



HOUSE BILL No. 5776

May 11, 2000, Introduced by Reps. Jamnick and LaForge and referred to the Committee on Local Government and Urban Policy.

A bill to amend 1921 PA 207, entitled
"City and village zoning act,"
by amending sections 5 and 10 (MCL 125.585 and 125.590), section
5 as amended by 2000 PA 20.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5. (1) The legislative body of a city or village may
2 act as a board of appeals upon questions arising under a zoning
3 ordinance. The legislative body may establish rules to govern
4 its procedure as a board of appeals. In the alternative, the
5 legislative body may appoint a board of appeals consisting of not
6 less than 5 members, each to be appointed for a term of 3 years.
7 Appointments of the first members shall be for terms of 1, 2, and
8 3 years, respectively, so as nearly as possible to provide for
9 the subsequent appointment of an equal number of members each

1 year. After the initial appointments, each member shall hold
2 office for the full 3-year term.

3 (2) Under procedures specified in the zoning ordinance, the
4 legislative body of a city or village may appoint not more than 2
5 alternate members for the same term as regular members of the
6 board of appeals. The alternate members may be called on a
7 rotating basis as specified in the zoning ordinance to sit as
8 regular members of the board of appeals in the absence of a regu-
9 lar member. An alternate member may also be called to serve in
10 the place of a regular member ~~for the purpose of reaching a~~
11 ~~decision~~ on a case in which the regular member has abstained
12 ~~for reasons~~ BECAUSE of conflict of interest. The alternate
13 member called shall serve in the case until a final decision is
14 made. The alternate member has the same voting rights as a regu-
15 lar member of the board of appeals.

16 (3) THE LEGISLATIVE BODY OF A CITY OR VILLAGE MAY AUTHORIZE
17 COMPENSATION OF THE MEMBERS OF THE BOARD OF APPEALS FOR
18 ATTENDANCE AT EACH MEETING.

19 (4) ~~(3)~~ The board of appeals shall hear and decide appeals
20 from and review any order, requirements, decision, or determina-
21 tion made by an administrative official or body charged with the
22 enforcement of an ordinance adopted under this act. The board of
23 appeals shall also hear and decide matters referred to the board
24 or upon which the board is required to pass under an ordinance
25 adopted under this act. For special land use and planned unit
26 development decisions, an appeal may be taken to the board of
27 appeals only if provided for in the zoning ordinance.

1 (5) ~~(4)~~ In a city or village having a population of less
2 than ~~1,000,000~~ 900,000, the concurring vote of a majority of
3 the members of the board is necessary to reverse an order,
4 requirement, decision, or determination of an administrative
5 official or body, or to decide in favor of the applicant a matter
6 upon which the board is required to pass under an ordinance, or
7 to effect a variation in an ordinance except that a concurring
8 vote of 2/3 of the members of the board is necessary to grant a
9 variance from uses of land permitted in an ordinance. In a city
10 having a population of ~~1,000,000~~ 900,000 or more, the concur-
11 ring vote of 2/3 of the members of the board is necessary to
12 reverse an order, requirement, decision, or determination of an
13 administrative official or body, or to decide in favor of the
14 applicant a matter upon which the board is required to pass under
15 an ordinance, or to grant a variance in an ordinance.

16 (6) ~~(5)~~ An appeal may be taken by a person aggrieved, or
17 by an officer, department, board, or bureau of the city or
18 village. In addition, a variance in an ordinance may be applied
19 for and granted pursuant to section 4 of the uniform condemnation
20 procedures act, 1980 PA 87, MCL 213.54, and this act. ~~A board~~
21 ~~of rules or board of building appeals of a city or village may be~~
22 ~~enlarged to consist of not less than 5 members, and these may be~~
23 ~~appointed as the board of appeals as provided in this section.~~

24 (7) ~~(6)~~ An appeal under this section shall be taken ~~,~~
25 within a time prescribed by the board of appeals by general rule
26 ~~,~~ by filing, with the officer or body from whom the appeal is
27 taken and with the board of appeals, a notice of appeal

1 specifying the grounds for the appeal. The officer or body from
2 whom the appeal is taken shall immediately transmit to the board
3 all the papers constituting the record upon which the action
4 appealed from was taken.

5 (8) ~~-(7)-~~ An appeal under this section stays all proceedings
6 in furtherance of the action appealed from unless the officer or
7 body from whom the appeal is taken certifies to the board of
8 appeals, after the notice of appeal is filed, that by reason of
9 facts stated in the certificate, a stay would in the opinion of
10 the officer or body cause imminent peril to life or property. If
11 such a certification is filed, the proceedings shall only be
12 stayed by a restraining order. A restraining order may be
13 granted by the board of appeals or by the circuit court, on
14 application, on notice to the officer or body from whom the
15 appeal is taken and on due cause shown.

16 (9) ~~-(8)-~~ The board of appeals shall fix a reasonable time
17 for the hearing of the appeal and give notice of the appeal to
18 the persons to whom real property within 300 feet of the premises
19 in question is assessed, and to the occupants of single and
20 2-family dwellings within 300 feet. The notice shall be deliv-
21 ered personally or by mail addressed to the respective owners and
22 tenants at the address given in the last assessment roll. If a
23 tenant's name is not known, the term "occupant" may be used.
24 Upon the hearing, a party may appear in person or by AN agent or
25 ~~by~~ attorney.

26 (10) ~~-(9)-~~ The board of appeals shall decide the appeal
27 within a reasonable time. The board of appeals may reverse or

1 affirm, wholly or partly, or may modify the order, requirement,
2 decision, or determination appealed from. ~~and~~ THE BOARD OF
3 APPEALS shall make an order, requirement, decision, or determina-
4 tion as in the board's opinion ~~ought to~~ SHOULD be made in the
5 ~~premises, and to that end shall have~~ MATTER, AND FOR THAT PUR-
6 POSE HAS all the powers of the officer or body from whom the
7 appeal is taken. If there are practical difficulties or unneces-
8 sary hardship in carrying out the strict letter of the ordinance,
9 the board of appeals may in passing upon appeals grant a variance
10 in any of its rules or provisions relating to the construction
11 OF, ~~or~~ structural changes in, equipment FOR, or alteration of
12 buildings or structures, or the use of land, buildings, or struc-
13 tures, so that the spirit of the ordinance ~~shall be~~ IS
14 observed, public safety secured, and substantial justice done.

15 (11) ~~(10)~~ The board of appeals may impose conditions upon
16 an affirmative decision, as provided in section 4c(2). ~~The leg-~~
17 ~~islative body of a city or village may authorize the remuneration~~
18 ~~of the members of the board for attendance at each meeting.~~

19 (12) ~~(11)~~ The decision of the board of appeals is final.
20 However, SUBJECT TO SECTION 10(2), a person having an interest
21 affected by the zoning ordinance may appeal to the circuit
22 court. Upon appeal, the circuit court shall review the record
23 and decision of the board of appeals to ensure that the decision
24 meets all of the following requirements:

25 (a) Complies with the constitution and laws of this state.

26 (b) Is based upon proper procedure.

1 (c) Is supported by competent, material, and substantial
2 evidence on the record.

3 (d) Represents the reasonable exercise of discretion granted
4 by law to the board of appeals.

5 (13) ~~(12)~~ If the court finds the record of the board of
6 appeals inadequate to make the review required by this section,
7 or that additional material evidence exists that with good reason
8 was not presented to the board of appeals, the court shall order
9 further proceedings before the board of appeals on conditions
10 that the court considers proper. The board of appeals may modify
11 its findings and decision as a result of the new proceedings, or
12 may affirm the original decision. The supplementary record and
13 decision shall be filed with the court.

14 (14) ~~(13)~~ As a result of ~~the review required by this~~
15 ~~section~~ AN APPEAL UNDER SUBSECTION (12), the court may affirm,
16 reverse, or modify the decision of the board of appeals.

17 Sec. 10. (1) ~~Any~~ A party aggrieved by ~~any~~ AN order,
18 determination, or decision of ~~any~~ AN officer, agency, board, OR
19 commission, THE board of appeals, or the legislative body of
20 ~~any~~ A city or village, made pursuant to ~~the provisions of~~
21 section 3a ~~of this act~~ may obtain a review thereof both on the
22 facts and the law, in the circuit court for the county ~~wherein~~
23 WHERE ALL OR PART OF the property involved ~~or some part thereof,~~
24 is situated: ~~Provided, That application is made to~~ IS LOCATED.
25 HOWEVER, THE AGGRIEVED PARTY SHALL FILE THE APPLICATION FOR
26 REVIEW WITH the court within 30 days after delivery of a copy of
27 ~~such~~ THE order, determination, or decision, by ~~certiorari~~

1 WRIT OF SUPERINTENDING CONTROL or by any other method permissible
2 under the rules and practices of the circuit courts. ~~of this~~
3 ~~state.~~ On such review, the courts ~~shall~~ have jurisdiction to
4 make ~~such~~ further orders ~~in respect thereto~~ as justice may
5 require. An appeal may be had from the decision of any circuit
6 court ~~or condemnation court~~ to the supreme court in the same
7 manner as provided by the laws of this state with respect to
8 appeals from circuit courts. ~~; and in the event of~~ ON such AN
9 appeal, the issue of ~~non-conformity~~ NONCONFORMITY may be
10 reviewed as an issue of law in the supreme court.

11 (2) AN AGREEMENT TO PURCHASE PROPERTY CONTINGENT ON AN
12 ORDER, DETERMINATION, OR DECISION OF AN OFFICER, AGENCY, BOARD,
13 OR COMMISSION, THE BOARD OF APPEALS, OR THE LEGISLATIVE BODY OF A
14 CITY OR VILLAGE UNDER THIS ACT OR UNDER AN ORDINANCE ADOPTED
15 UNDER THIS ACT IS NOT A BASIS FOR STANDING IN A JUDICIAL PROCEED-
16 ING, INCLUDING BUT NOT LIMITED TO A PROCEEDING UNDER SUBSECTION
17 (1), CHALLENGING SUCH AN ORDER, DETERMINATION, OR DECISION.

18 (3) AN AGREEMENT TO PURCHASE PROPERTY CONTINGENT ON AN
19 AMENDMENT TO AN ORDINANCE ADOPTED UNDER THIS ACT IS NOT A BASIS
20 FOR STANDING IN A JUDICIAL PROCEEDING, INCLUDING BUT NOT LIMITED
21 TO A PROCEEDING UNDER SUBSECTION (1), CHALLENGING AN ORDINANCE
22 ADOPTED UNDER THIS ACT.