

AUTHORIZING INCORPORATED TOWNS TO ADOPT ZONING ORDINANCES

Act of Sep. 28, 1965, P.L. 543, No. 282

Cl. 08

AN ACT

Authorizing incorporated towns to adopt and enforce zoning ordinances regulating the location, construction, and use of buildings, the size of courts and open spaces, the density of population, and the use of land.

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

Section 1. Grant of Power.--For the purpose of promoting health, safety, morals or the general welfare, councils of incorporated towns are hereby empowered to regulate and restrict the height, number of stories, and size of buildings and other structures, their construction, alteration, extension, repair, maintenance, and all facilities and services in or about such buildings and structures and percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence or other purposes, and may also establish and maintain building lines and set back building lines upon any or all public streets.

Section 2. Districts; Procedure.--(a) For any or all said purposes, the council may divide the town into districts, of such number, shape, and area as may be deemed best suited to carry out the purpose of this act. Within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land. All such regulations shall be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in another district.

(b) The council shall provide by ordinance the manner in which the boundaries of such districts shall be determined and established and from time to time amended or changed. However, no such boundary shall become effective until after public hearing in relation thereto at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen days' notice of the time and place of such hearing shall be published in a newspaper of general circulation in such incorporated town.

Section 3. Purpose in View.--Such regulations shall be made in accordance with a comprehensive plan, and designed to lessen congestion in the streets, to secure safety from fire, panic and other dangers, to promote health and the general welfare, to provide adequate light and air, to prevent the overcrowding of land, to avoid undue concentration of population, to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability

for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the incorporated town.

Section 4. Exercise by Council of Zoning Power; Notice.--The council shall exercise the powers granted in this act by ordinance which shall provide for effecting of its purposes and for the enforcement of the regulations and restrictions established therein by reasonable fines and by instituting appropriate actions or proceedings at law or in equity. At least one week, and not more than three weeks, prior to the presentation of the proposed ordinance, informative notice of intention to consider such proposed ordinance and a brief summary setting forth the principal provisions of the proposed ordinance in such reasonable detail as will give notice of its contents, and a reference to the place or places within the incorporated town where copies of the proposed ordinance and zone maps may be examined shall be published in the manner provided by law for the publication of ordinances.

The provisions of the ordinance need not be advertised or recorded as in other cases, but may be supplied by reference to a code or to parts thereof determined by the council or such provisions of the ordinance may be supplied by reference to a typed or printed code prepared under the direction of, or accepted by, the council or such provisions may consist of a standard code approved as aforesaid or parts thereof and also further provisions typed or printed as aforesaid. Copies of the provisions of the ordinance thus adopted by reference shall be made available to any interested party at the cost thereof, or may be furnished or loaned without charge and a copy of such provisions of the ordinance whether by reference to a standard code or a combination of them shall be attached to the ordinance book with the same force and effect as if duly recorded therein.

The procedure set forth relating to the adoption of the ordinance may likewise be adopted in amending, supplementing or repealing any of the provisions of the ordinance.

Section 5. Changes.--Such regulations, restrictions and boundaries may from time to time be amended, supplemented, changed, modified or repealed. In case, however, of a protest against such change, signed by the owners of thirty-three and one-third percent or more, either of the area of the lots included in such proposed change or of those immediately adjacent to the rear thereof extending one hundred feet therefrom, or of those directly opposite thereto, extending one hundred feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of two-thirds of all the members of council.

Section 6. Zoning Commission.--In order to avail itself of the powers conferred by this act, the council shall appoint a commission of five citizens, to be known as the Zoning Commission, to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and such council shall not hold its public hearings or take action until it has received the final report of such commission. When an

incorporated town planning commission already exists it may be appointed as the zoning commission.

Section 7. Board of Adjustment.--(a) The council may appoint a board of adjustment and, in the regulations and restrictions adopted pursuant to the authority of this act, may provide that said board of adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purpose and intent and in accordance with general or specific rules therein contained.

(b) The board of adjustment shall consist of three members, one of whom shall be designated to serve until the first day of January following the adoption of the zoning ordinance, one until the first day of the second January thereafter, and one until the first day of the third January thereafter. Their successors shall be appointed on the expiration of their respective terms, to serve three years. The members of the board shall be removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

(c) The board of adjustment shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this act. Meetings of the board shall be held at the call of the chairman, and at such other times as the board may determine. Such chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official action, all of which shall be immediately filed in the office of the board and shall be a public record.

(d) Appeals to the board of adjustment may be taken by any person aggrieved or by any officer of the incorporated town affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

(e) An appeal shall stay all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life and property. In such case, proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the board of adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and due cause shown.

(f) The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well

as due notice to the parties in interest, and decide the same within forty-five days after the hearing or, if said hearing is continued, within forty-five days after said continued hearing. If the board of adjustment does not make a decision within forty-five days after the hearing or continued hearing, it shall be deemed that such board has decided in favor of the person or the officer of the incorporated town aggrieved or affected who is seeking relief. Upon the hearing, any party may appear in person or by agent or by attorney.

(g) The board of adjustment shall have the following powers:

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

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

(3) To authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done.

(h) In exercising the above-mentioned powers, such board may, in conformity with the provisions of this act, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as, in its opinion, ought to be made. Notice of such decision shall forthwith be given to all parties in interest.

(i) Any person aggrieved by any decision of the board of adjustment, or any taxpayer or any officer of the incorporated town may, within thirty days after such decision of the board, appeal to the court of common pleas of the county by petition, duly verified, setting forth that such decision is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law and specifying the grounds upon which he relies.

(j) Upon presentation of the petition in proper form, the court shall forthwith issue a writ of certiorari directed to the board of adjustment commanding it within twenty days after the service thereof to certify to the court under the certificate of its chairman, its entire record in the matter in which the appeal has been taken. The prothonotary shall serve the board of adjustment by registered mail with a copy of the writ and a copy of the appeal petition. On or before the return day of the writ, the board of adjustment shall file the entire record with the writ in the office of the prothonotary.

(k) Any time during the pendency of an appeal, upon application of the appellant, and upon due notice of the board of adjustment, the court or a judge thereof may, after hearing, grant an order of supersedeas upon such terms and conditions, including the filing of security, as the court or the judge thereof may prescribe.

(l) If, upon the hearing of the appeal, it shall appear to

the court that testimony is necessary for the proper disposition of the appeal, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court, with his findings of facts and conclusions of law. The court may reverse, or affirm, in whole or in part, or may modify the decision appealed from as to it may appear just and proper.

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

Section 8. Remedies.--In case any building or structure is erected, constructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of this act or of any ordinance or other regulation made under authority conferred hereby, the proper local authorities of the incorporated town, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate such violation, to prevent the occupancy of said building, structure or land or to prevent any illegal act, conduct, business or use in or about such premises.

Section 9. Certain Buildings of Public Utility Corporations Exempted.--This act shall not apply to any existing or proposed building or extension thereof used or to be used by public utility corporations, if, upon petition of the corporation, the Public Utility Commission shall, after a public hearing, decide that the present or proposed situation of the building in question is reasonably necessary for the convenience or welfare of the public.

Section 10. Finances.--The council is empowered to appropriate out of the general incorporated town fund, such moneys, otherwise unappropriated, as it may deem fit to finance the work of the incorporated town zoning commission and the board of adjustment, and to enforce the zoning regulations and restrictions which are adopted, and to accept grants of money and service for these purposes from either private or public sources, State or Federal.

Section 11. Effective Date.--This act shall take effect immediately.