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A STANDARD STATE ZONING ENABLING ACT

UNDER WHICH MUNICIPALITIES MAY ADOPT ZONING REGULATIONS

BY THE

ADVISORY COMMITTEE ON ZONING

[REVISED EDITION, 1926]

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APPOINTED BY SECRETARY HOOVER

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[Revised Edition, 1926]

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FOREWORD

By Herbert Hoover

The importance of this standard State zoning enabling act can not well be overemphasized. When the advisory committee on zoning was formed in the Department of Commerce, the proposal to frame it received unanimous support from the public-spirited organizations represented on the committee and other groups interested in zoning. The urgency of the need for such a standard act was at once demonstrated, when, within a year of its issuance, 11 States passed zoning enabling acts which were modeled either wholly or partly after it.[1] Similar acts have been introduced in four other States, with the prospect of more to follow.

The discovery that it is practical by city zoning to carry out reasonable neighborly agreements as to the use of land has made an almost instant appeal to the American people. When the advisory committee on zoning was formed in the Department of Commerce in September, 1921, only 48 cities and towns, with less than 11,000,000 inhabitants, had adopted zoning ordinances. By the end of 1923, a little more than two years later, zoning was in effect in 218 municipalities, with more than 22,000,000 inhabitants, and new ones are being added to the list each month.[2]

In this rapid movement the fundamental legal basis on which zoning rests can not be overlooked. Several of our States, fortunately, already have zoning enabling acts that have stood the test in their own courts. This standard act endeavors to provide, so far as it is practicable to foresee, that proper zoning can be undertaken under it without injustice and without violating property rights. The committee did not make it public until it had given it the most exacting and painstaking study in relation to existing State acts and court decisions and with reference to zoning as it has been practiced and found successful in cities and towns throughout the country. Prac-

[1] By 1925 the following 19 States had used the standard act wholly or in part in their laws: Arizona, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Iowa, Nevada, New Hampshire, New Jersey, North Carolina, North Dakota, Oklahoma, Pennsylvannia, Rhode Island, South Carolina, Utah, and Wyoming.

[2] On January 1, 1926, there were at least 425 zoned municipalities, comprising more than half the urban population of the country.

tical zoners who have been associated with a majority of zoned cities were consulted for their opinions, and the committee itself represents the professional, commercial, and civic societies most interested in zoning problems.

The drafting of the act has required very large effort, and the members of the advisory committee on zoning, particularly those who served on the subcommittee on standard law, merit the gratitude of the people of the United States for the thoroughness with which they executed their task.

February 15, 1924.

A STANDARD STATE ZONING ENABLING ACT UNDER WHICH MUNICIPALITIES MAY ADOPT ZONING REGULATIONS

EXPLANATORY NOTES IN GENERAL

1. *An enabling act is advisable in all cases.*—A general State enabling act is always advisable, and while the power to zone may, in some States, be derived from constitutional as distinguished from statutory home rule, still it is seldom that the home-rule powers will cover all the necessary provisions for successful zoning.

2. *Constitutional amendments not required.*—No amendment to the State constitution, as a rule, is necessary. Zoning is undertaken under the police power and is well within the powers granted to the legislature by the constitutions of the various States.

3. *Modify this standard act as little as possible.*—It was prepared with a full knowledge of the decisions of the courts in every case in which zoning acts have been under review, and has been carefully checked with reference to subsequent decisions. A safe course to follow is to make only those changes necessary to have the act conform to local legislative customs and modes of expression.

4. *Adding new words and phrases.*—Especial caution is given to beware of adding additional words and phrases which, as a rule, restrict the meaning, from the legal point of view.

5. *Do not try to consolidate sections.*—It is natural to try to shorten the act by consolidating sections. This may defeat one of the purposes of the act, namely, of keeping the language of the statute as simple and concise as possible. It is much better to have an act broken up into a number of sections, provided they are properly drawn, than to have one or two, or a few long, involved sections. While it is recognized that some of the sections in the standard act could be combined, it is put purposely in its present form.

6. *Title and enacting clause necessary.*—No title of the act and no enacting clause have been included. These are purposely omitted, as the custom varies in almost every State. The act should, of course, be preceded by the appropriate title and enacting clause in accordance with the local legislative custom.

7. *Definitions.*—No definitions are included. The terms used in the act are so commonly understood that definitions are unneces-

sary. Definitions are generally a source of danger. They give to words a restricted meaning. No difficulty will be found with the operation of the act because of the absence of such definitions.

8. *Validity of one section affecting other sections.*—Some States have included in the enabling act a declaration to the effect that the finding void or unconstitutional by the courts of one section or provision shall not affect the rest of the act. This is so well accepted a principle of legal interpretation that it seems unnecessary to include it in the act. If any State desires to have it included, it can be added without danger.

9. *No declaration that act is not retroactive.*—Some laws contain a provision to the effect that "the powers by this act conferred shall not be exercised so as to deprive the owner of any existing property of its use or maintenance for the purpose to which it is then lawfully devoted." While the almost universal practice is to make zoning ordinances nonretroactive, it is recognized that there may arise local conditions of a peculiar character that make it necessary and desirable to deal with some isolated case by means of a retroactive provision affecting that case only. For this reason it does not seem wise to debar the local legislative body from dealing with such a situation.

10. *The repeal clause.*—No repeal clause has been included in the act for the reason that the method of phrasing such a clause will vary in nearly every State. The local legislative custom as to repeal clauses should be followed.

11. *Date of taking effect.*—For similar reasons the act does not include any provision as to the date on which it will take effect. Here also the local legislative custom should be followed.

12. *Typical ordinances or local regulations.*—The department has made a careful study of the use, height, and area regulations embodied in 16 typical zoning ordinances, together with notes on the trend of certain newer ordinances. Single copies of this bulletin are available by application to the division of building and housing, Department of Commerce, Washington, D. C.

13. *Interim ordinances.*—After the local legislative authorities have the power to zone, they are nearly always pressed to bring immediate protection to certain threatened localities. Sometimes the authorities frame an ordinance to cover a few blocks, or only a part of the city; this is called piecemeal zoning. Its adoption is inadvisable and may lead to much litigation. Interim zoning, although undesirable, is not as objectionable as piecemeal zoning. Interim zoning, at least, has the advantage of applying to the whole city. For instance, an ordinance providing that wherever three-fourths of the houses in a block are residential then no new business structure or factory can be built in that block is an illustration of

interim zoning. The reason it is objectionable is because it is too general, not sufficiently adapted to the particular need of each street, and therefore likely to be arbitrary in many cases. In such case, if a new house is built or an old one destroyed, the legal protection of the district may be altered. In this sense the district is a "traveling zone." As such, a district has no stability, and as the police power may be differently applied according to the acts of property owners it is not looked upon with favor by the courts. To prevent this the words "at the time of the passage of this ordinance" should be inserted. If it is deemed necessary to prohibit a nonconforming building because of the consents or protests of the property owners, the ordinance should always be phrased so as to prohibit the nonconforming use, *unless* the desired majority files written consents with the officials. In other words, a provision which conditions the permission to have a nonconforming use upon the consents of a majority of the property owners is void. If at all possible, the first zoning ordinance should be comprehensive.

14. *Note to revised edition, 1926.*—A standard State zoning enabling act under which municipalities may adopt zoning regulations was first issued in mimeographed form in August, 1922. A revised edition was made public in the same form in January, 1923, and the first printed edition in May, 1924. In this second printed edition note 15a has been added to cover the needs of cases where it is found desirable to control the development of areas adjacent to the city limits; and section 8, dealing with enforcement and remedies, has been revised in order to give the municipality more effective means of obtaining conformance to the zoning ordinance.

The circulation of the standard act has not been confined to those directly interested in drafting State zoning legislation. Calls for it have been received from persons in all sections of the country who have desired to use it on account of its general bearing on the legal and social aspects of zoning. More than 55,000 copies of the first printed edition have been sold by the Superintendent of Documents.

A STANDARD STATE ZONING ENABLING ACT

SECTION 1. GRANT OF POWER.—For the purpose of promoting health,[1] safety, morals, or[2] the general welfare[3] of the community, the legislative body[4] of cities and incorporated villages[5] is hereby empowered to regulate and restrict[6] the height, number of stories,[7]

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[1] "*health*": It is to be noted that the word used is "health," not "public health," for the latter narrows the application. There are some things that relate to the health only of the people living in a given dwelling, such, for instance, as the size of yards, and have only a remote relation to public health. If the term "public health" were used, the act might be set aside in a given case where it would be possible to show that the particular provision in which legal action was being taken did not concern itself with the public health but only with health.

[2] "*or*": It should be noted that the word used is "or" and not the word "and." If the latter word were used, then it might be necessary to show to the satisfaction of the court that *all* four of the purposes mentioned were involved in a given case, viz, health, safety, morals, and general welfare. The use of the word "or" limits the application to any one of the four instead of to all of them.

[3] "*general welfare*": The main pillars on which the police power rests are these four, viz, health, safety, morals, and general welfare. It is wise, therefore, to limit the purposes of this enactment to these four. There may be danger in adding others, as "prosperity," "comfort," "convenience," "order," "growth of the city," etc., and nothing is to be gained thereby.

[4] "*legislative body*": This term is sufficiently understood to include all forms of government, including commission and city manager, as well as the older forms of government. Whatever form of government exists, there must be some local body performing legislative functions.

[5] "*cities and incorporated villages*": This phrase includes those municipalities which ordinarily will find it advantageous to be given zoning powers. In some States, where different forms of governmental provisions exist, it will be necessary to add those municipalities to the term "cities and incorporated villages"; in other States the word "town" or "borough" will probably need to be added. The term "cities and incorporated villages," however, will cover the normal situation.

[6] "*regulate and restrict*": This phrase is considered sufficiently all-embracing. Nothing will be gained by adding such terms as "exclude," "segregate," "limit," "determine."

[7] "*number of stories*": It is thought wise to add this to the term "height," as courts may construe this expression narrowly, as limited to a given number of feet only, and may hold that this does not give the power to limit the number of stories, provided the building in question came within the limitation of the number of feet imposed by the ordinance. It is obvious that the power to restrict the number of stories should be granted.

and size of buildings[8] and other structures,[9] the percentage of lot[10] that may be occupied, the size of yards, courts, and other open spaces,[11] the density of population,[12] and the location and use[13] of buildings, structures, and land for trade, industry, residence, or other purposes.[14, 15, 15a]

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[8] "*size of buildings*": The term "size" is a better expression to use than "bulk" or "area," for the reason that both "bulk" and "area" imply, to some extent, a regularity of outline that may not be involved in all cases, whereas "size" is sufficiently all-inclusive to cover all contingencies.

[9] "*other structures*": This phrase would include other structures which possibly might not be defined as "buildings," such as open sheds, billboards, fences, spite fences, etc., none of which can be strictly considered as "buildings," as commonly understood.

[10] "*percentage of lot*": This is a better method of expression than granting the power to limit "the area of the building," as has been done in some laws, for the latter expression does not imply a variation of the fraction of the lot built upon.

[11] "*other open spaces*": This is a catch-all expression and is necessary in view of the fact that "yards" and "courts" are not defined in the act.

[12] "*density of population*": The power to regulate density of population is comparatively new in zoning practice. It is, however, highly desirable. Many different methods may be employed. For this reason the phrase "density of population" is a better phrase to use than one giving the power to "limit the number of people to the acre," as this is only *one* method of limiting density of population. It may be more desirable to limit the number of families to the acre or the number of families to a given house, etc. The expression "number of people to the acre" is therefore more limited in its meaning and describes only one way of reducing congestion of population, while the phrase "limiting density of population" is all-embracing. It is believed that, with proper restrictions, this provision will make possible the creation of one-family residence districts.

[13] "*use*": This term is broad enough to include all meanings desired.

[14] "*other purposes*": This is a catch-all phrase. It will include every use.

[15] Although the power to require open spaces allows the fixing of setback building lines, some recent acts contain a specific grant of that power. The establishment of setback lines is somewhat novel in zoning practice but is beginning to be employed. As it is in the minds of some people of doubtful legality and has not as yet been sustained by the courts, this power has not been included here. If it should be desired to grant such power, it can readily be done by adding at the end of this section the following words: "and may also establish setback building lines."

[15a] Some communities find it desirable to control the development of areas adjacent to the city's limits—which, in many cases, are ultimately to become a part of that city. Where it is desired to control those "fringes of cities," the legislature may grant such power to any community. Where this power is desired, strike out the period after the word "purposes" at the end of section 1 and add the following: "within the boundaries of such city or village; and, in the case of cities having a population of 25,000 or over, also within that non-municipal territory immediately adjacent and contiguous to the boundaries of such city and extending for the radial distance of 5 miles beyond such boundaries in all directions." Caution should be given, however, that this effort

SEC. 2. DISTRICTS.—For any or all of said purposes the local legislative body may divide the municipality [16] into districts of such number, shape,[17] and area as may be deemed best suited to carry out the purposes of this act; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use [18] of buildings, structures, or land. All such regulations shall be uniform for each class or kind of buildings throughout each district,[19] but the regulations in one district may differ [20] from those in other districts.

SEC. 3. PURPOSES IN VIEW.[21]—Such regulations shall be made in accordance with a comprehensive plan [22] and designed [23] 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 pub-

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by one community to control the development of some other community will often give rise to political and practical difficulties. It is for this reason that this provision is not included in the text of the act but appended as a note, to be used by those who desire it. This question will ultimately have to be dealt with, however, in most cases, by a process of regional planning.

[16] "*municipality*": This term is sufficiently broad to include cities, towns, villages, boroughs, or whatever governmental unit may be involved.

[17] "*shape*": This permits districts of irregular outline, something that is quite necessary.

[18] "*reconstruction, alteration, repair, or use*": All of these words are thought necessary, so as to allow no loophole for evasion of the law.

[19] "*uniform for each class or kind of buildings throughout each district*": This is important, not so much for legal reasons as because it gives notice to property owners that there shall be no improper discriminations, but that all in the same class shall be treated alike.

[20] "*may differ*": This is the essence of zoning, and without this express authority from the legislature to make different regulations in different districts zoning might be of doubtful validity.

[21] "*Purposes in view*": This section should be clearly differentiated from the statement of purpose (under the police power) contained in the first sentence of section 1. *That* defined and limited the powers created by the legislature to the municipality under the police power. *This* section contains practically a direction from the legislative body as to the purposes in view in establishing a zoning ordinance and the manner in which the work of preparing such an ordinance shall be done. It may be said, in brief, to constitute the "atmosphere" under which the zoning is to be done.

[22] "*with a comprehensive plan*": This will prevent haphazard or piecemeal zoning. No zoning should be done without such a comprehensive study.

[23] "*and designed*": This is the statement of direction given by the legislature referred to in note 21. It has purposely been made to include many purposes. There are not the same dangers involved here that there are in adding to the statement of purposes under the police power, as set forth in the first sentence of section 1.

lic 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,[24] and with a view to conserving the value of buildings [25] and encouraging the most appropriate use of land throughout such municipality.

SEC. 4. METHOD OF PROCEDURE.—The legislative body of such municipality shall provide for the manner [26] in which such regulations and restrictions and the boundaries of such districts shall be determined, established, and enforced, and from time to time amended, supplemented, or changed. However, no such regulation, restriction, or boundary shall become effective until after a public hearing [27] in relation thereto, at which parties in interest and citizens [28] shall have an opportunity to be heard. At least 15 days' notice [29] of the time and place of such hearing shall be published in an official paper, or a paper of general circulation, in such municipality.

SEC. 5. CHANGES.[30]—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,[31]

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[24] "*peculiar suitability for particular uses*": This is a reassurance to property interests that zoning is to be done in a sane and practical way.

[25] "*conserving the value of buildings*": It should be noted that zoning is not intended to enhance the value of buildings but to conserve that value—that is, to prevent depreciation of values such as come in "blighted districts," for instance—but it *is* to encourage the most appropriate use of land.

[26] "*provide for the manner*": In view of the great variety in the form of government that exists throughout the country, it is not thought wise to use the expression "provide by ordinance," for that method may be inappropriate in those communities that have commission government or city managers.

[27] "*after a public hearing*": It is thought wise to require by statute that there must be a public hearing before a zoning ordinance becomes effective. There should be, as a matter of policy, many such hearings.

[28] "*and citizens*": This permits any person to be heard, and not merely property owners whose property interests may be adversely affected by the proposed ordinance. It is right that every citizen should be able to make his voice heard and protest against any ordinance that might be detrimental to the best interests of the city.

[29] "*15 days' notice*": This requirement can be varied to conform to local custom. All that is important is that there should be due and proper notice and ample time for citizens to study the proposals and make their opposition manifest.

[30] "*Changes*": It is obvious that provision must be made for changing the regulations as conditions change or new conditions arise, otherwise zoning would be a "strait-jacket" and a detriment to a community instead of an asset.

[31] "*change*": This term, as here used, it is believed will be construed by the courts to include "amendments, supplements, modifications, and repeal," in view of the language which it follows. These words might be added after the word "change," but have been omitted for the sake of brevity. On the

signed by the owners of 20 per cent or more either of the area of the lots [32] included in such proposed change, or of those immediately adjacent [33] in the rear thereof [34] extending —— feet therefrom,[35] or of those directly opposite [36] thereto extending —— feet [35] from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of three-fourths of all the members [37] of the legislative body of such municipality. The provisions of the previous section relative to public hearings and official notice shall apply equally to all changes or amendments.

SEC. 6. ZONING COMMISSION.—In order to avail itself of the powers conferred by this act,[38] such legislative body shall appoint a

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other hand, there must be stability for zoning ordinances if they are to be of value. For this reason the practice has been rather generally adopted of permitting ordinary routine changes to be adopted by a majority vote of the local legislative body but requiring a three-fourths vote in the event of a protest from a substantial proportion of property owners whose interests are affected. This has proved in practice to be a sound procedure and has tended to stabilize the ordinance.

[32] "*area of the lots*": Most laws heretofore enacted, based on the first enactment in New York City, have used ownership of feet frontage as the basis for this consent. This has given rise to many difficulties in practice, especially with corner lots which have frontage on two streets and whose owners accordingly have had two votes to the single vote of the other property owners. In order to get rid of this unnecessarily complex method of determining solely the question of assent to a change in the ordinance, it is recommended that *area of the lots* included in the proposed change be used as the basis instead of feet frontage. This will do away with the present unfair element of double voting and the unnecessary complications of the generally used method.

[33] "*or of those immediately adjacent*": There are three groups of property ownership, and if 20 per cent of *any one* of these object to the proposed change it will require a three-fourths vote of the legislative body before the change can become effective. These three are (1) the owners of the lots included in the change, (2) the owners of the lots immediately adjacent in the rear, and (3) the owners of the lots directly opposite.

[34] "*immediately adjacent in the rear thereof*": This phrase is necessary for precision; otherwise there will be doubt, and owners of lots in the rear but some distance away might claim the right to be included in the objection.

[35] "*extending —— feet therefrom*": There should be inserted in the act the number of feet which is the prevailing lot depth in the municipalities of the State.

[36] "*directly opposite*": The same considerations apply to this phrase as to "immediately adjacent in the rear thereof."

[37] "*all the members*": It is important to use this expression, otherwise changes in the ordinance might be made by a three-fourths vote of the members present at a given meeting.

[38] "*In order to avail itself of the powers conferred by this act*": Without this phrase it would be necessary for the local legislative body forthwith to appoint a zoning commission, even though it was not desired to take up zoning at that time. This act is an enabling act *empowering* action, not making it mandatory.

commission,[39] 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 legislative body shall not hold its public hearings or take action until [40] it has received the final report of such commission. Where a city plan commission [41] already exists, it may be appointed [42] as the zoning commission.[43]

SEC. 7. BOARD OF ADJUSTMENT.—Such local legislative body may provide for the appointment of a board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of this act may provide that the 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.

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[39] "*shall appoint a commission*": Even though a committee of the local legislative body might be entirely competent to undertake the painstaking, careful, and prolonged detailed study that is ordinarily involved in the preparation of a zoning ordinance and map, the appointment of an outside body of representative citizens is most desirable as a means of securing that participation in and thorough understanding of the zoning ordinance which will insure its acceptance by the people of the particular municipality. One of the most important functions of such a commission is the holding of numerous conferences in all parts of the city with all classes of interests. No zoning ordinance should be adopted until such work has been done.

[40] "*shall not hold its public hearings or take action until*": This is a proper safeguard against hasty or ill-considered action. It should be carefully noted that this is in no sense a delegation of its powers by the local legislative body to the zoning commission. The legislative body may still reverse the recommendations of the zoning commission.

[41] "*city plan commission*": It is highly desirable that all zoning schemes should be worked out as an integral part of the city plan. For that reason the city plan commission, preferably, should be intrusted with the making of the zoning plan.

[42] "*may be appointed*": It should be noted that its appointment is not made mandatory, however, as sometimes there will be local reasons for desiring a separate body.

[43] "*Zoning commission*": Some laws contain a provision to the effect that all changes in the ordinance shall be reported upon by the zoning commission before action on them can be taken by the legislative body. Such a provision has *not* been included here. In the first place, that involves continuing the zoning commission as a permanent body, which may not be desirable. In the second place, it is *before* a zoning ordinance is established that the necessity exists for that careful study and investigation which a zoning commission can so well perform. Amendments to the original ordinance do not as a rule require such comprehensive study and may be passed upon by the legislative body, provided that proper notice and opportunity for the public to express its views have been given.

The board of adjustment shall consist of five members, each to be appointed for a term of three years[44] and 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.

The board 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 actions, all of which shall be immediately filed in the office of the board and shall be a public record.

Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality 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.

An appeal stays 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 or 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 on due cause shown.

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 a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

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 ad-

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[44] "*each to be appointed for three years*": This can be altered to provide for overlapping terms, if desired.

ministrative 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.

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 ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance, or to effect any variation in such ordinance.

Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment, or any taxpayer, or any officer, department, board, or bureau of the municipality, may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the filing of the decision in the office of the board.

Upon the presentation of such petition the court may allow a writ of certiorari directed to the board of adjustment to review such decision of the board of adjustment and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than 10 days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, 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 fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

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.

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

SEC. 8. ENFORCEMENT AND REMEDIES.[45]—The local legislative body may provide by ordinance for the enforcement of this act and of any ordinance or regulation made thereunder. A violation of this act or of such ordinance or regulation is hereby declared to be a misdemeanor, and such local legislative body may provide for the punishment thereof by fine or imprisonment or both. It is also empowered to provide civil penalties for such violation.

In case any building or structure is erected, constructed, reconstructed, 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 municipality, in addition to other remedies, may institute any appropriate action or proceedings[46] to prevent such unlawful erection, construction, reconstruction, altera-

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[45] "*Enforcement and Remedies*": This section is vital. Without it the local authorities, as a rule, will be powerless to do more than inflict a fine or penalty for violation of the zoning ordinance. It is obvious that a person desiring undue privileges will be glad to pay a few hundred dollars in fines or penalties if thereby he can obtain a privilege to build in a manner forbidden by law, or use his building in an unlawful manner, when he may profit thereby to the extent of many thousands of dollars. What is necessary is that the authorities shall be able to stop promptly the construction of an unlawful building before it is erected and restrain and prohibit an unlawful use.

[46] "*Any appropriate action or proceedings*": Under the provisions of this section the local authorities may use any or all of the following methods in trying to bring about compliance with the law: They may sue the responsible person for a penalty in a civil suit; they may arrest the offender and put him in jail; they may stop the work in the case of a new building and prevent its going on; they may prevent the occupancy of a building and keep it vacant until such time as the conditions complained of are remedied; they can evict the occupants of a building when the conditions are contrary to law and prevent its reoccupancy until the conditions have been cured. All of these things the local authorities should be given power to do if zoning laws are to be effective.

tion, 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.

SEC. 9. CONFLICT WITH OTHER LAWS.[47]—Wherever the regulations made under authority of this act require a greater width or size of yards, courts, or other open spaces, or require a lower height of building or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this act shall govern. Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts, or other open spaces, or require a lower height of building or a less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of this act, the provisions of such statute or local ordinance or regulation shall govern.

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[47] "*Conflict with other laws*": By this provision the community is always assured of the maintenance of the higher standard. Without a provision of this kind the later enactment would probably govern. This requirement is especially necessary in those States which now have or later may enact housing laws, as housing laws also contain requirements as to height of dwellings, size of yards, and other open spaces, etc.

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DEPARTMENT OF COMMERCE

WASHINGTON

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