

HOUSE BILL No. 5926

March 9, 2010, Introduced by Rep. Walsh and referred to the Committee on Intergovernmental and Regional Affairs.

A bill to amend 2006 PA 110, entitled "Michigan zoning enabling act," by amending sections 208, 601, and 606 (MCL 125.3208, 125.3601, and 125.3606), as amended by 2008 PA 12.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 208. (1) If the use of a dwelling, building, or structure
2 or of the land is lawful at the time of enactment of a zoning
3 ordinance or an amendment to a zoning ordinance, then that use may
4 be continued although the use does not conform to the zoning
5 ordinance or amendment. This subsection is intended to codify the
6 law as it existed before July 1, 2006 in section ~~216(1)~~**16(1)** of
7 the former county zoning act, 1943 PA 183, section ~~286(1)~~**16(1)** of

1 the former township zoning act, 1943 PA 184, and section ~~583a(1)~~
2 **3A(1)** of the former city and village zoning act, 1921 PA 207, as
3 they applied to counties, townships, and cities and villages,
4 respectively, and shall be construed as a continuation of those
5 laws and not as **A new enactments—ENACTMENT**.

6 (2) The legislative body may provide in a zoning ordinance for
7 the completion, resumption, restoration, reconstruction, extension,
8 or substitution of nonconforming uses or structures upon terms and
9 conditions provided in the zoning ordinance. In establishing terms
10 for the completion, resumption, restoration, reconstruction,
11 extension, or substitution of nonconforming uses or structures,
12 different classes of nonconforming uses may be established in the
13 zoning ordinance with different requirements applicable to each
14 class.

15 (3) The legislative body may acquire, by purchase,
16 condemnation, or otherwise, private property or an interest in
17 private property for the removal of nonconforming uses and
18 structures. The legislative body may provide that the cost and
19 expense of acquiring private property may be paid from general
20 funds or assessed to a special district in accordance with the
21 applicable statutory provisions relating to the creation and
22 operation of special assessment districts for public improvements
23 in local units of government. Property acquired under this
24 subsection by a city or village shall not be used for public
25 housing.

26 (4) The elimination of the nonconforming uses and structures
27 in a zoning district is declared to be for a public purpose and for

1 a public use. The legislative body may institute proceedings for
2 condemnation of nonconforming uses and structures under 1911 PA
3 149, MCL 213.21 to 213.25.

4 Sec. 601. (1) A zoning ordinance shall create a zoning board
5 of appeals. A zoning board of appeals in existence on June 30, 2006
6 may continue to act as the zoning board of appeals subject to this
7 act. Subject to subsection (2), members of a zoning board of
8 appeals shall be appointed by majority vote of the members of the
9 legislative body serving.

10 (2) The legislative body of a city or village may act as a
11 zoning board of appeals and may establish rules to govern its
12 procedure as a zoning board of appeals.

13 (3) A zoning board of appeals shall be composed of not fewer
14 than 5 members if the local unit of government has a population of
15 5,000 or more or not fewer than 3 members if the local unit of
16 government has a population of less than 5,000. The number of
17 members of the zoning board of appeals shall be specified in the
18 zoning ordinance.

19 (4) In a county or township, 1 of the regular members of the
20 zoning board of appeals shall be a member of the zoning commission,
21 or of the planning commission if the planning commission is
22 functioning as the zoning commission. In a city or village, 1 of
23 the regular members of the zoning board of appeals may be a member
24 of the zoning commission, or of the planning commission if the
25 planning commission is functioning as the zoning commission, unless
26 the legislative body acts as the zoning board of appeals under
27 subsection (2). A decision made by a city or village zoning board

1 of appeals before ~~the effective date of the 2007 amendatory act~~
2 ~~that amended this section~~ **FEBRUARY 29, 2008** is not invalidated by
3 the failure of the zoning board of appeals to include a member of
4 the city or village zoning commission or planning commission, as
5 was required by this subsection before that ~~amendatory act took~~
6 ~~effect~~ **DATE**.

7 (5) The remaining regular members of a zoning board of
8 appeals, and any alternate members under subsection (7), shall be
9 selected from the electors of the local unit of government residing
10 within the zoning jurisdiction of that local unit of government or,
11 in the case of a county, residing within the county but outside of
12 any city or village. The members selected shall be representative
13 of the population distribution and of the various interests present
14 in the local unit of government.

15 (6) Subject to subsection (2), 1 regular or alternate member
16 of a zoning board of appeals may be a member of the legislative
17 body. Such a member shall not serve as chairperson of the zoning
18 board of appeals. An employee or contractor of the legislative body
19 may not serve as a member of the zoning board of appeals.

20 (7) The legislative body may appoint to the zoning board of
21 appeals not more than 2 alternate members for the same term as
22 regular members. An alternate member may be called as specified in
23 the zoning ordinance to serve as a member of the zoning board of
24 appeals in the absence of a regular member if the regular member
25 will be unable to attend 1 or more meetings. An alternate member
26 may also be called to serve as a member for the purpose of reaching
27 a decision on a case in which the member has abstained for reasons

1 of conflict of interest. The alternate member appointed shall serve
2 in the case until a final decision is made. An alternate member
3 serving on the zoning board of appeals has the same voting rights
4 as a regular member.

5 (8) A member of the zoning board of appeals may be paid a
6 reasonable per diem and reimbursed for expenses actually incurred
7 in the discharge of his or her duties.

8 (9) A member of the zoning board of appeals may be removed by
9 the legislative body for misfeasance, malfeasance, or nonfeasance
10 in office upon written charges and after a public hearing. A member
11 shall disqualify himself or herself from a vote in which the member
12 has a conflict of interest. Failure of a member to disqualify
13 himself or herself from a vote in which the member has a conflict
14 of interest constitutes malfeasance in office.

15 (10) The terms of office for ~~members~~**AN** appointed to ~~MEMBER OF~~
16 the zoning board of appeals shall be ~~for~~ 3 years, except for
17 ~~members~~**A MEMBER** serving because of ~~their~~**HIS OR HER** membership on
18 the zoning commission or legislative body, whose ~~terms~~**TERM** shall
19 be limited to the time ~~they are members of those bodies~~**HE OR SHE**
20 **IS A MEMBER OF THAT BODY**. When members are first appointed, ~~the~~
21 appointments may be for less than 3 years to provide for staggered
22 terms. A successor shall be appointed not more than 1 month after
23 the term of the preceding member has expired.

24 (11) A vacancy on the zoning board of appeals shall be filled
25 for the remainder of the unexpired term in the same manner as the
26 original appointment.

27 (12) A zoning board of appeals shall not conduct business

1 unless a majority of the regular members of the zoning board of
2 appeals are present.

3 (13) A member of the zoning board of appeals who is also a
4 member of the zoning commission, the planning commission, or the
5 legislative body shall not participate in a public hearing on or
6 vote on the same matter that the member voted on as a member of the
7 zoning commission, the planning commission, or the legislative
8 body. However, the member may consider and vote on other unrelated
9 matters involving the same property.

10 Sec. 606. (1) Any party aggrieved by a decision of the zoning
11 board of appeals may appeal to the circuit court for the county in
12 which the property is located. The circuit court shall review the
13 record and decision to ensure that the decision meets all of the
14 following requirements:

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

16 (b) Is based upon proper procedure.

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

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

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

1 shall be filed with the court. The court may affirm, reverse, or
2 modify the decision.

3 (3) An appeal from a decision of a zoning board of appeals
4 shall be filed within ~~30~~ **WHICHEVER OF THE FOLLOWING DEADLINES COMES**
5 **FIRST:**

6 (A) **THIRTY** days after the zoning board of appeals issues its
7 decision in writing signed by the chairperson, if there is a
8 chairperson, or signed by the members of the zoning board of
9 appeals, if there is no chairperson. ~~, or within 21~~

10 (B) **TWENTY-ONE** days after the zoning board of appeals approves
11 the minutes of its decision.

12 (4) The court may affirm, reverse, or modify the decision of
13 the zoning board of appeals. The court may make other orders as
14 justice requires.