

ASSEMBLY, No. 2486

STATE OF NEW JERSEY

INTRODUCED NOVEMBER 7, 1996

By Assemblyman CARROLL

1 AN ACT creating a procedure for the review and approval of minor  
2 variance applications, amending and supplementing P.L.1975, c.291  
3 (C.40:55D-1 et seq.).

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

7  
8 1. Section 3.2 of P.L.1975, c.291 (C.40:55D-5) is amended to  
9 read as follows:

10 3.2. "Maintenance guarantee" means any security which may be  
11 accepted by a municipality for the maintenance of any improvements  
12 required by this act, including but not limited to surety bonds, letters  
13 of credit under the circumstances specified in section 16 of P.L.1991,  
14 c.256 (C.40:55D-53.5), and cash.

15 "Major subdivision" means any subdivision not classified as a minor  
16 subdivision.

17 "Master plan" means a composite of one or more written or graphic  
18 proposals for the development of the municipality as set forth in and  
19 adopted pursuant to section 19 of P.L.1975, c.291 (C.40:55D-28).

20 "Mayor" means the chief executive of the municipality, whatever his  
21 official designation may be, except that in the case of municipalities  
22 governed by municipal council and municipal manager the term  
23 "mayor" shall not mean the "municipal manager" but shall mean the  
24 mayor of such municipality.

25 "Minor site plan" means a development plan of one or more lots  
26 which (1) proposes new development within the scope of development  
27 specifically permitted by ordinance as a minor site plan; (2) does not  
28 involve planned development, any new street or extension of any  
29 off-tract improvement which is to be prorated pursuant to section 30  
30 of P.L.1975, c.291 (C.40:55D-42); and (3) contains the information  
31 reasonably required in order to make an informed determination as to  
32 whether the requirements established by ordinance for approval of a  
33 minor site plan have been met.

34 "Minor subdivision" means a subdivision of land for the creation of

**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 a number of lots specifically permitted by ordinance as a minor  
2 subdivision; provided that such subdivision does not involve (1) a  
3 planned development, (2) any new street, (3) approval by the county  
4 planning board, or (4) the extension of any off-tract improvement, the  
5 cost of which is to be prorated pursuant to section 30 of P.L.1975,  
6 c.291 (C.40:55D-42).

7 "Minor variance" means any variance, otherwise governed by the  
8 provisions of subsection c. of section 57 of P.L.1975, c.291  
9 (C.40:55D-70), which has been so designated by ordinance as a minor  
10 variance, and which does not arise out of an application for  
11 development involving (1) a planned development, (2) any new street,  
12 (3) approval by the county planning board, or (4) any off-tract  
13 improvement, the cost of which is to be pro-rated pursuant to section  
14 30 of P.L.1975, c.291 (C.40:55D-42).

15 "Municipality" means any city, borough, town, township or village.

16 "Municipal agency" means a municipal planning board or board of  
17 adjustment, or a governing body of a municipality when acting  
18 pursuant to this act and any agency which is created by or responsible  
19 to one or more municipalities when such agency is acting pursuant to  
20 this act.

21 "Nonconforming lot" means a lot, the area, dimension or location  
22 of which was lawful prior to the adoption, revision or amendment of  
23 a zoning ordinance, but fails to conform to the requirements of the  
24 zoning district in which it is located by reason of such adoption,  
25 revision or amendment.

26 "Nonconforming structure" means a structure the size, dimension  
27 or location of which was lawful prior to the adoption, revision or  
28 amendment of a zoning ordinance, but which fails to conform to the  
29 requirements of the zoning district in which it is located by reasons of  
30 such adoption, revision or amendment.

31 "Nonconforming use" means a use or activity which was lawful  
32 prior to the adoption, revision or amendment of a zoning ordinance,  
33 but which fails to conform to the requirements of the zoning district  
34 in which it is located by reasons of such adoption, revision or  
35 amendment.

36 "Official county map" means the map, with changes and additions  
37 thereto, adopted and established, from time to time, by resolution of  
38 the board of chosen freeholders of the county pursuant to R.S.40:27-5.

39 "Official map" means a map adopted by ordinance pursuant to  
40 article 5 of P.L.1975, c.291.

41 "Offsite" means located outside the lot lines of the lot in question  
42 but within the property (of which the lot is a part) which is the subject  
43 of a development application or contiguous portion of a street or  
44 right-of-way.

45 "Off-tract" means not located on the property which is the subject  
46 of a development application nor on a contiguous portion of a street

1 or right-of-way.

2 "Onsite" means located on the lot in question.

3 "On-tract" means located on the property which is the subject of a  
4 development application or on a contiguous portion of a street or  
5 right-of-way.

6 "Open-space" means any parcel or area of land or water essentially  
7 unimproved and set aside, dedicated, designated or reserved for public  
8 or private use or enjoyment or for the use and enjoyment of owners  
9 and occupants of land adjoining or neighboring such open space;  
10 provided that such areas may be improved with only those buildings,  
11 structures, streets and off street parking and other improvements that  
12 are designed to be incidental to the natural openness of the land.

13 (cf: P.L.1991, c.256, s.1)

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15 2. Section 7.3 of P.L.1975, c.291 (C.40:55D-14) is amended to  
16 read as follows:

17 7.3 Any notice made by certified mail pursuant to sections 7.1 and  
18 7.2 of [this act] P.L.1975, c.291 (C.40:55D-12) and (C.40:55D-13)  
19 and section 3 of P.L. , c. (C. ) (pending before the Legislature  
20 as this bill) shall be deemed complete upon mailing.

21 (cf: P.L.1975, c.291, s.7.3)

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23 3. (New section) A municipality may, by ordinance, authorize the  
24 zoning officer to grant approval of minor variances.

25 Within 15 days of determining that an application for a minor  
26 variance is complete pursuant to section 5 of P.L.1984, c.20  
27 (C.40:55D-10.3), the zoning officer shall either approve or  
28 disapprove the application. If the zoning officer: (1) determines that  
29 the application does not meet the definition of a minor variance; or (2)  
30 disapproves the application, the application shall be referred to the  
31 board of adjustment for consideration as a variance pursuant to  
32 subsection c. of section 57 of P.L.1975, c.291 (C.40:55D-70). A  
33 determination by the zoning officer that the application does not meet  
34 the definition of a minor variance or the disapproval of an application  
35 for a minor variance by the zoning officer shall not be appealable to  
36 Superior Court.

37 If the zoning officer is satisfied that the application fulfills the  
38 definition of a minor variance and meets both the positive and negative  
39 criteria for variance relief set forth in section c. of section 57 of  
40 P.L.1975, c.291 (C.40:55D-70), the zoning officer may provisionally  
41 grant variance relief, subject to the procedure set forth hereunder.

42 The applicant, upon receipt of the provisional grant of the variance  
43 by the zoning officer, shall provide notice to owners of all real  
44 property as shown on the current tax duplicates, located in the State  
45 and within 200 feet of the property which is the subject of the hearing,  
46 to the municipal clerk, and any other person or entity entitled to notice

1 pursuant to section 7.1 of P.L.1975, c.291 (C.40:55D-12), via  
2 certified mail, which notice shall set forth the nature of the application,  
3 the reason why variance relief is requested, the address of the  
4 property, the address and hours of the office in which the application  
5 and supporting documents are filed and can be reviewed, and such  
6 other information as the municipality may by ordinance or regulation  
7 require. In addition, such notice shall prominently state:

8 "This matter has been deemed a minor variance by the zoning  
9 officer of the (municipality). This is the only notice that you will be  
10 given of this application. If you object to the variance being sought,  
11 you must notify the zoning officer in writing within 10 days of the date  
12 of this notice or the variance will be granted without further action.  
13 If you object, the matter will be considered by the board of  
14 adjustment."

15 The applicant shall provide proper proof of mailing to the zoning  
16 officer.

17 In the event that no written objection is received to the application  
18 within 10 days of the date of mailing, the zoning officer shall issue a  
19 certificate memorializing the variance. The failure on the part of any  
20 person to object to the variance as herein provided shall bar such  
21 person from any further appeals relating to such approval.

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23 4. This act shall take effect 90 days next following enactment.

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#### 25 STATEMENT

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27 This bill would establish a "de minimus" variance, authorize  
28 municipalities to define its parameters and allow the zoning officer to  
29 grant approvals of these variance applications without the resort to  
30 public hearings by either planning or zoning boards.

31 Under the "Municipal Land Use Law," municipalities are authorized  
32 to define, by ordinance, a "minor site plan" and "minor subdivision"  
33 and to waive public hearings on applications for development which  
34 fall into these categories. The law defines what these applications are  
35 not, but leaves up to the municipality what constitutes a "de minimus"  
36 subdivision or site plan application. Both definitions exclude from the  
37 definition of "minor" a planned development application and one which  
38 involves a new street or extension of an off-tract improvement.

39 This bill would define as a "minor variance" one which does not  
40 involve a planned development, any new street, the extension of any  
41 off-tract improvement, and approval by the county planning board.

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45 Establishes expedited procedure for approval of minor variances under  
46 "Municipal Land Use Law."