

[Passed Both Houses]

[Third Reprint]

SENATE, No. 824

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 22, 1996

By Senators SCHLUTER, INVERSO, Assemblymen Bagger, Augustine, Assemblywomen Buono, Myers, Assemblymen Barnes, Dalton, Assemblywoman Friscia, Assemblyman Greenwald, Assemblywoman Weinberg, Assemblymen Wisniewski, Zisa, Bateman and Lance

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

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:

¹ Senate floor amendments adopted November 7, 1996.

² Senate floor amendments adopted December 19, 1996.

³ Senate amendments adopted in accordance with Governor's recommendations May 22, 1997.

1 application of any regulation pursuant to article 8 of this act would
2 result in peculiar and exceptional practical difficulties to, or
3 exceptional and undue hardship upon, the developer of such property,
4 grant, upon an application or an appeal relating to such property, a
5 variance from such strict application of such regulation so as to relieve
6 such difficulties or hardship; (2) where in an application or appeal
7 relating to a specific piece of property the purposes of this act would
8 be advanced by a deviation from the zoning ordinance requirements
9 and the benefits of the deviation would substantially outweigh any
10 detriment, grant a variance to allow departure from regulations
11 pursuant to article 8 of this act; provided, however, that the fact ¹that¹
12 a proposed use is an inherently beneficial use shall not be ³[relevant
13 to] dispositive of³ a decision on a variance under this subsection and
14 provided that no variance from those departures enumerated in
15 subsection d. of this section shall be granted under this subsection; and
16 provided further that the proposed development does not require
17 approval by the planning board of a subdivision, site plan or
18 conditional use, in conjunction with which the planning board has
19 power to review a request for a variance pursuant to subsection a. of
20 section 47 of this act; and

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

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

43 No variance or other relief may be granted under the terms of this
44 section, including a variance or other relief involving an inherently
45 beneficial use, without ²[an independent] ²a² showing that such
46 variance or other relief can be granted without substantial detriment

1 to the public good and will not substantially impair the intent and the
2 purpose of the zone plan and zoning ordinance. In respect to any
3 airport safety zones delineated under the "Air Safety and Zoning Act
4 of 1983," P.L.1983, c.260 (C.6:1-80 et seq.), no variance or other
5 relief may be granted under the terms of this section, permitting the
6 creation or establishment of a nonconforming use which would be
7 prohibited under standards promulgated pursuant to that act, except
8 upon issuance of a permit by the Commissioner of Transportation. An
9 application under this section may be referred to any appropriate
10 person or agency for its report; provided that such reference shall not
11 extend the period of time within which the zoning board of adjustment
12 shall act.

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

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

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24 2. This act shall take effect immediately.

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Modifies "Municipal Land Use Law."