

SENATE, No. 1303

STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED FEBRUARY 21, 2008

Sponsored by:

Senator BOB SMITH

District 17 (Middlesex and Somerset)

Senator BILL BARONI

District 14 (Mercer and Middlesex)

SYNOPSIS

Defines "inherently beneficial use" for purposes of zoning use variance and specifically includes facilities that supply electrical energy produced from wind, solar, or photovoltaic technologies.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning certain property uses under local zoning
2 ordinances and amending P.L.1975, c.291.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 3.1 of P.L.1975, c.291 (C.40:55D-4) is amended to
8 read as follows:

9 3.1. "Days" means calendar days.

10 "Density" means the permitted number of dwelling units per
11 gross area of land to be developed.

12 "Developer" means the legal or beneficial owner or owners of a
13 lot or of any land proposed to be included in a proposed
14 development, including the holder of an option or contract to
15 purchase, or other person having an enforceable proprietary interest
16 in such land.

17 "Development" means the division of a parcel of land into two or
18 more parcels, the construction, reconstruction, conversion,
19 structural alteration, relocation or enlargement of any building or
20 other structure, or of any mining excavation or landfill, and any use
21 or change in the use of any building or other structure, or land or
22 extension of use of land, for which permission may be required
23 pursuant to this act.

24 "Development potential" means the maximum number of
25 dwelling units or square feet of nonresidential floor area that may
26 be constructed on a specified lot or in a specified zone under the
27 master plan and land use regulations in effect on the date of the
28 adoption of the development transfer ordinance, and in accordance
29 with recognized environmental constraints.

30 "Development regulation" means a zoning ordinance,
31 subdivision ordinance, site plan ordinance, official map ordinance
32 or other municipal regulation of the use and development of land, or
33 amendment thereto adopted and filed pursuant to this act.

34 "Development transfer" or "development potential transfer"
35 means the conveyance of development potential, or the permission
36 for development, from one or more lots to one or more other lots by
37 deed, easement, or other means as authorized by ordinance.

38 "Development transfer bank" means a development transfer bank
39 established pursuant to section 22 of P.L.2004, c.2 (C.40:55D-158)
40 or the State TDR Bank.

41 "Drainage" means the removal of surface water or groundwater
42 from land by drains, grading or other means and includes control of
43 runoff during and after construction or development to minimize
44 erosion and sedimentation, to assure the adequacy of existing and
45 proposed culverts and bridges, to induce water recharge into the

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 ground where practical, to lessen nonpoint pollution, to maintain
2 the integrity of stream channels for their biological functions as
3 well as for drainage, and the means necessary for water supply
4 preservation or prevention or alleviation of flooding.

5 "Environmental commission" means a municipal advisory body
6 created pursuant to P.L.1968, c.245 (C.40:56A-1 et seq.).

7 "Erosion" means the detachment and movement of soil or rock
8 fragments by water, wind, ice and gravity.

9 "Final approval" means the official action of the planning board
10 taken on a preliminarily approved major subdivision or site plan,
11 after all conditions, engineering plans and other requirements have
12 been completed or fulfilled and the required improvements have
13 been installed or guarantees properly posted for their completion, or
14 approval conditioned upon the posting of such guarantees.

15 "Floor area ratio" means the sum of the area of all floors of
16 buildings or structures compared to the total area of the site.

17 "General development plan" means a comprehensive plan for the
18 development of a planned development, as provided in section 4 of
19 P.L.1987, c.129 (C.40:55D-45.2).

20 "Governing body" means the chief legislative body of the
21 municipality. In municipalities having a board of public works,
22 "governing body" means such board.

23 "Historic district" means one or more historic sites and
24 intervening or surrounding property significantly affecting or
25 affected by the quality and character of the historic site or sites.

26 "Historic site" means any real property, man-made structure,
27 natural object or configuration or any portion or group of the
28 foregoing of historical, archeological, cultural, scenic or
29 architectural significance.

30 "Inherently beneficial use" means a use which is universally
31 considered of value to the community because it fundamentally
32 serves the public good and promotes the general welfare. Such a
33 use includes, but is not limited to, a hospital, school, child care
34 center, group home, or a wind, solar or photovoltaic energy facility.

35 "Instrument" means the easement, credit, or other deed
36 restriction used to record a development transfer.

37 "Interested party" means: (a) in a criminal or quasi-criminal
38 proceeding, any citizen of the State of New Jersey; and (b) in the
39 case of a civil proceeding in any court or in an administrative
40 proceeding before a municipal agency, any person, whether residing
41 within or without the municipality, whose right to use, acquire, or
42 enjoy property is or may be affected by any action taken under this
43 act, or whose rights to use, acquire, or enjoy property under this act,
44 or under any other law of this State or of the United States have
45 been denied, violated or infringed by an action or a failure to act
46 under this act.

47 "Land" includes improvements and fixtures on, above or below
48 the surface.

1 "Local utility" means any sewerage authority created pursuant to
2 the "sewerage authorities law," P.L.1946, c.138 (C.40:14A-1 et
3 seq.); any utilities authority created pursuant to the "municipal and
4 county utilities authorities law," P.L.1957, c.183 (C.40:14B-1 et
5 seq.); or any utility, authority, commission, special district or other
6 corporate entity not regulated by the Board of Regulatory
7 Commissioners under Title 48 of the Revised Statutes that provides
8 gas, electricity, heat, power, water or sewer service to a
9 municipality or the residents thereof.

10 "Lot" means a designated parcel, tract or area of land established
11 by a plat or otherwise, as permitted by law and to be used,
12 developed or built upon as a unit.
13 (cf: P.L.2004, c.2, s.33)

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15 2. Section 3.4 of P.L.1975, c.291 (C.40:55D-7) is amended to
16 read as follows:

17 3.4. "Sedimentation" means the deposition of soil that has been
18 transported from its site of origin by water, ice, wind, gravity or
19 other natural means as a product of erosion.

20 "Sending zone" means an area or areas designated in a master
21 plan and zoning ordinance, adopted pursuant to P.L.1975, c.291
22 (C.40:55D-1 et seq.), within which development may be restricted
23 and which is otherwise consistent with the provisions of section 8
24 of P.L.2004, c.2 (C.40:55D-144).

25 "Site plan" means a development plan of one or more lots on
26 which is shown (1) the existing and proposed conditions of the lot,
27 including but not necessarily limited to topography, vegetation,
28 drainage, flood plains, marshes and waterways, (2) the location of
29 all existing and proposed buildings, drives, parking spaces,
30 walkways, means of ingress and egress, drainage facilities, utility
31 services, landscaping, structures and signs, lighting, screening
32 devices, and (3) any other information that may be reasonably
33 required in order to make an informed determination pursuant to an
34 ordinance requiring review and approval of site plans by the
35 planning board adopted pursuant to article 6 of this act.

36 "Standards of performance" means standards (1) adopted by
37 ordinance pursuant to subsection 52d. regulating noise levels, glare,
38 earthborne or sonic vibrations, heat, electronic or atomic radiation,
39 noxious odors, toxic matters, explosive and inflammable matters,
40 smoke and airborne particles, waste discharge, screening of
41 unsightly objects or conditions and such other similar matters as
42 may be reasonably required by the municipality or (2) required by
43 applicable federal or State laws or municipal ordinances.

44 "State Transfer of Development Rights Bank," or "State TDR
45 Bank," means the bank established pursuant to section 3 of
46 P.L.1993, c.339 (C.4:1C-51).

47 "Street" means any street, avenue, boulevard, road, parkway,
48 viaduct, drive or other way (1) which is an existing State, county or

1 municipal roadway, or (2) which is shown upon a plat heretofore
2 approved pursuant to law, or (3) which is approved by official
3 action as provided by this act, or (4) which is shown on a plat duly
4 filed and recorded in the office of the county recording officer prior
5 to the appointment of a planning board and the grant to such board
6 of the power to review plats; and includes the land between the
7 street lines, whether improved or unimproved, and may comprise
8 pavement, shoulders, gutters, curbs, sidewalks, parking areas and
9 other areas within the street lines.

10 "Structure" means a combination of materials to form a
11 construction for occupancy, use or ornamentation whether installed
12 on, above, or below the surface of a parcel of land.

13 "Subdivision" means the division of a lot, tract or parcel of land
14 into two or more lots, tracts, parcels or other divisions of land for
15 sale or development. The following shall not be considered
16 subdivisions within the meaning of this act, if no new streets are
17 created: (1) divisions of land found by the planning board or
18 subdivision committee thereof appointed by the chairman to be for
19 agricultural purposes where all resulting parcels are 5 acres or
20 larger in size, (2) divisions of property by testamentary or intestate
21 provisions, (3) divisions of property upon court order, including but
22 not limited to judgments of foreclosure, (4) consolidation of
23 existing lots by deed or other recorded instrument and (5) the
24 conveyance of one or more adjoining lots, tracts or parcels of land,
25 owned by the same person or persons and all of which are found
26 and certified by the administrative officer to conform to the
27 requirements of the municipal development regulations and are
28 shown and designated as separate lots, tracts or parcels on the tax
29 map or atlas of the municipality. The term "subdivision" shall also
30 include the term "resubdivision."

31 "Transcript" means a typed or printed verbatim record of the
32 proceedings or reproduction thereof.

33 "Variance" means permission to depart from the literal
34 requirements of a zoning ordinance pursuant to sections 47 and
35 subsections 29.2b., 57c. and 57d. of this act.

36 "Wind, solar or photovoltaic energy facility" means a facility for
37 the purpose of supplying electrical energy produced from wind,
38 solar, or photovoltaic technologies.

39 "Zoning permit" means a document signed by the administrative
40 officer (1) which is required by ordinance as a condition precedent
41 to the commencement of a use or the erection, construction,
42 reconstruction, alteration, conversion or installation of a structure or
43 building and (2) which acknowledges that such use, structure or
44 building complies with the provisions of the municipal zoning
45 ordinance or variance therefrom duly authorized by a municipal
46 agency pursuant to sections 47 and 57 of this act.

47 (cf: P.L.2004, c.2, s.36)

1 3. This act shall take effect immediately.

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STATEMENT

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6 This bill would add a definition of "inherently beneficial use" to
7 the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et
8 seq.). Although section 57 of that law (C.40:55D-70) makes
9 reference to this term, it is not defined in existing statutory law.

10 If a use is held to be inherently beneficial, it presumptively
11 satisfies the positive criteria for the grant of a use variance under
12 subsection d. of section 57 of P.L.1975, c.291 (C.40:55D-70),
13 which is required when the proposed use is inconsistent with the
14 zoning plan. Specifically, the bill defines an "inherently beneficial
15 use" as "a use which is universally considered of value to the
16 community because it fundamentally serves the public good and
17 promotes the general welfare. Such a use includes, but is not
18 limited to, a hospital, school, child care center, group home, or a
19 wind, solar or photovoltaic energy facility."

20 Of those enumerated uses, the courts have specifically declared
21 hospitals, schools, child care centers, and group homes to be
22 inherently beneficial uses. This bill would codify those decisions
23 and also include a wind, solar or photovoltaic energy facility as an
24 inherently beneficial use.

25 The bill defines "wind, solar, or photovoltaic energy facility" to
26 mean, "a facility for the purpose of supplying electrical energy
27 produced from wind, solar, or photovoltaic technologies."

28 This bill is intended to ensure that facilities that supply electrical
29 energy produced from wind, solar or photovoltaic technologies will
30 be considered an inherently beneficial use.