

Act No. 330
Public Acts of 2010
Approved by the Governor
December 21, 2010
Filed with the Secretary of State
December 21, 2010
EFFECTIVE DATE: December 21, 2010

**STATE OF MICHIGAN
95TH LEGISLATURE
REGULAR SESSION OF 2010**

Introduced by Rep. Walsh

ENROLLED HOUSE BILL No. 5926

AN ACT to amend 2006 PA 110, entitled "An act to codify the laws regarding local units of government regulating the development and use of land; to provide for the adoption of zoning ordinances; to provide for the establishment in counties, townships, cities, and villages of zoning districts; to prescribe the powers and duties of certain officials; to provide for the assessment and collection of fees; to authorize the issuance of bonds and notes; to prescribe penalties and provide remedies; and to repeal acts and parts of acts," 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:

Sec. 208. (1) If the use of a dwelling, building, or structure or of the land is lawful at the time of enactment of a zoning ordinance or an amendment to a zoning ordinance, then that use may be continued although the use does not conform to the zoning ordinance or amendment. This subsection is intended to codify the law as it existed before July 1, 2006 in section 16(1) of the former county zoning act, 1943 PA 183, section 16(1) of the former township zoning act, 1943 PA 184, and section 3a(1) of the former city and village zoning act, 1921 PA 207, as they applied to counties, townships, and cities and villages, respectively, and shall be construed as a continuation of those laws and not as a new enactment.

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

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

(4) The elimination of the nonconforming uses and structures in a zoning district is declared to be for a public purpose and for a public use. The legislative body may institute proceedings for condemnation of nonconforming uses and structures under 1911 PA 149, MCL 213.21 to 213.25.

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

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

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

(4) In a county or township, 1 of the regular members of the zoning board of appeals shall be a member of the zoning commission, or of the planning commission if the planning commission is functioning as the zoning commission. In a city or village, 1 of the regular members of the zoning board of appeals may be a member of the zoning commission, or of the planning commission if the planning commission is functioning as the zoning commission, unless the legislative body acts as the zoning board of appeals under subsection (2). A decision made by a city or village zoning board of appeals before February 29, 2008 is not invalidated by the failure of the zoning board of appeals to include a member of the city or village zoning commission or planning commission, as was required by this subsection before that date.

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

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

(7) The legislative body may appoint to the zoning board of appeals not more than 2 alternate members for the same term as regular members. An alternate member may be called as specified in the zoning ordinance to serve as a member of the zoning board of appeals in the absence of a regular member if the regular member will be unable to attend 1 or more meetings. An alternate member may also be called to serve as a member for the purpose of reaching a decision on a case in which the member has abstained for reasons of conflict of interest. The alternate member appointed shall serve in the case until a final decision is made. An alternate member serving on the zoning board of appeals has the same voting rights as a regular member.

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

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

(10) The terms of office for an appointed member of the zoning board of appeals shall be 3 years, except for a member serving because of his or her membership on the zoning commission or legislative body, whose term shall be limited to the time he or she is a member of that body. When members are first appointed, appointments may be for less than 3 years to provide for staggered terms. A successor shall be appointed not more than 1 month after the term of the preceding member has expired.

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

(12) A zoning board of appeals shall not conduct business unless a majority of the regular members of the zoning board of appeals are present.

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

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

- (a) Complies with the constitution and laws of the 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 zoning board of appeals.

(2) If the court finds the record inadequate to make the review required by this section or finds that additional material evidence exists that with good reason was not presented, the court shall order further proceedings on conditions that the court considers proper. The zoning 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. The court may affirm, reverse, or modify the decision.

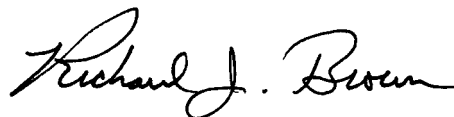
(3) An appeal from a decision of a zoning board of appeals shall be filed within whichever of the following deadlines comes first:

(a) Thirty days after the zoning board of appeals issues its decision in writing signed by the chairperson, if there is a chairperson, or signed by the members of the zoning board of appeals, if there is no chairperson.

(b) Twenty-one days after the zoning board of appeals approves the minutes of its decision.

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

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor