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HOUSE BILL 265

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

INTRODUCED BY

Al Park

AN ACT

RELATING TO MUNICIPALITIES; PERMITTING A LAND-USE HEARING OFFICER TO CONDUCT PUBLIC HEARINGS ON ZONING CHANGES AND TO HEAR AND DECIDE APPEALS.

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

Section 1. Section 3-21-6 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-20-4, as amended) is amended to read:

"3-21-6. ZONING--MODE OF DETERMINING REGULATIONS, RESTRICTIONS AND BOUNDARIES OF DISTRICT--PUBLIC HEARING REQUIRED--NOTICE. --

A. The zoning authority within its jurisdiction shall provide by ordinance for the manner in which zoning regulations, restrictions and the boundaries of districts are:

- (1) determined, established and enforced; and
- (2) amended, supplemented or repealed.

underscored material = new
[bracketed material] = delete

1 B. No zoning regulation, restriction or boundary
2 shall become effective, amended, supplemented or repealed
3 until after a public hearing at which all parties in interest
4 and citizens shall have an opportunity to be heard. Notice of
5 the time and place of the public hearing shall be published,
6 at least fifteen days prior to the date of the hearing, within
7 its respective jurisdiction. Whenever a change in zoning is
8 proposed for an area of one block or less, notice of the
9 public hearing shall be mailed by certified mail, return
10 receipt requested, to the owners, as shown by the records of
11 the county treasurer, of lots ~~[of]~~ or land within the area
12 proposed to be changed by a zoning regulation and within one
13 hundred feet, excluding public ~~[right-of-way]~~ rights of way,
14 of the area proposed to be changed by zoning regulation.
15 Whenever a change in zoning is proposed for an area of more
16 than one block, notice of the public hearing shall be mailed
17 by first class mail to the owners, as shown by the records of
18 the county treasurer, of lots or land within the area proposed
19 to be changed by a zoning regulation and within one hundred
20 feet, excluding public ~~[right-of-way]~~ rights of way, of the
21 area proposed to be changed by zoning regulation. If the
22 notice by first class mail to the owner is returned
23 undelivered, the zoning authority shall attempt to discover
24 the owner's most recent address and shall remit the notice by
25 certified mail, return receipt requested, to that address.

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underscored material = new
[bracketed material] = delete

1 C. If the owners of twenty percent or more of the
2 area of the lots and land included in the area proposed to be
3 changed by a zoning regulation or within one hundred feet,
4 excluding public [~~right-of-way~~] rights of way, of the area
5 proposed to be changed by a zoning regulation protest in
6 writing the proposed change in the zoning regulation, the
7 proposed change in zoning shall not become effective unless
8 the change is approved by a majority vote of all the members
9 of the governing body of the municipality or by a two-thirds
10 vote of all the members of the board of county commissioners.

11 D. The zoning authority may designate a land-use
12 hearing officer to hold the public hearing and approve the
13 proposed change in a zoning regulation for all protests except
14 those set forth in Subsection C of this section."

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

17 "3-21-8. APPEALS TO ZONING AUTHORITY-- LAND-USE HEARING
18 OFFICER-- GROUND-- STAY OF PROCEEDINGS. --

19 A. The zoning authority shall provide by
20 [~~resolution~~] ordinance the procedure to be followed in
21 considering appeals allowed by this section. The zoning
22 authority may, by a majority vote of all its members, delegate
23 to a designated land-use hearing officer the authority to hear
24 and decide the appeals allowed by this section.

25 B. Any aggrieved person or any officer,

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[bracketed material] = delete

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

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

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- (a) which are not contrary to the public interest;
 - (b) where, owing to special conditions, a literal enforcement of the zoning ordinance will result in unnecessary hardship; and
 - (c) so that the spirit of the zoning ordinance is observed and substantial justice done; or
- (2) in conformity with Sections 3-21-1 through 3-21-14 NMSA 1978:
- (a) reverse any order, requirement, decision or determination of an administrative official, commission or committee;
 - (b) decide in favor of the appellant;
- or
- (c) make any change in any order, requirement, decision or determination of an administrative official, commission or committee. "