SENATE, No. 1303

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED FEBRUARY 21, 2008

Sponsored by:
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District 17 (Middlesex and Somerset)
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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.
AN ACT concerning certain property uses under local zoning ordinances and amending P.L.1975, c.291.

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

1. Section 3.1 of P.L.1975, c.291 (C.40:55D-4) is amended to read as follows:
   3.1. "Days" means calendar days.
   "Density" means the permitted number of dwelling units per gross area of land to be developed.
   "Developer" means the legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.
   "Development" means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or other structure, or of any mining excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to this act.
   "Development potential" means the maximum number of dwelling units or square feet of nonresidential floor area that may be constructed on a specified lot or in a specified zone under the master plan and land use regulations in effect on the date of the adoption of the development transfer ordinance, and in accordance with recognized environmental constraints.
   "Development regulation" means a zoning ordinance, subdivision ordinance, site plan ordinance, official map ordinance or other municipal regulation of the use and development of land, or amendment thereto adopted and filed pursuant to this act.
   "Development transfer" or "development potential transfer" means the conveyance of development potential, or the permission for development, from one or more lots to one or more other lots by deed, easement, or other means as authorized by ordinance.
   "Development transfer bank" means a development transfer bank established pursuant to section 22 of P.L.2004, c.2 (C.40:55D-158) or the State TDR Bank.
   "Drainage" means the removal of surface water or groundwater from land by drains, grading or other means and includes control of runoff during and after construction or development to minimize erosion and sedimentation, to assure the adequacy of existing and 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.
ground where practical, to lessen nonpoint pollution, to maintain
the integrity of stream channels for their biological functions as
well as for drainage, and the means necessary for water supply
preservation or prevention or alleviation of flooding.
"Environmental commission" means a municipal advisory body
created pursuant to P.L.1968, c.245 (C.40:56A-1 et seq.).
"Erosion" means the detachment and movement of soil or rock
fragments by water, wind, ice and gravity.
"Final approval" means the official action of the planning board
taken on a preliminarily approved major subdivision or site plan,
after all conditions, engineering plans and other requirements have
been completed or fulfilled and the required improvements have
been installed or guarantees properly posted for their completion, or
approval conditioned upon the posting of such guarantees.
"Floor area ratio" means the sum of the area of all floors of
buildings or structures compared to the total area of the site.
"General development plan" means a comprehensive plan for the
development of a planned development, as provided in section 4 of
"Governing body" means the chief legislative body of the
municipality. In municipalities having a board of public works,
"governing body" means such board.
"Historic district" means one or more historic sites and
intervening or surrounding property significantly affecting or
affected by the quality and character of the historic site or sites.
"Historic site" means any real property, man-made structure,
natural object or configuration or any portion or group of the
foregoing of historical, archeological, cultural, scenic or
architectural significance.
"Inherently beneficial use" means a use which is universally
considered of value to the community because it fundamentally
serves the public good and promotes the general welfare. Such a
use includes, but is not limited to, a hospital, school, child care
center, group home, or a wind, solar or photovoltaic energy facility.
"Instrument" means the easement, credit, or other deed
restriction used to record a development transfer.
"Interested party" means: (a) in a criminal or quasi-criminal
proceeding, any citizen of the State of New Jersey; and (b) in the
case of a civil proceeding in any court or in an administrative
proceeding before a municipal agency, any person, whether residing
within or without the municipality, whose right to use, acquire, or
enjoy property is or may be affected by any action taken under this
act, or whose rights to use, acquire, or enjoy property under this act,
or under any other law of this State or of the United States have
been denied, violated or infringed by an action or a failure to act
under this act.
"Land" includes improvements and fixtures on, above or below
the surface.
"Local utility" means any sewerage authority created pursuant to the "sewerage authorities law," P.L.1946, c.138 (C.40:14A-1 et seq.); any utilities authority created pursuant to the "municipal and county utilities authorities law," P.L.1957, c.183 (C.40:14B-1 et seq.); or any utility, authority, commission, special district or other corporate entity not regulated by the Board of Regulatory Commissioners under Title 48 of the Revised Statutes that provides gas, electricity, heat, power, water or sewer service to a municipality or the residents thereof.

"Lot" means a designated parcel, tract or area of land established by a plat or otherwise, as permitted by law and to be used, developed or built upon as a unit.

(cf: P.L.2004, c.2, s.33)

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

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

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

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

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


"Street" means any street, avenue, boulevard, road, parkway, viaduct, drive or other way (1) which is an existing State, county or
municipal roadway, or (2) which is shown upon a plat heretofore approved pursuant to law, or (3) which is approved by official action as provided by this act, or (4) which is shown on a plat duly filed and recorded in the office of the county recording officer prior to the appointment of a planning board and the grant to such board of the power to review plats; and includes the land between the street lines, whether improved or unimproved, and may comprise pavement, shoulders, gutters, curbs, sidewalks, parking areas and other areas within the street lines.

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

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

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

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

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

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

(cf: P.L.2004, c.2, s.36)
3. This act shall take effect immediately.

STATEMENT

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

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

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

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

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