

6:1-80

LEGISLATIVE HISTORY CHECKLIST
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(Airport safety zones
---regulate construction)

NJSA: 6:1-80

LAWS OF: 1991 CHAPTER: 445

BILL NO: S2174

SPONSOR(S): Rand

DATE INTRODUCED: Pre-filed

COMMITTEE: ASSEMBLY: Transportation
SENATE: Transportation

AMENDED DURING PASSAGE: Yes Amendments during passage
denoted by asterisks

DATE OF PASSAGE: ASSEMBLY: January 12, 1992
SENATE: March 8, 1990

DATE OF APPROVAL: January 18, 1992

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes
SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

KBG/pp

P.L.1991, CHAPTER 445, approved January 18, 1992

1990 Senate No. 2174 (Second Reprint)

1 AN ACT concerning airport safety, amending P.L.1975, c.291,
2 and amending and supplementing P.L.1983, c.260.

3
4 BE IT ENACTED by the Senate and General Assembly of the
5 State of New Jersey:

6 1. Section 1 of P.L.1983, c.260 (C.6:1-80) is amended to read
7 as follows:

8 1. It is found and declared by the Legislature that an airport
9 hazard endangers the lives and property of the users of the
10 airport and of occupants of land in the vicinity thereof, and also,
11 if the hazard is of the obstruction type, it reduces the size of the
12 area available for landing, taking-off and maneuvering of
13 aircraft, thus tending to destroy or impair the utility of the
14 airport and the public benefit therein. Accordingly, it is declared:

15 a. That the creation or establishment of an airport hazard is a
16 public nuisance and an injury to the community served by the
17 airport in question; therefore, it is necessary in the interest of
18 the public health, public safety, and general welfare that the
19 creation or establishment of airport hazards be prevented by the
20 creation of airport safety zones and other means; and

21 b. That the prevention of the creation or establishment of
22 airport hazards should be accomplished, to the extent legally
23 possible, by the exercise of the police power of the State, without
24 compensation.

25 (cf: P.L.1983, c.260, s.1)

26 2. Section 2 of P.L.1983, c.260 (C.6:1-81) is amended to read
27 as follows:

28 2. Sections 1 through 9 of this act shall be known and may be
29 cited as the "Air Safety and [Hazardous] Zoning Act of 1983."

30 (cf: P.L.1983, c.260, s.2)

31 3. Section 3 of P.L.1983, c.260 (C.6:1-82) is amended to read
32 as follows:

33 3. As used in this amendatory and supplementary act:

34 a. "Airport" means any area of land or water, or both designed
35 and set aside for the landing and taking-off of fixed wing
36 aircraft, utilized or to be utilized by the public for such purposes,
37 publicly or privately owned, and licensed by the commissioner as
38 a public use airport or landing strip, or [an area designated by the
39 commissioner,] a proposed facility for which an application for 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.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

1 Senate STU committee amendments adopted February 5, 1990.

2 Assembly ATR committee amendments adopted August 1, 1991.

1 license has been submitted in complete form pursuant to
 2 N.J.A.C.16:54-1.4 and which has been determined by [him] the
 3 commissioner as likely to be so licensed within one year of such
 4 determination. "Airport" shall not mean any facility which is
 5 owned and operated by a federal or military authority, or which is
 6 owned and operated by the Port Authority of New York and New
 7 Jersey or which is located within the Port of New York District
 8 as defined in R.S.32:1-3.

9 b. ["Airport hazard" means (1) any use of land or water, or
 10 both, which creates a dangerous condition for persons or property
 11 in or about an airport or aircraft during landing or taking-off at
 12 an airport, or (2) any structure or tree which obstructs the air
 13 space required for the flight of aircraft in landing or taking-off
 14 at an airport.] ¹[(Deleted by amendment) (P.L.19 , c. (C.)
 15 (now pending before the Legislature as this bill).] "Airport
 16 hazard" means (1) any use of land or water, or both, which
 17 creates a dangerous condition for persons or property in or about
 18 an airport or aircraft during landing or taking-off at an airport,
 19 or (2) any structure or tree which obstructs the air space required
 20 for the flight of aircraft in landing or taking-off at an airport.¹

21 c. "Airport [hazard area] safety zone" means any area of land
 22 or water, or both upon which ¹[a use creates or might create a
 23 dangerous condition for persons or property in or about an
 24 aircraft or airport during landing or taking-off at an airport, or
 25 upon which any structure or tree obstructs or might obstruct the
 26 air space required for the flight of aircraft in landing or
 27 taking-off at an airport]¹ [an airport hazard might be created or
 28 established, if not prevented as provided in this supplementary
 29 act] ¹an airport hazard might be created or established, if not
 30 prevented as provided in this supplementary act.¹

31 d. "Commissioner" means the Commissioner of [the
 32 Department of] Transportation.

33 e. "Department" means the Department of Transportation.

34 f. "Structure" means any object constructed or installed by
 35 man, including, but not limited to, buildings, towers,
 36 smokestacks, chimneys, and overhead transmission lines.

37 g. "Tree" means an object of natural vegetative growth.
 38 (cf: P.L.1985, c.122, s.1)

39 4. Section 4 of P.L.1983, c.260 (C.6:1-83) is amended to read
 40 as follows:

41 4. After public hearing upon notice, including notice [of] to
 42 each affected municipality, and pursuant to the "Administrative
 43 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the
 44 commissioner shall adopt rules and regulations which delineate
 45 airport [hazard areas] safety zones for all airports subject to this
 46 amendatory and supplementary act. The regulations shall
 47 describe the methodology used to make the delineation and may
 48 delineate subzones ¹[, one of which may be a "clear zone" in
 49 which development may be prohibited and in which previously

1 existing land uses may be designated by a municipality, by
2 ordinance, only as a nonconforming use or structure as defined
3 pursuant to section 3.2 of P.L.1975, c.291 (C.40:55D-5) or as a
4 conditional use pursuant to section 54 of P.L.1975, c.291
5 (C.40:55D-67)]¹.

6 (cf: P.L.1983, c.260, s.4)

7 5. Section 5 of P.L.1983, c.260 (C.6:1-84) is amended to read
8 as follows:

9 5. The commissioner shall adopt rules and regulations,
10 pursuant to "Administrative Procedure Act," P.L.1968, c.410
11 (C.52:14B-1 et seq.), promulgating standards which specify
12 permitted and prohibited land uses, including the specification of
13 the height to which structures may be erected and trees allowed
14 to grow, within airport [hazard areas] safety zones. These
15 standards shall be uniform for all airport [hazard areas] safety
16 zones, except that where the commissioner determines that local
17 conditions require it, he may adopt an amended or special
18 standard. No standard adopted under this amendatory and
19 supplementary act shall be construed to require the removal,
20 lowering or other change or alteration of any structure or tree
21 not conforming to the standard when adopted or amended, or
22 otherwise interfere with the continuance of any nonconforming
23 use, except as provided in section 9 of this amendatory and
24 supplementary act.

25 (cf: P.L.1983, c.260, s.5)

26 6. Section 6 of P.L.1983, c.260 (C.6:1-85) is amended to read
27 as follows:

28 6. Each municipality which contains within its boundaries any
29 part of a delineated airport [hazard area] safety zone shall enact
30 an ordinance or ordinances incorporating the standards
31 promulgated by the commissioner pursuant to section 5 of this
32 amendatory and supplementary act and providing for their
33 enforcement within those delineated areas. A valid copy of this
34 ordinance or ordinances, including any amendments that may be
35 made from time to time, shall be transmitted to the
36 commissioner.

37 (cf: P.L.1983, c.260, s.6)

38 7. Section 19 of P.L.1975, c.291 (C.40:55D-28) is amended to
39 read as follows:

40 19. Preparation; contents; modification.

41 a. The planning board may prepare and, after public hearing,
42 adopt or amend a master plan or component parts thereof, to
43 guide the use of lands within the municipality in a manner which
44 protects public health and safety and promotes the general
45 welfare.

46 b. The master plan shall generally comprise a report or
47 statement and land use and development proposals, with maps,
48 diagrams and text, presenting, at least the following elements (1)
49 and (2) and, where appropriate, the following elements (3) through

1 (12);

2 (1) A statement of objectives, principles, assumptions, policies
3 and standards upon which the constituent proposals for the
4 physical, economic and social development of the municipality
5 are based;

6 (2) A land use plan element (a) taking into account and stating
7 its relationship to the statement provided for in paragraph (1)
8 hereof, and other master plan elements provided for in
9 paragraphs (3) through (12) hereof and natural conditions,
10 including, but not necessarily limited to, topography, soil
11 conditions, water supply, drainage, flood plain areas, marshes,
12 and woodlands; (b) showing the existing and proposed location,
13 extent and intensity of development of land to be used in the
14 future for varying types of residential, commercial, industrial,
15 agricultural, recreational, educational and other public and
16 private purposes or combination of purposes; and stating the
17 relationship thereof to the existing and any proposed zone plan
18 and zoning ordinance; and (c) showing the existing and proposed
19 location of any airports and the boundaries of any airport [hazard
20 areas] safety zones delineated pursuant to the "Air Safety and
21 [Hazardous] Zoning Act of 1983," P.L.1983, c.260 (C.6:1-80 et
22 seq.); and (d) including a statement of the standards of population
23 density and development intensity recommended for the
24 municipality;

25 (3) A housing plan element pursuant to section 10 of P.L.1985,
26 c.222 (C.52:27D-310), including, but not limited to, residential
27 standards and proposals for the construction and improvement of
28 housing;

29 (4) A circulation plan element showing the location and types
30 of facilities for all modes of transportation required for the
31 efficient movement of people and goods into, about, and through
32 the municipality, taking into account the functional highway
33 classification system of the Federal Highway Administration and
34 the types, locations, conditions and availability of existing and
35 proposed transportation facilities, including air, water, road and
36 rail;

37 (5) A utility service plan element analyzing the need for and
38 showing the future general location of water supply and
39 distribution facilities, drainage and flood control facilities,
40 sewerage and waste treatment, solid waste disposal and provision
41 for other related utilities, and including any storm water
42 management plan required pursuant to the provisions of P.L.1981,
43 c.32 (C.40:55D-93 et seq.);

44 (6) A community facilities plan element showing the existing
45 and proposed location and type of educational or cultural
46 facilities, historic sites, libraries, hospitals, firehouses, police
47 stations and other related facilities, including their relation to
48 the surrounding areas;

49 (7) A recreation plan element showing a comprehensive system

1 of areas and public sites for recreation;

2 (8) A conservation plan element providing for the preservation,
3 conservation, and utilization of natural resources, including, to
4 the extent appropriate, energy, open space, water supply, forests,
5 soil, marshes, wetlands, harbors, rivers and other waters,
6 fisheries, endangered or threatened species wildlife and other
7 resources, and which systemically analyzes the impact of each
8 other component and element of the master plan on the present
9 and future preservation, conservation and utilization of those
10 resources;

11 (9) An economic plan element considering all aspects of
12 economic development and sustained economic vitality, including:
13 (a) a comparison of the types of employment expected to be
14 provided by the economic development to be promoted with the
15 characteristics of the labor pool resident in the municipality and
16 nearby areas and (b) an analysis of the stability and diversity of
17 the economic development to be promoted;

18 (10) A historic preservation plan element ^{2,2} (a) indicating the
19 location ²[.] and ² significance ²[, proposed utilization and means
20 for preservation]² of historic sites and historic districts ²[, and];²
21 (b) identifying the standards used to assess worthiness for historic
22 site or district ²[designation] identification; and (c) analyzing the
23 impact of each component and element of the master plan on the
24 preservation of historic sites and districts²;

25 (11) Appendices or separate reports containing the technical
26 foundation for the master plan and its constituent elements; and

27 (12) A recycling plan element which incorporates the State
28 Recycling Plan goals, including provisions for the collection,
29 disposition and recycling of recyclable materials designated in
30 the municipal recycling ordinance, and for the collection,
31 disposition and recycling of recyclable materials within any
32 development proposal for the construction of 50 or more units of
33 single-family residential housing or 25 or more units of
34 multi-family residential housing and any commercial or industrial
35 development proposal for the utilization of 1,000 square feet or
36 more of land.

37 c. The master plan and its plan elements may be divided into
38 subplans and subplan elements projected according to periods of
39 time or staging sequences.

40 d. The master plan shall include a specific policy statement
41 indicating the relationship of the proposed development of the
42 municipality, as developed in the master plan to (1) the master
43 plans of contiguous municipalities, (2) the master plan of the
44 county in which the municipality is located, (3) the State
45 Development and Redevelopment Plan adopted pursuant to the
46 "State Planning Act," sections 1 through 12 of P.L.1985, c.398
47 (C.52:18A-196 et seq.) and (4) the district solid waste
48 management plan required pursuant to the provisions of the
49 "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et

1 seq.) of the county in which the municipality is located.

2 (cf: P.L.1991, c.199, s.3)

3 8. Section 29 of P.L.1975, c.291 (C.40:55D-38) is amended to
4 read as follows:

5 29. Contents of ordinance. An ordinance requiring approval by
6 the planning board of either subdivisions or site plans, or both,
7 shall include the following:

8 a. Provisions, not inconsistent with other provisions of this
9 act, for submission and processing of applications for
10 development, including standards for preliminary and final
11 approval and provisions for processing of final approval by stages
12 or sections of development;

13 b. Provisions ensuring:

14 (1) Consistency of the layout or arrangement of the subdivision
15 or land development with the requirements of the zoning
16 ordinance;

17 (2) Streets in the subdivision or land development of sufficient
18 width and suitable grade and suitably located to accommodate
19 prospective traffic and to provide access for firefighting and
20 emergency equipment to buildings and coordinated so as to
21 compose a convenient system consistent with the official map, if
22 any, and the circulation element of the master plan, if any, and
23 so oriented as to permit, consistent with the reasonable
24 utilization of land, the buildings constructed thereon to maximize
25 solar gain; provided that no street of a width greater than 50 feet
26 within the right-of-way lines shall be required unless said street
27 constitutes an extension of an existing street of the greater
28 width, or already has been shown on the master plan at the
29 greater width, or already has been shown in greater width on the
30 official map;

31 (3) Adequate water supply, drainage, shade trees, sewerage
32 facilities and other utilities necessary for essential services to
33 residents and occupants;

34 (4) Suitable size, shape and location for any area reserved for
35 public use pursuant to section 32 of this act;

36 (5) Reservation pursuant to section 31 of this act of any open
37 space to be set aside for use and benefit of the residents of
38 planned development, resulting from the application of standards
39 of density or intensity of land use, contained in the zoning
40 ordinance, pursuant to subsection 52c. of this act;

41 (6) Regulation of land designated as subject to flooding,
42 pursuant to subsection 52e., to avoid danger to life or property;

43 (7) Protection and conservation of soil from erosion by wind or
44 water or from excavation or grading;

45 (8) Conformity with standards promulgated by the
46 Commissioner of Transportation, pursuant to the "Air Safety and
47 [Hazardous] Zoning Act of 1983," P.L.1983, c.260 (C.8:1-80 et
48 seq.), for any airport [hazard areas] safety zones delineated under
49 that act;

1 (9) Conformity with a municipal recycling ordinance required
2 pursuant to section 6 of P.L.1987, c.102 (C.13:1E-99.16);

3 (10) Conformity with the State highway access management
4 code adopted by the Commissioner of Transportation under
5 section 3 of the "State Highway Access Management Act,"
6 P.L.1989, c.32 (C.27:7-91), with respect to any State highways
7 within the municipality;

8 (11) Conformity with any access management code adopted by
9 the county under R.S.27:16-1, with respect to any county roads
10 within the municipality; ¹[and]¹

11 (12) Conformity with any municipal access management code
12 adopted under R.S.40:67-1, with respect to municipal streets;
13 ²[and]²

14 (13) Protection of potable water supply reservoirs from
15 pollution or other degradation of water quality resulting from the
16 development or other uses of surrounding land areas, which
17 provisions shall be in accordance with siting, performance, or
18 other standards or guidelines adopted therefor by the Department
19 of Environmental Protection ²[¹]; and

20 (14) Conformity with the public safety regulations concerning
21 storm water detention facilities adopted pursuant to section 5 of
22 P.L.1991, c.194 (C. 40:55D-38) and reflected in storm water
23 management plans and storm water management ordinances
24 adopted pursuant to P.L.1981, c.32 (C.40:55D-93 et seq.).²

25 c. Provisions governing the standards for grading,
26 improvement and construction of streets or drives and for any
27 required walkways, curbs, gutters, streetlights, shade trees, fire
28 hydrants and water, and drainage and sewerage facilities and
29 other improvements as shall be found necessary, and provisions
30 ensuring that such facilities shall be completed either prior to or
31 subsequent to final approval of the subdivision or site plan by
32 allowing the posting of performance bonds by the developer;

33 d. Provisions ensuring that when a municipal zoning ordinance
34 is in effect, a subdivision or site plan shall conform to the
35 applicable provisions of the zoning ordinance, and where there is
36 no zoning ordinance, appropriate standards shall be specified in
37 an ordinance pursuant to this article; and

38 e. Provisions ensuring performance in substantial accordance
39 with the final development plan; provided that the planning board
40 may permit a deviation from the final plan, if caused by change
41 of conditions beyond the control of the developer since the date
42 of final approval, and the deviation would not substantially alter
43 the character of the development or substantially impair the
44 intent and purpose of the master plan and zoning ordinance.

45 (cf. P.L.1991, c.194, s.4)

46 9. Section 49 of P.L.1975, c.291 (C.40:55D-62) is amended to
47 read as follows:

48 49. Power to zone. a. The governing body may adopt or
49 amend a zoning ordinance relating to the nature and extent of the

1 uses of land and of buildings and structures thereon. Such
2 ordinance shall be adopted after the planning board has adopted
3 the land use plan element and the housing plan element of a
4 master plan, and all of the provisions of such zoning ordinance or
5 any amendment or revision thereto shall either be substantially
6 consistent with the land use plan element and the housing plan
7 element of the master plan or designed to effectuate such plan
8 elements; provided that the governing body may adopt a zoning
9 ordinance or amendment or revision thereto which in whole or
10 part is inconsistent with or not designed to effectuate the land
11 use plan element and the housing plan element, but only by
12 affirmative vote of a majority of the full authorized membership
13 of the governing body, with the reasons of the governing body for
14 so acting set forth in a resolution and recorded in its minutes
15 when adopting such a zoning ordinance; and provided further that,
16 notwithstanding anything aforesaid, the governing body may
17 adopt an interim zoning ordinance pursuant to subsection b. of
18 section 77 of P.L.1975, c.291 (C.40:55D-90).

19 The zoning ordinance shall be drawn with reasonable
20 consideration to the character of each district and its peculiar
21 suitability for particular uses and to encourage the most
22 appropriate use of land. The regulations in the zoning ordinance
23 shall be uniform throughout each district for each class or kind of
24 buildings or other structure or uses of land, including planned unit
25 development, planned unit residential development and
26 residential cluster, but the regulations in one district may differ
27 from those in other districts.

28 b. No zoning ordinance and no amendment or revision to any
29 zoning ordinance shall be submitted to or adopted by initiative or
30 referendum.

31 c. The zoning ordinance shall provide for the regulation of any
32 airport [hazard areas] safety zones delineated under the "Air
33 Safety and [Hazardous] Zoning Act of 1983," P.L.1983, c.260
34 (C.6:1-80 et seq.), in conformity with standards promulgated by
35 the Commissioner of Transportation.

36 d. The zoning ordinance shall provide for the regulation of land
37 adjacent to State highways in conformity with the State highway
38 access management code adopted by the Commissioner of
39 Transportation under section 3 of the "State Highway Access
40 Management Act," P.L.1989, c.32 (C.27:7-91), for the regulation
41 of land with access to county roads and highways in conformity
42 with any access management code adopted by the county under
43 R.S.27:16-1 and for the regulation of land with access to
44 municipal streets and highways in conformity with any municipal
45 access management code adopted under R.S.40:67-1. This
46 subsection shall not be construed as requiring a zoning ordinance
47 to establish minimum lot sizes or minimum frontage requirements
48 for lots adjacent to but restricted from access to a State highway.
49 (cf: P.L.1989, c.32, s.25)

1 10. Section 57 of P.L.1975, c.291 (C.40:55D-70) is amended to
2 read as follows:

3 57. Powers. The board of adjustment shall have the power to:

4 a. Hear and decide appeals where it is alleged by the appellant
5 that there is error in any order, requirement, decision or refusal
6 made by an administrative officer based on or made in the
7 enforcement of the zoning ordinance;

8 b. Hear and decide requests for interpretation of the zoning
9 map or ordinance or for decisions upon other special questions
10 upon which such board is authorized to pass by any zoning or
11 official map ordinance, in accordance with this act;

12 c. (1) Where: (a) by reason of exceptional narrowness,
13 shallowness or shape of a specific piece of property, or (b) by
14 reason of exceptional topographic conditions or physical features
15 uniquely affecting a specific piece of property, or (c) by reason of
16 an extraordinary and exceptional situation uniquely affecting a
17 specific piece of property or the structures lawfully existing
18 thereon, the strict application of any regulation pursuant to
19 article 8 of this act would result in peculiar and exceptional
20 practical difficulties to, or exceptional and undue hardship upon,
21 the developer of such property, grant, upon an application or an
22 appeal relating to such property, a variance from such strict
23 application of such regulation so as to relieve such difficulties or
24 hardship; (2) where in an application or appeal relating to a
25 specific piece of property the purposes of this act would be
26 advanced by a deviation from the zoning ordinance requirements
27 and the benefits of the deviation would substantially outweigh
28 any detriment, grant a variance to allow departure from
29 regulations pursuant to article 8 of this act; provided, however,
30 that no variance from those departures enumerated in subsection
31 d. of this section shall be granted under this subsection; and
32 provided further that the proposed development does not require
33 approval by the planning board of a subdivision, site plan or
34 conditional use, in conjunction with which the planning board has
35 power to review a request for a variance pursuant to subsection
36 47a. of this act; and

37 d. In particular cases for special reasons, grant a variance to
38 allow departure from regulations pursuant to article 8 of this act
39 to permit: (1) a use or principal structure in a district restricted
40 against such use or principal structure, (2) an expansion of a
41 nonconforming use, (3) deviation from a specification or standard
42 pursuant to section 54 of P.L.1975, c.291 (C.40:55D-67)
43 pertaining solely to a conditional use, (4) an increase in the
44 permitted floor area ratio as defined in section 3.1. of P.L.1975,
45 c.291 (C.40:55D-4), (5) an increase in the permitted density as
46 defined in section 3.1 of P.L.1975, c.291 (C.40:55D-4), except as
47 applied to the required lot area for a lot or lots for detached one
48 or two dwelling unit buildings, which lot or lots either an isolated
49 undersized lot or lots resulting from a minor subdivision. A

1 variance under this subsection shall be granted only by
2 affirmative vote of at least five members, in the case of a
3 municipal board, or two-thirds of the full authorized membership,
4 in the case of a regional board, pursuant to article 10 of this act.

5 No variance or other relief may be granted under the terms of
6 this section unless such variance or other relief can be granted
7 without substantial detriment to the public good and will not
8 substantially impair the intent and the purpose of the zone plan
9 and zoning ordinance. In respect to any airport [hazard areas]
10 safety zones delineated under the "Air Safety and [Hazardous]
11 Zoning Act of 1983," P.L.1983, c.260 (C.6:1-80 et seq.), no
12 variance or other relief may be granted under the terms of this
13 section, permitting the creation or establishment of a
14 nonconforming use which would be prohibited under standards
15 promulgated pursuant to that act, except upon issuance of a
16 permit by the Commissioner of Transportation. An application
17 under this section may be referred to any appropriate person or
18 agency for its report; provided that such reference shall not
19 extend the period of time within which the zoning board of
20 adjustment shall act.

21 (cf: P.L.1984, c.20, s.12)

22 11. (New section) a. Each municipality which contains within
23 its boundaries any part of a delineated airport safety zone shall
24 notify, in writing, each owner of record of property located
25 within an airport safety zone of the boundaries of the airport
26 safety zone, and a duly authenticated copy of this notification
27 shall be filed with the county recording officer in the same
28 manner as a deed or other instrument of conveyance.

29 No cause of action against the State, any county or
30 municipality shall arise out of a failure to give the notice
31 required by this subsection.

32 b. A metes and bounds description of airport safety zones shall
33 be incorporated into the municipal maps used for tax purposes
34 and prepared pursuant to R.S.54:1-15 and P.L.1939, c.167
35 (C.40:146-27 et seq.).

36 12. (New section) Any person who sells or transfers a property
37 in an airport safety zone delineated under the "Air Safety and
38 Zoning Act of 1983," P.L.1983, c.260 (C.6:1-80 et seq.) and
39 appearing in a municipal map used for tax purposes pursuant to
40 subsection b. of section 12 of this 1990 amendatory and
41 supplementary act, shall provide notice to a prospective buyer
42 that the property is located in an airport safety zone prior to the
43 signing of a contract of sale. Failure to provide notice required
44 by this section may result in the suspension or revocation of the
45 person's license to engage in real estate sales in this State or
46 other appropriate disciplinary action by the New Jersey Real
47 Estate Commission in the case of a person subject to the
48 jurisdiction of the commission.

49 13. (New section) Rules and regulations adopted pursuant to

1 the provisions of the "Air Safety and Hazardous Zoning Act of
2 1983," P.L.1983, c.260 (C.6:1-80 et seq.), prior to the enactment
3 of P.L.19 , c. (C.) (now pending before the Legislature as
4 this bill) shall continue in effect until amended or superseded.

5 14. This act shall take effect 180 days after enactment, but
6 the Commissioner of Transportation may take any anticipatory
7 action as may be necessary for the timely implementation of this
8 act on the effective date thereof.

9

10

11

TRANSPORTATION

12

13

Provides for airport safety zones and notice to buyers of property
in these zones.

14

[SECOND REPRINT]

SENATE, No. 2174

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1990 SESSION

By Senator RAND

1 AN ACT concerning airport safety, amending P.L.1975, c.291,
2 and amending and supplementing P.L.1983, c.260.

3

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

6 1. Section 1 of P.L.1983, c.260 (C.6:1-80) is amended to read
7 as follows:

8 1. It is found and declared by the Legislature that an airport
9 hazard endangers the lives and property of the users of the
10 airport and of occupants of land in the vicinity thereof, and also,
11 if the hazard is of the obstruction type, it reduces the size of the
12 area available for landing, taking-off and maneuvering of
13 aircraft, thus tending to destroy or impair the utility of the
14 airport and the public benefit therein. Accordingly, it is declared:

15 a. That the creation or establishment of an airport hazard is a
16 public nuisance and an injury to the community served by the
17 airport in question; therefore, it is necessary in the interest of
18 the public health, public safety, and general welfare that the
19 creation or establishment of airport hazards be prevented by the
20 creation of airport safety zones and other means; and

21 b. That the prevention of the creation or establishment of
22 airport hazards should be accomplished, to the extent legally
23 possible, by the exercise of the police power of the State, without
24 compensation.

25 (cf: P.L.1983, c.260, s.1)

26 2. Section 2 of P.L.1983, c.260 (C.6:1-81) is amended to read
27 as follows:

28 2. Sections 1 through 9 of this act shall be known and may be
29 cited as the "Air Safety and [Hazardous] Zoning Act of 1983."

30 (cf: P.L.1983, c.260, s.2)

31 3. Section 3 of P.L.1983, c.260 (C.6:1-82) is amended to read
32 as follows:

33 3. As used in this amendatory and supplementary act:

34 a. "Airport" means any area of land or water, or both designed
35 and set aside for the landing and taking-off of fixed wing
36 aircraft, utilized or to be utilized by the public for such purposes,
37 publicly or privately owned, and licensed by the commissioner as
38 a public use airport or landing strip, or [an area designated by the
39 commissioner,] a proposed facility for which an application for 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.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate STU committee amendments adopted February 5, 1990.

² Assembly ATR committee amendments adopted August 1, 1991.

1 license has been submitted in complete form pursuant to
 2 N.J.A.C.16:54-1.4 and which has been determined by [him] the
 3 commissioner as likely to be so licensed within one year of such
 4 determination. "Airport" shall not mean any facility which is
 5 owned and operated by a federal or military authority, or which is
 6 owned and operated by the Port Authority of New York and New
 7 Jersey or which is located within the Port of New York District
 8 as defined in R.S.32:1-3.

9 b. ["Airport hazard" means (1) any use of land or water, or
 10 both, which creates a dangerous condition for persons or property
 11 in or about an airport or aircraft during landing or taking-off at
 12 an airport, or (2) any, structure or tree which obstructs the air
 13 space required for the flight of aircraft in landing or taking-off
 14 at an airport.] ¹[(Deleted by amendment) (P.L.19 , c. (C.)
 15 (now pending before the Legislature as this bill).] "Airport
 16 hazard" means (1) any use of land or water, or both, which
 17 creates a dangerous condition for persons or property in or about
 18 an airport or aircraft during landing or taking-off at an airport,
 19 or (2) any structure or tree which obstructs the air space required
 20 for the flight of aircraft in landing or taking-off at an airport.¹

21 c. "Airport [hazard area] safety zone" means any area of land
 22 or water, or both upon which ¹a use creates or might create a
 23 dangerous condition for persons or property in or about an
 24 aircraft or airport during landing or taking-off at an airport, or
 25 upon which any structure or tree obstructs or might obstruct the
 26 air space required for the flight of aircraft in landing or
 27 taking-off at an airport]¹ [an airport hazard might be created or
 28 established, if not prevented as provided in this supplementary
 29 act] ¹an airport hazard might be created or established, if not
 30 prevented as provided in this supplementary act.¹

31 d. "Commissioner" means the Commissioner of [the
 32 Department of] Transportation.

33 e. "Department" means the Department of Transportation.

34 f. "Structure" means any object constructed or installed by
 35 man, including, but not limited to, buildings, towers,
 36 smokestacks, chimneys, and overhead transmission lines.

37 g. "Tree" means an object of natural vegetative growth.
 38 (cf: P.L.1985, c.122, s.1)

39 4. Section 4 of P.L.1983, c.260 (C.6:1-83) is amended to read
 40 as follows:

41 4. After public hearing upon notice, including notice [of] to
 42 each affected municipality, and pursuant to the "Administrative
 43 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the
 44 commissioner shall adopt rules and regulations which delineate
 45 airport [hazard areas] safety zones for all airports subject to this
 46 amendatory and supplementary act. The regulations shall
 47 describe the methodology used to make the delineation and may
 48 delineate subzones ¹[, one of which may be a "clear zone" in
 49 which development may be prohibited and in which previously

1 existing land uses may be designated by a municipality, by
2 ordinance, only as a nonconforming use or structure as defined
3 pursuant to section 3.2 of P.L.1975, c.291 (C.40:55D-5) or as a
4 conditional use pursuant to section 54 of P.L.1975, c.291
5 (C.40:55D-67)]¹.

6 (cf: P.L.1983, c.260, s.4)

7 5. Section 5 of P.L.1983, c.260 (C.6:1-84) is amended to read
8 as follows:

9 5. The commissioner shall adopt rules and regulations,
10 pursuant to "Administrative Procedure Act," P.L.1968, c.410
11 (C.52:14B-1 et seq.), promulgating standards which specify
12 permitted and prohibited land uses, including the specification of
13 the height to which structures may be erected and trees allowed
14 to grow, within airport [hazard areas] safety zones. These
15 standards shall be uniform for all airport [hazard areas] safety
16 zones, except that where the commissioner determines that local
17 conditions require it, he may adopt an amended or special
18 standard. No standard adopted under this amendatory and
19 supplementary act shall be construed to require the removal,
20 lowering or other change or alteration of any structure or tree
21 not conforming to the standard when adopted or amended, or
22 otherwise interfere with the continuance of any nonconforming
23 use, except as provided in section 9 of this amendatory and
24 supplementary act.

25 (cf: P.L.1983, c.260, s.5)

26 6. Section 6 of P.L.1983, c.260 (C.6:1-85) is amended to read
27 as follows:

28 6. Each municipality which contains within its boundaries any
29 part of a delineated airport [hazard area] safety zone shall enact
30 an ordinance or ordinances incorporating the standards
31 promulgated by the commissioner pursuant to section 5 of this
32 amendatory and supplementary act and providing for their
33 enforcement within those delineated areas. A valid copy of this
34 ordinance or ordinances, including any amendments that may be
35 made from time to time, shall be transmitted to the
36 commissioner.

37 (cf: P.L.1983, c.260, s.6)

38 7. Section 19 of P.L.1975, c.291 (C.40:55D-28) is amended to
39 read as follows:

40 19. Preparation; contents; modification.

41 a. The planning board may prepare and, after public hearing,
42 adopt or amend a master plan or component parts thereof, to
43 guide the use of lands within the municipality in a manner which
44 protects public health and safety and promotes the general
45 welfare.

46 b. The master plan shall generally comprise a report or
47 statement and land use and development proposals, with maps,
48 diagrams and text, presenting, at least the following elements (1)
49 and (2) and, where appropriate, the following elements (3) through

1 (12):

2 (1) A statement of objectives, principles, assumptions, policies
3 and standards upon which the constituent proposals for the
4 physical, economic and social development of the municipality
5 are based;

6 (2) A land use plan element (a) taking into account and stating
7 its relationship to the statement provided for in paragraph (1)
8 hereof, and other master plan elements provided for in
9 paragraphs (3) through (12) hereof and natural conditions,
10 including, but not necessarily limited to, topography, soil
11 conditions, water supply, drainage, flood plain areas, marshes,
12 and woodlands; (b) showing the existing and proposed location,
13 extent and intensity of development of land to be used in the
14 future for varying types of residential, commercial, industrial,
15 agricultural, recreational, educational and other public and
16 private purposes or combination of purposes; and stating the
17 relationship thereof to the existing and any proposed zone plan
18 and zoning ordinance; and (c) showing the existing and proposed
19 location of any airports and the boundaries of any airport [hazard
20 areas] safety zones delineated pursuant to the "Air Safety and
21 [Hazardous] Zoning Act of 1983," P.L.1983, c.260 (C.6:1-80 et
22 seq.); and (d) including a statement of the standards of population
23 density and development intensity recommended for the
24 municipality;

25 (3) A housing plan element pursuant to section 10 of P.L.1985,
26 c.222 (C.52:27D-310), including, but not limited to, residential
27 standards and proposals for the construction and improvement of
28 housing;

29 (4) A circulation plan element showing the location and types
30 of facilities for all modes of transportation required for the
31 efficient movement of people and goods into, about, and through
32 the municipality, taking into account the functional highway
33 classification system of the Federal Highway Administration and
34 the types, locations, conditions and availability of existing and
35 proposed transportation facilities, including air, water, road and
36 rail;

37 (5) A utility service plan element analyzing the need for and
38 showing the future general location of water supply and
39 distribution facilities, drainage and flood control facilities,
40 sewerage and waste treatment, solid waste disposal and provision
41 for other related utilities, and including any storm water
42 management plan required pursuant to the provisions of P.L.1981,
43 c.32 (C.40:55D-93 et seq.);

44 (6) A community facilities plan element showing the existing
45 and proposed location and type of educational or cultural
46 facilities, historic sites, libraries, hospitals, firehouses, police
47 stations and other related facilities, including their relation to
48 the surrounding areas;

49 (7) A recreation plan element showing a comprehensive system

1 of areas and public sites for recreation;

2 (8) A conservation plan element providing for the preservation,
3 conservation, and utilization of natural resources, including, to
4 the extent appropriate, energy, open space, water supply, forests,
5 soil, marshes, wetlands, harbors, rivers and other waters,
6 fisheries, endangered or threatened species wildlife and other
7 resources, and which systemically analyzes the impact of each
8 other component and element of the master plan on the present
9 and future preservation, conservation and utilization of those
10 resources;

11 (9) An economic plan element considering all aspects of
12 economic development and sustained economic vitality, including
13 (a) a comparison of the types of employment expected to be
14 provided by the economic development to be promoted with the
15 characteristics of the labor pool resident in the municipality and
16 nearby areas and (b) an analysis of the stability and diversity of
17 the economic development to be promoted;

18 (10) A historic preservation plan element ² (a) indicating the
19 location ²[,] and² significance ² [, proposed utilization and means
20 for preservation]² of historic sites and historic districts ² [, and];²
21 (b) identifying the standards used to assess worthiness for historic
22 site or district ² [designation] identification; and (c) analyzing the
23 impact of each component and element of the master plan on the
24 preservation of historic sites and districts²;

25 (11) Appendices or separate reports containing the technical
26 foundation for the master plan and its constituent elements; and

27 (12) A recycling plan element which incorporates the State
28 Recycling Plan goals, including provisions for the collection,
29 disposition and recycling of recyclable materials designated in
30 the municipal recycling ordinance, and for the collection,
31 disposition and recycling of recyclable materials within any
32 development proposal for the construction of 50 or more units of
33 single-family residential housing or 25 or more units of
34 multi-family residential housing and any commercial or industrial
35 development proposal for the utilization of 1,000 square feet or
36 more of land.

37 c. The master plan and its plan elements may be divided into
38 subplans and subplan elements projected according to periods of
39 time or staging sequences.

40 d. The master plan shall include a specific policy statement
41 indicating the relationship of the proposed development of the
42 municipality, as developed in the master plan to (1) the master
43 plans of contiguous municipalities, (2) the master plan of the
44 county in which the municipality is located, (3) the State
45 Development and Redevelopment Plan adopted pursuant to the
46 "State Planning Act," sections 1 through 12 of P.L.1985, c.398
47 (C.52:18A-196 et seq.) and (4) the district solid waste
48 management plan required pursuant to the provisions of the
49 "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et

1 seq.) of the county in which the municipality is located.
2 (cf: P.L.1991, c.199, s.3)

3 8. Section 29 of P.L.1975, c.291 (C.40:55D-38) is amended to
4 read as follows:

5 29. Contents of ordinance. An ordinance requiring approval by
6 the planning board of either subdivisions or site plans, or both,
7 shall include the following:

8 a. Provisions, not inconsistent with other provisions of this
9 act, for submission and processing of applications for
10 development, including standards for preliminary and final
11 approval and provisions for processing of final approval by stages
12 or sections of development;

13 b. Provisions ensuring:

14 (1) Consistency of the layout or arrangement of the subdivision
15 or land development with the requirements of the zoning
16 ordinance;

17 (2) Streets in the subdivision or land development of sufficient
18 width and suitable grade and suitably located to accommodate
19 prospective traffic and to provide access for firefighting and
20 emergency equipment to buildings and coordinated so as to
21 compose a convenient system consistent with the official map, if
22 any, and the circulation element of the master plan, if any, and
23 so oriented as to permit, consistent with the reasonable
24 utilization of land, the buildings constructed thereon to maximize
25 solar gain; provided that no street of a width greater than 50 feet
26 within the right-of-way lines shall be required unless said street
27 constitutes an extension of an existing street of the greater
28 width, or already has been shown on the master plan at the
29 greater width, or already has been shown in greater width on the
30 official map;

31 (3) Adequate water supply, drainage, shade trees, sewerage
32 facilities and other utilities necessary for essential services to
33 residents and occupants;

34 (4) Suitable size, shape and location for any area reserved for
35 public use pursuant to section 32 of this act;

36 (5) Reservation pursuant to section 31 of this act of any open
37 space to be set aside for use and benefit of the residents of
38 planned development, resulting from the application of standards
39 of density or intensity of land use, contained in the zoning
40 ordinance, pursuant to subsection 52c. of this act;

41 (6) Regulation of land designated as subject to flooding,
42 pursuant to subsection 52e., to avoid danger to life or property;

43 (7) Protection and conservation of soil from erosion by wind or
44 water or from excavation or grading;

45 (8) Conformity with standards promulgated by the
46 Commissioner of Transportation, pursuant to the "Air Safety and
47 [Hazardous] Zoning Act of 1983," P.L.1983, c.260 (C.6:1-80 et
48 seq.), for any airport [hazard areas] safety zones delineated under
49 that act;

1 (9) Conformity with a municipal recycling ordinance required
2 pursuant to section 6 of P.L.1987, c.102 (C.13:1E-99.16);

3 (10) Conformity with the State highway access management
4 code adopted by the Commissioner of Transportation under
5 section 3 of the "State Highway Access Management Act,"
6 P.L.1989, c.32 (C.27:7-91), with respect to any State highways
7 within the municipality;

8 (11) Conformity with any access management code adopted by
9 the county under R.S.27:16-1, with respect to any county roads
10 within the municipality; ¹[and]¹

11 (12) Conformity with any municipal access management code
12 adopted under R.S.40:67-1, with respect to municipal streets;
13 ²[¹and]²

14 (13) Protection of potable water supply reservoirs from
15 pollution or other degradation of water quality resulting from the
16 development or other uses of surrounding land areas, which
17 provisions shall be in accordance with siting, performance, or
18 other standards or guidelines adopted therefor by the Department
19 of Environmental Protection ²[¹]; and

20 (14) Conformity with the public safety regulations concerning
21 storm water detention facilities adopted pursuant to section 5 of
22 P.L.1991, c.194 (C. 40:55D-38) and reflected in storm water
23 management plans and storm water management ordinances
24 adopted pursuant to P.L.1981, c.32 (C.40:55D-93 et seq.).²

25 c. Provisions governing the standards for grading,
26 improvement and construction of streets or drives and for any
27 required walkways, curbs, gutters, streetlights, shade trees, fire
28 hydrants and water, and drainage and sewerage facilities and
29 other improvements as shall be found necessary, and provisions
30 ensuring that such facilities shall be completed either prior to or
31 subsequent to final approval of the subdivision or site plan by
32 allowing the posting of performance bonds by the developer;

33 d. Provisions ensuring that when a municipal zoning ordinance
34 is in effect, a subdivision or site plan shall conform to the
35 applicable provisions of the zoning ordinance, and where there is
36 no zoning ordinance, appropriate standards shall be specified in
37 an ordinance pursuant to this article; and

38 e. Provisions ensuring performance in substantial accordance
39 with the final development plan; provided that the planning board
40 may permit a deviation from the final plan, if caused by change
41 of conditions beyond the control of the developer since the date
42 of final approval, and the deviation would not substantially alter
43 the character of the development or substantially impair the
44 intent and purpose of the master plan and zoning ordinance.

45 (cf: P.L.1991, c.194, s.4)

46 9. Section 49 of P.L.1975, c.291 (C.40:55D-62) is amended to
47 read as follows:

48 49. Power to zone. a. The governing body may adopt or
49 amend a zoning ordinance relating to the nature and extent of the

1 uses of land and of buildings and structures thereon. Such
2 ordinance shall be adopted after the planning board has adopted
3 the land use plan element and the housing plan element of a
4 master plan, and all of the provisions of such zoning ordinance or
5 any amendment or revision thereto shall either be substantially
6 consistent with the land use plan element and the housing plan
7 element of the master plan or designed to effectuate such plan
8 elements; provided that the governing body may adopt a zoning
9 ordinance or amendment or revision thereto which in whole or
10 part is inconsistent with or not designed to effectuate the land
11 use plan element and the housing plan element, but only by
12 affirmative vote of a majority of the full authorized membership
13 of the governing body, with the reasons of the governing body for
14 so acting set forth in a resolution and recorded in its minutes
15 when adopting such a zoning ordinance; and provided further that,
16 notwithstanding anything aforesaid, the governing body may
17 adopt an interim zoning ordinance pursuant to subsection b. of
18 section 77 of P.L.1975, c.291 (C.40:55D-90).

19 The zoning ordinance shall be drawn with reasonable
20 consideration to the character of each district and its peculiar
21 suitability for particular uses and to encourage the most
22 appropriate use of land. The regulations in the zoning ordinance
23 shall be uniform throughout each district for each class or kind of
24 buildings or other structure or uses of land, including planned unit
25 development, planned unit residential development and
26 residential cluster, but the regulations in one district may differ
27 from those in other districts.

28 b. No zoning ordinance and no amendment or revision to any
29 zoning ordinance shall be submitted to or adopted by initiative or
30 referendum.

31 c. The zoning ordinance shall provide for the regulation of any
32 airport [hazard areas] safety zones delineated under the "Air
33 Safety and [Hazardous] Zoning Act of 1983," P.L.1983, c.260
34 (C.6:1-80 et seq.), in conformity with standards promulgated by
35 the Commissioner of Transportation.

36 d. The zoning ordinance shall provide for the regulation of land
37 adjacent to State highways in conformity with the State highway
38 access management code adopted by the Commissioner of
39 Transportation under section 3 of the "State Highway Access
40 Management Act," P.L.1989, c.32 (C.27:7-91), for the regulation
41 of land with access to county roads and highways in conformity
42 with any access management code adopted by the county under
43 R.S.27:16-1 and for the regulation of land with access to
44 municipal streets and highways in conformity with any municipal
45 access management code adopted under R.S.40:67-1. This
46 subsection shall not be construed as requiring a zoning ordinance
47 to establish minimum lot sizes or minimum frontage requirements
48 for lots adjacent to but restricted from access to a State highway.
49 (cf: P.L.1989, c.32, s.25)

1 10. Section 57 of P.L.1975, c.291 (C.40:55D-70) is amended to
2 read as follows:

3 57. Powers. The board of adjustment shall have the power to:

4 a. Hear and decide appeals where it is alleged by the appellant
5 that there is error in any order, requirement, decision or refusal
6 made by an administrative officer based on or made in the
7 enforcement of the zoning ordinance;

8 b. Hear and decide requests for interpretation of the zoning
9 map or ordinance or for decisions upon other special questions
10 upon which such board is authorized to pass by any zoning or
11 official map ordinance, in accordance with this act;

12 c. (1) Where: (a) by reason of exceptional narrowness,
13 shallowness or shape of a specific piece of property, or (b) by
14 reason of exceptional topographic conditions or physical features
15 uniquely affecting a specific piece of property, or (c) by reason of
16 an extraordinary and exceptional situation uniquely affecting a
17 specific piece of property or the structures lawfully existing
18 thereon, the strict application of any regulation pursuant to
19 article 8 of this act would result in peculiar and exceptional
20 practical difficulties to, or exceptional and undue hardship upon,
21 the developer of such property, grant, upon an application or an
22 appeal relating to such property, a variance from such strict
23 application of such regulation so as to relieve such difficulties or
24 hardship; (2) where in an application or appeal relating to a
25 specific piece of property the purposes of this act would be
26 advanced by a deviation from the zoning ordinance requirements
27 and the benefits of the deviation would substantially outweigh
28 any detriment, grant a variance to allow departure from
29 regulations pursuant to article 8 of this act; provided, however,
30 that no variance from those departures enumerated in subsection
31 d. of this section shall be granted under this subsection; and
32 provided further that the proposed development does not require
33 approval by the planning board of a subdivision, site plan or
34 conditional use, in conjunction with which the planning board has
35 power to review a request for a variance pursuant to subsection
36 47a. of this act; and

37 d. In particular cases for special reasons, grant a variance to
38 allow departure from regulations pursuant to article 8 of this act
39 to permit: (1) a use or principal structure in a district restricted
40 against such use or principal structure, (2) an expansion of a
41 nonconforming use, (3) deviation from a specification or standard
42 pursuant to section 54 of P.L.1975, c.291 (C.40:55D-67)
43 pertaining solely to a conditional use, (4) an increase in the
44 permitted floor area ratio as defined in section 3.1. of P.L.1975,
45 c.291 (C.40:55D-4), (5) an increase in the permitted density as
46 defined in section 3.1 of P.L.1975, c.291 (C.40:55D-4), except as
47 applied to the required lot area for a lot or lots for detached one
48 or two dwelling unit buildings, which lot or lots either an isolated
49 undersized lot or lots resulting from a minor subdivision. A

1 variance under this subsection shall be granted only by
2 affirmative vote of at least five members, in the case of a
3 municipal board, or two-thirds of the full authorized membership,
4 in the case of a regional board, pursuant to article 10 of this act.

5 No variance or other relief may be granted under the terms of
6 this section unless such variance or other relief can be granted
7 without substantial detriment to the public good and will not
8 substantially impair the intent and the purpose of the zone plan
9 and zoning ordinance. In respect to any airport [hazard areas]
10 safety zones delineated under the "Air Safety and [Hazardous]
11 Zoning Act of 1983," P.L.1983, c.260 (C.6:1-80 et seq.), no
12 variance or other relief may be granted under the terms of this
13 section, permitting the creation or establishment of a
14 nonconforming use which would be prohibited under standards
15 promulgated pursuant to that act, except upon issuance of a
16 permit by the Commissioner of Transportation. An application
17 under this section may be referred to any appropriate person or
18 agency for its report; provided that such reference shall not
19 extend the period of time within which the zoning board of
20 adjustment shall act.

21 (cf: P.L.1984, c.20, s.12)

22 11. (New section) a. Each municipality which contains within
23 its boundaries any part of a delineated airport safety zone shall
24 notify, in writing, each owner of record of property located
25 within an airport safety zone of the boundaries of the airport
26 safety zone, and a duly authenticated copy of this notification
27 shall be filed with the county recording officer in the same
28 manner as a deed or other instrument of conveyance.

29 No cause of action against the State, any county or
30 municipality shall arise out of a failure to give the notice
31 required by this subsection.

32 b. A metes and bounds description of airport safety zones shall
33 be incorporated into the municipal maps used for tax purposes
34 and prepared pursuant to R.S.54:1-15 and P.L.1939, c.167
35 (C.40:146-27 et seq.).

36 12. (New section) Any person who sells or transfers a property
37 in an airport safety zone delineated under the "Air Safety and
38 Zoning Act of 1983," P.L.1983, c.260 (C.6:1-80 et seq.) and
39 appearing in a municipal map used for tax purposes pursuant to
40 subsection b. of section 12 of this 1990 amendatory and
41 supplementary act, shall provide notice to a prospective buyer
42 that the property is located in an airport safety zone prior to the
43 signing of a contract of sale. Failure to provide notice required
44 by this section may result in the suspension or revocation of the
45 person's license to engage in real estate sales in this State or
46 other appropriate disciplinary action by the New Jersey Real
47 Estate Commission in the case of a person subject to the
48 jurisdiction of the commission.

49 13. (New section) Rules and regulations adopted pursuant to

1 the provisions of the "Air Safety and Hazardous Zoning Act of
2 1983," P.L.1983, c.260 (C.6:1-80 et seq.), prior to the enactment
3 of P.L.19 , c. (C.) (now pending before the Legislature as
4 this bill) shall continue in effect until amended or superseded.

5 14. This act shall take effect 180 days after enactment, but
6 the Commissioner of Transportation may take any anticipatory
7 action as may be necessary for the timely implementation of this
8 act on the effective date thereof.

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11 **TRANSPORTATION**

12

13 Provides for airport safety zones and notice to buyers of property
14 in these zones.

Sponsor's STATEMENT

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This bill amends the "Air Safety and Hazardous Zoning Act of 1983," P.L.1983, c.260 (C.6:1-80 et seq.) to replace the term "airport hazard area" in P.L.1983, c.260 and in the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.) by the term "airport safety zone" and amends the title to the "Air Safety and Hazardous Zoning Act of 1983" to read the "Air Safety and Zoning Act of 1983." The purpose of these changes is to emphasize the goals of the safety of the users of airports and those adjacent to them and to remove the stigma attached to land in what is currently referred to as an "airport hazard area."

The bill changes the definition of airport to also include a proposed facility for which an application for a license has been submitted in complete form pursuant to N.J.A.C.16:54-1.4 and which has been determined by the commissioner as likely to be so licensed within one year of such determination. The proposed facility for which an application has been submitted would be substituted for the term "an area designated by the commissioner." The bill also makes explicit the concept of "clear zone" as one subzone of an airport safety zone in which development may be prohibited. Preexisting land uses or structures, however, located in a "clear zone" may be designated as a nonconforming use or structure or as a conditional use. These provisions make explicit the changes to N.J.A.C.16:62-9.1 (b) adopted in 1989.

The bill also requires any person who sells or transfers a property to notify prospective buyers in airport safety areas appearing in municipal tax maps of the location of these properties in such a zone prior to the signing of a contract of sale. Failure of any such person subject to the jurisdiction of the New Jersey Real Estate Commission to provide this notice may subject them to sanctions to be levied by the Real Estate Commission.

The bill also provides that each municipality is to notify each owner of record of property located within an airport safety zone of the boundaries of the zone. A copy of this notice is to be filed with the county along with deeds. Airport safety zones are to be denoted on municipal tax maps. There is to be no governmental liability for failure to give this required notice.

TRANSPORTATION

Provides for airport safety zones and notice to buyers of property in these zones.

SENATE TRANSPORTATION AND PUBLIC UTILITIES
COMMITTEE

STATEMENT TO

SENATE, No. 2174

with Senate Committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 5, 1990

The Senate Transportation and Public Utilities Committee favorably reports Senate Bill No. 2174 with committee amendments.

This bill amends the "Air Safety and Hazardous Zoning Act of 1983," P.L.1983, c.260 (C.6:1-80 et seq.) to replace the term "airport hazard area" in P.L.1983, c.260 and in the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.) by the term "airport safety zone" and amends the title to the "Air Safety and Hazardous Zoning Act of 1983" to read the "Air Safety and Zoning Act of 1983." The purpose of these changes is to emphasize the goals of the safety of the users of airports and those adjacent to them and to remove the stigma attached to land in what is currently referred to as an "airport hazard area."

The bill changes the definition of airport to also include a proposed facility for which an application for a license has been submitted in complete form pursuant to N.J.A.C.16:54-1.4 and which has been determined by the commissioner as likely to be so licensed within one year of such determination. The proposed facility for which an application has been submitted would be substituted for the term "an area designated by the commissioner."

The bill also requires any person who sells or transfers a property to notify prospective buyers in airport safety areas appearing in municipal tax maps of the location of these properties in such a zone prior to the signing of a contract of sale. Failure of any such person subject to the jurisdiction of the New Jersey Real Estate Commission to provide this notice may subject them to sanctions to be levied by the Real Estate Commission.

The bill also provides that each municipality is to notify each owner of record of property located within an airport safety zone of the boundaries of the zone. A copy of this notice is to be filed with the county along with deeds. Airport safety zones are to be denoted on municipal tax maps. There is to be no governmental liability for failure to give this required notice.

The amendments adopted by the committee deleted changes to the original definition of airport hazard area, now airport safety zone, in order to avoid giving it any changed or additional meaning beyond the original. In addition, the amendments deleted reference to the "clear zone" in order to give the Commissioner of Transportation complete flexibility as to the type of regulatory measures needed to implement the existing law. The purpose of the

committee amendments is not to derogate from any powers of the commissioner but to essentially limit the scope of the bill to its two primary objectives, the change in terminology to airport safety zones and the requirement that prospective buyers be notified as to the existence of these zones.

This bill was pre-filed for introduction in the 1990-91 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

SENATE STU COMMITTEE

AMENDMENTS

to

SENATE, No. 2174
(Sponsored by Senator RAND)

ADOPTED
FEB 5 1990

REPLACE SECTION 3 TO READ:

3. Section 3 of P.L.1983, c.260 (C.6:1-82) is amended to read as follows:

3. As used in this amendatory and supplementary act:

a. "Airport" means any area of land or water, or both designed and set aside for the landing and taking-off of fixed wing aircraft, utilized or to be utilized by the public for ~~land~~ such purposes, publicly or privately owned, and licensed by the commissioner as a public use airport or landing strip, or [an area designated by the commissioner,] a proposed facility for which an application for a license has been submitted in complete form pursuant to N.J.A.C.16:54-1.4 and which has been determined by [him] the commissioner as likely to be so licensed within one year of such determination. "Airport" shall not mean any facility which is owned and operated by a federal or military authority, or which is owned and operated by the Port Authority of New York and New Jersey or which is located within the Port of New York District as defined in R.S.32:1-3.

b. ["Airport hazard" means (1) any use of land or water, or both, which creates a dangerous condition for persons or property in or about an airport or aircraft during landing or taking-off at an airport, or (2) any structure or tree which obstructs the air space required for the flight of aircraft in landing or taking-off at an airport.] ¹~~[(Deleted by amendment)-(P.L.19 , c. (C.) (now pending before the Legislature as this bill).]~~ "Airport hazard" means (1) any use of land or water, or both, which creates a dangerous condition for persons or property in or about an airport or aircraft during landing or taking-off at an airport, or (2) any structure or tree which obstructs the air space required for the flight of aircraft in landing or taking-off at an airport.¹

c. "Airport [hazard area] safety zone" means any area of land or water, or both upon which ¹a use creates or might create a dangerous condition for persons or property in or about an aircraft or airport during landing or taking-off at an airport, or upon which any structure or tree obstructs or might obstruct the air space required for the flight of aircraft in landing or taking-off at an airport [an airport hazard might be created or established, if not prevented as provided in this supplementary act] an airport hazard might be created or established, if not prevented as provided in this supplementary act.¹

d. "Commissioner" means the Commissioner of [the Department of] Transportation.

e. "Department" means the Department of Transportation.

f. "Structure" means any object constructed or installed by man, including, but not limited to, buildings, towers, smokestacks, chimneys, and overhead transmission lines.

g. "Tree" means an object of natural vegetative growth.

(cf: P.L.1985, c.122, s.1)

REPLACE SECTION 4 TO READ:

4. Section 4 of P.L.1983, c.260 (C.6:1-83) is amended to read as follows:

4. After public hearing upon notice, including notice [of] to each affected municipality, and pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the commissioner shall adopt rules and regulations which delineate airport [hazard areas] safety zones for all airports subject to this amendatory and supplementary act. The regulations shall describe the methodology used to make the delineation and may delineate subzones ¹, one of which may be a "clear zone" in which development may be prohibited and in which previously existing land uses may be designated by a municipality, by ordinance, only as a nonconforming use or structure as defined pursuant to section 3.2 of P.L.1975, c.291 (C.40:55D-5) or as a conditional use pursuant to section 54 of P.L.1975, c.291 (C.40:55D-67)]¹.

(cf: P.L.1983, c.260, s.4)

REPLACE SECTION 8 TO READ:

8. Section 29 of P.L.1975, c.291 (C.40:55D-38) is amended to read as follows:

29. Contents of ordinance. An ordinance requiring approval by the planning board of either subdivisions or site plans, or both, shall include the following:

a. Provisions, not inconsistent with other provisions of this act, for submission and processing of applications for development, including standards for preliminary and final approval and provisions for processing of final approval by stages or sections of development;

b. Provisions ensuring:

(1) Consistency of the layout or arrangement of the subdivision or land development with the requirements of the zoning ordinance;

(2) Streets in the subdivision or land development of sufficient width and suitable grade and suitably located to accommodate prospective traffic and to provide access for firefighting and emergency equipment to buildings and coordinated so as to compose a convenient system consistent with the official map, if any, and the circulation element of the master plan, if any, and so oriented as to permit, consistent with the reasonable utilization of land, the buildings constructed thereon to maximize solar gain; provided that no street of a width greater than 50 feet within the right-of-way lines shall be required unless said street constitutes an extension of an existing street of the greater width, or already has been shown on the master plan at the greater width, or already has been shown in greater width on the official map;

(3) Adequate water supply, drainage, shade trees, sewerage facilities and other utilities necessary for essential services to residents and occupants;

(4) Suitable size, shape and location for any area reserved for public use pursuant to section 32 of this act;

(5) Reservation pursuant to section 31 of this act of any open space to be set aside for use and benefit of the residents of planned development, resulting from the application of standards of density or intensity of land use, contained in the zoning ordinance, pursuant to subsection 52c. of this act;

(6) Regulation of land designated as subject to flooding, pursuant to subsection 52e., to avoid danger to life or property;

(7) Protection and conservation of soil from erosion by wind or water or from excavation or grading;

(8) Conformity with standards promulgated by the Commissioner of Transportation, pursuant to the "Air Safety and [Hazardous] Zoning Act of 1983," P.L.1983, c.280 (C.6:1-80 et seq.), for any airport [hazard areas] safety zones delineated under that act;

(9) Conformity with a municipal recycling ordinance required pursuant to section 6 of P.L.1987, c.102 (C.13:1E-99.16);

(10) Conformity with the State highway access management code adopted by the Commissioner of Transportation under section 3 of the "State Highway Access Management Act," P.L.1989, c.32 (C.27:7-91), with respect to any State highways within the municipality;

(11) Conformity with any access management code adopted by the county under R.S.27:16-1, with respect to any county roads within the municipality; ¹[and]¹

(12) Conformity with any municipal access management code adopted under R.S.40:67-1, with respect to municipal streets; ¹and

(13) Protection of potable water supply reservoirs from pollution or other degradation of water quality resulting from the development or other uses of surrounding land areas, which provisions shall be in accordance with siting, performance, or other standards or guidelines adopted therefor by the Department of Environmental Protection.¹

c. Provisions governing the standards for grading, improvement and construction of streets or drives and for any required walkways, curbs, gutters, streetlights, shade trees, fire hydrants and water, and drainage and sewerage facilities and other improvements as shall be found necessary, and provisions ensuring that such facilities shall be completed either prior to or subsequent to final approval of the subdivision or site plan by allowing the posting of performance bonds by the developer;

d. Provisions ensuring that when a municipal zoning ordinance is in effect, a subdivision or site plan shall conform to the applicable provisions of the zoning ordinance, and where there is no zoning ordinance, appropriate standards shall be specified in an ordinance pursuant to this article; and

e. Provisions ensuring performance in substantial accordance with the final development plan; provided that the planning board may permit a deviation from the final plan, if caused by change of conditions beyond the control of the developer since the date of final approval, and the deviation would not substantially alter the character of the development or substantially impair the intent and purpose of the master plan and zoning ordinance.

(cf: P.L.1989, c.37, s.24)

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ASSEMBLY TRANSPORTATION COMMITTEE

STATEMENT TO

[FIRST REPRINT]

SENATE, No. 2174

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: AUGUST 1, 1991

The Assembly Transportation Committee favorably reports Senate Bill No. 2174(1R) of 1990, with committee amendments.

The bill, as amended, makes changes to definitions and terms in the "Air Safety and Hazardous Zoning Act of 1983," P.L.1983, c.260 (C.6:1-80 et seq.) and the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.) in order to emphasize the safety goals of airports and to remove the stigma attached to land in what is currently referred to as an "airport hazard area." The title of the "Air Safety and Hazardous Zoning Act of 1983" is also amended to read the "Air Safety and Zoning Act of 1983."

The bill, as amended, changes the definition of airport to include a proposed facility for which an application for a license has been submitted in complete form pursuant to N.J.A.C.16:54-1.4 and which has been determined by the commissioner as likely to be so licensed within one year. The proposed facility for which an application has been submitted would be substituted for the term "an area designated by the commissioner."

The bill, as amended, also requires any person who sells or transfers a property to notify prospective buyers in airport safety areas appearing in municipal tax maps of the location of these properties in such a zone prior to the signing of a contract of sale. Failure of any such person subject to the jurisdiction of the New Jersey Real Estate Commission to provide this notice may subject them to sanctions to be levied by the Real Estate Commission.

Finally, the bill, as amended, provides that each municipality is to notify each owner of record of property located within an airport safety zone of the boundaries of the zone. A copy of this notice is to be filed with the county along with deeds. Airport safety zones are to be denoted on municipal tax maps. There is to be no governmental liability for failure to give this required notice.

The committee amendments make technical changes in the bill's language to conform it to existing law that has been changed since the bill was introduced.

ASSEMBLY ATR COMMITTEE

AMENDMENTS

to

SENATE, No. 2174(1R)
(Sponsored by Senator Rand)

ADOPTED

DATE AUG 1 1991

REPLACE SECTION 7 TO READ:

7. Section 19 of P.L.1975, c.291 (C.40:55D-28) is amended to read as follows:

19. Preparation; contents; modification.

a. The planning board may prepare and, after public hearing, adopt or amend a master plan or component parts thereof, to guide the use of lands within the municipality in a manner which protects public health and safety and promotes the general welfare.

b. The master plan shall generally comprise a report or statement and land use and development proposals, with maps, diagrams and text, presenting, at least the following elements (1) and (2) and, where appropriate, the following elements (3) through (12):

(1) A statement of objectives, principles, assumptions, policies and standards upon which the constituent proposals for the physical, economic and social development of the municipality are based;

(2) A land use plan element (a) taking into account and stating its relationship to the statement provided for in paragraph (1) hereof, and other master plan elements provided for in paragraphs (3) through (12) hereof and natural conditions, including, but not necessarily limited to, topography, soil conditions, water supply, drainage, flood plain areas, marshes, and woodlands; (b) showing the existing and proposed location, extent and intensity of development of land to be used in the future for varying types of residential, commercial, industrial, agricultural, recreational, educational and other public and private purposes or combination of purposes; and stating the relationship thereof to the existing and any proposed zone plan and zoning ordinance; and (c) showing the existing and proposed location of any airports and the boundaries of any airport [hazard areas] safety zones delineated pursuant to the "Air Safety and [Hazardous] Zoning Act of 1983," P.L.1983, c.260 (C.6:1-80 et seq.); and (d) including a statement of the standards of population density and development intensity recommended for the municipality;

(3) A housing plan element pursuant to section 10 of P.L.1985, c.222 (C.52:27D-310), including, but not limited to, residential standards and proposals for the construction and improvement of housing;

(4) A circulation plan element showing the location and types of facilities for all modes of transportation required for the efficient movement of people and goods into, about, and through the municipality, taking into account the functional highway classification system of the Federal Highway Administration and the types, locations, conditions and availability of existing and proposed transportation facilities, including air, water, road and rail;

(5) A utility service plan element analyzing the need for and showing the future general location of water supply and distribution facilities, drainage and flood control facilities, sewerage and waste treatment, solid waste disposal and provision for other related utilities, and including any storm water management plan required pursuant to the provisions of P.L.1981, c.32 (C.40:55D-93 et seq.);

(6) A community facilities plan element showing the existing and proposed location and type of educational or cultural facilities, historic sites, libraries, hospitals, firehouses, police stations and other related facilities, including their relation to the surrounding areas;

(7) A recreation plan element showing a comprehensive system of areas and public sites for recreation;

(8) A conservation plan element providing for the preservation, conservation, and utilization of natural resources, including, to the extent appropriate, energy, open space, water supply, forests, soil, marshes, wetlands, harbors, rivers and other waters, fisheries, endangered or threatened species wildlife and other resources, and which systemically analyzes the impact of each other component and element of the master plan on the present and future preservation, conservation and utilization of those resources;

(9) An economic plan element considering all aspects of economic development and sustained economic vitality, including (a) a comparison of the types of employment expected to be provided by the economic development to be promoted with the characteristics of the labor pool resident in the municipality and nearby areas and (b) an analysis of the stability and diversity of the economic development to be promoted;

(10) A historic preservation plan element ^{2,2} (a) indicating the location ^{2[.]} and ² significance ^{2[}, proposed utilization and means for preservation^{2]} of historic sites and historic districts ^{2[}, and^{2]}, ² (b) identifying the standards used to assess worthiness for historic site or district ^{2[designation]} identification; and ² (c) analyzing the impact of each component and element of the master plan on the preservation of historic sites and districts²;

(11) Appendices or separate reports containing the technical foundation for the master plan and its constituent elements; and

(12) A recycling plan element which incorporates the State Recycling Plan goals, including provisions for the collection, disposition and recycling of recyclable materials designated in the municipal recycling ordinance, and for the collection, disposition and recycling of recyclable materials within any development proposal for the construction of 50 or more units of single-family residential housing or 25 or more units of multi-family residential housing and any commercial or industrial development proposal for the utilization of 1,000 square feet or more of land.

c. The master plan and its plan elements may be divided into subplans and subplan elements projected according to periods of time or staging sequences.

d. The master plan shall include a specific policy statement indicating the relationship of the proposed development of the municipality, as developed in the master plan to (1) the master plans of contiguous municipalities, (2) the master plan of the county in which the municipality is located, (3) the State Development and Redevelopment Plan adopted pursuant to the "State Planning Act," sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.) and (4) the district solid waste management plan required pursuant to the provisions of the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.) of the county in which the municipality is located.

(cf: P.L.1991, c.199, s.3)

REPLACE SECTION 8 TO READ:

8. Section 29 of P.L.1975, c.291 (C.40:55D-38) is amended to read as follows:

29. Contents of ordinance. An ordinance requiring approval by the planning board of either subdivisions or site plans, or both, shall include the following:

a. Provisions, not inconsistent with other provisions of this act, for submission and processing of applications for development, including standards for preliminary and final approval and provisions for processing of final approval by stages or sections of development;

b. Provisions ensuring:

(1) Consistency of the layout or arrangement of the subdivision or land development with the requirements of the zoning ordinance;

(2) Streets in the subdivision or land development of sufficient width and suitable grade and suitably located to accommodate prospective traffic and to provide access for firefighting and emergency equipment to buildings and coordinated so as to compose a convenient system consistent with the official map, if

~~any, and the circulation element of the master plan, if any, and so oriented as to permit, consistent with the reasonable utilization of land, the buildings constructed thereon to maximize solar gain; provided that no street of a width greater than 50 feet within the right-of-way lines shall be required unless said street constitutes an extension of an existing street of the greater width, or already has been shown on the master plan at the greater width, or already has been shown in greater width on the official map;~~

~~(3) Adequate water supply, drainage, shade trees, sewerage facilities and other utilities necessary for essential services to residents and occupants;~~

~~(4) Suitable size, shape and location for any area reserved for public use pursuant to section 32 of this act;~~

~~(5) Reservation pursuant to section 31 of this act of any open space to be set aside for use and benefit of the residents of planned development, resulting from the application of standards of density or intensity of land use, contained in the zoning ordinance, pursuant to subsection 52c. of this act;~~

~~(6) Regulation of land designated as subject to flooding, pursuant to subsection 52e., to avoid danger to life or property;~~

~~(7) Protection and conservation of soil from erosion by wind or water or from excavation or grading;~~

~~(8) Conformity with standards promulgated by the Commissioner of Transportation, pursuant to the "Air Safety and [Hazardous] Zoning Act of 1983," P.L.1983, c.260 (C.6:1-80 et seq.), for any airport [hazard areas] safety zones delineated under that act;~~

~~(9) Conformity with a municipal recycling ordinance required pursuant to section 6 of P.L.1987, c.102 (C.13:1E-99.16);~~

~~(10) Conformity with the State highway access management code adopted by the Commissioner of Transportation under section 3 of the "State Highway Access Management Act," P.L.1989, c.32 (C.27:7-91), with respect to any State highways within the municipality;~~

~~(11) Conformity with any access management code adopted by the county under R.S.27:16-1, with respect to any county roads within the municipality; ¹[and]¹~~

~~(12) Conformity with any municipal access management code adopted under R.S.40:67-1, with respect to municipal streets; ²[¹and]²~~

~~(13) Protection of potable water supply reservoirs from pollution or other degradation of water quality resulting from the development or other uses of surrounding land areas, which provisions shall be in accordance with siting, performance, or other standards or guidelines adopted therefor by the Department of Environmental Protection ²[¹; and~~

(14) Conformity with the public safety regulations concerning storm water detention facilities adopted pursuant to section 5 of P.L.1991, c.194 (C. 40:55D-38) and reflected in storm water management plans and storm water management ordinances adopted pursuant to P.L.1981, c.32 (C.40:55D-93 et seq.).²

c. Provisions governing the standards for grading, improvement and construction of streets or drives and for any required walkways, curbs, gutters, streetlights, shade trees, fire hydrants and water, and drainage and sewerage facilities and other improvements as shall be found necessary, and provisions ensuring that such facilities shall be completed either prior to or subsequent to final approval of the subdivision or site plan by allowing the posting of performance bonds by the developer;

d. Provisions ensuring that when a municipal zoning ordinance is in effect, a subdivision or site plan shall conform to the applicable provisions of the zoning ordinance, and where there is no zoning ordinance, appropriate standards shall be specified in an ordinance pursuant to this article; and

e. Provisions ensuring performance in substantial accordance with the final development plan; provided that the planning board may permit a deviation from the final plan, if caused by change of conditions beyond the control of the developer since the date of final approval, and the deviation would not substantially alter the character of the development or substantially impair the intent and purpose of the master plan and zoning ordinance.

(cf: P.L.1991, c.194, s.4)