

SENATE, No. 449

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Senator MICHAEL J. DOHERTY

District 23 (Hunterdon, Somerset and Warren)

Co-Sponsored by:

Senator Bateman

SYNOPSIS

Modifies “inherently beneficial use” definition for purposes of zoning variance to discourage siting of wind and solar energy facilities on agricultural land and open space.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



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1 AN ACT concerning wind and solar energy facilities under local
2 zoning 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 3 of P.L.1975, c.291 (C.40:55D-3) is amended to
8 read as follows:

9 3. For the purposes of this act, unless the context clearly
10 indicates a different meaning:

11 The term "shall" indicates a mandatory requirement, and the term
12 "may" indicates a permissive action.

13 "Administrative officer" means the clerk of the municipality,
14 unless a different municipal official or officials are designated by
15 ordinance or statute.

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

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

21 "Applicant" means a developer submitting an application for
22 development.

23 "Application for development" means the application form and
24 all accompanying documents required by ordinance for approval of
25 a subdivision plat, site plan, planned development, cluster
26 development, conditional use, zoning variance or direction of the
27 issuance of a permit pursuant to section 25 or section 27 of
28 P.L.1975, c.291 (C.40:55D-34 or C.40:55D-36).

29 "Approving authority" means the planning board of the
30 municipality, unless a different agency is designated by ordinance
31 when acting pursuant to the authority of P.L.1975, c.291
32 (C.40:55D-1 et seq.).

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

35 "Brownfield" means any former or current commercial or
36 industrial site that is currently vacant or underutilized and on which
37 there has been, or there is suspected to have been, a discharge of
38 contaminant, as included in the "Brownfields Redevelopment Task
39 Force" inventory, developed pursuant to section 5 of P.L.1997,
40 c.278 (C.58:10B-23).

41 "Building" means a combination of materials to form a
42 construction adapted to permanent, temporary, or continuous
43 occupancy and having a roof.

44 "Cable television company" means a cable television company as

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 defined pursuant to subsection g. of section 3 of P.L.1972, c.186
2 (C.48:5A-3).

3 "Capital improvement" means a governmental acquisition of real
4 property or major construction project.

5 "Circulation" means systems, structures and physical
6 improvements for the movement of people, goods, water, air,
7 sewage or power by such means as streets, highways, railways,
8 waterways, towers, airways, pipes and conduits, and the handling of
9 people and goods by such means as terminals, stations, warehouses,
10 and other storage buildings or transshipment points.

11 "Cluster development" means a contiguous cluster or
12 noncontiguous cluster that is not a planned development.

13 "Common open space" means an open space area within or
14 related to a site designated as a development, and designed and
15 intended for the use or enjoyment of residents and owners of the
16 development. Common open space may contain such
17 complementary structures and improvements as are necessary and
18 appropriate for the use or enjoyment of residents and owners of the
19 development.

20 "Conditional use" means a use permitted in a particular zoning
21 district only upon a showing that such use in a specified location
22 will comply with the conditions and standards for the location or
23 operation of such use as contained in the zoning ordinance, and
24 upon the issuance of an authorization therefor by the planning
25 board.

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

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

37 "Conventional" means development other than cluster
38 development or planned development.

39 "County agriculture development board" or "CADB" means a
40 county agriculture development board established by a county
41 pursuant to the provisions of section 7 of P.L.1983, c.32 (C.4:1C-
42 14).

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

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1 "County planning board" means the county planning board, as
2 defined in section 1 of P.L.1968, c.285 (C.40:27-6.1), of the county
3 in which the land or development is located.
4 (cf: P.L.2013, c.106, s.2)

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6 2. Section 3.1 of P.L.1975, c.291 (C.40:55D-4) is amended to
7 read as follows:

8 3. 1. "Days" means calendar days.

9 "Density" means the permitted number of dwelling units per
10 gross area of land that is the subject of an application for
11 development, including noncontiguous land, if authorized by
12 municipal ordinance or by a planned development.

13 "Developer" means the legal or beneficial owner or owners of a
14 lot or of any land proposed to be included in a proposed
15 development, including the holder of an option or contract to
16 purchase, or other person having an enforceable proprietary interest
17 in such land.

18 "Development" means the division of a parcel of land into two or
19 more parcels, the construction, reconstruction, conversion,
20 structural alteration, relocation or enlargement of any building or
21 other structure, or of any mining excavation or landfill, and any use
22 or change in the use of any building or other structure, or land or
23 extension of use of land, for which permission may be required
24 pursuant to P.L.1975, c.291 (C.40:55D-1 et seq.).

25 "Development potential" means the maximum number of
26 dwelling units or square feet of nonresidential floor area that may
27 be constructed on a specified lot or in a specified zone under the
28 master plan and land use regulations in effect on the date of the
29 adoption of the development transfer ordinance or on the date of the
30 adoption of the ordinance authorizing noncontiguous cluster, and in
31 accordance with recognized environmental constraints.

32 "Development regulation" means a zoning ordinance,
33 subdivision ordinance, site plan ordinance, official map ordinance
34 or other municipal regulation of the use and development of land, or
35 amendment thereto adopted and filed pursuant to P.L.1975, c.291
36 (C.40:55D-1 et seq.).

37 "Development restriction" means an agricultural restriction, a
38 conservation restriction, or a historic preservation restriction.

39 "Development transfer" or "development potential transfer"
40 means the conveyance of development potential, or the permission
41 for development, from one or more lots to one or more other lots by
42 deed, easement, or other means as authorized by ordinance.

43 "Development transfer bank" means a development transfer bank
44 established pursuant to section 22 of P.L.2004, c.2 (C.40:55D-158)
45 or the State TDR Bank.

46 "Drainage" means the removal of surface water or groundwater
47 from land by drains, grading or other means and includes control of

1 runoff during and after construction or development to minimize
2 erosion and sedimentation, to assure the adequacy of existing and
3 proposed culverts and bridges, to induce water recharge into the
4 ground where practical, to lessen nonpoint pollution, to maintain
5 the integrity of stream channels for their biological functions as
6 well as for drainage, and the means necessary for water supply
7 preservation or prevention or alleviation of flooding.

8 "Environmental commission" means a municipal advisory body
9 created pursuant to P.L.1968, c.245 (C.40:56A-1 et seq.).

10 "Erosion" means the detachment and movement of soil or rock
11 fragments by water, wind, ice and gravity.

12 "Final approval" means the official action of the planning board
13 taken on a preliminarily approved major subdivision or site plan,
14 after all conditions, engineering plans and other requirements have
15 been completed or fulfilled and the required improvements have
16 been installed or guarantees properly posted for their completion, or
17 approval conditioned upon the posting of such guarantees.

18 "Floor area ratio" means the sum of the area of all floors of
19 buildings or structures compared to the total area of land that is the
20 subject of an application for development, including noncontiguous
21 land, if authorized by municipal ordinance or by a planned
22 development.

23 "General development plan" means a comprehensive plan for the
24 development of a planned development, as provided in section 4 of
25 P.L.1987, c.129 (C.40:55D-45.2).

26 "Governing body" means the chief legislative body of the
27 municipality. In municipalities having a board of public works,
28 "governing body" means such board.

29 "Historic district" means one or more historic sites and
30 intervening or surrounding property significantly affecting or
31 affected by the quality and character of the historic site or sites.

32 "Historic preservation restriction" means a "historic preservation
33 restriction" as defined in section 2 of P.L.1979, c.378 (C.13:8B-2).

34 "Historic site" means any real property, man-made structure,
35 natural object or configuration or any portion or group of the
36 foregoing of historical, archeological, cultural, scenic or
37 architectural significance.

38 "Inherently beneficial use" means a use which is universally
39 considered of value to the community because it fundamentally
40 serves the public good and promotes the general welfare. Such a
41 use includes, but is not limited to, a hospital, school, child care
42 center, group home, or a wind, solar or photovoltaic energy facility
43 or structure so long as the wind, solar or photovoltaic energy
44 facility or structure is located on or above a parking lot, rooftop, or
45 brownfield, and not within agricultural land or open space.

46 "Instrument" means the easement, credit, or other deed
47 restriction used to record a development transfer.

1 "Interested party" means: (a) in a criminal or quasi-criminal
2 proceeding, any citizen of the State of New Jersey; and (b) in the
3 case of a civil proceeding in any court or in an administrative
4 proceeding before a municipal agency, any person, whether residing
5 within or without the municipality, whose right to use, acquire, or
6 enjoy property is or may be affected by any action taken under
7 P.L.1975, c.291 (C.40:55D-1 et seq.), or whose rights to use,
8 acquire, or enjoy property under P.L.1975, c.291 (C.40:55D-1 et
9 seq.), or under any other law of this State or of the United States
10 have been denied, violated or infringed by an action or a failure to
11 act under P.L.1975, c.291 (C.40:55D-1 et seq.).

12 "Land" includes improvements and fixtures on, above or below
13 the surface.

14 "Local utility" means any sewerage authority created pursuant to
15 the "sewerage authorities law," P.L.1946, c.138 (C.40:14A-1 et
16 seq.); any utilities authority created pursuant to the "municipal and
17 county utilities authorities law," P.L.1957, c.183 (C.40:14B-1 et
18 seq.); or any utility, authority, commission, special district or other
19 corporate entity not regulated by the Board of Regulatory
20 Commissioners under Title 48 of the Revised Statutes that provides
21 gas, electricity, heat, power, water or sewer service to a
22 municipality or the residents thereof.

23 "Lot" means a designated parcel, tract or area of land established
24 by a plat or otherwise, as permitted by law and to be used,
25 developed or built upon as a unit.
26 (cf: P.L.2013, c.106, s.3)

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28 3. This act shall take effect immediately.

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STATEMENT

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33 This bill would modify the definition of "inherently beneficial
34 use" in the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-
35 1 et seq.) so that wind and solar or photovoltaic energy facilities are
36 only included if located on or above a parking lot, rooftop, or
37 brownfield, and not within agricultural land or open space.

38 If a use is held to be inherently beneficial, it presumptively
39 satisfies the positive criteria for the grant of a use variance under
40 subsection d. of section 57 of P.L.1975, c.291 (C.40:55D-70),
41 which is required when the proposed use is inconsistent with the
42 zoning plan. Presently, "inherently beneficial use" is defined as "a
43 use which is universally considered of value to the community
44 because it fundamentally serves the public good and promotes the
45 general welfare. Such a use includes, but is not limited to, a
46 hospital, school, child care center, group home, or a wind, solar or
47 photovoltaic energy facility or structure."

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1 This bill narrows that definition so that wind and solar or
2 photovoltaic energy facilities are only included if located on or
3 above a parking lot, rooftop, or brownfield, and not within
4 agricultural land or open space. This modification would help to
5 restore balance between the State's effort to encourage alternative
6 energy development, and the equally important goal of preserving
7 open space.