

SENATE BILL No. 17

January 12, 2005, Introduced by Senator CLARK-COLEMAN 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 residential
3 purposes that is licensed by the state pursuant to the adult foster
4 care facility licensing act, ~~Act No. 218 of the Public Acts of~~
5 ~~1979, being sections 400.701 to 400.737 of the Michigan Compiled~~
6 ~~Laws, or Act No. 116 of the Public Acts of 1973, as amended, being~~
7 ~~sections 722.111 to 722.128 of the Michigan Compiled Laws~~ 1979 PA

1 218, MCL 400.701 TO 400.737, OR 1973 PA 116, MCL 722.111 TO
2 722.128, that provides resident services or care for 6 or fewer
3 persons under 24-hour supervision for persons in need of that
4 supervision or care.

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

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

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

1 village, shall give appropriate notification of the proposal to
2 license the facility to those residents whose property lines are
3 within a 1,500-foot radius of the property lines of the proposed
4 facility. A state licensing agency shall not license a proposed
5 residential facility if another state licensed residential facility
6 exists within the 1,500-foot radius of the proposed location,
7 unless permitted by local zoning ordinances, or if the issuance of
8 the license would substantially contribute to an excessive
9 concentration of state licensed residential facilities within the
10 city or village. In a city with a population of ~~1,000,000~~ **750,000**
11 or more a state licensing agency shall not license a proposed
12 residential facility if another state licensed residential facility
13 exists within a 3,000-foot radius of the proposed location, unless
14 permitted by local zoning ordinances. This subsection ~~shall~~ **DOES**
15 not apply to state licensed residential facilities caring for 4 or
16 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 and
20 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 act
23 as a board of appeals ~~upon~~ **ON** questions arising under a zoning
24 ordinance. The legislative body may establish rules to govern its
25 procedure as a board of appeals. In the alternative, the
26 legislative body may appoint a board of appeals consisting of not
27 less than 5 members, each to be appointed for a term of 3 years.

1 Appointments of the first members shall be for terms of 1, 2, and 3
2 years, respectively, so as nearly as possible to provide for the
3 subsequent appointment of an equal number of members each year.
4 After the initial appointments, each member shall hold office for
5 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 board
9 of appeals. The alternate members may be called on a rotating basis
10 as specified in the zoning ordinance to sit as regular members of
11 the board of appeals in the absence of a regular member. An
12 alternate member may also be called to serve in the place of a
13 regular member for the purpose of reaching a decision on a case in
14 which the regular member has abstained for reasons of conflict of
15 interest. The alternate member called shall serve in the case until
16 a final decision is made. The alternate member has the same voting
17 rights as a regular member of the board of appeals.

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

27 (4) In a city or village having a population of less than

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

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

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

1 immediately transmit to the board all the papers constituting the
2 record upon which the action appealed from was taken.

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

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

23 (9) The board of appeals shall decide the appeal within a
24 reasonable time. The board of appeals may reverse or affirm, wholly
25 or partly, or may modify the order, requirement, decision, or
26 determination appealed from and shall make an order, requirement,
27 decision, or determination as in the board's opinion ought to be

1 made in the premises, and to that end shall have all the powers of
2 the officer or body from whom the appeal is taken. If there are
3 practical difficulties or unnecessary hardship in carrying out the
4 strict letter of the ordinance, the board of appeals may in passing
5 upon appeals grant a variance in any of its rules or provisions
6 relating to the construction, or structural changes in, equipment,
7 or alteration of buildings or structures, or the use of land,
8 buildings, or structures, so that the spirit of the ordinance shall
9 be observed, public safety secured, and substantial justice done.

10 (10) The board of appeals may impose conditions upon an
11 affirmative decision, as provided in section 4c(2). The legislative
12 body of a city or village may authorize the remuneration of the
13 members of the board for attendance at each meeting.

14 (11) The decision of the board of appeals is final. However, a
15 person having an interest affected by the zoning ordinance may
16 appeal to the circuit court. Upon appeal, the circuit court shall
17 review the record and decision of the board of appeals to ensure
18 that the decision meets all of the following requirements:

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

20 (b) Is based upon proper procedure.

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

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

25 (12) If the court finds the record of the board of appeals
26 inadequate to make the review required by this section, or that
27 additional material evidence exists that with good reason was not

1 presented to the board of appeals, the court shall order further
2 proceedings before the board of appeals on conditions that the
3 court considers proper. The board of appeals may modify its
4 findings and decision as a result of the new proceedings, or may
5 affirm the original decision. The supplementary record and decision
6 shall be filed with the court.

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