

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

400I0766

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1281** - 02/21/2003

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: The Committee on State Affairs at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to revise certain county zoning laws.

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

3 Section 1. That § 11-2-49 be amended to read as follows:

4 11-2-49. Except as otherwise provided by § 11-2-60, the board shall provide for the
5 appointment of a board of adjustment, or for the planning and zoning commission to act as a
6 board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of
7 this chapter, shall provide that the board of adjustment may, ~~in appropriate cases and subject to~~
8 ~~appropriate conditions and safeguards, grant variances to the terms of the ordinance~~ approve
9 administrative actions, remedies, and procedures as authorized by § 11-2-53.

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

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

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

15 (2) Authorize upon appeal in specific cases such variance from terms of the ordinance as



1 will not be contrary to the public interest, if, owing to special conditions, a literal
2 enforcement of the provisions of the ordinance will result in unnecessary hardship and
3 so that the spirit of the ordinance is observed and substantial justice done; and

4 (3) Designate certain types of developments and certain land development activities as
5 conditional uses under zoning regulations. Conditional uses may be approved upon
6 a showing by an applicant that standards and criteria stated in the ordinance will be
7 met. Such standards and criteria shall include both general requirements for all
8 conditional uses and, insofar as practicable, requirements specific to each designated
9 conditional use. A permit issued for a dairy or other animal feeding operation in
10 compliance with such standards, including a permit for future expansion, shall be a
11 vested compensable property right under the laws of South Dakota but may be
12 revoked for good cause.

13 Section 3. That § 11-2-58 be amended to read as follows:

14 11-2-58. In exercising the powers mentioned in § 11-2-53, ~~the board of adjustment may, in~~
15 ~~conformity with the provisions of this chapter, reverse or affirm, wholly or partly, or may modify~~
16 ~~the order, requirement, decision, or determination appealed from and may make such order,~~
17 ~~requirement, decision, or determination as ought to be made, and to that end has all the powers~~
18 ~~of the officer from whom the appeal is taken~~ all decisions of the board of adjustment to grant
19 variances or conditional uses or in hearing appeals from any administrative order, requirement,
20 decision, or determination may be appealed to the board of county commissioners in accordance
21 with the county ordinance, and any final decision of the board of adjustment or county
22 commission shall be deemed a final administrative decision not subject to referendum or review,
23 except that any aggrieved person or legal entity shall have the right to appeal as allowed in § 11-
24 2-61.

1 Section 4. That § 11-2-59 be amended to read as follows:

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

7 Section 5. That § 11-2-60 be amended to read as follows:

8 11-2-60. In lieu of appointing the board of adjustment provided by § 11-2-49, the board of
9 county commissioners having adopted and in effect a zoning ordinance may act as and perform
10 all the duties and exercise the powers of the board of adjustment. The chair of the board of
11 county commissioners is chair of the board of adjustment as so composed. The concurring vote
12 of at least two-thirds of the members of the board as so composed is necessary to reverse any
13 order, requirement, decision, or determination of any administrative official, or to decide in favor
14 of the appellant on any matter upon which it is required to pass under any zoning ordinance, or
15 to effect any variation or conditional use in the ordinance.

16 Section 6. That § 11-2-61 be amended to read as follows:

17 11-2-61. Any person or ~~persons, jointly or severally, aggrieved by any decision of the board~~
18 ~~of adjustment, or any taxpayer, or any officer, department, board, or bureau of the county, legal~~
19 entity aggrieved by a decision of the board of adjustment or board of county commissioners may
20 present to a court of record a petition duly verified, setting forth that the decision is illegal, in
21 whole or in part, specifying the grounds of the illegality. The petition shall be presented to the
22 court within thirty days after the filing of the decision in the office of the board of adjustment.