



SENATE BILL No. 646

September 13, 1995, Introduced by Senators GAST, MC MANUS, STILLE and NORTH and referred to the Committee on Natural Resources and Environmental Affairs.

A bill to amend section 36 of Act No. 222 of the Public Acts of 1976, entitled as amended

"Sand dune protection and management act,"

as amended by Act No. 135 of the Public Acts of 1994, being section 281.686 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 36 of Act No. 222 of the Public Acts of
2 1976, as amended by Act No. 135 of the Public Acts of 1994, being
3 section 281.686 of the Michigan Compiled Laws, is amended to read
4 as follows:

5 Sec. 36. (1) A local unit of government may issue variances
6 under a zoning ordinance, or the department may issue special
7 exceptions under the model zoning plan if a local unit of
8 government does not have an approved zoning ordinance, if an
9 unreasonable hardship will occur to the owner of the property if

1 the variance or special exception is not granted. In determining
2 whether an unreasonable hardship will occur if a variance or spe-
3 cial exception is not granted, primary consideration shall be
4 given to assuring that human health and safety are protected by
5 the determination and that the determination complies with appli-
6 cable local zoning, other state laws, and federal law. A vari-
7 ance or a special exception is also subject to the following
8 limitations:

9 (a) A variance shall not be granted from a setback require-
10 ment provided for under the model zoning plan or an equivalent
11 zoning ordinance enacted pursuant to this act unless the property
12 for which the variance is requested is 1 of the following:

13 (i) A nonconforming lot of record that is recorded prior to
14 July 5, 1989, and that becomes nonconforming due to the operation
15 of this act or a zoning ordinance.

16 (ii) A lot legally created after July 5, 1989 that later
17 becomes nonconforming due to natural shoreline erosion.

18 (iii) Property on which the base of the first landward crit-
19 ical dune of at least 20 feet in height, that is not a foredune,
20 is located at least 500 feet inland from the first foredune crest
21 or line of vegetation on the property. However, the setback
22 shall be a minimum of 200 feet measured from the foredune crest
23 or line of vegetation.

24 (b) A variance or special exception shall not be granted
25 that authorizes construction of a dwelling or other permanent
26 building on the first lakeward facing slope of a critical dune
27 area or a foredune. However, a variance or special exception may

1 be granted if the proposed construction is near the base of the
2 lakeward facing slope of the critical dune on a slope of less
3 than 12% on a nonconforming lot of record that is recorded prior
4 to July 5, 1989 that has borders that lie entirely on the first
5 lakeward facing slope of the critical dune area that is not a
6 foredune.

7 (2) Each local unit of government that has issued a variance
8 for a use other than a special use project during the previous 12
9 months shall file an annual report with the department indicating
10 variances that have been granted by the local unit of government
11 during that period.

12 (3) Upon receipt of an application for a special exception
13 under the model zoning plan, the department shall forward a copy
14 of the application and all supporting documentation to the local
15 unit of government having jurisdiction over the proposed
16 location. The local unit of government shall have 60 days to
17 review the proposed special exception. The department shall not
18 make a decision on a special exception under the model zoning
19 plan until either the local unit of government has commented on
20 the proposed special exception or has waived its opportunity to
21 review the special exception. The local unit of government may
22 waive its opportunity to consider the application at any time
23 within 60 days after receipt of the application and supporting
24 documentation by notifying the department in writing. If the
25 local unit of government waives its opportunity to review the
26 application, or fails to act as authorized in this section within
27 60 days, the local unit of government also waives its opportunity

1 to oppose the decision by the department to issue a special
2 exception. If the local unit of government opposes the issuance
3 of the special exception, the local unit of government shall
4 notify the department, in writing, of its opposition within the
5 60 day notice period. If the local unit of government opposes
6 the issuance of the special exception, the department shall not
7 issue a special exception. The local unit of government may also
8 consider whether an unreasonable hardship will occur to the owner
9 of the property if the special exception is not granted by the
10 department and may make a recommendation to the department within
11 the 60 day notice period. The department shall base its determi-
12 nation of an unreasonable hardship on information provided by the
13 local unit of government and other pertinent information.

14 ~~(4) For the purpose of this act, unreasonable hardship~~
15 ~~shall be treated as unnecessary hardship.~~