



2020 South Dakota Legislature
Senate Bill 157
ENROLLED

AN ACT

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

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

Section 1. That a NEW SECTION be added:

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

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

- (1) Establishes that the person suffered an injury, an invasion of a legally protected interest that is both concrete and particularized, and actual or imminent, not conjectural or hypothetical;
- (2) Shows that a causal connection exists between the person's injury and the conduct of which the person complains. The causal connection is satisfied if the injury is fairly traceable to the challenged action, and not the result of the independent action of any third party not before the court;
- (3) Shows it is likely, and not merely speculative, that the injury will be redressed by a favorable decision, and;
- (4) Shows that the injury is unique or different from those injuries suffered by the public in general.

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

11-2-17.3. Conditional use of real property--Ordinance--Content--Approval or disapproval.

A county zoning ordinance adopted under this chapter that authorizes a conditional use of real property shall specify the approving authority, each category of conditional use requiring 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 the relevant zoning districts when making a decision to approve or disapprove a conditional use request. Approval of a conditional use request requires the affirmative majority vote of the members of the approving authority.

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

11-2-17.5. Special permitted uses.

A zoning ordinance adopted under this chapter may also establish a process for certification of certain uses upon meeting specified criteria for that use. A use certified as a special permitted use under the zoning ordinance shall be approved if the applicant demonstrates that all specified criteria are met.

Section 4. That a NEW SECTION be added:

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

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

Section 5. That a NEW SECTION be added:

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

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

provisions of the ordinance. If the conditional use is not pursued by the applicant for a period of more than one year, any subsequent use, lot, or occupancy of the land or premises shall conform with the zoning ordinance.

Section 6. That § 11-2-53 be AMENDED:

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

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 a variance from the terms of the ordinance that is 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 majority vote of the present and voting members of the board of adjustment.

Section 7. That § 11-2-55 be AMENDED:

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

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

Section 8. That § 11-2-57 be AMENDED:

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

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

Section 9. That § 11-2-59 be AMENDED:

11-2-59. Reversal--Two-thirds majority vote.

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 administrative official or to effect any variation in the ordinance. An initial conditional use determination of the board of adjustment shall be determined by the vote set forth in § 11-2-17.3.

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

11-2-60. County commissioners as board of adjustment--Powers--Chair--Two-thirds majority vote.

In lieu of appointing the board of adjustment provided by § 11-2-49, the board of county commissioners having adopted and in effect a zoning ordinance may act as and perform all the duties and exercise the powers of the board of adjustment. When acting as the board of adjustment, the chair of the board of county commissioners is chair of the board of adjustment. The concurring vote of at least two-thirds of the members of the board is necessary to reverse any order, requirement, decision, or determination of any administrative official, or to decide in favor of the appellant on any matter upon which it is required to pass under any zoning ordinance, or to effect any variation in the ordinance. Any initial conditional use determinations of the board shall be determined by the vote set forth in § 11-2-17.3.

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

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

Any person or persons, jointly or severally, or any officer, department, board, or bureau of the county, aggrieved by any decision of the board of adjustment may present to a court of record a petition duly verified, setting forth that the decision is illegal, in

whole or in part, specifying the grounds of the illegality. The petition shall be a petition for writ of certiorari presented to the court within thirty days after the filing of the decision in the office of the board of adjustment. The board of adjustment shall respond to the petition within thirty days of receiving the notice of the filing and shall simultaneously submit the complete record of proceedings of the board appealed from, in the form of a return on a petition for writ, without need for a court order or formal issuance of writ.

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

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

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

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

Section 13. That a NEW SECTION be added:

11-2-62.1. Expedited determinations.

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

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

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

The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review. On motion, the court may award reasonable attorneys' fees and costs of the action in an action brought to the court under this chapter against any non-prevailing party relative to the petition for writ of certiorari.

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

Section 15. That a NEW SECTION be added:

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

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

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

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

I certify that the attached Act originated in the:

Received at this Executive Office this ____ day of _____,

Senate as Bill No. 157

2020 at _____ M.

Secretary of the Senate

By _____
for the Governor

President of the Senate

The attached Act is hereby approved this _____ day of _____, A.D., 2020

Attest:

Secretary of the Senate

Governor

STATE OF SOUTH DAKOTA,

ss.

Office of the Secretary of State

Speaker of the House

Attest:

Filed _____, 2020
at _____ o'clock __ M.

Chief Clerk

Secretary of State

Senate Bill No. 157
File No. _____
Chapter No. _____

By _____
Asst. Secretary of State