

SENATE BILL NO. 518

April 15, 1999, Introduced by Senators JOHNSON and MC MANUS and referred to the Committee on Local, Urban and State Affairs.

A bill to amend 1921 PA 207, entitled
"City and village zoning act,"
by amending section 5 (MCL 125.585), as amended by 1986 PA 191.

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, ~~if the~~
5 ~~legislative body of a city or village desires,~~ the legislative
6 body may appoint a board of appeals consisting of not less than 5
7 members, each to be appointed for a term of 3 years.
8 Appointments of the first members shall be for terms of 1, 2, and
9 3 years, respectively, so as nearly as possible to provide for
10 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) ~~In accord with~~ UNDER procedures specified in the
4 zoning ordinance, the legislative body of a city or village may
5 appoint not more than 2 alternate members for the same term as
6 regular members of the board of appeals. The alternate members
7 may be called on a rotating basis as specified in the zoning
8 ordinance to sit as regular members of the board of appeals in
9 the absence of a regular member. An alternate member may also be
10 called to serve in the place of a regular member for the purpose
11 of reaching a decision on a case in which the regular member has
12 abstained for reasons of conflict of interest. The alternate
13 member ~~having been appointed~~ CALLED shall serve in the case
14 until a final decision ~~has been~~ IS made. The alternate member
15 ~~shall have~~ HAS the same voting rights as a regular member of
16 the board of appeals.

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

1 (4) In a city or village having a population of less than
2 1,000,000, the concurring vote of a majority of the members of
3 the board ~~shall be~~ IS necessary to reverse an order, require-
4 ment, decision, or determination of an administrative official or
5 body, or to decide in favor of the applicant a matter upon which
6 the board is required to pass under an ordinance, or to effect a
7 variation in an ordinance except that a concurring vote of 2/3 of
8 the members of the board ~~shall be~~ IS necessary to grant a vari-
9 ance from uses of land permitted in an ordinance. In a city
10 having a population of 1,000,000 or more, the concurring vote of
11 2/3 of the members of the board ~~shall be~~ 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 ~~effect a variation~~ GRANT A VARIANCE in an
16 ordinance.

17 (5) An appeal may be taken by a person aggrieved, or by an
18 officer, department, board, or bureau of the city or village.
19 ~~If a city or village has created or may create a~~ IN ADDITION,
20 AN AGENCY MAY SEEK A VARIANCE FROM THE BOARD OF APPEALS UNDER
21 SECTION 4 OF THE UNIFORM CONDEMNATION PROCEDURES ACT, 1980 PA 87,
22 MCL 213.54. A board of rules or board of building appeals ~~, that~~
23 ~~board~~ OF A CITY OR VILLAGE may be enlarged to consist of not
24 less than 5 members, and these may be appointed as the board of
25 appeals as provided in this section.

26 (6) An appeal under this section shall be taken, within a
27 time prescribed by the board of appeals by general rule, by ~~the~~

1 filing, with the officer or body from whom the appeal is taken
2 and with the board of appeals, ~~of~~ a notice of appeal specifying
3 the grounds for the appeal. The officer or body from whom the
4 appeal is taken shall immediately transmit to the board all the
5 papers constituting the record upon which the action appealed
6 from was taken.

7 (7) An appeal under this section stays all proceedings in
8 furtherance of the action appealed from unless the officer or
9 body from whom the appeal is taken certifies to the board of
10 appeals, after the notice of appeal is filed, that by reason of
11 facts stated in the certificate, a stay would in the opinion of
12 the officer or body cause imminent peril to life or property. ~~—~~
13 ~~in which case~~ IF SUCH A CERTIFICATION IS FILED, the proceedings
14 shall ~~not~~ ONLY be stayed ~~otherwise than~~ by a restraining
15 order. ~~which~~ A RESTRAINING ORDER may be granted by the board
16 of appeals or by the circuit court, on application, on notice to
17 the officer or body from whom the appeal is taken and on due
18 cause shown.

19 (8) The board of appeals shall fix a reasonable time for the
20 hearing of the appeal and give ~~due~~ notice of the appeal to the
21 persons to whom real property within 300 feet of the premises in
22 question is assessed, and to the occupants of single and 2-family
23 dwellings within 300 feet. ~~—, the notice to~~ THE NOTICE SHALL be
24 delivered personally or by mail addressed to the respective
25 owners and tenants at the address given in the last assessment
26 roll. ~~The board of appeals shall decide the appeal within a~~
27 ~~reasonable time.~~ If ~~the~~ A tenant's name is not known, the term

1 "occupant" may be used. Upon the hearing, a party may appear in
2 person or by agent or by attorney.

3 (9) THE BOARD OF APPEALS SHALL DECIDE THE APPEAL WITHIN A
4 REASONABLE TIME. The board of appeals may reverse or affirm,
5 wholly or partly, or may modify the order, requirement, decision,
6 or determination appealed from and shall make an order, require-
7 ment, decision, or determination as in the board's opinion ought
8 to be made in the premises, and to that end shall have all the
9 powers of the officer or body from whom the appeal is taken. If
10 there are practical difficulties or unnecessary hardship in ~~the~~
11 ~~way of~~ carrying out the strict letter of the ordinance, the
12 board of appeals may in passing upon appeals ~~vary or modify~~
13 GRANT A VARIANCE IN any of its rules or provisions relating to
14 the construction, or structural changes in, equipment, or alter-
15 ation of buildings or structures, or the use of land, buildings,
16 or structures, so that the spirit of the ordinance shall be
17 observed, public safety secured, and substantial justice done.

18 (10) The board of appeals may impose conditions upon an
19 affirmative decision, as provided in section 4c(2). The legisla-
20 tive body of ~~any~~ A city or village may authorize the remunera-
21 tion of the members of the board for attendance at each meeting.

22 (11) The decision of the board of appeals ~~shall be~~ IS
23 final. However, a person having an interest affected by the
24 zoning ordinance may appeal to the circuit court. Upon appeal,
25 the circuit court shall review the record and decision of the
26 board of appeals to ~~insure~~ ENSURE that the decision meets all
27 of the following REQUIREMENTS:

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

2 (b) Is based upon proper procedure.

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

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

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