

SENATE BILL No. 608

July 3, 2003, Introduced by Senator BRATER and referred to the Committee on Natural Resources and Environmental Affairs.

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, and by adding section 5c.

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
10 year. After the initial appointments, each member shall hold

1 office for the full 3-year term.

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

15 **(3) The legislative body of a city or village may authorize**
16 **compensation of the members of the board of appeals for**
17 **attendance at each meeting.**

18 **(4) —(3)—** The board of appeals shall hear and decide appeals
19 from and review any order, ~~requirements~~ **requirement**, decision,
20 or determination made by an administrative official or body
21 charged with the enforcement of an ordinance adopted under this
22 act. The board of appeals shall also hear and decide matters
23 referred to the board or upon which the board is required to pass
24 under an ordinance adopted under this act. For special land use
25 and planned unit development decisions, an appeal may be taken to
26 the board of appeals only if provided for in the zoning
27 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~~ **grant a variance** in an ordinance. ~~except~~
 8 ~~that~~ **However, in such a city,** a concurring vote of 2/3 of the
 9 members of the board is necessary to grant a variance from uses
 10 of land permitted in an ordinance. In a city having a population
 11 of ~~1,000,000~~ **900,000** or more, the concurring vote of 2/3 of the
 12 members of the board is necessary to reverse an order,
 13 requirement, decision, or determination of an administrative
 14 official or body, or to decide in favor of the applicant a matter
 15 upon which the board is required to pass under an ordinance, or
 16 to grant a variance in an ordinance.

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

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

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

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

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

27 **(10)** ~~—(9)—~~ The board of appeals shall decide the appeal

1 within a reasonable time. The board of appeals may reverse or
 2 affirm, wholly or partly, or may modify the order, requirement,
 3 decision, or determination appealed from. ~~and~~ **The board of**
 4 **appeals** shall make an order, requirement, decision, or
 5 determination ~~as that~~ in the board's opinion ~~ought to~~ **should**
 6 be made in the ~~premises, and to that end shall have~~ **matter, and**
 7 **for that purpose has** all the powers of the officer or body from
 8 whom the appeal is taken. If there are practical difficulties or
 9 unnecessary hardship in carrying out the strict letter of the
 10 ordinance, the board of appeals may in passing upon appeals grant
 11 a variance in any of its rules or provisions relating to the
 12 construction **of**, ~~or~~ structural changes in, equipment **for**, or
 13 alteration of buildings or structures, or the use of land,
 14 buildings, or structures, so that the spirit of the ordinance
 15 ~~shall be~~ **is** observed, public safety secured, and substantial
 16 justice done.

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

22 (12) ~~(11)~~ The decision of the board of appeals is final.
 23 However, **subject to section 5c**, a person having an interest
 24 affected by the zoning ordinance may appeal to the circuit
 25 court. Upon appeal, the circuit court shall review the record
 26 and decision of the board of appeals to ensure that the decision
 27 meets all of the following requirements:

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

(b) Is based upon proper procedure.

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

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

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

(14) ~~-(13)-~~ As a result of ~~the review required by this section~~ **an appeal under subsection (12)**, the court may affirm, reverse, or modify the decision of the board of appeals.

Sec. 5c. An option to purchase property is not a basis for standing in a judicial proceeding challenging either of the following:

(a) An ordinance adopted under this act.

(b) An order, determination, or decision of an officer, agency, board, or commission, the board of appeals, or the legislative body of the city or village under this act or under an ordinance adopted under this act.

Sec. 10. ~~Any~~ **Subject to section 5c, a party aggrieved by**

1 ~~any~~ **an** order, determination, or decision of ~~any~~ **an** officer,
 2 agency, board, **or** commission, **the** board of appeals, or the
 3 legislative body of ~~any~~ **a** city or village, made pursuant to
 4 ~~the provisions of~~ section 3a ~~of this act~~ may obtain a review
 5 thereof both on the facts and the law, in the circuit court for
 6 the county ~~wherein~~ **where all or part of** the property involved
 7 ~~or some part thereof, is situated:~~ ~~Provided, That application~~
 8 ~~is made to~~ **is located.** **However, the aggrieved party shall file**
 9 **the application for review with** the court within 30 days after
 10 delivery of a copy of ~~such~~ **the** order, determination, or
 11 decision, by ~~certiorari~~ **writ of superintending control** or by
 12 any other method permissible under the rules and practices of the
 13 circuit courts. ~~of this state.~~ On such review, the courts
 14 ~~shall~~ have jurisdiction to make ~~such~~ further orders ~~in~~
 15 ~~respect thereto~~ as justice may require. ~~An appeal may be had~~
 16 ~~from the~~ **The** decision of any circuit court ~~or condemnation~~
 17 ~~court~~ **may be appealed** to the supreme court in the same manner as
 18 provided by the laws of this state with respect to appeals from
 19 circuit courts. ~~; and in the event of~~ **On such an** appeal, the
 20 issue of ~~non-conformity~~ **nonconformity** may be reviewed as an
 21 issue of law in the supreme court.