

ASSEMBLY, No. 329

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblymen PASCHELL and ARNONE

1 AN ACT concerning certain nonconforming zoning uses and amending  
2 P.L.1975, c.291.

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

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7 1. Section 54 of P.L.1975, c.291 (C.40:55D-67) is amended to  
8 read as follows:

9 54. a. A zoning ordinance may provide for conditional uses as  
10 specified in the ordinance, which may include significant existing  
11 nonconforming uses or some particular class thereof, to be granted by  
12 the planning board according to definite specifications and standards  
13 which shall be clearly set forth with sufficient certainty and  
14 definiteness to enable the developer to know their limit and extent.  
15 The planning board shall grant or deny an application for a conditional  
16 use within 95 days of submission of a complete application by a  
17 developer to the administrative officer, or within such further time as  
18 may be consented to by the applicant.

19 b. The review by the planning board of a conditional use shall  
20 include any required site plan review pursuant to article 6 of this act.  
21 The time period for action by the planning board on conditional uses  
22 pursuant to subsection a. of this section shall apply to such site plan  
23 review. Failure of the planning board to act within the period  
24 prescribed shall constitute approval of the application and a certificate  
25 of the administrative officer as to the failure of the planning board to  
26 act shall be issued on request of the applicant, and it shall be sufficient  
27 in lieu of the written endorsement or other evidence of approval,  
28 herein required, and shall be so accepted by the county recording  
29 officer for purposes of filing subdivision plats.

30 Whenever review or approval of the application by the county  
31 planning board is required by section 5 of P.L.1968, c.285  
32 (C.40:27-6.3), in the case of a subdivision, or section 8 of P.L.1968,

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

**Matter underlined thus is new matter.**

1 c.285 (C.40:27-6.6), in the case of a site plan, the municipal planning  
2 board shall condition any approval that it grants upon timely receipt of  
3 a favorable report on the application by the county planning board or  
4 approval by the county planning board by its failure to report thereon  
5 within the required time period.

6 (cf: P.L.1975, c.291, s.54)

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8 2. This act shall take effect immediately.

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11 STATEMENT

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13 This bill would permit a local governing body to specify in its  
14 zoning ordinance that significant existing nonconforming uses, or some  
15 particular class thereof, are conditional uses which may be granted by  
16 the planning board. Currently, the law does not provide that an  
17 existing nonconforming use may be considered a conditional use by a  
18 planning board. Therefore, if a nonconforming structure is completely  
19 destroyed, it cannot be rebuilt upon the site without a "d" variance  
20 granted by the zoning board of adjustment. The purpose of this bill is  
21 to provide a practical method for changing one nonconforming use to  
22 another since a conditional use application is generally approved more  
23 quickly than a "d" variance application. An advantage to this  
24 conditional use method of permitting nonconforming uses is that a  
25 municipality would adopt objective standards into its zoning ordinance  
26 with respect to items such as traffic, parking, maximum occupancy,  
27 employment, noise, light, smoke and emissions, aesthetics, drainage,  
28 neighborhood impact, and environmental impact, which would provide  
29 guidance to the planning board with respect to decisions which have  
30 traditionally been made without such objective standards.

31 This bill is not a mandate on municipalities to amend their zoning  
32 ordinances; it merely permits a municipality to adopt a process so that  
33 significant nonconforming uses can be classified as conditional uses.  
34 The requirements that a nonconforming use be significant and that the  
35 municipality adopt standards to determine if conditional use treatment  
36 is warranted for the nonconforming use are intended to prevent this  
37 type of conditional use treatment from being used as a form of spot  
38 zoning to benefit a few favored landowners.

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43 Permits granting of zoning conditional use to include significant  
44 existing nonconforming use.