

[First Reprint]

ASSEMBLY, No. 3772

STATE OF NEW JERSEY
213th LEGISLATURE

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Sponsored by:

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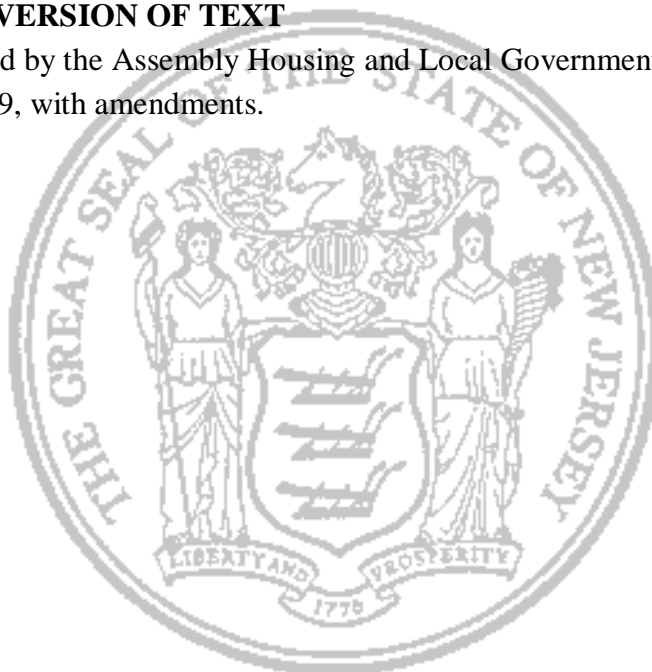
District 5 (Camden and Gloucester)

SYNOPSIS

Permits conversion of age-restricted housing units to non-age-restricted housing units and modifies laws concerning affordable housing.

CURRENT VERSION OF TEXT

As reported by the Assembly Housing and Local Government Committee on March 9, 2009, with amendments.



(Sponsorship Updated As Of: 3/6/2009)

1 AN ACT concerning ¹affordable housing and¹ the development of
2 non-age-restricted communities^{1,1} and supplementing Title 45 of
3 the Revised Statutes ¹and P.L.1985, c.222 (C.52:27D-301 et al.)¹.

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

7
8 1. The Legislature finds and declares that:

9 a. While the cost of housing in New Jersey has declined under
10 currently eroding economic conditions, the cost of both renting and
11 homeownership remains unaffordable to a large percentage of New
12 Jersey residents, including those who make vital contributions to
13 their communities such as teachers, nurses, police officers,
14 firefighters, and the general workforce population;

15 b. In recognition of this crisis, Governor Jon S. Corzine has
16 committed to producing and preserving 100,000 units of affordable
17 housing for low-, moderate- and middle-income families and
18 individuals over the next 10 years;

19 c. According to the 2000 U.S. Census, 55 percent of these
20 families are one and two person households, many of which are
21 unable to find homes and apartments designed to meet their needs;

22 d. While no policy is singularly responsible for current housing
23 conditions, zoning practices have resulted in a lack of land
24 approved for housing which meets the needs of households
25 requiring smaller housing units;

26 e. The shortage of affordably priced workforce housing has been
27 exacerbated in recent years by a municipal preference for age-
28 restricted housing which has resulted in an oversupply of age-
29 restricted housing approvals and an inability among the majority of
30 New Jersey's workforce to live near their jobs;

31 f. While the Legislature has created a State Housing
32 Commission, which has been charged with reviewing New Jersey's
33 housing limitations and its future needs to create a balanced housing
34 policy and plan appropriate for all New Jerseyans, it has not yet
35 commenced operation;

36 g. Although the maximum municipal percentage of affordable
37 fair share housing which may be met by age-restricted units in a
38 municipality has been reduced from 50 percent to 25 percent under
39 the recently adopted rules of the Council on Affordable Housing, a
40 mechanism is needed to permit ¹**[a proposed]** an¹ age-restricted
41 development to change to a ¹**[non-restricted]** converted¹
42 development to meet this rule, and to meet demographic needs; and

43 h. Under currently deteriorating national economic conditions, it
44 is appropriate to take immediate action at this time to create the

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:

¹Assembly AHO committee amendments adopted March 9, 2009.

1 opportunity to increase the production and supply of workforce
2 housing through the conversion of the over-supplied age-restricted
3 market to meet the needs of New Jersey's residents who require
4 smaller, more reasonably priced homes.

5

6 2. As used in P.L. , c. (C.) (pending before the
7 Legislature as this bill):

8 "Affordable" means a sales price or rent which meets the criteria
9 for low income or moderate income housing, as defined in section 4
10 of P.L.1985, c.222 (C.52:27D-304).

11 "Approving board" means the municipal or regional planning
12 board, zoning board of adjustment, or joint land use board that
13 issued the initial site plan or subdivision approvals for the given
14 age-restricted development.

15 "Age-restricted development" means a community that complies
16 with the "housing for older persons" exception from the federal
17 "Fair Housing Amendments Act of 1988," Pub.L.100-430 (42
18 U.S.C.ss.3601 et seq.) for that community as set forth in section
19 100.301 of Title 24, Code of Federal Regulations.

20 "Attached housing" means housing units that share a common
21 wall.

22 "Converted development" means a proposed age-restricted
23 development that will be marketed instead with no age restrictions.

24 "Department" means the Department of Community Affairs.

25 "Developer" means the legal or beneficial owner or owners of a
26 lot or of any land proposed to be included in a proposed
27 development, including the holder of an option or contract to
28 purchase, or other person having an enforceable proprietary interest
29 in such land.

30 "Floor area ratio" means the floor area of all buildings and
31 structures on a lot divided by the lot area.¹

32 "Fair share plan" means the plan that describes the mechanisms
33 and the funding sources, if applicable, by which a municipality
34 proposes to address its affordable housing obligation as established
35 in the housing element, and includes the draft ordinances necessary
36 to implement that plan in accordance with section 10 of P.L.1985,
37 c.222 (C.52:27D-310) and the regulations adopted by the Council
38 on Affordable Housing to effectuate that section.

39 "Final approval" has the same meaning as defined in the
40 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

41 "Municipality" means any city, borough, town, township, or
42 village.

43 "Non-restricted ¹[development] status¹ means an age-restricted
44 development that has ¹[been changed to an open market
45 development where the age restriction has been eliminated]
46 received approval to become a converted development¹.

1 “Preliminary approval” has the same meaning as defined in the
2 “Municipal Land Use Law,” P.L.1975, c.291 (C.40:55D-1 et seq.).

3 “Residential Site Improvement Standards” means the technical
4 site standards promulgated by the Commissioner of Community
5 Affairs pursuant to the authority of P.L.1993, c.32 (C.40:55D-40.1).

6
7 3. a. During the period of time set forth in section 9 of P.L. ,
8 c. (C.) (pending before the Legislature as this bill), any age-
9 restricted development shall be eligible to be changed to a ¹‘[non-
10 restricted] converted¹ development, pending approving board
11 approval, provided that the development meets all of the following
12 conditions:

13 (1) preliminary or final approval for construction of the
14 development has been granted prior to the effective date of P.L. ,
15 c. (C.) (pending before the Legislature as this bill);

16 (2) the developer of the age-restricted ¹‘[community]
17 development¹ is not holding a deposit for ¹‘[the sale of] , or has not
18 conveyed.¹ any dwelling unit within the development;

19 (3) the developer of the age-restricted ¹‘[community]
20 development¹ agrees that an amount not exceeding 20 percent of the
21 units in the development will be provided as affordable units in
22 accordance with regulations promulgated by the Council on
23 Affordable Housing pursuant to the “Fair Housing Act,” P.L.1985,
24 c.222 (C.52:27D-301 et al.).

25 b. Any ¹‘[affordable] housing¹ unit which is provided under the
26 provisions of P.L. , c. (C.) (pending before the Legislature
27 as this bill) ¹‘, and which is affordable to households of low and
28 moderate income.¹ shall automatically become part of a municipal
29 fair share plan, if applicable, and as such shall be eligible for credits
30 to meet the municipality’s obligation for affordable housing
31 pursuant to the “Fair Housing ¹‘[Act.]’ Act,” P.L.1985, c. 222
32 (C.52:27D-301 et al.).¹

33 c. No affordable housing units complying with applicable
34 Council on Affordable Housing standards or market-rate housing
35 units associated with such a converted development shall be
36 construed as generating any ¹‘[growth] fair¹ share affordable
37 housing obligation for a municipality.

38
39 4. a. A developer seeking to change an age-restricted
40 development approval to a converted development approval shall
41 file an application with the approving board seeking an amendment
42 to the previously granted approvals requesting the authority to
43 develop the land as a converted development. At such time, the
44 developer shall also file a copy of said notice with the municipal
45 clerk of the municipality in which the development is located and
46 the developer shall provide notice prior to a hearing on the

1 application in the manner prescribed by section 7.1 of P.L.1975,
2 c.291 (C.40:55D-12).

3 (1) No application for an amended approval seeking the authority
4 to construct a converted development shall be considered a “use
5 variance” or other “d’ variance” application pursuant to subsection
6 d. of section 57 of P.L.1975, c.291 (C.40:55D-70). Both planning
7 boards that initially granted approvals for the age-restricted
8 development and zoning boards of adjustment that initially granted
9 approvals for the age-restricted development shall have the legal
10 authority to grant amended approvals for a converted development
11 without the need to seek relief pursuant to subsection d. of section
12 57 of P.L.1975, c.291 (C.40:55D-70), it being the intent of this bill
13 that such converted developments are to be considered permitted
14 uses in the zoning district in which they are located.

15 b. Applications seeking amended approval for a converted
16 development shall include documentation that all of the following
17 site improvement and infrastructure requirements have been met:

18 (1) the site meets the Residential Site Improvement Standards
19 parking requirement for the residential land uses in a converted
20 development as established pursuant to N.J.A.C.5:21-4.14-4.16;

21 (2) the recreation improvements and other amenities to be
22 constructed on the site have been revised, as needed, to meet the
23 needs of a converted development;

24 (3) the water supply system is adequate, as determined pursuant
25 to N.J.A.C.5:21-5.1, to meet the needs of a converted development;

26 (4) the capacity of the sanitary sewer system is adequate to meet
27 the projected flow requirements of a converted development
28 pursuant to N.J.A.C.7:14A-23.3.

29 (5) if additional water supply or sewer capacity is needed and the
30 developer is unable to obtain additional supply or capacity, the
31 number of dwelling units in the development has been reduced
32 accordingly;

33 (6) if additional parking is needed, and the developer is unable to
34 provide the required parking, the number of dwelling units in the
35 development has been reduced accordingly; and

36 (7) if additional parking is provided and increases the amount of
37 impervious cover by more than one percent, the storm water system
38 calculations and improvements have been revised accordingly.

39

40 5. A unit in a converted development shall conform to all
41 requirements imposed pursuant to the “State Uniform Construction
42 Code Act,” P.L.1975, c.217 (C.52:27D-119 et seq.). It shall also
43 conform to any requirements for, and limitations on, size and square
44 footage imposed pursuant to a preliminary approval. However, any
45 floor plans of the dwelling units may be revised without requiring
46 any further approving board approval or review.

1 6. a. In the case of an age-restricted development which is
2 being changed to a '~~non-restricted~~ converted' development, the
3 layout of a subdivision or site plan approved pursuant to the
4 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.)
5 '~~shall not~~ may' be 'reasonably' revised '~~other than~~' to
6 accommodate additional parking, different recreation improvements
7 and other amenities, infrastructure enhancements, a needed
8 reduction in the number of units, 'height requirements, revision to
9 dwelling footprints that do not modify square footage of the
10 development or the individual dwellings,' or a needed change to
11 construct the affordable units as attached housing.

12 b. In order to construct the affordable units as attached housing,
13 to meet accessibility requirements, or provide them as rental units,
14 the affordable units may be constructed in one section of the
15 development with a separate management entity if such a
16 management entity is required due to the nature of the development.

17 c. The size, height, '~~footprint~~ floor area ratio', number of
18 bedrooms and 'total' square footage of buildings established as part
19 of a preliminary or final approval for an age-restricted development
20 shall not be increased, but may be decreased for a converted
21 development, except that the number of bedrooms for the affordable
22 units only may be increased within the footprint to meet the
23 bedroom distribution requirements as established in the Uniform
24 Housing Affordability Controls.

25
26 7. a. Within 30 days after the submission of an amended
27 application pursuant to this bill, the approving board shall advise
28 the applicant in writing whether the amended application is
29 complete, with completeness to be determined based upon whether
30 the applicant has submitted documentation addressing the issues
31 described in section 4 of P.L. , c. (C.) (pending before the
32 Legislature as this bill). If no such writing asserting incompleteness
33 for any such reason is provided to the applicant within the 30 day
34 period, the application shall be deemed complete for purposes of
35 review by the approving board.

36 b. The approving board shall render a decision on an
37 application for a converted development within 60 days of a
38 determination of application completeness, unless the time frame is
39 extended by the applicant. If no such decision is rendered by the
40 approving board within the time period, including extensions, the
41 application shall be deemed approved and the applicant shall in
42 such a case follow the procedures set forth in section 5 of P.L.1985,
43 c.516 (C.40:55D-10.4).

44 c. Applicants seeking approval for a converted development
45 pursuant to P.L. , c. (C.) (pending before the Legislature as
46 this bill) shall not be charged application fees, although reasonable

1 escrow fees may be charged pursuant to section 13 of P.L.1991,
2 c.256 (C.40:55D-53.2).

3
4 8. After a development has been officially changed to a non-
5 restricted development, the developer shall file a copy of the
6 revised preliminary subdivision or site plan approval with the
7 municipal engineer for review and a determination that all site
8 information is complete. Such information shall be used as the base
9 document for the calculation of any required inspection escrow
10 accounts, and performance and maintenance guaranties in
11 accordance with section 41 of P.L.1975, c.291 (C.40:55D-53). Any
12 reasonable costs for the review of the revised plans may be charged
13 to the escrow account that the developer posted with the
14 municipality.

15
16 9. An application for approval to change a development from
17 age-restricted to non-restricted status, pursuant to section 4 of
18 P.L. , c. (C.) (pending before the Legislature as this bill),
19 may be submitted to the approving board at anytime before the first
20 day of the 25th month next following the effective date of P.L. , c.
21 (C.) (pending before the Legislature as this bill); provided,
22 however, that the approving board may extend this time period by
23 an additional 24 months if it finds, at the end of the initial period,
24 that poor economic conditions continue to adversely affect the real
25 estate market in New Jersey.

26
27 10. All development approvals for a development that changes
28 from age-restricted to non-restricted status pursuant to P.L. ,
29 c. (C.) (pending before the Legislature as this bill) shall be
30 deemed vested in accordance with the "Municipal Land Use Law,"
31 P.L.1975, c.291 (C.40:55D-1 et seq.), and extended as permitted
32 under the "Permit Extension Act of 2008," P.L.2008, c.78
33 (C.40:55D-136.1 et seq.). ¹In the case of a prior approval that was
34 not extended as permitted under the "Permit Extension Act of
35 2008," the period of vesting and protection shall not be less than 24
36 months from the date of approval of the application to change to a
37 non-restricted status.¹

38
39 ¹[11. a. An approving board shall issue a resolution of denial
40 within the time period set forth in subsection g. of section 6 of
41 P.L.1975, c.291 (C.40:55D-10). In the event that an approving
42 board denies an application for a converted development, an
43 applicant may appeal that determination to the Smart Growth
44 Ombudsman appointed pursuant to section 2 of P.L.2004, c.89
45 (C.52:27D-10.3). Such an appeal shall be filed within 30 days of
46 the applicant's receipt of the resolution of denial issued by the
47 approving board. The Smart Growth Ombudsman shall render a
48 decision as to an appeal within 60 days of its submission to the

1 Smart Growth Ombudsman. The notice of appeal shall include the
2 plans and reports, if any, submitted by the applicant to the
3 approving board in support of the request for approval of a
4 converted development. No fees will be charged for the filing or
5 processing of such an appeal.

6 b. In considering such an appeal, the Smart Growth Ombudsman
7 shall be guided by a review of whether the applicant has
8 demonstrated satisfaction of the review criteria set forth in section 4
9 of P.L. , c. (C.) (pending before the Legislature as this
10 bill). Upon finding that the criteria have been satisfied, the Smart
11 Growth Ombudsman shall issue approval of the converted
12 development, along with any reasonable approval conditions
13 deemed necessary by the Smart Growth Ombudsman. There shall
14 be no right of appeal from decisions issued by the Smart Growth
15 Ombudsman.]¹

16

17 ^{11.} An approving board shall issue a resolution memorializing
18 its decision on an application for a converted development within
19 the time period set forth in subsection g. of section 6 of P.L.1975,
20 c.291 (C.40:55D-10). In the event that an approving board denies
21 an application for a converted development or approves an
22 application subject to conditions deemed unsatisfactory to the
23 applicant, the applicant may appeal that determination to the court
24 in a summary manner. Such an appeal shall be filed within 30 days
25 of the applicant's receipt of the resolution issued by the approving
26 board. The notice of appeal shall include the plans and reports, if
27 any, submitted by the applicant to the approving board in support of
28 the request for approval of a converted development, a copy of the
29 transcript of the hearing before the approving board, and any other
30 items that comprise the record before the approving board.

31 b. In deciding an appeal, the court shall consider whether the
32 applicant complied with the criteria contained in section 3 and
33 section 4 of P.L. , c. (C.) (pending before the Legislature as
34 this bill). Upon finding that the criteria have been satisfied, the
35 court may make an order instructing the board to approve the
36 converted development, along with any reasonable conditions of
37 approval deemed necessary by the court.¹

38

39 ^{12.} Notwithstanding any law, rule or regulation to the contrary,
40 a municipality that has received substantive certification from the
41 council shall be permitted to give preference for occupancy for up
42 to 50 percent of all available affordable housing units in a converted
43 development to those households having members who work or
44 reside in the municipality.¹

1 ¹13. Under any rental or purchase program implemented to
2 prevent the homelessness of persons who have experienced or may
3 experience the foreclosure and loss of their personal residence, or
4 any program which addresses the needs of low and moderate
5 income households residing within the municipality including, but
6 not limited to, State, federal or local programs, if the persons
7 benefitting from the program are otherwise income qualified to
8 occupy such housing under State law, then affirmative marketing
9 requirements under regulations promulgated to effectuate the “Fair
10 Housing Act,” P.L.1985, c.222 (C.52:27D-301 et al.) shall be
11 waived to permit such persons to occupy, rent or purchase the
12 housing units which they may have previously occupied or owned.¹

13
14 ¹14. For the purpose of determining credits to be granted against
15 the fair share obligation of a municipality under the requirements of
16 P.L.1985, c.222 (C.52:27D-301 et al.) and the regulations
17 promulgated to effectuate that act, a housing unit financed in whole
18 or in part through the allocation of federal Low-Income Housing
19 Tax Credits shall be eligible to be credited if the requirements of
20 federal law pursuant to 26U.S.C. s.42 have been met for that unit.
21 In the event the federal requirements have been met, the provisions
22 of the Uniform Housing Affordability Controls promulgated by the
23 New Jersey Housing and Mortgage Finance Agency shall not be
24 applied to inhibit or prevent the crediting of the housing unit against
25 the municipal fair share obligation.¹

26
27 ¹[12.] 15.¹ This act shall take effect immediately.