

State of South Dakota

NINETY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2016

390X0246

HOUSE ENGROSSED NO. **HB 1140** - 02/16/2016

Introduced by: Representatives Mickelson, Beal, Brunner, Deutsch, Duvall, Gosch, Haggar (Don), Harrison, Hunt, Jensen (Alex), Klumb, Novstrup (Al), Otten (Herman), Partridge, Peterson (Kent), Schaefer, Stalzer, Stevens, Tulson, Westra, Wollmann, and Zikmund and Senators Tidemann, Brown, Cammack, Haverly, Novstrup (David), Olson, Peters, Rusch, Tieszen, Vehle, and White

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

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

3 Section 1. That § 11-2-30 be amended to read:

4 11-2-30. After the hearing, the board shall by resolution or ordinance, as appropriate, either
5 adopt or reject the amendment, supplement, change, modification, or repeal, with or without
6 changes. Consideration of any changes to the proposed amendment, supplement, change,
7 modification, or repeal may only be done if the time and place of the hearing is published at
8 least ten days in advance in a legal newspaper of the municipality. If adopted, the board shall
9 publish a notice of the fact of adoption once in a legal newspaper of ~~such~~ the county and take
10 effect on the twentieth day after its publication. The provisions of § 11-2-22 are applicable to
11 this section.

12 Section 2. That § 11-2-55 be amended to read:

13 11-2-55. ~~Appeals~~ An appeal to the board of adjustment may be taken by any person



1 aggrieved or by any officer, department, board, or bureau of the county affected by any decision
2 of the administrative officer, that is not a ministerial act or other preliminary act to bring an
3 application or matter before the board for hearing and a final decision. The appeal shall be taken
4 within a reasonable time, as provided by the rules of the board of adjustment, by filing with the
5 officer from whom the appeal is taken and with the board of adjustment a notice of appeal
6 specifying the grounds of the appeal. The officer from whom the appeal is taken shall transmit
7 to the board of adjustment all the papers constituting the record upon which the action appealed
8 from was taken. All appeals relating to a particular action or property shall be consolidated and
9 heard on an expedited basis.

10 Section 3. That § 11-2-56 be amended to read:

11 11-2-56. An appeal to the board of adjustment stays all proceedings in the action appealed
12 from, except ministerial or other preliminary acts necessary to allow consolidated appeals on
13 all matters prior to final decision by the board of adjustment, or unless the officer from whom
14 the appeal is taken files a certificate that by reason of facts stated in the certificate a stay would
15 in the officer's opinion cause imminent peril to life or property. In such case proceedings may
16 not be stayed other than by a restraining order which may be granted by the board of adjustment
17 or by a court of record, on application, on notice to the officer from whom the appeal is taken
18 and on due cause shown.

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

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, except as to conditional uses where the county has
24 chosen to adopt a different standard, as set forth in subdivision 11-2-53(3), or to effect any

1 variation in the ordinance.

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

3 11-2-60. In lieu of appointing the board of adjustment provided by § 11-2-49, the board of
4 county commissioners having adopted and in effect a zoning ordinance may act as and perform
5 all the duties and exercise the powers of the board of adjustment. The chair of the board of
6 county commissioners is chair of the board of adjustment as so composed. The concurring vote
7 of at least two-thirds of the members of the board as so composed is necessary to reverse any
8 order, requirement, decision, or determination of any administrative official, or to decide in
9 favor of the appellant on any matter upon which it is required to pass under any zoning
10 ordinance, except as to conditional uses where the county has chosen to adopt a different
11 standard as set forth in subdivision 11-2-53(3), or to effect any variation in the ordinance.

12 Section 6. That § 11-2-61 be amended to read:

13 11-2-61. Any person or persons, jointly or severally, ~~aggrieved by any decision of the board~~
14 ~~of adjustment~~, or any taxpayer, or any officer, department, board, or bureau of the county,
15 aggrieved by any decision of the board of adjustment may present to a court of record a petition
16 duly verified, setting forth that the decision is illegal, in whole or in part, specifying the grounds
17 of the illegality. The petition shall be presented to the court within thirty days after the filing of
18 the decision in the office of the board of adjustment. An appeal to the circuit court may only
19 commence upon filing a bond in the amount of two hundred fifty dollars with one or more
20 sureties to be approved by the county auditor, on condition that the appellant shall prosecute the
21 appeal without delay and pay all costs the appellant may be adjudged to pay in the circuit court.
22 The bond shall be executed to the county and may be sued in the name of the county upon
23 breach of any condition in the bond.

24 Section 7. That § 11-4-19 be amended to read:

1 11-4-19. Appeals to the Board of Adjustment may be taken by any person aggrieved or by
2 any officer, department, board, or bureau of the municipality affected by any decision of the
3 administrative officer which is not a ministerial act or other preliminary act to bring an
4 application or matter before the board for hearing and a final decision on the merits. Such appeal
5 shall be taken within a reasonable time, as provided by the rules of such board, by filing with
6 the officer from whom the appeal is taken and with the board of adjustment a notice of appeal
7 specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith
8 transmit to the board all the papers constituting the record upon which the action appealed from
9 was taken. All appeals relating to a particular action or property shall be consolidated and heard
10 on an expedited basis.

11 Section 8. That § 11-4-20 be amended to read:

12 11-4-20. An appeal to the board of adjustment stays all proceedings in the action appealed
13 from, except ministerial or other preliminary acts necessary to allow consolidated appeals on
14 all matters prior to final decision by the board of adjustment, or unless the officer from whom
15 the appeal is taken shall file a certificate that by reason of facts stated in the certificate a stay
16 would in his opinion cause imminent peril to life or property. In such case proceedings shall not
17 be stayed otherwise than by a restraining order which may be granted by the board of adjustment
18 or by a court of record, on application, on notice to the officer from whom the appeal is taken
19 and on due cause shown.

20 Section 9. That § 11-4-25 be amended to read:

21 11-4-25. Any person or persons, jointly or severally, ~~aggrieved by any decision of the Board~~
22 ~~of Adjustment,~~ or any taxpayer, or any officer, department, board, or bureau of the municipality,
23 aggrieved by any decision of the board of adjustment may present to a court of record a petition
24 duly verified, setting forth that such decision is illegal, in whole or in part, specifying the

1 grounds of the illegality. Such petition shall be presented to the court within thirty days after the
2 filing of the decision in the office of the board. An appeal to the circuit court shall only be
3 commenced upon filing a bond in the amount of two hundred fifty dollars with one or more
4 sureties to be approved by the county auditor conditioned that the appellant shall prosecute the
5 appeal without delay and pay all costs that he may be adjudged to pay in the circuit court. Such
6 bond shall be executed to the county and may be sued in the name of the county upon breach
7 of any condition therein.