

SB 475 S

FILED

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WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2007

OFFICE WEST VIRGINIA
LEGISLATURE OF STATE

ENROLLED

COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 475

(SENATOR McCABE, *original sponsor*)

[Passed March 10, 2007; in effect ninety days from passage.]

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[Passed March 10, 2007; in effect ninety days from passage.]

AN ACT to amend and reenact §8A-8-11 and §8A-8-12 of the Code of West Virginia, 1931, as amended, all relating to appeals to the Board of Zoning Appeals; clarifying time period for written decision by board; automatic dismissal if time period not met; clarifying stays; and authorizing stay exemptions.

Be it enacted by the Legislature of West Virginia:

That §8A-8-11 and §8A-8-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 8. BOARD OF ZONING APPEALS.

§8A-8-11. Notice and hearing of appeal.

1 (a) Within ten days of receipt of the appeal by the
2 Board of Zoning Appeals, the board shall set a time for
3 the hearing of the appeal and give notice. The hearing
4 on the appeal must be held within forty-five days of
5 receipt of the appeal by the board.

6 (b) At least fifteen days prior to the date set for the
7 hearing on the appeal, the Board of Zoning Appeals
8 shall publish a notice of the date, time and place of the
9 hearing on the appeal as a Class I legal advertisement in
10 compliance with the provisions of article three, chapter
11 fifty-nine of this code and written notice shall be given
12 to the interested parties. The publication area shall be
13 the area covered in the appeal.

14 (c) The Board of Zoning Appeals may require the
15 party taking the appeal to pay for the cost of public
16 notice and written notice to interested parties.

17 (d) At the hearing, any party may appear in person, by
18 agent or by an attorney licensed to practice in this state.

19 (e) Every decision by the board must be in writing and
20 state findings of fact and conclusions of law on which
21 the board based its decision. If the board fails to
22 provide findings of fact and conclusions of law
23 adequate for decision by the circuit court and as a result
24 of the failure, the circuit court returns an appealed

25 matter to the board and dismisses jurisdiction over an
26 applicant's appeal without deciding the matter, whether
27 the court returns the matter with or without
28 restrictions, the board shall pay any additional costs for
29 court filing fees, service of process and reasonable
30 attorneys' fees required to permit the person appealing
31 the board's decision to return the matter to the circuit
32 court for completion of the appeal.

33 (f) The written decision by the board shall be rendered
34 within thirty days after the hearing. If the board fails to
35 render a written decision within thirty days after the
36 hearing, then any party may pursue additional legal
37 remedies to obtain a decision, including, but not limited
38 to, seeking a writ of mandamus.

§8A-8-12. Stays; exception.

1 (a) When an appeal has been filed with the Board of
2 Zoning Appeals, all proceedings and work on the
3 premises in question shall be stayed, except as provided
4 in subsection (b) of this section.

5 (b) A stay may not be had:

6 (1) If the official or board from where the appeal was
7 taken certifies in writing to the Board of Zoning
8 Appeals that a stay would cause imminent peril to life
9 or property;

10 (2) Upon further administrative proceedings,
11 including, but not limited to, submissions to and
12 reviews by the staff or any administrative body; or

13 (3) Upon engineering or architectural work that does

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14 not disturb the real estate beyond what is necessary to
15 complete engineering, survey work or other tests.

16 (c) If the written certification is filed pursuant to
17 subdivision (1), subsection (b) of this section, then
18 proceedings or work on the premises shall not be stayed.

19 (d) Nothing in this section prevents a party from
20 obtaining a restraining order.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


.....
Chairman Senate Committee

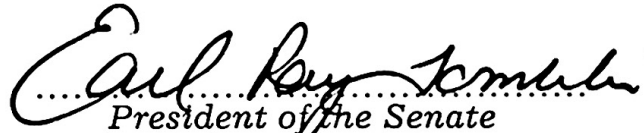

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Chairman House Committee


Originated in the Senate.

In effect ninety days from passage.



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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within *is approved* this
the *4th* Day of *April*, 2007.


.....
Governor

PRESENTED TO THE
GOVERNOR

APR 03 2007

Time 1:40 pm