

## 2020 South Dakota Legislature

**Senate Bill 157****AMENDMENT 157A FOR THE INTRODUCED BILL**

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

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

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

8 **11-2-17.5. Special permitted uses.**

9 A zoning ordinance adopted pursuant to under this chapter ~~that provides for~~  
10 ~~conditional uses of real property~~ may also establish a process for certification of certain  
11 uses upon meeting specified criteria for that ~~conditional~~ use. A conditional use certified as  
12 a special permitted use under the zoning ordinance shall be approved if the applicant  
13 demonstrates that all specified criteria are met. ~~The certification process may include~~  
14 ~~adoption of a simple majority affirmative vote requirement pursuant to subdivision 11-2-~~  
15 ~~53(3) for approval or confirmation that the specified criteria are met.~~

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

17 **11-2-17.6. Special permitted uses--Exceptions.**

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

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

26 **11-2-17.7. Conditional use application--Impact on neighboring land.**

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

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

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

9 **11-2-53. Board of adjustment--Powers.**

10 The board of adjustment may:

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

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

24 **11-2-55. Appeals--Notice--Records transmitted--Expedited process.**

25 An appeal to the board of adjustment may be taken by any person aggrieved or by  
 26 any officer, department, board, or bureau of the county adversely affected by any decision  
 27 of the administrative officer, ~~that is not to grant or deny the permit. No other appeal such~~  
 28 ~~as any relating to~~ a ministerial act or other preliminary act to bring an application or  
 29 matter before the board for hearing and a final decision is authorized by this section. The  
 30 appeal shall be taken within a reasonable time not to exceed ~~fourteen-twenty-one~~ days,  
 31 as provided by the rules of the board of adjustment, by filing with the officer from whom  
 32 the appeal is taken and with the board of adjustment a notice of appeal specifying the  
 33 grounds of the appeal. The officer from whom the appeal is taken shall transmit to the

1 board of adjustment all the papers constituting the record upon which the action appealed  
2 from was taken. All appeals relating to a particular action or property shall be consolidated  
3 and heard on an expedited basis.

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

5 **11-2-57. Public hearing of appeal--Notice.**

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

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

13 **11-2-59. Two-thirds majority required.**

14 The concurring vote of two-thirds of the members of the board of adjustment is  
15 necessary to reverse any order, requirement, decision, or determination of any such  
16 administrative official ~~or commission on appeal, or to decide in favor of the applicant on~~  
17 ~~any matter upon which it is required to pass under any such ordinance,~~ except as to  
18 conditional uses where the county has chosen to adopt a different standard, as set forth  
19 in subdivision 11-2-53(3), or to effect any variation in the ordinance. An initial conditional  
20 use determination of the board of adjustment shall be determined by the vote set forth in  
21 § 11-2-17.3.

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

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

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

1 decide in favor of the appellant on any matter upon which it is required to pass under any  
2 zoning ordinance, ~~except as to conditional uses where the county has chosen to adopt a~~  
3 ~~different standard as set forth in subdivision 11-2-53(3),~~ or to effect any variation in the  
4 ordinance. Any initial conditional use determinations of the board shall be determined by  
5 the vote set forth in § 11-2-17.3.

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

7 **11-2-61. Petition to court contesting decision of board--Requirements.**

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

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

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

26 **11-2-61.1. Appeal of grant or denial of conditional use permit.**

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

1 **Section 13.** That a NEW SECTION be added:

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

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

7 **Section 14.** That § 11-2-65 be AMENDED:

8 **11-2-65. Court may reverse or affirm decision of board--Costs.**

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

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

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

17 **11-2-65.1. Special permitted use, conditional use, variance--Expiration.**

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

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