

ASSEMBLY, No. 672

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblymen BAGGER and AUGUSTINE

1 AN ACT concerning certain variances under the "Municipal Land Use
2 Law," and amending 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 57 of P.L.1975, c.291 (C.40:55D-70) is amended to
8 read as follows:

9 57. Powers. The board of adjustment shall have the power to:

10 a. Hear and decide appeals where it is alleged by the appellant that
11 there is error in any order, requirement, decision or refusal made by an
12 administrative officer based on or made in the enforcement of the
13 zoning ordinance;

14 b. Hear and decide requests for interpretation of the zoning map or
15 ordinance or for decisions upon other special questions upon which
16 such board is authorized to pass by any zoning or official map
17 ordinance, in accordance with this act;

18 c. (1) Where: (a) by reason of exceptional narrowness,
19 shallowness or shape of a specific piece of property, or (b) by reason
20 of exceptional topographic conditions or physical features uniquely
21 affecting a specific piece of property, or (c) by reason of an
22 extraordinary and exceptional situation uniquely affecting a specific
23 piece of property or the structures lawfully existing thereon, the strict
24 application of any regulation pursuant to article 8 of this act would
25 result in peculiar and exceptional practical difficulties to, or
26 exceptional and undue hardship upon, the developer of such property,
27 grant, upon an application or an appeal relating to such property, a
28 variance from such strict application of such regulation so as to relieve
29 such difficulties or hardship; (2) where in an application or appeal
30 relating to a specific piece of property the purposes of this act would
31 be advanced by a deviation from the zoning ordinance requirements
32 and the benefits of the deviation would substantially outweigh any

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 detriment, grant a variance to allow departure from regulations
2 pursuant to article 8 of this act; provided, however, that the fact a
3 proposed use is an inherently beneficial use shall not be relevant to a
4 decision on a variance under this subsection and provided that no
5 variance from those departures enumerated in subsection d. of this
6 section shall be granted under this subsection; and provided further
7 that the proposed development does not require approval by the
8 planning board of a subdivision, site plan or conditional use, in
9 conjunction with which the planning board has power to review a
10 request for a variance pursuant to subsection a. of section 47 of this
11 act; and

12 d. In particular cases for special reasons, grant a variance to allow
13 departure from regulations pursuant to article 8 of this act to permit:
14 (1) a use or principal structure in a district restricted against such use
15 or principal structure, (2) an expansion of a nonconforming use, (3)
16 deviation from a specification or standard pursuant to section 54 of
17 P.L.1975, c.291 (C.40:55D-67) pertaining solely to a conditional use,
18 (4) an increase in the permitted floor area ratio as defined in section
19 3.1. of P.L.1975, c.291 (C.40:55D-4), (5) an increase in the permitted
20 density as defined in section 3.1 of P.L.1975, c.291 (C.40:55D-4),
21 except as applied to the required lot area for a lot or lots for detached
22 one or two dwelling unit buildings, which lot or lots either an isolated
23 undersized lot or lots resulting from a minor subdivision or (6) a
24 height of a principal structure which exceeds by 10 feet or 10% the
25 maximum height permitted in the district for a principal structure. A
26 variance under this subsection shall be granted only by affirmative vote
27 of at least five members, in the case of a municipal board, or
28 two-thirds of the full authorized membership, in the case of a regional
29 board, pursuant to article 10 of this act.

30 If an application development requests one or more variances but
31 not a variance for a purpose enumerated in subsection d. of this
32 section, the decision on the requested variance or variances shall be
33 rendered under subsection c. of this section.

34 No variance or other relief may be granted under the terms of this
35 section, including a variance or other relief involving an inherently
36 beneficial use, without an independent showing that such variance or
37 other relief can be granted without substantial detriment to the public
38 good and will not substantially impair the intent and the purpose of the
39 zone plan and zoning ordinance. In respect to any airport safety zones
40 delineated under the "Air Safety and Zoning Act of 1983," P.L.1983,
41 c.260 (C.6:1-80 et seq.), no variance or other relief may be granted
42 under the terms of this section, permitting the creation or
43 establishment of a nonconforming use which would be prohibited
44 under standards promulgated pursuant to that act, except upon
45 issuance of a permit by the Commissioner of Transportation. An
46 application under this section may be referred to any appropriate

1 person or agency for its report; provided that such reference shall not
2 extend the period of time within which the zoning board of adjustment
3 shall act.

4 Except as provided hereunder, with respect to an application for a
5 variance or other relief under this section, "inherently beneficial use"
6 means a use which uniquely and peculiarly serves the public welfare at
7 a particular site. With respect to an application for a variance or other
8 relief under this section involving a health care facility, as defined
9 under section 2 of P.L.1971, c.136 (C.26:2H-2), "inherently beneficial
10 use" means a use that by its essential nature or character serves the
11 public good and promotes the general welfare.

12 (cf: P.L.1991, c.445, s.10)

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14 2. This act shall take effect immediately.

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STATEMENT

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19 This bill is intended to define the term "inherently beneficial use"
20 and clarifies that a variance involving an inherently beneficial use may
21 be granted only if an applicant that is not a health care facility
22 demonstrates that the proposed use uniquely and peculiarly serves the
23 public welfare at a particular site and will not be a substantial
24 detriment to the public good and will not substantially impair the intent
25 and purpose of the zone plan and zoning ordinance.

26 The bill would further clarify that there must be an independent
27 showing that a variance involving an inherently beneficial use can be
28 granted without substantial detriment to the public good and will not
29 substantially impair the intent and purpose of the zoning ordinance.
30 The bill would narrow the definition of "inherently beneficial use" as
31 a use which uniquely and peculiarly serves the public welfare at a
32 particular site, except with regard to an application made by a health
33 care facility, in which case "inherently beneficial use" would be defined
34 as a use that by its essential nature or character serves the public good
35 and promotes the general welfare.

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40 Defines "inherently beneficial use"; modifies treatment under
41 "Municipal Land Use Law."