

40:55-47 and 47.1

August 20, 1970

LEGISLATIVE NOTES ON R.S. 40:55-47, 47.1
(Zoning ordinance - challenge by any interested party)

L.1969 - Chapt.277 - A536

February - Introduced by Apy and others

May 5 - Passed in Assembly

May 15 - passed in Senate

December 1 - Returned by Governor with recommended amendment (enclosed)

December 1 - Amended as recommended, re-enacted in Assembly

January 13 - Re-enacted in Senate

January 13 - Approved, chapter 277

Bill had statement (copy enclosed)

~~Governor message signing (copy enclosed)~~

This bill was listed as "approved" in:

974.905 New Jersey League of Municipalities
Legislative bulletin
3-11-69 page 3

Newspaper account located (V.F.--N.J.--Zoning)
(copies enclosed)

Assembly bill give citizens court right. APP 5-6-69

New law to challenge power of zoning boards TET 1-14-70
Hughes OKs zoning bias bill P.I. 1-15-70

"Unnoticed" bill faces repeal NEN 1-17-70

Apy may request repeal of his bill APP

Home rule still runs the zoning in suburbia. Record, 5-7-70

Repealer stalled: zoning bill pulled off floor. TET 4-24-70

Attack is set on zoning law for minorities. P.I. 1-29-70

Bill alters zoning law. NEN 2-17-70

Zoning reform wins a round. Record 4-24-70

Keep it (Editorial) TET 1-25-70

Legislative bids court decide zoning intent. Record 1-27-70

Zoning - challenge law faces own challenge. TET 1-27-70

277

69

1/15/70
[OFFICIAL COPY REPRINT]

ASSEMBLY, No. 536

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 11, 1969

By Assemblymen APY, KASER, AZZOLINA and AIKINS

Referred to Committee on County and Municipal Government

AN ACT concerning zoning and amending section 40:55-47 of the Revised Statutes, and supplementing article 3 of chapter 55 of Title 40 of the Revised Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Section 40:55-47 of the Revised Statutes is amended to read
2 as follows:

3 40:55-47. The governing body or board of public works may
4 provide by ordinance for the enforcement of this article and of any
5 ordinance or regulation made thereunder. In case any building or
6 structure is erected, constructed, altered, repaired, converted, or
7 maintained, or any building, structure or land is used in violation
8 of this article or of any ordinance or other regulation made under
9 authority conferred hereby, the proper local authorities of the
10 municipality *or any other interested party*, in addition to other
11 remedies, may institute any appropriate action or proceedings to
12 prevent such unlawful erection, construction, reconstruction, altera-
13 tion, repair, conversion, maintenance or use, to restrain, correct or
14 abate such violation, to prevent the occupancy of said building,
15 structure or land, or to prevent any illegal act, conduct, business or
16 use in or about such premises.

1 2. For purposes of the article to which this act is a supplement,
2 ***[**the term "other interested party" is defined to mean any citizen
3 of the municipality]* **the term "other interested party" in a*
4 *criminal or quasicriminal proceeding shall include: (a) any citizen*
5 *of the State of New Jersey; and (b) in the case of a civil proceeding*
6 *in any court or in an administrative proceeding before a municipal*
7 *agency, any person, whether residing within or without the mu-*
8 *nicipality, whose right to use, acquire, or enjoy property is or may*
9 *be effected by any action taken under the act to which this act is a*

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

10 *supplement, or whose rights to use, acquire, or enjoy property*
11 *under the act to which this act is a supplement, or under any other*
12 *law of this State of the United States have been denied, violated or*
13 *infringed by an action or a failure to act under the act to which this*
14 *act is a supplement*.*

1 3. This act shall take effect immediately.

12/1/69

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13 tion, repair, conversion, maintenance or use, to restrain, correct or
14 abate such violation, to prevent the occupancy of said building,
15 structure or land, or to prevent any illegal act, conduct, business or
16 use in or about such premises.

1 2. For purposes of the article to which this act is a supplement,
2 the term "other interested party" is defined to mean any citizen
3 of the municipality.

1 3. This act shall take effect immediately.

STATEMENT

Section 40:55-47 of the Revised Statutes has been interpreted by our Courts (*Township of Cranford v. Errico*, 94 Super 395, 228 Atlantic 2d 555 (Law Div. 1967) as denying an individual interested citizen the right to prosecute the violation of a municipal zoning

ordinance. Only by the cumbersome and expensive process of a suit in lieu of mandamus can a private citizen seek enforcement of a zoning ordinance where the local authorities have neglected or refused to act. The amendment proposed would alleviate this hardship and help insure that the purpose and intent of zoning ordinances would be carried out by permitting any citizen to file a complaint, just as any citizen can now file a complaint charging violation of any criminal statute.

ASSEMBLY AMENDMENT TO
ASSEMBLY, No. 536

STATE OF NEW JERSEY

ADOPTED DECEMBER 1, 1969

Amend page 1, section 2, lines 2 and 3, delete the present language and insert in lieu thereof the following: "the term 'other interested party' in a criminal or quasicriminal proceeding shall include: (a) any citizen of the State of New Jersey; and (b) in the case of a civil proceeding in any court or in an administrative proceeding before a municipal agency, any person, whether residing within or without the municipality, whose right to use, acquire, or enjoy property is or may be effected by any action taken under the act to which this act is a supplement, or whose rights to use, acquire, or enjoy property under the act to which this act is a supplement, or under any other law of this State of the United States have been denied, violated or infringed by an action or a failure to act under the act to which this act is a supplement."

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

December 1, 1969

ASSEMBLY BILL NO. 536

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14(b) of the Constitution, I herewith return Assembly Bill No. 536, with my objections, for reconsideration.

Assembly Bill No. 536 would give standing to any citizen of a municipality to institute any appropriate action for the enforcement of a local zoning ordinance (RS 40:55-47). The statement appended to the bill indicates that its intent was to reverse the holding of Cranford v. Errico, 94 N.J. Super. 395 (Cty. Ct. 1967); contra, State v. Seich, 98 N.J. Super 466 (Cty. Ct. 1967).

The remedies which may be invoked pursuant to RS 40:55-47 are both civil and criminal in nature. Thus, a municipality may seek to impose a fine on the theory that a violation of a zoning ordinance is a criminal violation of a municipal ordinance. This power, however, is supplemented by the power to seek an injunction, a civil order of the court directing a landowner to take certain steps in order to correct any violations of the zoning ordinance on his property, Borough of Alpine v. Brewster, 7 N.J. 42 (1951). The intent of the statute in question was to provide the municipality with this additional civil remedy.

Individual abutting landowners have always had standing to seek an injunction when their own property was affected, Stokes v. Jenkins, 107 N.J. Eq. 318 (1931). The language of Assembly Bill No. 536, however, would appear to extend the right to a civil remedy and an injunction to any citizen of the municipality, abandoning the requirement that an individual's property be directly affected. This appears to be too broad an expansion of the right to seek an injunction in any civil matter. Conversely, the limitation of the remedy to "any citizen of the municipality" would appear to create the possibility that a person residing in another municipality, whose property is affected and abutting, would have

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Assembly Bill No. 536

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abutting would have no remedy, simply because he is across an invisible municipal boundary, see Borough of Creskill v. Borough of Dumont, 28 N.J. Super. 26, aff'd. 15 N.J. 238 (1953).

It is my belief that this was not the intent of the sponsor. Therefore, I would respectfully recommend the following changes:

Page 1, Section 2, Lines 2 and 3: Delete the present language and insert in lieu thereof the following:

"The term 'other interested party' in a criminal or quasi-criminal proceeding shall include: (a) any citizen of the State of New Jersey; and (b) in the case of a civil proceeding in any court or in an administrative proceeding before a municipal agency, any person, whether residing within or without the municipality, whose right to use, acquire, or enjoy property is or may be effected by any action taken under the act to which this act is a supplement, or whose rights to use, acquire, or enjoy property under the act to which this act is a supplement, or under any other law of this State of the United States have been denied, violated or infringed by an action or a failure to act under the act to which this act is a supplement."

Respectfully,

GOVERNOR

Attest:

Acting Secretary to the Governor