

SENATE BILL No. 62

January 23, 2003, Introduced by Senators CLARK-COLEMAN, BRATER, JACOBS, CHERRY and HARDIMAN and referred to the Committee on Local, Urban and State Affairs.

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
2 residential facility" means a structure constructed for
3 residential purposes that is licensed by the state pursuant to
4 the adult foster care facility licensing act, ~~Act No. 218 of the~~
5 ~~Public Acts of 1979, being sections 400.701 to 400.737 of the~~
6 ~~Michigan Compiled Laws, or Act No. 116 of the Public Acts of~~
7 ~~1973, as amended, being sections 722.111 to 722.128 of the~~
8 ~~Michigan Compiled Laws~~ 1979 PA 218, MCL 400.701 to 400.737, or
9 1973 PA 116, MCL 722.111 to 722.128, that provides resident

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

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

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

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

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

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

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

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

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

19 (3) The board of appeals shall hear and decide appeals from
20 and review any order, requirements, decision, or determination
21 made by an administrative official or body charged with the
22 enforcement of an ordinance adopted under this act. The board of
23 appeals shall also hear and decide matters referred to the board
24 or upon which the board is required to pass under an ordinance
25 adopted under this act. For special land use and planned unit
26 development decisions, an appeal may be taken to the board of
27 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,
4 requirement, decision, or determination of an administrative
5 official or body, or to decide in favor of the applicant a matter
6 upon which the board is required to pass under an ordinance, or
7 to effect a variation in an ordinance except that a concurring
8 vote of 2/3 of the members of the board is necessary to grant a
9 variance from uses of land permitted in an ordinance. In a city
10 having a population of ~~1,000,000~~ **750,000** or more, the
11 concurring vote of 2/3 of the members of the board is necessary
12 to reverse an order, requirement, decision, or determination of
13 an administrative official or body, or to decide in favor of the
14 applicant a matter upon which the board is required to pass under
15 an ordinance, or 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
20 procedures 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
18 persons 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
21 personally or by mail addressed to the respective owners and
22 tenants at the address given in the last assessment roll. If a
23 tenant's name is not known, the term "occupant" may be used.
24 Upon the 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,
3 requirement, decision, or determination as in the board's opinion
4 ought to be made in the premises, and to that end shall have all
5 the powers of the officer or body from whom the appeal is taken.
6 If there are practical difficulties or unnecessary hardship in
7 carrying 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
10 structural changes in, equipment, or alteration of buildings or
11 structures, or the use of land, buildings, or structures, so that
12 the spirit of the ordinance shall be observed, public safety
13 secured, 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
16 legislative body of a city or village may authorize the
17 remuneration of the members of the board for attendance at each
18 meeting.

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

- 25 (a) Complies with the constitution and laws of this state.
26 (b) Is based upon proper procedure.
27 (c) Is supported by competent, material, and substantial

1 evidence on the record.

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

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

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