



## 2021 South Dakota Legislature

# House Bill 1094

*Introduced by: The Committee on Local Government at the request of the Office of the Governor*

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

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

4 **Section 1.** That § 11-4-1.1 be AMENDED.

5 **11-4-1.1. Definition of terms.**

6 The definitions set forth in ~~§-§§ 11-6-1 shall be~~ and 11-2-1.1 are applicable to this  
 7 chapter.

8 **Section 2.** That § 11-4-4.1 be AMENDED.

9 **11-4-4.1. Ordinance authorizing conditional use of real property--Content--**  
 10 **Approval or disapproval of request.**

11 A municipal zoning ordinance adopted pursuant to this chapter that authorizes a  
 12 conditional use of real property shall specify the approving authority, each category of  
 13 conditional use requiring such approval, the zoning districts in which a conditional use is  
 14 available, the criteria for evaluating each conditional use, and any procedures for certifying  
 15 property for approval of certain conditional uses. The approving authority shall consider  
 16 the stated criteria, the objectives of the comprehensive plan, and the purpose of the  
 17 zoning ordinance and ~~its~~ the relevant zoning districts when making a decision to approve  
 18 or disapprove a conditional use request. Approval of a conditional use request requires  
 19 the affirmative majority vote of the members of the approving authority who are present  
 20 and voting.

21 **Section 3.** That § 11-4-4.3 be AMENDED.

1           **11-4-4.3. Process for certification of special permitted uses upon meeting**  
2 **specified criteria.**

3           A zoning ordinance adopted pursuant to this chapter ~~that provides for conditional~~  
4 ~~uses of real property~~ may also establish a process for certification of ~~certain conditional~~  
5 special permitted uses upon meeting specified criteria for conditional the use. ~~The process~~  
6 ~~may include adoption of simple majority affirmative vote requirements pursuant to~~  
7 ~~subdivision 11-4-17(3).~~ A use certified as a special permitted use under the zoning  
8 ordinance shall be approved if the applicant demonstrates that all specified criteria are  
9 met.

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

11           **11-4-4.5. Special permitted uses--Exceptions.**

12           Any land use that meets the specified criteria for certification under any municipal  
13 zoning ordinance shall be considered a special permitted use. A special permitted use  
14 applicant is not subject to the requirements set forth in § 11-4-4.2. A special permitted  
15 use is not subject to any public hearing or other requirements for review and approval of  
16 conditional uses. Upon adoption of certification provisions, the land use is a special  
17 permitted use subject to enforcement in the same manner as a permitted use.

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

19           **11-4-4.6. Conditional use application--Impact on neighboring land.**

20           Any alteration, construction, use of earthmoving equipment, or other change  
21 pursuant to a zoning permit or allowed land use on neighboring land that begins after the  
22 date on which an application for a conditional use is received, and that causes the  
23 application to fail to meet one or more of the criteria or requirements for conditional use  
24 under the zoning ordinance, does not cause the request for a conditional use permit to be  
25 considered nonconforming until a final disposition of the conditional use request is  
26 determined pursuant to § 11-4-25 or 11-4-29. If the conditional use permit is granted,  
27 the conditional use is considered a lawful use, lot, or occupancy of land or premises and  
28 may be continued even though the use, lot, or occupation does not conform to the  
29 provisions of the ordinance. If the conditional use is not pursued by the applicant for a  
30 period of more than one year, any subsequent use, lot, or occupancy of the land or  
31 premises shall conform with the zoning ordinance.

32 **Section 6.** That § 11-4-17 be AMENDED.

1           **11-4-17. Powers of board of adjustment.**

2           The board of adjustment may:

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

14       **Section 7.** That § 11-4-19 be AMENDED.

15               **11-4-19. Appeal to board of adjustment--Notice of appeal--Records**  
16       **transmitted--Expedited process.**

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

29       **Section 8.** That § 11-4-21 be AMENDED.

30               **11-4-21. Notice and hearing by board of adjustment--Hearing open to**  
31       **public.**

32           The board of adjustment shall hold at least one public hearing of the appeal. Notice  
33           of the time and place of the hearing shall be given once at least ten days in advance by

1 publication in a legal newspaper of the municipality, and due notice shall be given to the  
2 parties in interest. The board shall decide the appeal within ~~a reasonable time~~ sixty days  
3 of receiving a notice of appeal. Any party may appear at the hearing in person or by agent  
4 or by attorney.

5 **Section 9.** That § 11-4-23 be AMENDED.

6 **11-4-23. Vote required.**

7 The concurring vote of at least two-thirds of the members of the board of  
8 adjustment is necessary to reverse any order, requirement, decision, or determination of  
9 the administrative officer, ~~or to decide in favor of the applicant on any matter upon which~~  
10 ~~the board of adjustment is required to pass under any ordinance, except as to conditional~~  
11 ~~uses as set forth in subdivision 11-4-17(3),~~ or to effect any variation in an ordinance. An  
12 initial conditional use determination of the board of adjustment shall be determined by  
13 the vote set forth in § 11-4-4.1.

14 **Section 10.** That § 11-4-24 be AMENDED.

15 **11-4-24. Governing body acting as board of adjustment--Chairman of board-**  
16 **-Vote required for reversal, exception or variance.**

17 In lieu of appointing the board of adjustment provided by § 11-4-13, the governing  
18 body of any municipality having adopted and ~~in effect~~ effectuated a zoning ordinance may  
19 act as and perform all the duties and exercise the powers of such board of adjustment.  
20 ~~The~~ Whenever the governing body is acting as the board of adjustment, the mayor or  
21 president of the board of trustees ~~shall be~~ is chairman of the board of adjustment ~~as so~~  
22 ~~composed~~. The concurring vote of at least two-thirds of the members of such board ~~as so~~  
23 ~~composed~~ shall be necessary to reverse any order, requirement, decision, or  
24 determination of any administrative official, or to decide in favor of the appellant on any  
25 matter upon which it is required to pass under any zoning ordinance, or to effect any  
26 variation in such ordinance.

27 **Section 11.** That § 11-4-25 be AMENDED.

28 **11-4-25. Petition to court contesting decision of board.**

29 Any person or persons, jointly or severally, ~~or any taxpayer,~~ or any officer,  
30 department, board, or bureau of the municipality, aggrieved by any decision of the board  
31 of adjustment may present to a court of record a petition for writ of certiorari, duly verified,

1 setting forth that such decision is illegal, in whole or in part, specifying the grounds of the  
2 illegality. Such petition shall be presented to the court within thirty days after the filing of  
3 the decision in the office of the board. The board of adjustment shall respond to the  
4 petition within thirty days of receiving the notice of the filing and shall simultaneously  
5 submit the complete record of proceedings of the board appealed from, in the form of a  
6 return on a petition for writ, without need for a court order or formal issuance of writ.

7 A petitioner to the circuit court under this section shall pay all transcript costs  
8 required to complete the record of proceedings of the board from which the decision was  
9 appealed.

10 **Section 12.** That § 11-4-25.1 be AMENDED.

11 **11-4-25.1. Appeal of grant or denial of conditional use permit.**

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

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

19 **11-4-25.2. Expedited determinations.**

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

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

25 **11-4-29.1. Special permitted use, conditional use, variance--Expiration.**

26 Any county zoning ordinance provision setting a time limit for commencement or  
27 completion of a special permitted use, conditional use, or variance granted under this  
28 chapter is tolled to allow commencement within a period of two years following completion  
29 of any final appeal of the county zoning decision. Any county zoning ordinance provision  
30 to the contrary is invalid or unenforceable and the special permitted use, conditional use,  
31 or variance shall be allowed if actual construction as approved is commenced within this

1 period, and any provision addressing timely completion shall commence only upon such  
2 actual construction. The authority constitutes a lawful use, lot, or occupancy of land or  
3 premises existing at the time of the adoption of a zoning ordinance amendment or  
4 replacement within this period or while an appeal is pending regardless of the  
5 commencement of actual construction, so that the approved use shall be allowed if upheld  
6 on final appeal.

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