

No. 200.

AN ACT

To amend section one of, and to add sections four, five, and six to an act, entitled "An act authorizing cities of the third class to regulate the location of business, trades, and industries; the location, size and use of buildings, and the areas of yards, courts, and open spaces," approved the third day of April, one thousand nine hundred and twenty-three (Pamphlet Laws, fifty-four); providing for regulating and restricting the height, number of stories, bulk, and size of buildings and other structures; the percentage of lot that may be occupied; the size, depth, and width 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; providing for a board of appeals to review decisions of the officer charged with the enforcement of any zoning ordinance duly adopted by said cities; establishing appeals from the decision of said board of appeals to the court of common pleas of the respective counties; and authorizing said appeals to be advanced; also providing for the enforcement of zoning regulations established by said cities and providing penalties for the violation of the same.

Cities of the third class.

Location of businesses, etc., to be regulated.

Section 1, act of April 3, 1923 (P. L. 54), amended.

Alteration of regulations.

Section 1. Be it enacted, &c., That section one of an act, entitled "An act authorizing cities of the third class to regulate the location of business, trades, and industries; the location, size and use of buildings, and the areas of yards, courts, and open spaces," approved the third day of April, one thousand nine hundred and twenty-three (Pamphlet Laws, fifty-four), is hereby amended to read as follows:

Section 1. Be it enacted, &c., That for the purpose of promoting the public health, safety, order, convenience, prosperity [and] or general welfare, cities of the third class may, by ordinance, regulate [the location of business, trades, and industries, the location, size, and use of buildings, and other structures and the areas of yards, courts, and open spaces therein] *and restrict the height, number of stories, bulk, and size of buildings and other structures; the percentage of lot that may be occupied; the size, depth, and width 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 make different regulations for different districts thereof, and may alter the same; but no alteration of such regulations may be made, except by the affirmative vote of not less than two-thirds of the elected or appointed members of council or other local legislative body having [the] jurisdiction. Such regulations shall provide that a board of appeals may determine and vary their application in harmony with their general purpose and intent, and in accordance with general or specific rules therein contained.*

Section 2. The said act is hereby further amended by adding thereto the following sections to be known as sections four, five, and six:

Act further amended.

Section 4. The legislative body of such cities shall provide for the appointment of a board of appeals, and in the regulations and restrictions adopted pursuant to the authority of this act, shall provide that the board of appeals 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.

Shall provide for board of appeals.

The board of appeals shall consist of three members, one of whom shall be appointed 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 appointing authority, upon written charges, shall have the power to remove any member for cause, and after public hearing. Vacancies shall be filled for the unexpired term of any member whose place becomes vacant.

Constitution and term of service.

May remove member for cause.

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. Every rule or regulation, every amendment or repeal thereof, and every order, requirement, decision, or determination of the board, shall immediately be filed in the office of the board and shall be a public record.

Board may adopt rules.

Meetings.

Meetings to be open to public minutes.

Rules, etc., to be filed and to be public records.

Such board of appeals shall hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with the enforcement of any ordinance adopted pursuant to this act. It shall also hear and decide all matters referred to it or upon which it is required to pass under any such ordinance. Such appeal 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.

Functions of board.

Who may take appeal.

Procedure on appeal.

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 appeals 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.

When appeal to be stay.

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 appeals, 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 appeals or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown.

Hearing.

Notice.

The board of appeals shall fix a reasonable time for the hearing of the appeal, give public notice thereof as well as due notice at least six days prior to the hearing, by mail, to the parties in interest at the address filed with the appeal, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

Appearance of parties.

Powers of board.

The board of appeals shall have the following powers:

1. To hear and decide appeals where it is alleged there is error in any order, requirement, decisions, 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 hardships, so that the spirit of the ordinance shall be observed and substantial justice done.

Board may reverse or affirm order appealed from.

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.

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

Appeal from order of board to court of common pleas.

Petition.

Upon the presentation of such petition the court may allow an appeal directed to the board of appeals, to review such decision of the board of appeals, 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 ten 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.

Procedure in common pleas.

Court may grant a restraining order.

The board of appeals 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.

Board of appeals may return certified copies of papers.

Contents of return.

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.

Court may take testimony.

Court may reverse or affirm decision.

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.

Costs.

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

Issues to have preference.

Section 5. The legislative body of such cities may provide by ordinance for the enforcement of this act, and may provide in such ordinance for the imposition of fines for the violation of any of the provisions of such ordinance, and for imprisonment in cases of default in the payment of such fine and costs. The said legislative body is also empowered to provide civil penalties for such violations.

Legislative body of cities may provide for enforcement.

Provisions sever-
able.

Section 6. The provisions of this act shall be severable, and if any of its provisions shall be held to be unconstitutional the decision of the court shall not affect or impair any of the remaining provisions of the act. It is hereby declared as a legislative intent that this act would have been adopted had such unconstitutional provision not been included therein.

APPROVED—The 27th day of April, A. D. 1925.

GIFFORD PINCHOT.

No. 201.

AN ACT

To further amend section six hundred and two of an act, approved the eighteenth day of May, one thousand nine hundred and eleven (Pamphlet Laws, three hundred and nine), entitled "An act to establish a public school system in the Commonwealth of Pennsylvania, together with the provisions by which it shall be administered, and prescribing penalties for the violation thereof; providing revenue to establish and maintain the same, and the method of collecting such revenue; and repealing all laws, general, special or local, or any parts thereof, that are or may be inconsistent therewith," by allowing boards of school directors to acquire school sites, playgrounds, or buildings in another district.

Public schools.

Section 602 of act of May 18, 1911 (P. L. 309), as amended by act of May 20, 1921 (P. L. 970), further amended.

Section 1. Be it enacted, &c., That section six hundred and two of an act, approved the eighteenth day of May, one thousand nine hundred and eleven (Pamphlet Laws, three hundred and nine), entitled "An act to establish a public school system in the Commonwealth of Pennsylvania, together with the provisions by which it shall be administered, and prescribing penalties for the violation thereof; providing revenue to establish and maintain the same, and the method of collecting such revenue; and repealing all laws, general, special or local, or any parts thereof, that are or may be inconsistent therewith," as amended by an act, approved the twentieth day of May, one thousand nine hundred and twenty-one (Pamphlet Laws, nine hundred and seventy), entitled "An act to amend section six hundred two of an act, approved the eighteenth day of May, one thousand nine hundred and eleven (Pamphlet Laws, three hundred and nine), entitled 'An act to establish a public school system in the Commonwealth of Pennsylvania, together with the provisions by which it shall be administered, and prescribing penalties for the violation thereof; providing revenue to establish and maintain the same, and the method of collecting such revenue; and repealing all laws, general, special, or local, or any parts thereof, that are or may be inconsistent therewith,'" is hereby further amended to read as follows: