



2020 South Dakota Legislature

Senate Bill 157

Introduced by: The Committee on State Affairs at the request of the Office of the Governor

1 **An Act to revise certain provisions regarding the county zoning and appeals process.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1.** That a NEW SECTION be added:

4 **11-2-1.1. Aggrieved persons--Requirements.**

5 For the purposes of this chapter, a person aggrieved is any person directly
 6 interested in the outcome of and aggrieved by a decision or action or failure to act pursuant
 7 to this chapter who:

8 (1) Establishes that the person suffered an injury, an invasion of a legally protected
 9 interest that is both concrete and particularized, and actual or imminent, not
 10 conjectural or hypothetical;

11 (2) Shows that a causal connection exists between the person's injury and the conduct
 12 of which the person complains. The causal connection is satisfied if the injury is
 13 fairly traceable to the challenged action, and not the result of the independent
 14 action of any third party not before the court;

15 (3) Shows it is likely, and not merely speculative, that the injury will be redressed by
 16 a favorable decision, and;

17 (4) Shows that the injury is unique or different from those injuries suffered by the
 18 public in general.

19 **Section 2.** That § 11-2-17.3 be AMENDED:

20 **11-2-17.3. Conditional use of real property--Ordinance--Content--Approval**
 21 **or disapproval of request.**

22 A county zoning ordinance adopted ~~pursuant to~~ under this chapter that authorizes
 23 a conditional use of real property shall specify the approving authority, each category of
 24 conditional use requiring ~~such~~ approval, the zoning districts in which a conditional use is
 25 available, the criteria for evaluating each conditional use, and any procedures for certifying

1 approval of certain conditional uses. The approving authority shall consider the stated
2 criteria, the objectives of the comprehensive plan, and the purpose of the zoning ordinance
3 and ~~its~~the relevant zoning districts when making a decision to approve or disapprove a
4 conditional use request. Approval of a conditional use request requires the affirmative
5 majority vote of the members of the approving authority who are present and voting.

6 **Section 3.** That § 11-2-17.5 be AMENDED:

7 **11-2-17.5. Conditional uses--Special permitted uses.**

8 A zoning ordinance adopted ~~pursuant to~~under this chapter that provides for
9 conditional uses of real property may also establish a process for certification of certain
10 conditional uses upon meeting specified criteria for that conditional use. A conditional use
11 certified as a special permitted use under the zoning ordinance shall be approved if the
12 applicant demonstrates that all specified criteria are met. The certification process may
13 include adoption of a simple majority affirmative vote requirement pursuant to subdivision
14 11-2-53(3) for approval or confirmation that the specified criteria are met.

15 **Section 4.** That a NEW SECTION be added:

16 **11-2-17.6. Special permitted uses--Exceptions.**

17 Any land use that meets the specified criteria for certification by a zoning officer
18 under any county zoning ordinance shall be considered a special permitted use. A special
19 permitted use project is not subject to the requirements set forth in § 11-2-17.4 and is
20 deemed to meet the requirements set forth in § 11-2-17.3, but is not subject to any public
21 hearing or other requirements for review and approval of conditional uses. Upon adoption
22 of certification provisions, the land use is a permitted use subject to the criteria and
23 enforcement in the same manner as a permitted use.

24 **Section 5.** That a NEW SECTION be added:

25 **11-2-17.7. Conditional use application--Impact on neighboring land.**

26 Any alteration, construction, use of earthmoving equipment, or other change
27 pursuant to a zoning permit or allowed land use on neighboring land that began after the
28 date on which an application for a conditional use is received, and that causes the
29 application to fail to meet one or more of the criteria or requirements for conditional use
30 under the zoning ordinance, does not cause the request for a conditional use permit to be
31 considered nonconforming until a final disposition of the conditional use request is

1 determined pursuant to § 11-2-61 or 11-2-65. If the conditional use permit is granted,
 2 the conditional use shall be considered a lawful use, lot, or occupancy of land or premises
 3 and may be continued even though the use, lot, or occupation does not conform to the
 4 provisions of the ordinance. If the conditional use is not pursued by the applicant for a
 5 period of more than one year, any subsequent use, lot, or occupancy of the land or
 6 premises shall conform with the zoning ordinance.

7 **Section 6.** That § 11-2-53 be AMENDED:

8 **11-2-53. Board of adjustment--Powers.**

9 The board of adjustment may:

- 10 (1) Hear and decide appeals if it is alleged there is error in any order, requirement,
 11 decision, or determination made by an administrative official in the enforcement of
 12 this chapter or of any ordinance adopted pursuant to this chapter;
- 13 (2) Authorize upon appeal in specific cases ~~such a~~ variance from the terms of the
 14 ordinance ~~as will that is not be~~ contrary to the public interest, if, owing to special
 15 conditions, a literal enforcement of the provisions of the ordinance will result in
 16 unnecessary hardship and so that the spirit of the ordinance is observed and
 17 substantial justice done; and
- 18 (3) Hear and determine conditional uses as authorized by the zoning ordinance. The
 19 uses shall be determined by an affirmative majority vote of the present and voting
 20 members of the board of adjustment ~~at a percentage specifically set forth in the~~
 21 ~~zoning ordinance.~~

22 **Section 7.** That § 11-2-55 be AMENDED:

23 **11-2-55. Appeals--Notice--Records transmitted--Expedited process.**

24 An appeal to the board of adjustment may be taken by any person aggrieved or by
 25 any officer, department, board, or bureau of the county adversely affected by any decision
 26 of the administrative officer, that is not a ministerial act or other preliminary act to bring
 27 an application or matter before the board for hearing and a final decision. The appeal shall
 28 be taken within a reasonable time not to exceed fourteen days, as provided by the rules
 29 of the board of adjustment, by filing with the officer from whom the appeal is taken and
 30 with the board of adjustment a notice of appeal specifying the grounds of the appeal. The
 31 officer from whom the appeal is taken shall transmit to the board of adjustment all the
 32 papers constituting the record upon which the action appealed from was taken. All appeals

1 relating to a particular action or property shall be consolidated and heard on an expedited
2 basis.

3 **Section 8.** That § 11-2-57 be AMENDED:

4 **11-2-57. Public hearing of appeal--Notice.**

5 The board of adjustment shall hold at least one public hearing of the appeal. Notice
6 of the time and place shall be given at least ten days in advance by publication in a legal
7 newspaper of the county, and due notice shall be given to the parties in interest. The
8 board of adjustment shall decide the appeal within ~~a reasonable time~~ sixty days of
9 receiving a notice of appeal. Any party may appear at the hearing in person or by agent
10 or by attorney.

11 **Section 9.** That § 11-2-59 be AMENDED:

12 **11-2-59. Two-thirds majority required.**

13 The concurring vote of two-thirds of the members of the board of adjustment is
14 necessary to reverse any order, requirement, decision, or determination of any ~~such~~
15 ~~administrative official or commission on appeal~~, or to decide in favor of the applicant on
16 any matter upon which it is required to pass under any ~~such~~ ordinance, ~~except as to~~
17 ~~conditional uses where the county has chosen to adopt a different standard, as set forth~~
18 ~~in subdivision 11-2-53(3)~~, or to effect any variation in the ordinance. An initial conditional
19 use determination of the board of adjustment shall be determined by the vote set forth in
20 § 11-2-17.3.

21 **Section 10.** That § 11-2-60 be AMENDED:

22 **11-2-60. County commissioners as board of adjustment--Powers and duties--**
23 **-Chair--Two-thirds majority required.**

24 In lieu of appointing the board of adjustment provided by § 11-2-49, the board of
25 county commissioners having adopted and in effect a zoning ordinance may act as and
26 perform all the duties and exercise the powers of the board of adjustment. ~~The~~ When
27 acting as the board of adjustment, the chair of the board of county commissioners is chair
28 of the board of adjustment ~~as so composed~~. The concurring vote of at least two-thirds of
29 the members of the board ~~as so composed~~ is necessary to reverse any order, requirement,
30 decision, or determination of any administrative official or commission on appeal, or to
31 decide in favor of the appellant on any matter upon which it is required to pass under any

1 zoning ordinance, ~~except as to conditional uses where the county has chosen to adopt a~~
2 ~~different standard as set forth in subdivision 11-2-53(3),~~ or to effect any variation in the
3 ordinance. Any initial conditional use determinations of the board shall be determined by
4 the vote set forth in § 11-2-17.3.

5 **Section 11.** That § 11-2-61 be AMENDED:

6 **11-2-61. Petition to court contesting decision of board--Requirements.**

7 Any person or persons, jointly or severally, or any taxpayer, or any officer,
8 department, board, or bureau of the county, aggrieved by any decision of the board of
9 adjustment may present to a court of record a petition duly verified, setting forth that the
10 decision is illegal, in whole or in part, specifying the grounds of the illegality. The petition
11 shall be a petition for writ of certiorari presented to the court within thirty days after the
12 filing of the decision in the office of the board of adjustment. The board of adjustment
13 shall respond to the petition within thirty days of receiving the notice of the filing and shall
14 simultaneously submit the complete record of proceedings of the board appealed from, in
15 the form of a return on a petition for writ, without need for a court order or formal issuance
16 of writ.

17 A petition presented to the circuit court under this section shall be accompanied by
18 a bond in the amount of two hundred fifty dollars with one or more sureties to be approved
19 by the county auditor conditioned that the appellant shall prosecute the appeal without
20 delay and pay all costs that the appellant may be adjudged to pay in the circuit court. The
21 bond shall be executed to the county and may be sued in the name of the county upon
22 breach of any condition in the bond.

23 **Section 12.** That a NEW SECTION be added:

24 **11-2-62.1. Expedited determinations.**

25 Upon filing of a petition for writ of certiorari, the court shall expedite any petition
26 determination. Within thirty days of the filing of the response and the record, or as soon
27 as reasonably practicable, the court shall schedule and hold a hearing on the matter to
28 determine the merits, and the cause shall be speedily heard and determined.

29 **Section 13.** That § 11-2-65 be AMENDED:

1 **11-2-65. Court may reverse or affirm decision of board--Costs.**

2 The court may reverse or affirm, wholly or partly, or may modify the decision
3 brought up for review. On motion, the court may award reasonable attorneys' fees, costs
4 of the action, and compensatory damages suffered in an action brought to the court under
5 this chapter against any nonprevailing party relative to the petition for writ of certiorari.

6 Costs, damages, and attorneys' fees are not allowed against the board of adjustment
7 unless the court determines that the board of adjustment acted with gross negligence, or
8 in bad faith, or with malice in making the decision appealed from.

9 **Section 14.** That a NEW SECTION be added:

10 **11-2-65.1. Special permitted use, conditional use, variance--Expiration.**

11 Any special permitted use, conditional use, or variance granted under this chapter
12 does not expire for a period of two years following completion of any final appeal of the
13 decision. Any county zoning ordinance provision to the contrary is invalid or unenforceable
14 and the special permitted use, conditional use, or variance shall be allowed if actual
15 construction as approved is commenced within this period. The authority constitutes a
16 lawful use, lot, or occupancy of land or premises existing at the time of the adoption of a
17 zoning ordinance amendment or replacement within this period or while an appeal is
18 pending regardless of the commencement of actual construction, so that the approved
19 use shall be allowed if upheld on final appeal.

20 For purposes of this section, the term, actual construction, means that construction
21 materials are being permanently placed and the construction work is proceeding without
22 undue delay.