

ASSEMBLY, No. 2749

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 13, 2020

Sponsored by:

Assemblywoman NANCY F. MUNOZ

District 21 (Morris, Somerset and Union)

SYNOPSIS

Requires compliance with notice and approval process under MLUL for construction of free-standing structures on certain publicly-owned property.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning construction of free-standing structures on
 2 certain publicly-owned property, and amending and
 3 supplementing P.L.1975, c.291.

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

7
 8 1. (New section) A board of education, as defined in
 9 N.J.S.18A:18A-2 and the governing board of each public institution
 10 of higher education, as described in P.L.1994, c.48 (C.18A:3B-
 11 1 et seq.), shall submit an application for development in order to
 12 construct a free-standing structure on publicly-owned property.

13 For the purposes of this section, "free-standing structure" means
 14 a combination of materials to form a construction for use or
 15 ornamentation whether installed on, above, or below the surface of
 16 a parcel of land, and which extends 100 feet or more in height from
 17 the surface of the parcel of land, but shall not include a building as
 18 defined in section 3 of P.L.1975, c.291 (C.40:55D-3).

19
 20 2. Section 3 of P.L.1975, c.291 (C.40:55D-3) is amended to
 21 read as follows:

22 3. For the purposes of **[this act]** P.L.1975, c.291 (C.40:55D-
 23 1 et seq., unless the context clearly indicates a different meaning:

24 The term "shall" indicates a mandatory requirement, and the term
 25 "may" indicates a permissive action.

26 "Administrative officer" means the clerk of the municipality,
 27 unless a different municipal official or officials are designated by
 28 ordinance or statute.

29 "Agricultural restriction" means an "agricultural deed restriction
 30 for farmland preservation purposes" as defined in section 3 of
 31 P.L.1983, c.32 (C.4:1C-13).

32 "Agricultural land" means "farmland" as defined pursuant to
 33 section 3 of P.L.1999, c.152 (C.13:8C-3).

34 "Applicant" means a developer submitting an application for
 35 development.

36 "Application for development" means the application form and
 37 all accompanying documents required by ordinance for approval of
 38 a subdivision plat, site plan, planned development, cluster
 39 development, conditional use, zoning variance , construction of a
 40 free-standing structure pursuant to section 1 of P.L. , c. (C.)
 41 (pending before the Legislature as this bill), or direction of the
 42 issuance of a permit pursuant to section 25 or section 27 of
 43 P.L.1975, c.291 (C.40:55D-34 or C.40:55D-36).

44 "Approving authority" means the planning board of the
 45 municipality, unless a different agency is designated by ordinance

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.

1 when acting pursuant to the authority of P.L.1975, c.291
2 (C.40:55D-1 et seq.).

3 "Board of adjustment" means the board established pursuant to
4 section 56 of P.L.1975, c.291 (C.40:55D-69).

5 "Building" means a combination of materials to form a
6 construction adapted to permanent, temporary, or continuous
7 occupancy and having a roof.

8 "Cable television company" means a cable television company as
9 defined pursuant to section 3 of P.L.1972, c.186 (C.48:5A-3).

10 "Capital improvement" means a governmental acquisition of real
11 property or major construction project.

12 "Circulation" means systems, structures and physical
13 improvements for the movement of people, goods, water, air,
14 sewage or power by such means as streets, highways, railways,
15 waterways, towers, airways, pipes and conduits, and the handling of
16 people and goods by such means as terminals, stations, warehouses,
17 and other storage buildings or transshipment points.

18 "Cluster development" means a contiguous cluster or
19 noncontiguous cluster that is not a planned development.

20 "Common open space" means an open space area within or
21 related to a site designated as a development, and designed and
22 intended for the use or enjoyment of residents and owners of the
23 development. Common open space may contain such
24 complementary structures and improvements as are necessary and
25 appropriate for the use or enjoyment of residents and owners of the
26 development.

27 "Conditional use" means a use permitted in a particular zoning
28 district only upon a showing that such use in a specified location
29 will comply with the conditions and standards for the location or
30 operation of such use as contained in the zoning ordinance, and
31 upon the issuance of an authorization therefor by the planning
32 board.

33 "Conservation restriction" means a "conservation restriction" as
34 defined in section 2 of P.L.1979, c.378 (C.13:8B-2).

35 "Contiguous cluster" means a contiguous area to be developed as
36 a single entity according to a plan containing a section or sections
37 to be developed for residential purposes, nonresidential purposes, or
38 a combination thereof, at a greater concentration of density or
39 intensity of land use than authorized within the section or sections
40 under conventional development, in exchange for the permanent
41 preservation of another section or other sections of the area as
42 common or public open space, or for historic or agricultural
43 purposes, or a combination thereof.

44 "Conventional" means development other than cluster
45 development or planned development.

46 "County agriculture development board" or "CADB" means a
47 county agriculture development board established by a county

1 pursuant to the provisions of section 7 of P.L.1983, c.32 (C.4:1C-
2 14).

3 "County master plan" means a composite of the master plan for
4 the physical development of the county in which the municipality is
5 located, with the accompanying maps, plats, charts and descriptive
6 and explanatory matter adopted by the county planning board
7 pursuant to R.S.40:27-2 and R.S.40:27-4.

8 "County planning board" means the county planning board, as
9 defined in section 1 of P.L.1968, c.285 (C.40:27-6.1), of the county
10 in which the land or development is located.

11 (cf: P.L.2013, c.106, s.2)

12

13 3. Section 7.1 of P.L.1975, c.291 (C.40:55D-12) is amended to
14 read as follows:

15 7.1. Notice pursuant to subsections a., b., d., e., f., g. and h. of
16 this section shall be given by the applicant unless a particular
17 municipal officer is so designated by ordinance; provided that
18 nothing contained herein shall prevent the applicant from giving
19 such notice if he so desires. Notice pursuant to subsections a., b.,
20 d., e., f., g. and h. of this section shall be given at least 10 days prior
21 to the date of the hearing.

22 a. Public notice of a hearing shall be given for an extension of
23 approvals for five or more years under subsection d. of section 37
24 of P.L.1975, c.291 (C.40:55D-49) and subsection b. of section 40 of
25 P.L.1975, c.291 (C.40:55D-52); for modification or elimination of a
26 significant condition or conditions in a memorializing resolution in
27 any situation wherein the application for development for which the
28 memorializing resolution is proposed for adoption required public
29 notice, and for any other applications for development, with the
30 following exceptions: (1) conventional site plan review pursuant to
31 section 34 of P.L.1975, c.291 (C.40:55D-46), (2) minor
32 subdivisions pursuant to section 35 of P.L.1975, c.291 (C.40:55D-
33 47) or (3) final approval pursuant to section 38 of P.L.1975, c.291
34 (C.40:55D-50); notwithstanding the foregoing, the governing body
35 may by ordinance require public notice for such categories of site
36 plan review as may be specified by ordinance, for appeals of
37 determinations of administrative officers pursuant to subsection a.
38 of section 57 of P.L.1975, c.291 (C.40:55D-70), and for requests for
39 interpretation pursuant to subsection b. of section 57 of P.L.1975,
40 c.291 (C.40:55D-70). Public notice shall also be given in the event
41 that relief is requested pursuant to section 47 or 63 of P.L.1975,
42 c.291 (C.40:55D-60 or C.40:55D-76) as part of an application for
43 development otherwise excepted herein from public notice.

44 In addition, public notice shall be given by a public entity
45 seeking to erect an outdoor advertising sign on land owned or
46 controlled by a public entity as required pursuant to section 22 of
47 P.L.1975, c.291 (C.40:55D-31) or, if so provided by ordinance
48 adopted pursuant to subsection g. of section 29.1 of P.L.1975, c.291

1 (C.40:55D-39), by a private entity seeking to erect an outdoor
2 advertising sign on public land or on land owned by a private entity.

3 Public notice shall be given by publication in the official
4 newspaper of the municipality, if there be one, or in a newspaper of
5 general circulation in the municipality.

6 b. Except as provided in paragraph (2) of subsection h. of this
7 section, notice of a hearing requiring public notice pursuant to
8 subsection a. of this section shall be given to the owners of all real
9 property as shown on the current tax duplicates, located in the State
10 and within 200 feet in all directions of the property which is the
11 subject of such hearing , unless the property is subject to the
12 provisions of section 1 of P.L. , c. (C.) (pending before the
13 Legislature as this bill), in which case notice shall be given to the
14 owners of all real property located in the State and within three
15 miles in all directions of the property; provided that this
16 requirement shall be deemed satisfied by notice to the (1)
17 condominium association, in the case of any unit owner whose unit
18 has a unit above or below it, or (2) horizontal property regime, in
19 the case of any co-owner whose apartment has an apartment above
20 or below it. Notice shall be given by: (1) serving a copy thereof on
21 the property owner as shown on the said current tax duplicate, or
22 his agent in charge of the property, or (2) mailing a copy thereof by
23 certified mail to the property owner at his address as shown on the
24 said current tax duplicate.

25 Notice to a partnership owner may be made by service upon any
26 partner. Notice to a corporate owner may be made by service upon
27 its president, a vice president, secretary or other person authorized
28 by appointment or by law to accept service on behalf of the
29 corporation. Notice to a condominium association, horizontal
30 property regime, community trust or homeowners' association,
31 because of its ownership of common elements or areas located
32 within 200 feet of the property which is the subject of the hearing,
33 may be made in the same manner as to a corporation without further
34 notice to unit owners, co-owners, or homeowners on account of
35 such common elements or areas.

36 c. Upon the written request of an applicant, the administrative
37 officer of a municipality shall, within seven days, make and certify
38 a list from said current tax duplicates of names and addresses of
39 owners to whom the applicant is required to give notice pursuant to
40 subsection b. of this section. In addition, the administrative officer
41 shall include on the list the names, addresses and positions of those
42 persons who, not less than seven days prior to the date on which the
43 applicant requested the list, have registered to receive notice
44 pursuant to subsection h. of this section. The applicant shall be
45 entitled to rely upon the information contained in such list, and
46 failure to give notice to any owner, to any public utility, cable
47 television company, or local utility or to any military facility
48 commander not on the list shall not invalidate any hearing or

- 1 proceeding. A sum not to exceed \$0.25 per name, or \$10.00,
2 whichever is greater, may be charged for such list.
- 3 d. Notice of hearings on applications for development
4 involving property located within 200 feet of an adjoining
5 municipality shall be given by personal service or certified mail to
6 the clerk of such municipality , except that notice of hearings on
7 applications for development of property subject to the provisions
8 of section 1 of P.L. , c. (C.) (pending before the Legislature
9 as this bill), shall be given by personal service or certified mail to
10 the clerk of every municipality adjoining the municipality in which
11 the property is located.
- 12 e. Notice shall be given by personal service or certified mail to
13 the county planning board of a hearing on an application for
14 development of property adjacent to an existing county road or
15 proposed road shown on the official county map or on the county
16 master plan, adjoining other county land or situated within 200 feet
17 of a municipal boundary.
- 18 f. Notice shall be given by personal service or certified mail to
19 the Commissioner of Transportation of a hearing on an application
20 for development of property adjacent to a State highway.
- 21 g. Notice shall be given by personal service or certified mail to
22 the State Planning Commission of a hearing on an application for
23 development of property which exceeds 150 acres or 500 dwelling
24 units. The notice shall include a copy of any maps or documents
25 required to be on file with the municipal clerk pursuant to
26 subsection b. of section 6 of P.L.1975, c.291 (C.40:55D-10).
- 27 h. Notice of hearings on applications for approval of a major
28 subdivision or a site plan not defined as a minor site plan under this
29 act requiring public notice pursuant to subsection a. of this section
30 shall be given: (1) in the case of a public utility, cable television
31 company or local utility which possesses a right-of-way or
32 easement within the municipality and which has registered with the
33 municipality in accordance with section 5 of P.L.1991, c.412
34 (C.40:55D-12.1), by (i) serving a copy of the notice on the person
35 whose name appears on the registration form on behalf of the public
36 utility, cable television company or local utility or (ii) mailing a
37 copy thereof by certified mail to the person whose name appears on
38 the registration form at the address shown on that form; (2) in the
39 case of a military facility which has registered with the municipality
40 and which is situated within 3,000 feet in all directions of the
41 property which is the subject of the hearing, by (i) serving a copy of
42 the notice on the military facility commander whose name appears
43 on the registration form or (ii) mailing a copy thereof by certified
44 mail to the military facility commander at the address shown on that
45 form.
- 46 i. The applicant shall file an affidavit of proof of service with
47 the municipal agency holding the hearing on the application for

1 development in the event that the applicant is required to give
2 notice pursuant to this section.

3 j. Notice pursuant to subsections d., e., f., g. and h. of this
4 section shall not be deemed to be required, unless public notice
5 pursuant to subsection a. and notice pursuant to subsection b. of this
6 section are required.
7 (cf: P.L.2005, c.41, s.3)

8
9 4. This act shall take effect on the first day of the seventh
10 month next following enactment.

11
12
13 STATEMENT

14
15 This bill requires boards of education and the governing boards
16 of public institutions of higher education to submit an application
17 for development in order to construct a free-standing structure on
18 publicly-owned property.

19 For the purposes of the bill, a “free-standing structure” is defined
20 to mean a combination of materials to form a construction for use or
21 ornamentation whether installed on, above, or below the surface of
22 a parcel of land, and which would be 100 feet or more in height
23 from the surface of the parcel of land, but does not include a
24 building as defined in the “Municipal Land Use Law.”

25 Under the bill’s provisions, public notice of a hearing on the
26 application would be required. The bill specifies that in addition to
27 notice being provided to neighboring municipalities of the
28 municipality to which the application for development is submitted,
29 notice also would be required to be given to the owners of all real
30 property within three miles in all directions of the property on
31 which the free-standing structure would be built.