

SENATE BILL NO. 105

February 12, 2019, Introduced by Senator VANDERWALL and referred to the Committee on Natural Resources.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending section 35317 (MCL 324.35317), as amended by 2012 PA 297.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 35317. (1) A local unit of government may issue variances
2 under a zoning ordinance, or the department may issue special
3 exceptions under the model zoning plan if a local unit of
4 government does not have an approved zoning ordinance, if a

1 practical difficulty will occur to the owner of the property if the
 2 variance or special exception is not granted. In determining
 3 whether a practical difficulty will occur if a variance or special
 4 exception is not granted, primary consideration shall be given to
 5 **ensuring both of the following:** ~~assuring that~~

6 (a) **The protection of** human health and safety. ~~are protected~~
 7 ~~by the determination and that the determination complies~~

8 (b) **Compliance** with applicable local zoning, other state laws,
 9 and federal law.

10 (2) If a practical difficulty will occur to the owner of the
 11 property if the variance or special exception is not granted, a
 12 variance or special exception shall be granted under this section
 13 unless ~~the local unit of government or the department determines~~
 14 ~~that~~ the use will significantly damage the public interest on the
 15 privately owned land, or, if the land is publicly owned, the public
 16 interest in the publicly owned land, by significant and
 17 unreasonable depletion or degradation of any of the following:

18 (a) The diversity of the critical dune areas within the local
 19 unit of government.

20 (b) The quality of the critical dune areas within the local
 21 unit of government.

22 (c) The functions of the critical dune areas within the local
 23 unit of government.

24 (3) ~~(2)~~ The decision of the local unit of government or the
 25 department shall be in writing and shall be based upon evidence
 26 that would meet the standards in section 75 of the administrative
 27 procedures act of 1969, 1969 PA 306, MCL 24.275. A decision denying
 28 a variance or special exception shall document, and any review
 29 upholding the decision shall determine, all of the following:

1 (a) That the local unit of government or the department has
2 met the burden of proof under subsection ~~(1)~~. **(2)**.

3 (b) That the decision is based upon sufficient facts or data.

4 (c) That the decision is the product of reliable scientific
5 principles and methods.

6 (d) That the decision has applied the principles and methods
7 reliably to the facts.

8 (e) That the facts or data upon which the decision is based
9 are recorded in the file.

10 **(4)** ~~(3)~~—A local unit of government or the department shall not
11 require an environmental site assessment or environmental impact
12 statement for a variance except for a special use project.

13 **(5)** ~~(4)~~—A variance shall not be granted from a setback
14 requirement provided for under the model zoning plan or an
15 equivalent zoning ordinance approved under section ~~35034~~ **35304**
16 enacted pursuant to this part unless the property for which the
17 variance is requested is 1 of the following:

18 (a) A nonconforming lot of record that is recorded prior to
19 July 5, 1989, and that becomes nonconforming due to the operation
20 of this part or a zoning ordinance.

21 (b) A lot legally created after July 5, 1989 that later
22 becomes nonconforming due to natural shoreline erosion.

23 (c) Property on which the base of the first landward critical
24 dune of at least 20 feet in height that is not a foredune is
25 located at least 500 feet inland from the first foredune crest or
26 line of vegetation on the property. However, the setback shall be a
27 minimum of 200 feet measured from the foredune crest or line of
28 vegetation.

29 **(6)** ~~(5)~~—Each local unit of government that has issued a

1 variance for a use other than a special use project during the
2 previous 12 months shall file an annual report with the department
3 indicating variances that have been granted by the local unit of
4 government during that period.

5 **(7)** ~~(6)~~—Upon receipt of an application for a special exception
6 under the model zoning plan, the department shall forward a copy of
7 the application and all supporting documentation to the local unit
8 of government having jurisdiction over the proposed location. The
9 local unit of government ~~shall have~~ **has** 60 days to review and
10 comment on the proposed special exception. The department shall not
11 make a decision on a special exception under the model zoning plan
12 until either the local unit of government has commented on the
13 proposed special exception or has waived its opportunity to review
14 the special exception. The local unit of government may waive its
15 opportunity to review the application at any time within 60 days
16 after receipt of the application and supporting documentation by
17 notifying the department in writing. The local unit of government
18 also waives its opportunity to review the application if it fails
19 to act as authorized in this subsection within 60 days. If the
20 local unit of government waives its opportunity to review the
21 application, the local unit of government also waives its
22 opportunity to oppose the decision by the department to issue a
23 special exception. If the local unit of government ~~opposes the~~
24 ~~issuance of the special exception, the local unit of government~~
25 ~~shall notify~~ **notifies** the department, in writing, ~~of its opposition~~
26 within the 60-day notice period, ~~—If that~~ the local unit of
27 government opposes the issuance of the special exception, the
28 department shall not issue a special exception. The local unit of
29 government may also consider whether a practical difficulty will

1 occur to the owner of the property if the special exception is not
2 granted by the department and may make a recommendation to the
3 department within the 60-day notice period. The department shall
4 base its determination of whether a practical difficulty exists on
5 information provided by the local unit of government and other
6 pertinent information.

7 **(8) Notwithstanding any other provision of this section, upon**
8 **application, the department shall issue a special exception under**
9 **this section if all of the following conditions are met:**

10 **(a) The applicant is a local unit of government and the**
11 **application involves public land that was public land on July 5,**
12 **1989.**

13 **(b) The purpose of the application is to provide a view of 1**
14 **of the Great Lakes, from a parking lot that was lawful and in**
15 **existence on July 5, 1989.**

16 **(c) The special exception is for a proposed project that would**
17 **benefit the citizens and visitors of that local unit of government**
18 **as evidenced by the adoption of a resolution in support of the**
19 **special exception by the governing body of that local unit of**
20 **government.**

21 **(d) The resolution adopted under subdivision (c) demonstrates**
22 **that the proposed project would meet the criteria set forth in**
23 **section 35302.**

24 Enacting section 1. This amendatory act takes effect 90 days
25 after the date it is enacted into law.