

# State of South Dakota

NINETIETH SESSION  
LEGISLATIVE ASSEMBLY, 2015

930W0587

## HOUSE ENGROSSED NO. **HB 1201** - 02/25/2015

Introduced by: Representatives Mickelson, Bolin, Craig, Duvall, Greenfield (Lana), Harrison, Hunt, Langer, Peterson (Kent), Qualm, Rasmussen, Rozum, and Tulson and Senators Cammack, Brown, Heinert, Novstrup (David), Otten (Ernie), Tidemann, and Tieszen

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding planning and zoning.

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

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

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

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

10 11-2-17.3. A county zoning ordinance adopted pursuant to this chapter that authorizes a  
11 conditional use of real property shall specify the approving authority, each category of  
12 conditional use requiring such approval, the zoning districts in which a conditional use is  
13 available, ~~and~~ the criteria for evaluating each conditional use, and any procedures for certifying  
14 approval of certain conditional uses. The approving authority shall consider the stated criteria,



1 the objectives of the comprehensive plan, and the purpose of the zoning ordinance and its  
2 relevant zoning districts when making a decision to approve or disapprove a conditional use  
3 request.

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

5 11-2-53. The board of adjustment may:

6 (1) Hear and decide appeals if it is alleged there is error in any order, requirement,  
7 decision, or determination made by an administrative official in the enforcement of  
8 this chapter or of any ordinance adopted pursuant to this chapter; ~~and~~

9 (2) Authorize upon appeal in specific cases such variance from terms of the ordinance  
10 as will not be contrary to the public interest, if, owing to special conditions, a literal  
11 enforcement of the provisions of the ordinance will result in unnecessary hardship  
12 and so that the spirit of the ordinance is observed and substantial justice done; and

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

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

17 11-2-58. In exercising the powers mentioned in § 11-2-53 as to appeals, the board of  
18 adjustment may, in conformity with the provisions of this chapter, reverse or affirm, wholly or  
19 partly, or may modify the order, requirement, decision, or determination appealed from and may  
20 make such order, requirement, decision, or determination as ought to be made, and to that end  
21 has all the powers of the officer from whom the appeal is taken. As to all other decisions, the  
22 board of adjustment may make initial determinations as provided by statute and applicable  
23 zoning ordinance.

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

1 11-2-59. The concurring vote of two-thirds of the members of the board of adjustment is  
2 necessary to reverse any order, requirement, decision, or determination of any such  
3 administrative official, or to decide in favor of the applicant on any matter upon which it is  
4 required to pass under any such ordinance, except as to conditional uses as set forth in  
5 subdivision 11-2-53(3), or to effect any variation in the ordinance.

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

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

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

13 11-4-4.1. A municipal zoning ordinance adopted pursuant to this chapter that authorizes a  
14 conditional use of real property shall specify the approving authority, each category of  
15 conditional use requiring such approval, the zoning districts in which a conditional use is  
16 available, ~~and~~ the criteria for evaluating each conditional use, and any procedures for certifying  
17 property for approval of certain conditional uses. The approving authority shall consider the  
18 stated criteria, the objectives of the comprehensive plan, and the purpose of the zoning  
19 ordinance and its relevant zoning districts when making a decision to approve or disapprove a  
20 conditional use request.

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

22 11-4-17. The board of adjustment may:

- 23 (1) Hear and decide appeals where it is alleged there is error in any order, requirement,  
24 decision, or determination made by an administrative official in the enforcement of

1 this chapter or of any ordinance adopted pursuant to this chapter;

2 (2) Authorize upon appeal in specific cases such variance from terms of the ordinance  
3 not contrary to the public interest, if, owing to special conditions, a literal  
4 enforcement of the provisions of the ordinance will result in unnecessary hardship  
5 and so that the spirit of the ordinance is observed and substantial justice done; and

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

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

10 11-4-22. In exercising the powers mentioned in § 11-4-17 as to appeals, the board of  
11 adjustment may, in conformity with the provisions of this chapter, reverse or affirm, wholly or  
12 partly, or may modify the order, requirement, decision, or determination appealed from and may  
13 make such order, requirement, decision, or determination as ought to be made, and to that end  
14 shall have all the powers of the officer from whom the appeal is taken. As to all other decisions,  
15 the board of adjustment may make initial determinations as provided by statute and applicable  
16 zoning ordinance.

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

18 11-4-23. The concurring vote of at least two-thirds of the members of the board of  
19 adjustment is necessary to reverse any order, requirement, decision, or determination of the  
20 administrative officer, or to decide in favor of the applicant on any matter upon which the board  
21 of adjustment is required to pass under any ordinance, except as to conditional uses as set forth  
22 in subdivision 11-4-17(3), or to effect any variation in an ordinance.