

HOUSE BILL No. 4264

February 25, 2003, Introduced by Reps. Pappageorge, Meyer, Rocca, Daniels, LaSata, Garfield, Vagnozzi, Vander Veen, Bieda, Woodward, Caul and Stahl 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 4a, 5, 11, and 20 (MCL 125.584a, 125.585,
125.591, and 125.600), section 5 as amended by 2000 PA 20,
section 11 as amended by 1986 PA 191, and section 20 as amended
by 2001 PA 179, and by adding section 9a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4a. (1) A city or village may provide in a zoning
2 ordinance for special land uses which shall be permitted in a
3 zoning district only after review and approval by the commission
4 appointed to formulate and subsequently administer the zoning
5 ordinance, an official charged with administering the ordinance,
6 or the legislative body. The ordinance shall specify the
7 following:

8 (a) The special land uses and activities eligible for

1 approval consideration and the body or official charged with
2 reviewing special land uses and granting approval.

3 (b) The requirements and standards upon which decisions on
4 requests for special land use approval shall be based.

5 (c) The procedures and supporting materials required for
6 application, review, and approval.

7 (2) Upon receipt of an application for a special land use
8 ~~which~~ **that** requires a decision on discretionary grounds, 1
9 notice that a request for special land use approval has been
10 received shall be published in a newspaper of general circulation
11 in the city or village and shall be sent by mail or personal
12 delivery to **all of the following:**

13 (a) **The** owners of ~~property for which approval is being~~
14 ~~considered, to all persons~~ **the property that is the subject of**
15 **the special land use request.**

16 (b) **Each person** to whom **is assessed** real property ~~is~~
17 ~~assessed~~ within 300 feet of the boundary of the property ~~in~~
18 ~~question, and to the~~ **that is the subject of the request.**

19 (c) **The** occupants of all structures within 300 feet ~~—except~~
20 ~~that the~~ **of the property that is the subject of the request.**

21 (d) **If the request concerns a sign or sign structure, to the**
22 **legislative body of any other city or village, or of a township,**
23 **with a boundary within 1,500 feet of the boundary of the property**
24 **that is the subject of the request.**

25 (3) **The notice provided for in subsection (2)** shall be given
26 not less than 5 and not more than 15 days before the application
27 will be considered. If the name of the occupant is not known,

1 the term "occupant" may be used in making notification.
2 Notification need not be given to more than 1 occupant of a
3 structure, except that if a structure contains more than 1
4 dwelling unit or spatial area owned or leased by different
5 individuals, partnerships, businesses or organizations, 1
6 occupant of each unit or spatial area shall receive notice. In
7 the case of a single structure containing more than 4 dwelling
8 units or other distinct spatial areas owned or leased by
9 different individuals, partnerships, businesses, or
10 organizations, notice may be given to the manager or owner of the
11 structure who shall be requested to post the notice at the
12 primary entrance to the structure. The notice shall **do all of**
13 **the following:**
14 (a) Describe the nature of the special land use request.
15 (b) Indicate the property ~~which~~ **that** is the subject of the
16 special land use request.
17 (c) State when and where the special land use request will be
18 considered.
19 (d) Indicate when and where written comments will be received
20 concerning the request.
21 (e) Indicate that a public hearing on the special land use
22 request may be requested by ~~a property owner~~ **an owner of**
23 **property** or the occupant of a structure located within 300 feet
24 of the boundary of the property ~~being considered for a special~~
25 ~~use~~ **that is the subject of the request or by the legislative**
26 **body of any other city or village, or of a township, with a**
27 **boundary within 1,500 feet of the boundary of that property.**

1 (4) ~~-(3)-~~ At the initiative of the body or official
2 responsible for approving special land uses, or upon the request
3 of the applicant for special land use authorization, or a
4 ~~property owner or the occupant of a structure located within 300~~
5 ~~feet of the boundary of the property being considered for a~~
6 ~~special land use~~ **person described in subsection (3)(e)**, a public
7 hearing ~~with notification as required for a notice of a request~~
8 ~~for special land use approval as provided in subsection (2)~~
9 shall be held before a decision on the special land use request
10 which is based on discretionary grounds. **Notice of the public**
11 **hearing shall be given in the same manner as required for notice**
12 **of a request for special land use approval under subsection (3).**
13 If the applicant or the body or official responsible for
14 approving special land uses requests a public hearing, only
15 notification of the public hearing need be made.

16 (5) A decision on a special land use request ~~which~~ **that** is
17 based on discretionary grounds shall not be made unless
18 notification of the request for special land use approval, or
19 notification of a public hearing on a special land use request is
20 given as required by this section.

21 (6) ~~-(4)-~~ The body or official designated in the zoning
22 ordinance to review and approve special land uses may deny,
23 approve, or approve with conditions, requests for special land
24 use approval. The decision on a special land use shall be
25 incorporated in a statement of conclusions relative to the
26 special land use under consideration. The decision shall specify
27 the basis for the decision, and any conditions imposed.

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

12 (2) Under procedures specified in the zoning ordinance, the
13 legislative body of a city or village may appoint not more than 2
14 alternate members for the same term as regular members of the
15 board of appeals. The alternate members may be called on a
16 rotating basis as specified in the zoning ordinance to ~~sit as~~
17 ~~regular members of the board of appeals~~ **serve** in the absence of
18 a regular member. An alternate member may also be called to
19 serve ~~in the place of a regular member~~ for the purpose of
20 reaching a decision on a case in which ~~the~~ **a** regular member has
21 abstained for reasons of conflict of interest. The alternate
22 member called shall serve in the case until a final decision is
23 made. The alternate member has the same voting rights as a
24 regular member of the board of appeals.

25 **(3) The legislative body of a city or village may authorize**
26 **the remuneration of the members of the board for attendance at**
27 **each meeting.**

1 (4) ~~—(3)—~~ The board of appeals shall hear and decide appeals
2 from and review any order, ~~—requirements—~~ **requirement**, decision,
3 or determination made by an administrative official or body
4 charged with the enforcement of an ordinance adopted under this
5 act. The board of appeals shall also hear and decide matters
6 referred to the board or upon which the board is required to pass
7 under an ordinance adopted under this act. For special land use
8 and planned unit development decisions, an appeal may be taken to
9 the board of appeals only if provided for in the zoning
10 ordinance.

11 (5) ~~—(4)—~~ In a city or village having a population of less
12 than 1,000,000, the concurring vote of a majority of the members
13 of the board is necessary to reverse an order, requirement,
14 decision, or determination of an administrative official or body,
15 or to decide in favor of the applicant a matter upon which the
16 board is required to pass under an ordinance, or to effect a
17 variation in an ordinance except that a concurring vote of 2/3 of
18 the members of the board is necessary to grant a variance from
19 uses of land permitted in an ordinance. In a city having a
20 population of 1,000,000 or more, the concurring vote of 2/3 of
21 the members of the board is necessary to reverse an order,
22 requirement, decision, or determination of an administrative
23 official or body, or to decide in favor of the applicant a matter
24 upon which the board is required to pass under an ordinance, or
25 to grant a variance in an ordinance.

26 (6) ~~—(5)—~~ An appeal may be taken by a person aggrieved, or by
27 an officer, department, board, or bureau of the city or village.

1 In addition, a variance in an ordinance may be applied for and
2 granted pursuant to section 4 of the uniform condemnation
3 procedures act, 1980 PA 87, MCL 213.54, and this act. A board of
4 rules or board of building appeals of a city or village may be
5 enlarged to consist of not less than 5 members, and these may be
6 appointed as the board of appeals as provided in this section.

7 (7) ~~-(6)-~~ An appeal under this section shall be taken, within
8 a time prescribed by the board of appeals by general rule, by
9 filing, with the officer or body from whom the appeal is taken
10 and with the board of appeals, a notice of appeal specifying the
11 grounds for the appeal. The officer or body from whom the appeal
12 is taken shall immediately transmit to the board all the papers
13 constituting the record upon which the action appealed from was
14 taken.

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

26 (9) ~~-(8)-~~ The board of appeals shall fix a reasonable time
27 for the hearing of the appeal and give notice of the appeal to

1 the persons to whom real property within 300 feet of the premises
2 in question is assessed, ~~and~~ to the occupants of single and
3 2-family dwellings within 300 feet, **and, if the appeal is from a**
4 **decision on a special land use request concerning a sign or sign**
5 **structure, to the legislative body of any other city or village,**
6 **or township, with a boundary within 1,500 feet of the boundary of**
7 **the property that is the subject of the appeal.** The notice shall
8 be delivered personally or by mail. **Notice to property owners**
9 **and occupants shall be** addressed to the respective owners and
10 ~~tenants~~ **occupants** at the address given in the last assessment
11 roll. If ~~a tenant's~~ **an occupant's** name is not known, the term
12 "occupant" may be used. Upon the hearing, a party may appear in
13 person or by agent or by attorney.

14 (10) ~~(9)~~ The board of appeals shall decide the appeal
15 within a reasonable time. The board of appeals may reverse or
16 affirm, wholly or partly, or may modify the order, requirement,
17 decision, or determination appealed from and shall make an order,
18 requirement, decision, or determination as in the board's opinion
19 ought to be made in the premises, and to that end shall have all
20 the powers of the officer or body from whom the appeal is taken.
21 If there are practical difficulties or unnecessary hardship in
22 carrying out the strict letter of the ordinance, the board of
23 appeals may in passing upon appeals grant a variance in any of
24 its rules or provisions relating to the construction, or
25 structural changes in, equipment, or alteration of buildings or
26 structures, or the use of land, buildings, or structures, so that
27 the spirit of the ordinance shall be observed, public safety

1 secured, and substantial justice done.

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

7 (12) ~~-(11)-~~ The decision of the board of appeals is final.
8 However, a person having an interest affected by the zoning
9 ordinance may appeal to the circuit court. Upon appeal, the
10 circuit court shall review the record and decision of the board
11 of appeals to ensure that the decision meets all of the following
12 requirements:

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

14 (b) Is based upon proper procedure.

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

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

19 (13) ~~-(12)-~~ If the court finds the record of the board of
20 appeals inadequate to make the review required by this section,
21 or that additional material evidence exists that with good reason
22 was not presented to the board of appeals, the court shall order
23 further proceedings before the board of appeals on conditions
24 that the court considers proper. The board of appeals may modify
25 its findings and decision as a result of the new proceedings, or
26 may affirm the original decision. The supplementary record and
27 decision shall be filed with the court.

1 **(14)** ~~—(13)—~~ As a result of the review required by this
2 section, the court may affirm, reverse, or modify the decision of
3 the board of appeals.

4 **Sec. 9a.** If a city or village is a party in a judicial
5 action arising from a decision on a special land use request
6 concerning a sign or sign structure, any other city or village,
7 or township, with a boundary within 1,500 feet of the boundary of
8 the property that is the subject of the action may intervene in
9 the action with the approval of the legislative body of the city
10 or village that is a party to the action or under any other
11 circumstances provided by law or the Michigan court rules.

12 **Sec. 11.** Any person required to be given notice under
13 section ~~—5(8)—~~ **5(9)** shall be a proper and necessary party to any
14 action for review instituted under section 10 and shall be given
15 notice personally or by registered or certified mail of
16 proceedings under section 10 in the same manner as provided in
17 section ~~—5(8)—~~ **5(9)**. If any person receiving notice under this
18 section fails within 20 days of receiving that notice to enter an
19 appearance in the court in which the proceedings were instituted,
20 further notice to that person of subsequent proceedings is not
21 required and the court may proceed to determine the issues.

22 **Sec. 20.** (1) As used in this act:

23 (a) "Agricultural land" means substantially undeveloped land
24 devoted to the production of plants and animals useful to humans,
25 including forage and sod crops; grains, feed crops, and field
26 crops; dairy products; poultry and poultry products; livestock,
27 including breeding and grazing of cattle, swine, and similar

1 animals; berries; herbs; flowers; seeds; grasses; nursery stock;
2 fruits; vegetables; Christmas trees; and other similar uses and
3 activities.

4 (b) "Airport" means an airport licensed by the Michigan
5 department of transportation, bureau of aeronautics under section
6 86 of the aeronautics code of the state of Michigan, 1945 PA 327,
7 MCL 259.86.

8 (c) "Airport approach plan" means a plan, or an amendment to
9 a plan, adopted under section 12 of the airport zoning act, 1950
10 (Ex Sess) PA 23, MCL 259.442, and filed with the commission
11 appointed to recommend zoning regulations for the city or village
12 under section 151 of the aeronautics code of the state of
13 Michigan, 1945 PA 327, MCL 259.151.

14 (d) "Airport layout plan" means a plan, or an amendment to a
15 plan, that shows current or proposed layout of an airport, that
16 is approved by the Michigan aeronautics commission, and that is
17 filed with the commission appointed to recommend zoning
18 regulations for the city or village under section 151 of the
19 aeronautics code of the state of Michigan, 1945 PA 327,
20 MCL 259.151.

21 (e) "Airport manager" means that term as defined in section
22 10 of the aeronautics code of the state of Michigan, 1945 PA 327,
23 MCL 259.10.

24 (f) "Airport zoning regulations" means airport zoning
25 regulations under the airport zoning act, 1950 (Ex Sess) PA 23,
26 MCL 259.431 to 259.465, for an airport hazard area that lies in
27 whole or part in the area affected by a zoning ordinance under

1 this act.

2 (g) "Conservation easement" means that term as defined in
3 section 2140 of the natural resources and environmental
4 protection act, 1994 PA 451, MCL 324.2140.

5 (h) "Development rights" means the rights to develop land to
6 the maximum intensity of development authorized by law.

7 (i) "Development rights ordinance" means an ordinance, which
8 may comprise part of a zoning ordinance, adopted under
9 section 13.

10 (j) "Greenway" means a contiguous or linear open space,
11 including habitats, wildlife corridors, and trails, that link
12 parks, nature reserves, cultural features, or historic sites with
13 each other, for recreation and conservation purposes.

14 (k) "Intensity of development" means the height, bulk, area,
15 density, setback, use, and other similar characteristics of
16 development.

17 (l) "Other eligible land" means land that has a common
18 property line with agricultural land from which development
19 rights have been purchased and that is not divided from that
20 agricultural land by a state or federal limited access highway.

21 (m) "PDR program" means a program under section 14 for the
22 purchase of development rights by a city or village.

23 (n) **"Sign" and "sign structure" mean those terms as defined**
24 **in section 2 of the highway advertising act of 1972, 1972 PA 106,**
25 **MCL 252.302.**

26 (o) ~~-(n)-~~ "Undeveloped state" means a natural state
27 preserving natural resources, natural features, or scenic or

1 wooded conditions; agricultural use; open space; or a similar use
2 or condition. Land in an undeveloped state does not include a
3 golf course but may include a recreational trail, picnic area,
4 children's play area, greenway, or linear park. Land in an
5 undeveloped state may be, but is not required to be, dedicated to
6 the use of the public.

7 (2) This act shall be known and may be cited as the "city and
8 village zoning act".