

# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

574J0759

## SENATE BILL NO. 164

Introduced by: Senators Symens and Bogue and Representatives Peterson (Bill) and Olson  
(Mel)

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to the county zoning  
2 laws.

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

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

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

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

12 11-2-53. The board of adjustment may:

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



- 1       (2) Authorize upon appeal in specific cases such variance from terms of the ordinance  
2           as will not be contrary to the public interest, if, owing to special conditions, a literal  
3           enforcement of the provisions of the ordinance will result in unnecessary hardship  
4           and so that the spirit of the ordinance is observed and substantial justice done; and  
5       ~~(3) Approve certain conditional uses upon a showing by an applicant that standards and~~  
6           ~~criteria stated in a relevant ordinance enacted pursuant to § 11-2-17.2 will be met.~~

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

8       11-2-58. In exercising the powers mentioned in § 11-2-53, ~~all decisions of the board of~~  
9       ~~adjustment to grant variances or conditional uses or in hearing appeals from any administrative~~  
10       ~~order, requirement, decision, or determination may be appealed to the board of county~~  
11       ~~commissioners in accordance with the county ordinance, and any final decision of the board of~~  
12       ~~adjustment or county commission shall be deemed a final administrative decision not subject~~  
13       ~~to referendum or review. However, any aggrieved person or legal entity has the right to appeal~~  
14       ~~as allowed in § 11-2-61~~ the board of adjustment may, in conformity with the provisions of this  
15       chapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or  
16       determination appealed from and may make such order, requirement, decision, or determination  
17       as ought to be made, and to that end has all the powers of the officer from whom the appeal is  
18       taken.

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

20       11-2-59. The concurring vote of two-thirds of the members of the board of adjustment is  
21       necessary to reverse any order, requirement, decision, or determination of any such  
22       administrative official, or to decide in favor of the applicant on any matter upon which it is  
23       required to pass under any such ordinance, or to effect any variation ~~or conditional use~~ in the  
24       ordinance.

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

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

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

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

18 Section 7. That § 11-2-67 be repealed.

19 ~~11-2-67. Any permit, issued pursuant to this chapter, for a dairy or other animal feeding~~  
20 ~~operation in compliance with such standards and criteria, including any permit for future~~  
21 ~~expansion, shall be a vested compensable property right under the laws of South Dakota, but~~  
22 ~~may be revoked for good cause.~~