

# HOUSE BILL No. 4295

February 20, 2001, Introduced by Reps. Lockwood, Zelenko, Callahan, Dennis, Waters, Jacobs, Hardman, O'Neil, Woodward and Rich Brown 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 section 5 (MCL 125.585), as amended by 2000 PA 20.

**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. HOWEVER, THE LEGISLATIVE BODY SHALL NOT SERVE AS THE  
4 ZONING BOARD OF APPEALS IF THE LEGISLATIVE BODY REVIEWS AND  
5 APPROVES SPECIAL LAND USES UNDER SECTION 4A OR PLANNED UNIT  
6 DEVELOPMENTS UNDER SECTION 4B AND THE ZONING ORDINANCE PROVIDES  
7 THAT THESE OR OTHER DECISIONS MADE BY THE LEGISLATIVE BODY ARE  
8 APPEALED TO THE ZONING BOARD OF APPEALS. The legislative body may  
9 establish rules to govern its procedure as a board of appeals.  
10 In the alternative, the legislative body may appoint a board of  
11 appeals consisting of not less than 5 members, each to be

1 appointed for a term of 3 years. Appointments of the first  
2 members shall be for terms of 1, 2, and 3 years, respectively, so  
3 as nearly as possible to provide for the subsequent appointment  
4 of an equal number of members each year. After the initial  
5 appointments, each member shall hold office for the full 3-year  
6 term.

7 (2) Under procedures specified in the zoning ordinance, the  
8 legislative body of a city or village may appoint not more than 2  
9 alternate members for the same term as regular members of the  
10 board of appeals. The alternate members may be called on a  
11 rotating basis as specified in the zoning ordinance to sit as  
12 regular members of the board of appeals in the absence of a regu-  
13 lar member. An alternate member may also be called to serve in  
14 the place of a regular member for the purpose of reaching a deci-  
15 sion on a case in which the regular member has abstained. ~~for~~  
16 ~~reasons of conflict of interest.~~ A REGULAR MEMBER SHALL ABSTAIN  
17 IF REQUIRED BY LAW BECAUSE OF A CONFLICT OF INTEREST OR IF THE  
18 REGULAR MEMBER MADE OR PARTICIPATED AS A MEMBER OF THE BODY THAT  
19 MADE THE ORDER, REQUIREMENT, DECISION, OR DETERMINATION APPEALED  
20 FROM. The alternate member called shall serve in the case until  
21 a final decision is made. The alternate member SERVING has the  
22 same voting rights as a regular member of the board of appeals.

23 (3) The board of appeals shall hear and decide appeals from  
24 and review any order, requirements, decision, or determination  
25 made by an administrative official or body charged with the  
26 enforcement of an ordinance adopted under this act. The board of  
27 appeals shall also hear and decide matters referred to the board

1 or upon which the board is required to pass under an ordinance  
2 adopted under this act. For special land use and planned unit  
3 development decisions, an appeal may be taken to the board of  
4 appeals only if provided for in the zoning ordinance.

5 (4) In a city or village having a population of less than  
6 1,000,000, the concurring vote of a majority of the members of  
7 the board is necessary to reverse an order, requirement, deci-  
8 sion, or determination of an administrative official or body, or  
9 to decide in favor of the applicant a matter upon which the board  
10 is required to pass under an ordinance, or to effect a variation  
11 in an ordinance except that a concurring vote of 2/3 of the mem-  
12 bers of the board is necessary to grant a variance from uses of  
13 land permitted in an ordinance. In a city having a population of  
14 1,000,000 or more, the concurring vote of 2/3 of the members of  
15 the board is necessary to reverse an order, requirement, deci-  
16 sion, or determination of an administrative official or body, or  
17 to decide in favor of the applicant a matter upon which the board  
18 is required to pass under an ordinance, or to grant a variance in  
19 an ordinance.

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

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

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

20           (8) The board of appeals shall fix a reasonable time for the  
21 hearing of the appeal and give notice of the appeal to the per-  
22 sons to whom real property within 300 feet of the premises in  
23 question is assessed, and to the occupants of single and 2-family  
24 dwellings within 300 feet. The notice shall be delivered person-  
25 ally or by mail addressed to the respective owners and tenants at  
26 the address given in the last assessment roll. If a tenant's  
27 name is not known, the term "occupant" may be used. Upon the

1 hearing, a party may appear in person or by agent or by  
2 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 car-  
11 rying out the strict letter of the ordinance, the board of  
12 appeals may in passing upon appeals grant a variance in any of  
13 its rules or provisions relating to the construction, or struc-  
14 tural changes in, equipment, or alteration of buildings or struc-  
15 tures, or the use of land, buildings, or structures, so that the  
16 spirit of the ordinance shall be observed, public safety secured,  
17 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 a city or village may authorize the remuneration of  
21 the members of the board for attendance at each meeting.

22 (11) The decision of the board of appeals is final.  
23 However, a person having an interest affected by the zoning ordi-  
24 nance may appeal to the circuit court. Upon appeal, the circuit  
25 court shall review the record and decision of the board of  
26 appeals to ensure that the decision meets all of the following  
27 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 that with good reason was not  
10 presented to the board of appeals, the court shall order further  
11 proceedings before the board of appeals on conditions that the  
12 court considers proper. The board of appeals may modify its  
13 findings and decision as a result of the new proceedings, or may  
14 affirm the original decision. The supplementary record and deci-  
15 sion 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.