



2020 South Dakota Legislature

Senate Bill 157

HOUSE ENGROSSED

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.

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

7 **11-2-17.5. 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 use certified as
11 a special permitted use under the zoning ordinance shall be approved if the applicant
12 demonstrates that all specified criteria are met. ~~The process may include adoption of a~~
13 ~~simple majority affirmative vote requirement pursuant to subdivision 11-2-53(3).~~

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

15 **11-2-17.6. Special permitted uses--Exceptions.**

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

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

23 **11-2-17.7. Conditional use application--Impact on neighboring land.**

24 Any alteration, construction, use of earthmoving equipment, or other change
25 pursuant to a zoning permit or allowed land use on neighboring land that began after the
26 date on which an application for a conditional use is received, and that causes the
27 application to fail to meet one or more of the criteria or requirements for conditional use
28 under the zoning ordinance, does not cause the request for a conditional use permit to be
29 considered nonconforming until a final disposition of the conditional use request is
30 determined pursuant to § 11-2-61 or 11-2-65. If the conditional use permit is granted,
31 the conditional use shall be considered a lawful use, lot, or occupancy of land or premises

1 and may be continued even though the use, lot, or occupation does not conform to the
 2 provisions of the ordinance. If the conditional use is not pursued by the applicant for a
 3 period of more than one year, any subsequent use, lot, or occupancy of the land or
 4 premises shall conform with the zoning ordinance.

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

6 **11-2-53. Board of adjustment--Powers.**

7 The board of adjustment may:

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

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

21 **11-2-55. Appeals--Notice--Records transmitted--Expedited process.**

22 An appeal to the board of adjustment may be taken by any person aggrieved or by
 23 any officer, department, board, or bureau of the county adversely affected by any decision
 24 of the administrative officer, ~~that is not to grant or deny the permit. No other appeal such~~
 25 as any relating to a ministerial act or other preliminary act to bring an application or
 26 matter before the board for hearing and a final decision is authorized by this section. The
 27 appeal shall be taken within a reasonable time not to exceed twenty-one days, as provided
 28 by the rules of the board of adjustment, by filing with the officer from whom the appeal
 29 is taken and with the board of adjustment a notice of appeal specifying the grounds of the
 30 appeal. The officer from whom the appeal is taken shall transmit to the board of
 31 adjustment all the papers constituting the record upon which the action appealed from
 32 was taken. All appeals relating to a particular action or property shall be consolidated and
 33 heard on an expedited basis.

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

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

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

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

10 **11-2-59. Two-thirds majority required.**

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

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

19 **11-2-60. County commissioners as board of adjustment--Powers and duties--**
20 **-Chair--Two-thirds majority required.**

21 In lieu of appointing the board of adjustment provided by § 11-2-49, the board of
22 county commissioners having adopted and in effect a zoning ordinance may act as and
23 perform all the duties and exercise the powers of the board of adjustment. ~~The~~ When
24 acting as the board of adjustment, the chair of the board of county commissioners is chair
25 of the board of adjustment ~~as so composed~~. The concurring vote of at least two-thirds of
26 the members of the board ~~as so composed~~ is necessary to reverse any order, requirement,
27 decision, or determination of any administrative official, or to decide in favor of the
28 appellant on any matter upon which it is required to pass under any zoning ordinance,
29 ~~except as to conditional uses where the county has chosen to adopt a different standard~~
30 ~~as set forth in subdivision 11-2-53(3),~~ or to effect any variation in the ordinance. Any
31 initial conditional use determinations of the board shall be determined by the vote set
32 forth in § 11-2-17.3.

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

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

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

13 A petitioner to the circuit court under this section shall pay all transcript costs
14 required to complete the record of proceedings of the board appealed from.

15 **Section 12.** That § 11-2-61.1 be AMENDED:

16 **11-2-61.1. Appeal of grant or denial of conditional use permit.**

17 Any appeal of a decision ~~relating to the grant or denial of~~ granting or denying a
18 conditional use permit shall be brought under a petition, duly verified, for a writ of
19 certiorari directed to the approving authority and, notwithstanding any provision of law to
20 the contrary, shall be determined under a writ of certiorari standard regardless of the form
21 of the approving authority. The court shall give deference to the decision of the approving
22 authority in interpreting the authority's ordinances.

23 **Section 13.** 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 14.** 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 and
4 costs of the action in an action brought to the court under this chapter against any non-
5 prevailing party relative to the petition for writ of certiorari.

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

9 **Section 15.** 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.