

# HOUSE BILL No. 4871

June 5, 2001, Introduced by Reps. Clark, Lipsey, Waters, Kilpatrick, Raczkowski, Thomas, Daniels, Kowall, Toy, Richner, Garza, Stallworth, Hale, Rivet, Clarke, Jamnick and Lemmons 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 3b and 5 (MCL 125.583b and 125.585), section 3b as amended by 1993 PA 210 and section 5 as amended by 2000 PA 20.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 3b. (1) As used in this section, "state licensed resi-  
2       dential facility" means a structure constructed for residential  
3       purposes that is licensed by the state pursuant to the adult  
4       foster care facility licensing act, ~~Act No. 218 of the Public~~  
5       ~~Acts of 1979, being sections 400.701 to 400.737 of the Michigan~~  
6       ~~Compiled Laws, or Act No. 116 of the Public Acts of 1973, as~~  
7       ~~amended, being sections 722.111 to 722.128 of the Michigan~~  
8       ~~Compiled Laws~~ 1979 PA 218, MCL 400.701 TO 400.737, OR 1973 PA  
9       116, MCL 722.111 TO 722.128, that provides resident services or

1 care for 6 or fewer persons under 24-hour supervision for persons  
2 in need of that supervision or care.

3       (2) In order to implement the policy of this state that per-  
4 sons in need of community residential care shall not be excluded  
5 by zoning from the benefits of normal residential surroundings, a  
6 state licensed residential facility providing supervision or  
7 care, or both, to 6 or less persons shall be considered a resi-  
8 dential use of property for the purposes of zoning and a permit-  
9 ted use in all residential zones, including those zoned for  
10 single family dwellings, and shall not be subject to a special  
11 use or conditional use permit or procedure different from those  
12 required for other dwellings of similar density in the same  
13 zone.

14       (3) This section does not apply to adult foster care facili-  
15 ties licensed by a state agency for care and treatment of persons  
16 released from or assigned to adult correctional institutions.

17       (4) At least 45 days before licensing a residential facili-  
18 ty, the state licensing agency shall notify the council of the  
19 city or village or the designated agency of the city or village  
20 where the proposed facility is to be located to review the number  
21 of existing or proposed similar state licensed residential facil-  
22 ities whose property lines are within a 1,500-foot radius of the  
23 property lines of the proposed facility. The council of a city  
24 or village or an agency of the city or village to which the  
25 authority is delegated, when a proposed facility is to be located  
26 within the city or village, shall give appropriate notification  
27 of the proposal to license the facility to those residents whose

1 property lines are within a 1,500-foot radius of the property  
2 lines of the proposed facility. A state licensing agency shall  
3 not license a proposed residential facility if another state  
4 licensed residential facility exists within the 1,500-foot radius  
5 of the proposed location, unless permitted by local zoning ordi-  
6 nances, or if the issuance of the license would substantially  
7 contribute to an excessive concentration of state licensed resi-  
8 dential facilities within the city or village. In a city with a  
9 population of ~~1,000,000~~ 750,000 or more a state licensing  
10 agency shall not license a proposed residential facility if  
11 another state licensed residential facility exists within a  
12 3,000-foot radius of the proposed location, unless permitted by  
13 local zoning ordinances. This subsection ~~shall~~ DOES not apply  
14 to state licensed residential facilities caring for 4 or fewer  
15 minors.

16 (5) This section does not apply to a state licensed residen-  
17 tial facility licensed before March 31, 1977, or to a residential  
18 facility that was in the process of being developed and licensed  
19 before March 31, 1977 if approval was granted by the appropriate  
20 local governing body before that date.

21 Sec. 5. (1) The legislative body of a city or village may  
22 act as a board of appeals ~~upon~~ ON questions arising under a  
23 zoning ordinance. The legislative body may establish rules to  
24 govern its procedure as a board of appeals. In the alternative,  
25 the legislative body may appoint a board of appeals consisting of  
26 not less than 5 members, each to be appointed for a term of 3  
27 years. Appointments of the first members shall be for terms of

1 1, 2, and 3 years, respectively, so as nearly as possible to  
2 provide for the subsequent appointment of an equal number of mem-  
3 bers each year. After the initial appointments, each member  
4 shall hold office for the full 3-year term.

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

18 (3) The board of appeals shall hear and decide appeals from  
19 and review any order, requirements, decision, or determination  
20 made by an administrative official or body charged with the  
21 enforcement of an ordinance adopted under this act. The board of  
22 appeals shall also hear and decide matters referred to the board  
23 or upon which the board is required to pass under an ordinance  
24 adopted under this act. For special land use and planned unit  
25 development decisions, an appeal may be taken to the board of  
26 appeals only if provided for in the zoning ordinance.

1           (4) In a city or village having a population of less than  
2 ~~1,000,000~~ 750,000, the concurring vote of a majority of the  
3 members of the board is necessary to reverse an order, require-  
4 ment, decision, or determination of an administrative official or  
5 body, or to decide in favor of the applicant a matter upon which  
6 the board is required to pass under an ordinance, or to effect a  
7 variation in an ordinance except that a concurring vote of 2/3 of  
8 the members of the board is necessary to grant a variance from  
9 uses of land permitted in an ordinance. In a city having a popu-  
10 lation of ~~1,000,000~~ 750,000 or more, the concurring vote of 2/3  
11 of the members of the board is necessary to reverse an order,  
12 requirement, decision, or determination of an administrative  
13 official or body, or to decide in favor of the applicant a matter  
14 upon which the board is required to pass under an ordinance, or  
15 to grant a variance in an ordinance.

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

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

1 grounds for the appeal. The officer or body from whom the appeal  
2 is taken shall immediately transmit to the board all the papers  
3 constituting the record upon which the action appealed from was  
4 taken.

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

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

26 (9) The board of appeals shall decide the appeal within a  
27 reasonable time. The board of appeals may reverse or affirm,

1 wholly or partly, or may modify the order, requirement, decision,  
2 or determination appealed from and shall make an order, require-  
3 ment, decision, or determination as in the board's opinion ought  
4 to be made in the premises, and to that end shall have all the  
5 powers of the officer or body from whom the appeal is taken. If  
6 there are practical difficulties or unnecessary hardship in car-  
7 rying out the strict letter of the ordinance, the board of  
8 appeals may in passing upon appeals grant a variance in any of  
9 its rules or provisions relating to the construction, or struc-  
10 tural changes in, equipment, or alteration of buildings or struc-  
11 tures, or the use of land, buildings, or structures, so that the  
12 spirit of the ordinance shall be observed, public safety secured,  
13 and substantial justice done.

14 (10) The board of appeals may impose conditions upon an  
15 affirmative decision, as provided in section 4c(2). The legisla-  
16 tive body of a city or village may authorize the remuneration of  
17 the members of the board for attendance at each meeting.

18 (11) The decision of the board of appeals is final.  
19 However, a person having an interest affected by the zoning ordi-  
20 nance may appeal to the circuit court. Upon appeal, the circuit  
21 court shall review the record and decision of the board of  
22 appeals to ensure that the decision meets all of the following  
23 requirements:

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

25 (b) Is based upon proper procedure.

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

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

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

12 (13) As a result of the review required by this section, the  
13 court may affirm, reverse, or modify the decision of the board of  
14 appeals.