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H.647

Introduced by Representative Stevens of Waterbury

Referred to Committee on

Date:

Subject: Housing; municipal and county government; municipal zoning;
zoning appeals

Statement of purpose of bill as introduced: This bill proposes to establish a
Housing Board of Appeals to hear appeals of zoning decisions related to the
construction of housing.

An act relating to creation of the Housing Board of Appeals

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 24 V.S.A. chapter 116 is added to read:

CHAPTER 116. HOUSING BOARD OF APPEALS

§ 4201. BOARD ESTABLISHED

(a) Board established. There is established a Housing Board of Appeals to
hear appeals of municipal zoning decisions on housing projects. The Board
shall be composed of three members who shall be experienced in land use law
or housing development, or both. At least one member shall be an attorney
licensed to practice law in the State of Vermont, and at least one member shall
be either a professional engineer or land surveyor. The members of the Board

1 shall be full-time employees and shall not engage in any other employment,
2 appointments, or duties during their terms that is in conflict with their duties as
3 members of the Board.

4 (b) Terms; chair. The members of the Board shall be appointed by the
5 Supreme Court for a term of five years and until their successors are appointed
6 and qualified; provided, however, that any vacancy on the Board shall be filled
7 for the unexpired term. The initial members of the Board shall serve staggered
8 terms of three, four, and five years. The Supreme Court shall designate one
9 member as chair to serve in that capacity for the duration of the member's
10 term.

11 (c) Removal. Any member may be removed by the same authority for
12 inefficiency, neglect of duty, or malfeasance in office. Before removal, the
13 member shall be furnished with a copy of the charges and have an opportunity
14 to be heard in defense.

15 (d) Salary. Each member of the Board shall receive the same annual salary
16 as a Superior Court Judge and reasonable expenses, including transportation.

17 (e) Duties.

18 (1) The Board shall have power and authority to hear and affirm,
19 reverse, or modify, in whole or in part, appeals of final decisions of appropriate
20 municipal panels regarding questions of housing and housing development.
21 This shall include decisions on municipal zoning permits, subdivisions,

1 variances, and other municipal permits and fees applicable to housing and
2 housing developments.

3 (2) Matters subject to the Board's authority may include mixed-use
4 combinations of residential and nonresidential uses, which may occur on
5 separate properties, provided such properties are all part of a common scheme
6 of development.

7 (3) In exercising its authority under this chapter, the Board shall have
8 the power to award all remedies available to the Superior Court in similar
9 cases, including permission to develop the proposed housing.

10 (4) After local remedies have been exhausted, an appeal may be brought
11 before the Board by the applicant or by any other person aggrieved as defined
12 in 10 V.S.A. § 8502. The municipality shall be a party to the action. If the
13 applicant is not the party initiating the action before the Board, then the
14 applicant shall automatically be an intervenor.

15 (5) The Board shall have authority to administer oaths and to compel the
16 attendance of witnesses to proceedings before it. The Board shall have the
17 power to subpoena and subpoena duces tecum. A subpoena or subpoena duces
18 tecum of the Board may be served by any person designated in the subpoena or
19 subpoena duces tecum to serve it. Any testimony given by a person duly
20 sworn shall be subject to the pains and penalties of perjury. All applications or

1 petitions to the Board for which no filing fee has been otherwise specified by
2 statute shall be accompanied by a \$250.00 filing fee.

3 (f) Quorum; disqualification; temporary members. In all matters, a
4 majority of the Board shall constitute a quorum to transact business. No
5 member of the Board shall represent a party or testify as an expert witness or
6 render any professional service for any party or interest before the Board, and
7 any member having an interest in the subject matter shall be disqualified to act.
8 In the event of a disqualification or temporary disability of a member or
9 members of the Board, the Board shall appoint any temporary Board members
10 as shall be necessary. Temporary Board members shall serve with respect to a
11 matter until the same has been fully disposed of before the Board. Temporary
12 Board members shall have the same qualifications as regular Board members
13 in whose place they are acting. A temporary Board member shall be
14 compensated at the rate of \$75.00 for each day devoted to the work of the
15 Board and shall be reimbursed the necessary and reasonable expenses incurred
16 in the performance of the temporary Board member's duties. In the event of a
17 vacancy on the Board, the appellant may elect to continue the proceedings
18 while awaiting the appointment of a successor Board member.

19 (g) Staff and office. The Board shall have such clerical, administrative, and
20 technical staff as may be necessary. The Board shall have an office in which

1 its records, documents, and books shall be kept and with a suitable room in
2 which it may hold hearings.

3 § 4202. HOUSING APPEALS

4 (a) In matters within its authority, the Board shall have concurrent,
5 appellate jurisdiction with the Superior Court. Any party seeking to appeal a
6 municipal zoning decision on a housing project shall bring the appeal to the
7 Board. The decision to bring an appeal before the Board shall be deemed a
8 waiver of any right to bring an action in the Superior Court but shall not
9 abrogate any party's right to appeal decisions of the Board to the Supreme
10 Court; as such, the Board shall retain jurisdiction of any matter originally
11 brought before it. At any time during an appeal to the Board, if the Board
12 determines that it does not have jurisdiction to hear the appeal, the appellant
13 shall have 30 days to file an appeal with the Superior Court.

14 (b) In an appeal of a local decision on housing or housing development,
15 any claim that is within the Board's authority and that has previously been or is
16 subsequently included in an appeal in Superior Court by another party to the
17 decision or by any other aggrieved or injured party who can demonstrate legal
18 standing to appeal shall automatically be stayed by the court to provide the
19 party with standing the opportunity to intervene in the matter before the Board.
20 If intervenor status is granted, the stay of the court action regarding those
21 claims shall continue during the pendency of the appeal to the Board. After the

1 Board has decided the appeal, the court shall dismiss the matter before it to the
2 extent the matter has been resolved by the Board. Any claim included in an
3 appeal to Superior Court that is not within the Board's authority shall not be
4 subject to automatic stay by the court.

5 (c) Appeals shall be filed with the Board within 30 days following the final
6 decision of the appropriate municipal panel. At the same time an appeal is
7 filed with the Board, the applicant shall notify the appropriate municipal panel
8 of the appeal.

9 (d) The appropriate municipal panel shall within 30 days following receipt
10 of notice of appeal submit to the Board a certified record of its proceedings on
11 the matter subject to the appeal.

12 (e) The Board shall serve notice in writing of the time, place, and cause of
13 any hearing upon all parties at least 20 days prior to the date of the hearing.

14 (f) The Board shall hold a hearing on the merits within 90 days following
15 its receipt of a notice of appeal.

16 (g) The Board shall make a decision on an appeal within 60 days after
17 conducting a hearing on the merits.

18 (h) Appeals to the Board shall be consistent with appeals to the Superior
19 Court. Appeals shall be on the certified record, and except in such cases as
20 justice may warrant, in the sole discretion of the Board, no additional evidence
21 will be introduced. The rules of evidence shall not strictly apply. The Board

1 shall record the proceedings of any hearing before it and shall make such
2 recording available to the public for inspection and recording from the date of
3 the hearing to a date that is 15 working days after the Board has made a final
4 decision on the matter that is the subject of the hearing, or, if an appeal is made
5 from such decision, the date upon which the matter has been finally
6 adjudicated, whichever date is later.

7 (i) The Board shall not reverse or modify a decision except for errors of
8 law or if the Board is persuaded by the balance of probabilities, on the
9 evidence before it, that said decision is unreasonable.

10 (j) Nonattorneys, including professional engineers, architects, and land
11 surveyors, may represent any party before the Board. Nothing in this section
12 shall prevent the Board from denying representation by any individual it deems
13 to be improper, inappropriate, or unable to adequately represent the interests of
14 the applicant.

15 (k) The Board's deliberative processes in adjudicatory proceedings shall be
16 exempt from the public meeting and notice provisions of 1 V.S.A. chapter 5.
17 Decisions and orders in adjudicatory proceedings shall be publicly available,
18 but only after they have been reduced to writing, signed by a quorum of the
19 Board, and served upon the parties, and shall set forth the Board's rulings of
20 law and findings of fact in support of its decisions. Discussions and actions by

1 the Board concerning procedural, administrative, legal, and internal matters
2 shall be exempt from the meeting and notice provisions of 1 V.S.A. chapter 5.

3 § 4203. RULES

4 The Board shall adopt rules under 3 V.S.A. chapter 25 necessary for
5 carrying out its functions including rules of procedure to be followed in
6 hearings conducted by it consistent with the provisions of this chapter.

7 § 4204. APPEALS TO SUPREME COURT

8 Decisions of the Board may be appealed to the Supreme Court by any party
9 in accordance with 10 V.S.A. § 8505.

10 § 4205. ENFORCEMENT

11 (a) After a decision of the Board becomes final, the Board shall, at the
12 request of any party, file a certified abstract in the Superior Court. The clerk of
13 the court shall enter judgment and such judgment may be enforced as with any
14 final judgment of the Superior Court.

15 (b) Neglect or failure on the part of any municipality to comply with such
16 orders shall be deemed willful neglect of duty, and it shall be subject to the
17 penalties and damages provided by law in such cases.

18 Sec. 2. 10 V.S.A. § 8503 is amended to read:

19 § 8503. APPLICABILITY

20 * * *

1 (c) This chapter shall govern all appeals arising under 24 V.S.A. chapter
2 117, the planning and zoning chapter, except those appeals brought to the
3 Housing Board of Appeals pursuant to 24 V.S.A. chapter 116.

4 * * *

5 Sec. 3. 10 V.S.A. § 8504 is amended to read:

6 § 8504. APPEALS TO THE ENVIRONMENTAL DIVISION

7 * * *

8 (k) Limitations on appeals. Notwithstanding any other provision of this
9 section:

10 (1) there shall be no appeal from a District Commission decision when
11 the Commission has issued a permit and no hearing was requested or held, or
12 no motion to alter was filed following the issuance of an administrative
13 amendment;

14 (2) a municipal decision regarding whether a particular application
15 qualifies for a recorded hearing under 24 V.S.A. § 4471(b) shall not be subject
16 to appeal;

17 (3) if a District Commission issues a partial decision under subsection
18 6086(b) of this title, any appeal of that decision must be taken within 30 days
19 ~~of~~ following the date of that decision; and

1 (4) there shall be no appeal from an appropriate municipal panel when
2 the appellant brings the appeal to the Housing Board of Appeals established
3 pursuant to 24 V.S.A. chapter 116.

4 * * *

5 Sec. 4. 10 V.S.A. 8505 is amended to read:

6 § 8505. APPEALS TO THE SUPREME COURT

7 (a) Any person aggrieved by a decision of the Environmental Division
8 pursuant to this subchapter, any party by right, or the Board, or any person
9 aggrieved by a decision of the Housing Board of Appeals may appeal to the
10 Supreme Court within 30 days of following the date of the entry of the order or
11 judgment appealed from, provided that:

12 (1) the person was a party to the proceeding before the Environmental
13 Division or the Housing Board of Appeals; ~~or~~

14 (2) the decision being appealed is the denial of party status; or

15 (3) the Supreme Court determines that:

16 (A) there was a procedural defect that prevented the person from
17 participating in the proceeding; or

18 (B) some other condition exists that would result in manifest injustice
19 if the person's right to appeal were disallowed.

20 (b) An objection that has not been raised before the Environmental
21 Division or the Housing Board of Appeals may not be considered by the

1 Supreme Court, unless the failure or neglect to raise that objection is excused
2 by the Supreme Court because of extraordinary circumstances.

3 * * *

4 Sec. 5. HOUSING BOARD OF APPEALS POSITIONS;

5 APPROPRIATION

6 (a) The following new positions are created at the Housing Board of
7 Appeals for the purposes of carrying out this act:

8 (1) three full-time Housing Board of Appeal members; and

9 (2) one Staff Attorney 1.

10 (b) The sum of \$600,000.00 is appropriated to the Housing Board of
11 Appeals from the General Fund in fiscal year 2025 for the positions established
12 in subsection (a) of this section and for additional operating costs required to
13 implement the appeals process established in this act.

14 Sec. 6. HOUSING BOARD OF APPEALS CREATION

15 The Supreme Court shall appoint the members of Housing Board of

16 Appeals on or before July 1, 2025.

17 Sec. 7. EFFECTIVE DATE

18 This act shall take effect on July 1, 2024.