

AN ACT

ENTITLED, An Act to revise certain provisions regarding planning and zoning.

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

Section 1. That chapter 11-2 be amended by adding thereto a NEW SECTION to read as follows:

A zoning ordinance adopted pursuant to this chapter that provides for conditional uses of real property may also establish a process for certification of certain conditional uses upon meeting specified criteria for that conditional use. The process may include adoption of a simple majority affirmative vote requirement pursuant to subdivision 11-2-53(3).

Section 2. That § 11-2-17.3 be amended to read as follows:

11-2-17.3. A county zoning ordinance adopted pursuant to this chapter that authorizes a conditional use of real property shall specify the approving authority, each category of conditional use requiring such approval, the zoning districts in which a conditional use is available, the criteria for evaluating each conditional use, and any procedures for certifying approval of certain conditional uses. The approving authority shall consider the stated criteria, the objectives of the comprehensive plan, and the purpose of the zoning ordinance and its relevant zoning districts when making a decision to approve or disapprove a conditional use request.

Section 3. That § 11-2-53 be amended to read as follows:

11-2-53. The board of adjustment may:

- (1) Hear and decide appeals if it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this chapter or of any ordinance adopted pursuant to this chapter;
- (2) Authorize upon appeal in specific cases such variance from terms of the ordinance as will not be contrary to the public interest, if, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship and so that the spirit

of the ordinance is observed and substantial justice done; and

- (3) Hear and determine conditional uses as authorized by the zoning ordinance. The uses shall be determined by an affirmative vote of the present and voting members of the board of adjustment at a percentage specifically set forth in the zoning ordinance.

Section 4. That § 11-2-58 be amended to read as follows:

11-2-58. In exercising the powers mentioned in § 11-2-53 as to appeals, the board of adjustment may, in conformity with the provisions of this chapter, 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 has all the powers of the officer from whom the appeal is taken. As to all other decisions, the board of adjustment may make initial determinations as provided by statute and applicable zoning ordinance.

Section 5. That § 11-2-59 be amended to read as follows:

11-2-59. The concurring vote of two-thirds of the members of the board of adjustment is necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance, except as to conditional uses as set forth in subdivision 11-2-53(3), or to effect any variation in the ordinance.

Section 6. That chapter 11-4 be amended by adding thereto a NEW SECTION to read as follows:

A zoning ordinance adopted pursuant to this chapter that provides for conditional uses of real property may also establish a process for certification of certain conditional uses upon meeting specified criteria for conditional use. The process may include adoption of simple majority affirmative vote requirements pursuant to subdivision 11-4-17(3).

Section 7. That § 11-4-4.1 be amended to read as follows:

11-4-4.1. A municipal zoning ordinance adopted pursuant to this chapter that authorizes a

conditional use of real property shall specify the approving authority, each category of conditional use requiring such approval, the zoning districts in which a conditional use is available, the criteria for evaluating each conditional use, and any procedures for certifying property for approval of certain conditional uses. The approving authority shall consider the stated criteria, the objectives of the comprehensive plan, and the purpose of the zoning ordinance and its relevant zoning districts when making a decision to approve or disapprove a conditional use request.

Section 8. That § 11-4-17 be amended to read as follows:

11-4-17. The board of adjustment may:

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

Section 9. That § 11-4-22 be amended to read as follows:

11-4-22. In exercising the powers mentioned in § 11-4-17 as to appeals, the board of adjustment may, in conformity with the provisions of this chapter, 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. As to all other decisions, the board of

adjustment may make initial determinations as provided by statute and applicable zoning ordinance.

Section 10. That § 11-4-23 be amended to read as follows:

11-4-23. The concurring vote of at least two-thirds of the members of the board of adjustment is necessary to reverse any order, requirement, decision, or determination of the administrative officer, or to decide in favor of the applicant on any matter upon which the board of adjustment is required to pass under any ordinance, except as to conditional uses as set forth in subdivision 11-4-17(3), or to effect any variation in an ordinance.

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I certify that the attached Act
originated in the
HOUSE as Bill No. 1201

Chief Clerk

Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1201
File No. _____
Chapter No. _____

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Received at this Executive Office
this ____ day of _____ ,
20__ at _____ M.

By _____
for the Governor

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The attached Act is hereby
approved this _____ day of
_____, A.D., 20__

Governor

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STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 20__
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State