

P.L. 1997, CHAPTER 145, *approved June 30, 1997*

Senate, No. 824 (*Third Reprint*)

1 **AN ACT** concerning certain variances under the "Municipal Land Use  
2 Law," 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:*

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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, shallowness  
19 or shape of a specific piece of property, or (b) by reason of  
20 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,

**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.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup> **Senate floor amendments adopted November 7, 1996.**

<sup>2</sup> **Senate floor amendments adopted December 19, 1996.**

<sup>3</sup> **Senate amendments adopted in accordance with Governor's recommendations May 22, 1997.**

1 grant, upon an application or an appeal relating to such property, a  
2 variance from such strict application of such regulation so as to relieve  
3 such difficulties or hardship; (2) where in an application or appeal  
4 relating to a specific piece of property the purposes of this act would  
5 be advanced by a deviation from the zoning ordinance requirements  
6 and the benefits of the deviation would substantially outweigh any  
7 detriment, grant a variance to allow departure from regulations  
8 pursuant to article 8 of this act; provided, however, that the fact<sup>1</sup> that<sup>1</sup>  
9 a proposed use is an inherently beneficial use shall not be<sup>3</sup> [relevant  
10 to] <sup>3</sup>dispositive of<sup>3</sup> a decision on a variance under this subsection and  
11 provided that no variance from those departures enumerated in  
12 subsection d. of this section shall be granted under this subsection; and  
13 provided further that the proposed development does not require  
14 approval by the planning board of a subdivision, site plan or  
15 conditional use, in conjunction with which the planning board has  
16 power to review a request for a variance pursuant to subsection a. of  
17 section 47 of this act; and

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

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

40 No variance or other relief may be granted under the terms of this  
41 section, including a variance or other relief involving an inherently  
42 beneficial use, without<sup>2</sup> [an independent] a<sup>2</sup> showing that such  
43 variance or other relief can be granted without substantial detriment  
44 to the public good and will not substantially impair the intent and the  
45 purpose of the zone plan and zoning ordinance. In respect to any  
46 airport safety zones delineated under the "Air Safety and Zoning Act

1 of 1983," P.L.1983, c.260 (C.6:1-80 et seq.), no variance or other  
2 relief may be granted under the terms of this section, permitting the  
3 creation or establishment of a nonconforming use which would be  
4 prohibited under standards promulgated pursuant to that act, except  
5 upon issuance of a permit by the Commissioner of Transportation. An  
6 application under this section may be referred to any appropriate  
7 person or agency for its report; provided that such reference shall not  
8 extend the period of time within which the zoning board of adjustment  
9 shall act.

10 <sup>1</sup>[Except as provided hereunder, with respect to an application for  
11 a variance or other relief under this section, "inherently beneficial use"  
12 means a use which uniquely and peculiarly serves the public welfare at  
13 a particular site. With respect to an application for a variance or other  
14 relief under this section involving a health care facility, as defined  
15 under section 2 of P.L.1971, c.136 (C.26:2H-2), "inherently beneficial  
16 use" means a use that by its essential nature or character serves the  
17 public good and promotes the general welfare.]<sup>1</sup>  
18 (cf: P.L.1991, c.445, s.10)

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20 2. This act shall take effect immediately.

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25 Modifies "Municipal Land Use Law."