

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2547 Session of
1976

INTRODUCED BY ITKIN, FLAHERTY, GEISLER, CAPUTO, M. M. MULLEN,
RHODES, RAVENSTAHL, LOGUE AND IRVIS, JUNE 22, 1976

REFERRED TO COMMITTEE ON URBAN AFFAIRS, JUNE 22, 1976

AN ACT

1 Amending the act of March 31, 1927 (P.L.98, No.69), entitled "A
2 supplement to an act, entitled 'An act for the government of
3 cities of the second class,' approved the seventh day of
4 March, one thousand nine hundred and one (Pamphlet Laws,
5 twenty), authorizing cities of the second class to regulate
6 and restrict the height, number of stories and size of
7 buildings and other structures, and the size of yards, courts
8 and other open spaces, the density of population, and to
9 regulate and restrict the location, use and occupancy of
10 buildings, structures and land for trade, industry,
11 residence, specified uses or other purposes, and, for the
12 above purposes, to divide the city into districts, and
13 authorizing the City Planning Commission to recommend the
14 boundaries of districts and appropriate regulations therein,
15 and providing the method of adoption of said district
16 regulations and restrictions, and providing methods to
17 prevent the unlawful erection, construction, reconstruction,
18 alteration, conversion, repair, maintenance, use, or
19 occupancy of buildings, structures or land, and to prevent
20 the unlawful occupancy or use of the said buildings,
21 structures or land and any illegal act, conduct, business or
22 use in or about such premises, and the method of amendment or
23 change thereof, et cetera," further providing for certain
24 individuals to have the right to appeal decisions of the
25 board of adjustment.

26 The General Assembly of the Commonwealth of Pennsylvania
27 hereby enacts as follows:

28 Section 1. Section 7, act of March 31, 1927 (P.L.98, No.69),
29 entitled "A supplement to an act, entitled 'An act for the

1 government of cities of the second class,' approved the seventh
2 day of March, one thousand nine hundred and one (Pamphlet Laws,
3 twenty), authorizing cities of the second class to regulate and
4 restrict the height, number of stories and size of buildings and
5 other structures, and the size of yards, courts and other open
6 spaces, the density of population, and to regulate and restrict
7 the location, use and occupancy of buildings, structures and
8 land for trade, industry, residence, specified uses or other
9 purposes, and, for the above purposes, to divide the city into
10 districts, and authorizing the City Planning Commission to
11 recommend the boundaries of districts and appropriate
12 regulations therein, and providing the method of adoption of
13 said district regulations and restrictions, and providing
14 methods to prevent the unlawful erection, construction,
15 reconstruction, alteration, conversion, repair, maintenance,
16 use, or occupancy of buildings, structures or land, and to
17 prevent the unlawful occupancy or use of the said buildings,
18 structures or land and any illegal act, conduct, business or use
19 in or about such premises, and the method of amendment or change
20 thereof, et cetera," is amended to read:

21 Section 7. Board of Adjustment.--The mayor of every city of
22 the second class shall, with the approval of the council,
23 appoint a board of adjustment and in the regulations and
24 restrictions adopted pursuant to the authority of this act, it
25 shall be provided that the said board of adjustments may, in
26 appropriate cases and subject to appropriate conditions and
27 safeguards, make special exceptions to the terms of the
28 ordinance, in harmony with its general purpose and intent and in
29 accordance with general or specific rules therein contained.

30 The board of adjustment shall consist of three members, one

1 of whom shall be a member of the city planning commission; one
2 of whom shall be designated to serve until the first day of
3 January, one thousand nine hundred and twenty-eight; one until
4 the first day of January, one thousand nine hundred and twenty-
5 nine; and one until the first day of January, one thousand nine
6 hundred and thirty. Their successors shall be appointed, on the
7 expiration of their respective terms, to serve three years.
8 Vacancies shall be filled for the unexpired term of any member
9 whose term becomes vacant.

10 The board shall adopt rules in accordance with the provisions
11 of any ordinance adopted pursuant to this act. Meetings of the
12 board shall be held at the call of the chairman and at such
13 other times as the board may determine. Such chairman, or in his
14 absence the acting chairman, may administer oaths and compel the
15 attendance of witnesses under penalty as may be provided in the
16 ordinance. All meetings of the board shall be open to the
17 public. The board shall keep minutes of its proceedings showing
18 the vote of each member upon each question or, if absent or
19 failing to vote, indicating such fact, and shall keep records of
20 its examinations and other official actions, all of which shall
21 be immediately filed in the office of the board and shall be a
22 public record.

23 Appeals to the board of adjustment may be taken by any person
24 aggrieved, or by the head of any department affected by or
25 interested in any decision of the officer charged with the
26 administration of the ordinance. Such appeal shall be taken
27 within a reasonable time, as provided by the rules of the board,
28 by filing with the officer from whom the appeal is taken and
29 with the board of adjustment a notice of appeal specifying the
30 grounds thereof. The officer from whom the appeal is taken shall

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

3 An appeal shall stay all proceedings in furtherance of the
4 action appealed from, unless the officer from whom the appeal is
5 taken certifies to the board of adjustment, after the notice of
6 appeal shall have been filed with him, that by reason of facts
7 stated in the certificate a stay would in his opinion cause
8 imminent peril to life or property. In such case proceedings
9 shall not be stayed otherwise than by a restraining order, which
10 may be granted by the court of common pleas of the county
11 wherein said city may be situated, on application and notice to
12 the officer from whom the appeal is taken and on due cause shown
13 and the filing of a bond as in other injunction proceedings.

14 The board of adjustment shall fix a reasonable time for the
15 hearing of the appeal, give posted public notice thereof, and
16 decide the same within a reasonable time. Upon the hearing, any
17 party may appear in person or by agent or by attorney.

18 The board of adjustment shall have the following powers:

19 1. To hear and decide appeals where it is alleged there is
20 error in any order, requirement, decision or determination, made
21 by an administrative official in the enforcement of any
22 ordinance adopted pursuant to this act.

23 2. To hear and decide special exceptions to the terms of the
24 ordinance upon which such board is required to pass under such
25 ordinance.

26 3. To authorize upon appeal in specific cases such variance
27 from the terms of the ordinance as will not be contrary to the
28 public interest, where, owing to special conditions, a literal
29 enforcement of the provisions of the ordinance will result in
30 unnecessary hardship and so that the spirit of the ordinance

1 shall be observed and substantial justice done.

2 In exercising the above-mentioned powers, such boards may, in
3 conformity with the provisions of this act, reverse or affirm,
4 wholly or partly, or may modify the order, requirement, decision
5 or determination appealed from, and may make such order,
6 requirement, decision or determination as ought to be made, and
7 to that end shall have all the powers of the officer from whom
8 the appeal is taken.

9 Any person or persons jointly or severally aggrieved by any
10 decision of the board of adjustment, or any property owner, or
11 any resident of the municipality, or the head of any department
12 interested therein, may present to the court of common pleas of
13 the county wherein said city may be located, a petition duly
14 verified, setting forth that such decision is illegal in whole
15 or in part, specifying the grounds of the illegality. Such
16 petition shall be presented to the court within thirty (30) days
17 after the filing of the decision in the office of the board.

18 Upon the presentation of such petition, the court may allow a
19 writ of certiorari, directed to the board of adjustment, to
20 review such decision of the board of adjustment and shall
21 prescribe therein the time within which a return thereto must be
22 made and served upon the relator's attorney, which shall not be
23 less than ten (10) days and may be extended by the court. The
24 allowance of the writ shall not stay proceedings upon the
25 decision appealed from, but the court may, on application, on
26 notice to the board and on due cause shown, grant a restraining
27 order, upon the petitioner giving a bond as in other injunction
28 proceedings.

29 The board of adjustment shall not be required to return the
30 original papers acted upon by it, but it shall be sufficient to

1 return certified or sworn copies thereof or of such portions
2 thereof as may be called for by such writ. The return shall
3 concisely set forth such other facts as may be pertinent and
4 material to show the grounds of the decision appealed from and
5 shall be verified. The board of adjustment shall be respondent
6 in said appeal with the right to appear in person or by counsel
7 and defend said action. The court may by order authorize
8 intervenors to join in said proceedings.

9 If upon the hearing it shall appear to the court that
10 testimony is necessary for the proper disposition of the matter,
11 it may take evidence or appoint a referee to take such evidence,
12 as it may direct, and report the same to the court with his
13 findings of fact and conclusions of law, which shall constitute
14 a part of the proceedings upon which the determination of the
15 court shall be made. The court may reverse or affirm wholly or
16 partly or may modify the decision brought up for review.

17 Costs shall not be allowed against the board unless it shall
18 appear to the court that it acted with gross negligence or in
19 bad faith or with malice in making the decision appealed from.

20 All issues in any proceedings under this section shall have
21 preference over all other civil actions and proceedings.

22 Section 2. This act shall take effect in 60 days.