

HOUSE GOVERNMENT AND URBAN AFFAIRS COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 265

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

AN ACT

RELATING TO MUNICIPALITIES; PERMITTING A LAND USE HEARING  
OFFICER TO CONDUCT PUBLIC HEARINGS ON CERTAIN MATTERS  
REGARDING ZONING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Municipal Code, Section  
3-21-6.1 NMSA 1978, is enacted to read:

"3-21-6.1. [NEW MATERIAL] LAND USE HEARING OFFICERS. --

A. A zoning authority may designate a hearing  
officer to conduct hearings in zoning matters that are quasi-  
judicial or administrative in nature and are protests or  
disputes arising from the administration or enforcement of a  
zoning law, regulation, restriction or boundary. The land use  
hearing officer shall conduct the hearing in the manner  
required or permitted by law.

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underscored material = new  
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1           B. In a hearing conducted pursuant to Subsection A  
2 of this section, the land use hearing officer shall make a  
3 proposed decision on the matter and make findings of fact and  
4 conclusions of law.

5           C. The proposed decision, with the findings of  
6 fact and conclusions of law, shall be forwarded to the zoning  
7 authority for approval or disapproval. The zoning authority  
8 shall make its decision solely on the record of the hearing,  
9 the findings of fact and the conclusions of law and no further  
10 testimony of witnesses shall be taken or considered. The  
11 decision of the zoning authority shall be made by a majority  
12 vote of the members unless a greater majority is otherwise  
13 required by ordinance, charter or law.

14           D. An appeal of the decision of the zoning  
15 authority may be made to the district court for a hearing, as  
16 provided by law."

17           Section 2. Section 3-21-8 NMSA 1978 (being Laws 1965,  
18 Chapter 300, Section 14-20-6, as amended) is amended to read:

19           "3-21-8. APPEALS TO ZONING AUTHORITY-- GROUNDS-- STAY OF  
20 PROCEEDINGS. --

21           A. The zoning authority shall provide by  
22 resolution the procedure to be followed in considering appeals  
23 allowed by this section.

24           B. Unless a land use hearing officer has been  
25 designated pursuant to Section 3-21-6.1 NMSA 1978, any

1 aggrrieved person or any officer, department, board or bureau  
 2 of the zoning authority affected by a decision of an  
 3 administrative officer, ~~commission or committee~~ in the  
 4 enforcement of Sections 3-21-1 through 3-21-14 NMSA 1978 or  
 5 ordinance, resolution, rule or regulation adopted pursuant to  
 6 these sections ~~may~~ appeal to the zoning authority. An appeal  
 7 shall stay all proceedings in furtherance of the action  
 8 appealed unless the officer, ~~commission or committee~~ from whom  
 9 the appeal is taken certifies that by reason of facts stated  
 10 in the certificate, a stay would cause ~~imminent~~ peril of life  
 11 or property. Upon certification, the proceedings shall not be  
 12 stayed except by order of district court after notice to the  
 13 official, ~~commission or committee~~ from whom the appeal is  
 14 taken and on due cause shown.

15 C. When an appeal alleges that there is error in  
 16 any order, requirement, decision or determination by an  
 17 administrative official, ~~commission or committee~~ in the  
 18 enforcement of Sections 3-21-1 through 3-21-14 NMSA 1978 or  
 19 any ordinance, resolution, rule or regulation adopted pursuant  
 20 to these sections, the zoning authority by a majority vote of  
 21 all its members may:

22 (1) authorize, in appropriate cases and  
 23 subject to appropriate conditions and safeguards variances  
 24 from the terms of the zoning ordinance or resolution:

25 (a) which are not contrary to the

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 [bracketed material] = delete

1 public interest;

2 (b) where, owing to special conditions,  
3 a literal enforcement of the zoning ordinance will result in  
4 unnecessary hardship; and

5 (c) so that the spirit of the zoning  
6 ordinance is observed and substantial justice done; or

7 (2) in conformity with Sections 3-21-1  
8 through 3-21-14 NMSA 1978:

9 (a) reverse any order, requirement,  
10 decision or determination of an administrative official,  
11 commission or committee;

12 (b) decide in favor of the appellant;  
13 or

14 (c) make any change in any order,  
15 requirement, decision or determination of an administrative  
16 official, commission or committee. "