Agribusiness activities include identified commercial activities involving the handling, storage, processing and distribution of agricultural products. Agribusiness activities are intended to be operated as a principle use on a property. They may be operated as an extended home occupation, when such activities are accessory to the residential use of the lot.

Section 1637.02. Requirements

- 1. Agribusiness activities must have access to a concrete or bituminous asphalt, or county-maintained gravel street.**
- 2. Operators of agribusiness activities shall enter into and comply with a haul road agreement for the applicable streets if deemed necessary by the applicable road authority for the maintenance of identified haul routes attendant to the operation of the proposed business.**
- 3. Lighting on the site shall be limited to downward directed lights or other lighting customarily used for agricultural operations.**
- 4. The number, size, and illumination standards for signs shall be determined by the Board of Adjustment.**
- 5. No equipment or process shall be used in such extended home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the lot. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises or causes fluctuations in line voltage off the premises.**
- 6. All vehicles and equipment stored outside shall be operable.**
- 7. Permits for an agribusiness activity may only be changed to another agribusiness activity if specifically authorized by the Board of Adjustment.**
- 8. Permits for Agribusiness activities may be transferred, unless otherwise stated by the Board of Adjustment.**

SECTION 1638. Religious Farming Community

Section 1638.01 Purpose.

The purpose of this chapter is to provide for areas in the county for religious farming communities to be located and occupied. A permit to establish a religious farming community shall not imply consent to operate any other use for which a separate permit is required.

Section 1638.02 Minimum Requirements.

1. A religious farming community shall comply with the following conditions:

- a. A religious farming community shall be prohibited if proposed to be located on a parcel situated over Zone A or B of the Deuel County Aquifer Protection District.**
- b. The minimum lot area for a religious farming community shall be thirty-five (35) acres.**
- c. Direct access to public roads shall be limited.**
- d. Access for emergency vehicles shall be provided to all structures.**
- e. The religious farming community shall be supplied with a potable water supply and sewage disposal facilities, including washing, toilets and bathing facilities, and similar facilities, and all of which shall meet all applicable State and County codes and regulations.**
- f. Garbage and rubbish storage and disposal shall be handled in such a manner so as not to create a health hazard, rodent harborage, insect breeding areas, accident or fire hazards, or air pollution. The religious farming community shall provide a sanitary method of disposing of solid waste, in compliance with state laws, rules and regulations.**
- g. The growth of brush, weeds, and grass shall be controlled. All areas shall be maintained to prevent the growth of ragweed, poison ivy, poison oak, poison sumac and other noxious weeds considered detrimental to health.**
- h. The Board of Adjustment may impose other conditions to ensure that the use of property related to the religious farming community is conducted in a manner to be compatible with the surrounding neighborhood.**

Section 1638.03 Application Requirements.

An application for a religious farming community shall be filed with the Zoning Officer. The application shall contain the following:

- 1. The address and legal description of all property upon which the religious farming community is to be located, together with the name, residence and mailing address of the recorded owners of all such property.**

2. Plans for supplying potable water including the source.
3. The plans for providing private wastewater facilities, i.e., septic tanks, holding tanks, sanitary sewer treatment systems.
4. The plans for holding, collecting and disposing of solid waste material.
5. A sketch plan of the property showing:
 - a. Proposed location of residences, agricultural activities, commercial/industrial activities, places of assembly.
 - b. Dimensions of all buildings.
 - c. Distance from all buildings/uses to the property lines at the closest points.
 - d. Dimensions of all property lines.
 - e. Name and location of all adjacent streets and roads.
 - f. Proposed grading and drainage pattern.
 - g. Proposed interior circulation pattern of roads.
 - h. Utility (water, sewer, electricity) plans.

Section 1638.04. Separate Permits Required.

1. Any use proposed in conjunction with the religious farming community requiring a conditional use permit shall be considered separately from the conditional use permit for the religious farming community.
2. Building permits are required in accordance with Section 805 of this ordinance. The Zoning Officer may only issue building permits and allow uses in accordance with the approved site plan for each specific conditional use permit. Upon approval of the site plan, the Board of Adjustment may indicate what, if any, uses may be additionally allowed and under what conditions without the Board's reconsideration. Similarly, upon approval of the site plan the Board of Adjustment may indicate if the location or size of any structures may be changed between the Board's approval and the approval of the Zoning Officer.

Section 1639. Solar Energy Systems (SES)

Section 1639.01. Purpose.

The purpose of this Section is to facilitate the construction, installation, operation and decommission of Solar Energy Systems in a manner that promotes economic development and ensures the protection of health, safety, and welfare while also avoiding adverse impacts to important areas such as agricultural lands and other sensitive lands. This ordinance will not impede personal or business solar collector development for the primary use of self-sustaining energy. This ordinance is not intended to replace safety, health or environmental requirements contained in other applicable codes, standards, or ordinances. The provisions of this ordinance shall not nullify any provisions of local, state or federal law.

Section 1639.02. Private Solar Energy System (PSES).

PSES shall be permitted as an accessory use and shall meet the requirements of the zoning district. A PSES shall be for a single use commercial or residential structure and used primarily for on-site consumption of power.

Section 1639.03. Permitting.

- 1. No SES shall be erected, built, or constructed without a conditional use permit having been approved by the Board of Adjustment.**
- 2. Application(s) for SES Conditional Use Permits shall be accompanied by:**
 - a. Site plan as required by 1639.05 (4)**
 - b. Boundaries of the site proposed for SES and associated facilities on United States Geological Survey Map or another map as appropriate.**
 - c. Map of easements for SES, if applicable.**
 - d. Affidavit attesting that necessary easement agreements with landowners have been obtained, if applicable.**
 - e. Aviation/Airport protection if required. See 1639.05 (6)**
 - f. The fencing and gates required to be around the exterior perimeter. See 1639.05 (8)**
 - g. The storm water pollution and prevention plan. See 1639.04 (1)**
 - h. The decommissioning plan. See 1639.06**
 - i. Weed/Grass control plan 1 See 643.05 (12)**
 - j. Haul roads identified. See 1639.05 (13)**

k. Project schedule

l. Any other factors relevant to the proposed system.

3. All copies of the plan must be submitted, signed and sealed by an engineer.

4. The Board of Adjustment may require an independent engineer, chosen by the County, to review plans at the petitioner's expense. Findings by the independent engineering firm are to be submitted to the Board of Adjustment.

Section 1639.04. Compliance.

1. All SES are subject to the State of South Dakota Storm Water Management regulations, erosion and sediment control provisions if adopted and National Pollutant Discharge Elimination System (NPDES) permit requirements, if applicable.

2. The Board of Adjustment may provide for a final site inspection before the facility is authorized to become operational.

3. An emergency contact name and phone number must be posted at the point of access on all SES sites.

4. The permit holder will allow the County, or its Authorized Agent (appointed by the County), access to the property within one (1) day of an inspection request by the County. In the event of an emergency, the County, or its Authorized Agent, has the right to access the premises.

5. All SES shall meet or exceed applicable standards and regulations of any state or federal agency.

Section 1639.05. General Provisions for Solar Energy Systems.

Ground-mount solar energy, designed for providing energy to off-site uses or export to the wholesale market, are permitted under the following standards:

1. Ground Cover and Buffer Areas. Ground-mount systems shall be maintained. Topsoils shall not be removed during development unless part of a remediation effort. Soils shall be planted to and maintained in perennial vegetation to prevent erosion, manage run off and build soil. It is required that any crops planted follow all federal and state laws protecting endangered species. This will also include pollinators such as bees. Foundations, gravel or compacted soils are considered impervious. Ground-mount systems shall be exempt from impervious surface calculations if the soil under the collector is not compacted and maintained in vegetation, including any access or service roads. A minimum thirty (30) foot managed vegetative buffer shall always be present and maintained around the perimeter of the site.

2. Foundations. A qualified engineer shall certify that the foundation and design of the solar panels racking and support is within accepted professional standards, given local soil and climate conditions.

3. Power and Communication Lines. Power and communication lines running between banks of solar panels are allowed. Power and communication lines running between banks of solar panels and to nearby electric substations or interconnections with buildings may be required to be buried underground. Exemptions may be granted in instances where the natural landscape interferes with the ability to bury lines, or distance makes undergrounding infeasible.
4. Site Plan Required. A detailed site plan for both existing and proposed conditions must be submitted, showing location of all solar arrays, other structures, property lines, rights-of-way, service roads, floodplains, wetlands and other protected natural resources, topography, electric equipment, and all other characteristics requested by the Board of Adjustment.
5. Setbacks. Projects including multiple, adjoining properties as part of the project plan, need not adhere to setbacks at point of connection between the adjoining properties. Solar panels will be kept at least five hundred (500) feet from a residence. Exception: The Board of Adjustment may allow setback/separation distances to be less than the established distance identified if the applicant obtains waivers from all dwellings and owners of property within the separation distance. If approved, such agreement is to be recorded and filed with the County Register of Deeds. Said agreement shall be binding upon the heirs, successors, and assigns of the title holder and shall pass with the land.
 - a. Every SES shall observe a minimum rear and side yard setback of thirty (30) feet.
 - b. Every SES shall meet the minimum front yard setback of the applicable zoning district.
 - c. Every SES shall be setback at least one hundred (100) feet from the highwater mark of any lake, stream or river.
6. Aviation/Airport Protection: If required by state or federal agencies the applicant must complete and provide the results of the Solar Glare Hazard Analysis Tool (SGHAT) for the Airport Traffic Control Tower cab and final approach paths, consistent with the Interim Policy, FAA Review of Solar Energy Projects on Federally Obligated Airports, or most recent version adopted by the FAA.
7. Glare: All solar energy systems shall minimize glare from affecting adjacent or nearby properties. Measures to minimize glare include selective placement of the system, screening on the north side of the solar array, modifying the orientation of the system, reducing use of the reflector system, or other remedies that limit glare.
8. Safety Fencing/Gates and Locks.
 - a. All SES shall be fenced around the exterior of the SES with a fence at least six (6) feet in height.
 - b. All fencing and gates shall be constructed to substantially lessen the likelihood of entry into a SES by unauthorized individuals.

- c. All gates to the fences of all SES shall be equipped with locks and shall always remained locked except for those times when the owner and/or operator, or their respective agents is/are using the gate for ingress and/or egress or is/are otherwise present and monitoring the SES.
 - d. The fencing and gates shall be maintained in serviceable condition. Failure to maintain the fencing or gates required hereunder shall constitute a violation of this ordinance.
 - e. The fencing and gate requirements specified hereunder shall continue notwithstanding the fact that a SES is no longer operational and/or falls into disuse unless and until the SES is properly decommissioned.
 - f. Fences are exempt from Section 1616.03 and may further be constructed on property and right-of-way lines.
9. Maximum height: Solar panel arrays shall be no more than twenty (20) feet in height, not including power lines.
10. Lighting: If lighting is provided at the project site, lighting shall be shielded and downcast such that the light does not spill onto the adjacent parcel.
11. Outdoor Storage: Only the outdoor storage of materials, vehicles, and equipment that directly support the operation and maintenance of the solar energy system shall be allowed.
12. Weed/Grass Control Plan: The applicant shall submit an acceptable weed/grass control plan for property inside and outside the fenced area for the entire property. The operating company or successor during the operation of the SES shall adhere to the approved weed/grass control plan.
13. Roads.
- a. Public Roads. Prior to commencement of construction, the permittees shall identify all state, county or township "haul roads" that will be used during the construction of the SES project and shall notify the state, county or township governing body having jurisdiction over the roads to determine if the haul roads identified are acceptable. The governmental body shall be given adequate time to inspect the haul roads prior to use of these haul roads. Where practical, existing roadways shall be used for all activities associated with the SES. Where practical, all-weather roads shall be used to deliver cement, solar collectors and components, and all other heavy components to and from the site.
 - b. The permittees shall, prior to the use of approved haul roads, make satisfactory arrangements with the appropriate state, county or township governmental body having jurisdiction over approved haul roads for construction of the SES for the maintenance and repair of the haul roads that will be subject to extra wear and tear due to transportation of equipment and SES components. The permittees shall notify the County of such arrangements upon request of the County.

c. Private Roads. The permittees shall promptly repair private roads or lanes damaged when moving equipment or when obtaining access to the site, unless otherwise negotiated with the affected landowner.

d. Control of Dust. The permittees shall utilize reasonable measures and practices of construction to control dust.

14. Permit Expiration. Unless otherwise determined by the BOA, the permit shall become void if no substantial construction has been completed within three (3) years of issuance.

Section 1639.06. Decommissioning/Restoration/Abandonment.

1. Cost Responsibility. The owner or operator of a SES is responsible for all costs associated with decommissioning the SES facility and any associated facilities.

2. Decommissioning Plan. At least thirty (30) days prior to construction, the applicant shall file a decommissioning plan for Board of Adjustment approval in accordance with the requirements of paragraphs (2), (3) and (4) below. The plan shall include an acceptable financial assurance plan which estimates the decommissioning cost and a description of the manner in which the permittees will ensure that it has the financial capability to carry out these restoration requirements when they go into effect. The permittees shall ensure that it carries out its obligation to provide for the resources necessary to fulfill these requirements. The County may at any time request the permittees to file a report with the County describing how the permittees are fulfilling this obligation.

3. Financial Assurance. The Board of Adjustment shall require a performance bond, surety bond, escrow account, letter of credit, corporate guarantee or other form of financial assurance that is acceptable to the Board of Adjustment to cover the anticipated costs of decommissioning the SES facility. The financial assurance plan is subject to the following provisions:

a. A decommissioning account is to be funded by the project owner annually at a rate of two thousand five hundred dollars (\$2,500) per megawatt of installed DC capacity per year for the first 30 years, commencing no later than the commercial operation date.

b. The Board of Adjustment may allow a decreased annual payment, if the Board of Adjustment determines the full rate as identified in the financial assurance plan is not necessary to cover costs of decommissioning.

c. All interest earned by any financial assurance account remains in the account.

d. A financial assurances statement is to be provided upon request to the Zoning Officer.

e. The financial assurance plan follows ownership of the SES. The Board of Adjustment may allow current and subsequent SES owners to request a change in the type of financial assurance instrument to be utilized.

f. The financial assurances are not subject to foreclosure, lien, judgment, or bankruptcy.

- g. Beginning in year ten (10) following the beginning of operation and each fifth year thereafter, the SES owner shall submit to the Board of Adjustment an estimated decommissioning date, if established, and estimated decommissioning costs and salvage values. Based on the verification of the information in this filing the Board of Adjustment may change the annual financial assurance funding rate to more closely match the estimated amount needed for decommissioning.
 - h. Funds from the financial assurances are to be paid to the SES owner at the time of decommissioning. Said funds are to be paid as decommissioning costs are incurred and paid for by the SES owner.
 - i. If the SES owner fails to execute the decommissioning requirement, the funds are payable to the landowner as the landowner incurs and pays decommissioning costs.
 - j. In the event the South Dakota Public Utilities Commission requires a Decommissioning Plan which includes a financial instrument to decommission to be filed with the State. The county may waive its required financial instrument.
4. Site Restoration. The decommissioning of the SES shall begin within eight (8) months of the expiration of this permit, or earlier termination of operation of the SES and be completed within eighteen (18) months of the expiration of this permit or earlier termination of operation of the SES. The permittees shall have the obligation to dismantle and remove from the site all solar collectors and components, transformers, overhead and underground cables, foundations, buildings and ancillary equipment to a depth of four (4) feet. To the extent possible the permittees shall restore and reclaim the site to its pre-project topography and topsoil quality. All access roads shall be removed unless written approval is given by the affected landowner requesting that one or more roads, or portions thereof, be retained. Any agreement for removal to a lesser depth or for no removal shall be recorded with the County and shall show the locations of all such foundations. All such agreements between the permittees and the affected landowner shall be submitted to the County prior to completion of restoration activities. The site shall be restored in accordance with the requirements of this condition within eighteen (18) months after expiration.
5. Failure to Decommission. If the SES owner or operator does not complete decommissioning, the Board of Adjustment may take such action as may be necessary to complete decommissioning, including requiring forfeiture of the bond or other forms of final assurances. The entry into a participating landowner agreement shall constitute agreement and consent of the parties to the agreement, their respective heirs, successors, and assigns, that the Board of Adjustment may take such action as may be necessary to decommission a SES facility.