

P.L. 2009, CHAPTER 82, *approved July 2, 2009*
Senate, No. 2577 (*Third Reprint*)

1 AN ACT concerning ¹affordable housing and¹ the development of
2 non-age-restricted communities^{1, 1} and supplementing ¹[Title 45
3 of the Revised Statutes] ²[P.L.1975, c.291 (C.40:55D-1 et seq.)]
4 Title 45 of the Revised Statutes² and P.L.1985, c.222
5 (C.52:27D-301 et al.)¹.

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

- 9
10 1. The Legislature finds and declares that:
11 a. While the cost of housing in New Jersey has declined under
12 currently eroding economic conditions, the cost of both renting and
13 homeownership remains unaffordable to a large percentage of New
14 Jersey residents, including those who make vital contributions to
15 their communities such as teachers, nurses, police officers,
16 firefighters, and the general workforce population;
17 b. In recognition of this crisis, Governor Jon S. Corzine has
18 committed to producing and preserving 100,000 units of affordable
19 housing for low-, moderate- and middle-income families and
20 individuals over the next 10 years;
21 c. According to the 2000 U.S. Census, 55 percent of these
22 families are one and two person households, many of which are
23 unable to find homes and apartments designed to meet their needs;
24 d. While no policy is singularly responsible for current housing
25 conditions, zoning practices have resulted in a lack of land
26 approved for housing which meets the needs of households
27 requiring smaller housing units;
28 e. The shortage of affordably priced workforce housing has
29 been exacerbated in recent years by a municipal preference for age-
30 restricted housing which has resulted in an oversupply of age-
31 restricted housing approvals and an inability among the majority of
32 New Jersey's workforce to live near their jobs;
33 f. While the Legislature has created a State Housing
34 Commission, which has been charged with reviewing New Jersey's
35 housing limitations and its future needs to create a balanced housing

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:

¹Senate SEG committee amendments adopted February 26, 2009.

²Assembly floor amendments adopted March 16, 2009.

³Senate amendments adopted in accordance with Governor's recommendations May 21, 2009.

1 policy and plan appropriate for all New Jerseyans, it has not yet
2 commenced operation;

3 g. Although the maximum municipal percentage of affordable
4 fair share housing which may be met by age-restricted units in a
5 municipality has been reduced from 50 percent to 25 percent under
6 the recently adopted rules of the Council on Affordable Housing, a
7 mechanism is needed to permit '[a proposed] an' age-restricted
8 development to change to a '[non-restricted] converted'
9 development to meet this rule, and to meet demographic needs; and

10 h. Under currently deteriorating national economic conditions,
11 it is appropriate to take immediate action at this time to create the
12 opportunity to increase the production and supply of workforce
13 housing through the conversion of the over-supplied age-restricted
14 market to meet the needs of New Jersey's residents who require
15 smaller, more reasonably priced homes.

16

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

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

22 "Approving board" means the municipal or regional planning
23 board, zoning board of adjustment, or joint land use board that
24 issued the initial site plan or subdivision approvals for the given
25 age-restricted development.

26 "Age-restricted development" means a community that complies
27 with the "housing for older persons" exception from the federal
28 "Fair Housing Amendments Act of 1988," Pub.L.100-430 (42
29 U.S.C. ss.3601 et seq.) for that community as set forth in section
30 100.301 of Title 24, Code of Federal Regulations.

31 "Attached housing" means housing units that share a common
32 wall.

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

35 "Department" means the Department of Community Affairs.

36 "Developer" means the legal or beneficial owner or owners of a
37 lot or of any land proposed to be included in a proposed
38 development, including the holder of an option or contract to
39 purchase, or other person having an enforceable proprietary interest
40 in such land.

41 ²"Floor area ratio" means the floor area of all buildings and
42 structures on a lot divided by the lot area.²

43 "Fair share plan" means the plan that describes the mechanisms and
44 the funding sources, if applicable, by which a municipality proposes
45 to address its affordable housing obligation as established in the
46 housing element, and includes the draft ordinances necessary to
47 implement that plan in accordance with section 10 of P.L.1985,

1 c.222 (C.52:27D-310) and the regulations adopted by the Council
2 on Affordable Housing to effectuate that section.

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

5 “Municipality” means any city, borough, town, township, or
6 village.

7 “Non-restricted ¹‘[development]’ status¹ means ¹‘the status of
8 an age-restricted development that has ¹‘[been changed to an open
9 market development where the age restriction has been eliminated]
10 received approval to become a converted development¹.

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

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

16

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

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

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

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

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

43 c. No affordable housing units complying with applicable
44 Council on Affordable Housing standards or market-rate housing
45 units associated with such a converted development shall be

1 construed as generating any ²[growth] fair² share affordable
2 housing obligation for a municipality.

3
4 4. a. A developer seeking to change an age-restricted
5 development approval to a converted development approval shall
6 file an application with the approving board seeking an amendment
7 to the previously granted approvals requesting the authority to
8 develop the land as a converted development. At such time, the
9 developer shall also file a copy of said notice with the municipal
10 clerk of the municipality in which the development is located and
11 the developer shall provide notice prior to a hearing on the
12 application in the manner prescribed by section 7.1 of P.L.1975,
13 c.291 (C.40:55D-12).

14 (1) No application for an amended approval seeking the
15 authority to construct a converted development shall be considered
16 a “use variance” or other “d’ variance” application pursuant to
17 subsection d. of section 57 of P.L.1975, c.291 (C.40:55D-70). Both
18 planning boards that initially granted approvals for the age-
19 restricted development and zoning boards of adjustment that
20 initially granted approvals for the age-restricted development shall
21 have the legal authority to grant amended approvals for a converted
22 development without the need to seek relief pursuant to subsection
23 d. of section 57 of P.L.1975, c.291 (C.40:55D-70), it being the
24 intent of this bill that such converted developments are to be
25 considered permitted uses in the zoning district in which they are
26 located.

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

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

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

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

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

41 (5) if additional water supply or sewer capacity is needed and
42 the developer is unable to obtain additional supply or capacity, the
43 number of dwelling units in the development has been reduced
44 accordingly;

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

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

4 ³c. if the approving board determines that the requirement of
5 P.L. , c. (C.) (pending before the Legislature as this bill) have
6 been satisfied, and the conversion can be granted without
7 substantial detriment to the public good and will not substantially
8 impair the intent and purpose of the zone plan and zoning
9 ordinance, the application for the conversion shall be approved.³

10
11 5. A unit in a converted development shall conform to all
12 requirements imposed pursuant to the “State Uniform Construction
13 Code Act,” P.L.1975, c.217 (C.52:27D-119 et seq.). It shall also
14 conform to any requirements for, and limitations on, size and square
15 footage imposed pursuant to a preliminary approval. However, any
16 floor plans of the dwelling units may be revised without requiring
17 any further approving board approval or review.

18
19 6. a. In the case of an age-restricted development which is
20 being changed to a ¹**[non-restricted]** converted¹ development, the
21 layout of a subdivision or site plan approved pursuant to the
22 “Municipal Land Use Law,” P.L.1975, c.291 (C.40:55D-1 et seq.)
23 ²**[shall not]** may² be ²reasonably² revised ²**[other than]**² to
24 accommodate additional parking, different recreation improvements
25 and other amenities, infrastructure enhancements, a needed
26 reduction in the number of units, ²height requirements, revision to
27 dwelling footprints that do not modify square footage of the
28 development or the individual dwellings,² or a needed change to
29 construct the affordable units as attached housing.

30 b. In order to construct the affordable units as attached
31 housing, to meet accessibility requirements, or provide them as
32 rental units, the affordable units may be constructed in one section
33 of the development with a separate management entity if such a
34 management entity is required due to the nature of the development.

35 c. The size, height, ²**[footprint]** floor area ratio², number of
36 bedrooms and ²total² square footage of buildings established as part
37 of a preliminary or final approval for an age-restricted development
38 shall not be increased, but may be decreased for a converted
39 development, except that the number of bedrooms for the affordable
40 units only may be increased within the footprint to meet the
41 bedroom distribution requirements as established in the Uniform
42 Housing Affordability Controls.

43
44 7. a. Within 30 days after the submission of an amended
45 application pursuant to this bill, the approving board shall advise
46 the applicant in writing whether the amended application is
47 complete, with completeness to be determined based upon whether

1 the applicant has submitted documentation addressing the issues
2 described in section 4 of P.L. , c. (C.) (pending before the
3 Legislature as this bill). If no such writing asserting incompleteness
4 for any such reason is provided to the applicant within the 30 day
5 period, the application shall be deemed complete for purposes of
6 review by the approving board.

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

15 c. Applicants seeking approval for a converted development
16 pursuant to P.L. , c. (C.) (pending before the Legislature as
17 this bill) shall not be charged application fees, although reasonable
18 escrow fees may be charged pursuant to section 13 of P.L.1991,
19 c.256 (C.40:55D-53.2).

20

21 8. After a development has been officially changed to a non-
22 restricted development, the developer shall file a copy of the
23 revised preliminary subdivision or site plan approval with the
24 municipal engineer for review and a determination that all site
25 information is complete. Such information shall be used as the base
26 document for the calculation of any required inspection escrow
27 accounts, and performance and maintenance guaranties in
28 accordance with section 41 of P.L.1975, c.291 (C.40:55D-53). Any
29 reasonable costs for the review of the revised plans may be charged
30 to the escrow account that the developer posted with the
31 municipality.

32

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

43

44 10. All development approvals for a development that changes
45 from age-restricted to non-restricted status pursuant to P.L. ,
46 c. (C.) (pending before the Legislature as this bill) shall be
47 deemed vested in accordance with the "Municipal Land Use Law,"
48 P.L.1975, c.291 (C.40:55D-1 et seq.), and extended as permitted

1 under the “Permit Extension Act of 2008,” P.L.2008, c.78
2 (C.40:55D-136.1 et seq.). ¹In the case of a prior approval that was
3 not extended as permitted under the “Permit Extension Act of
4 2008,” the period of vesting and protection shall not be less than 24
5 months from the date of approval of the application to change to a
6 non-restricted status.¹

7
8 ¹[11. a. An approving board shall issue a resolution of denial
9 within the time period set forth in subsection g. of section 6 of
10 P.L.1975, c.291 (C.40:55D-10). In the event that an approving
11 board denies an application for a converted development, an
12 applicant may appeal that determination to the Smart Growth
13 Ombudsman appointed pursuant to section 2 of P.L.2004, c.89
14 (C.52:27D-10.3). Such an appeal shall be filed within 30 days of
15 the applicant’s receipt of the resolution of denial issued by the
16 approving board. The Smart Growth Ombudsman shall render a
17 decision as to an appeal within 60 days of its submission to the
18 Smart Growth Ombudsman. The notice of appeal shall include the
19 plans and reports, if any, submitted by the applicant to the
20 approving board in support of the request for approval of a
21 converted development. No fees will be charged for the filing or
22 processing of such an appeal.

23 b. In considering such an appeal, the Smart Growth
24 Ombudsman shall be guided by a review of whether the applicant
25 has demonstrated satisfaction of the review criteria set forth in
26 section 4 of P.L. , c. (C.) (pending before the Legislature
27 as this bill). Upon finding that the criteria have been satisfied, the
28 Smart Growth Ombudsman shall issue approval of the converted
29 development, along with any reasonable approval conditions
30 deemed necessary by the Smart Growth Ombudsman. There shall
31 be no right of appeal from decisions issued by the Smart Growth
32 Ombudsman.]¹

33
34 ¹11. ²a.² An approving board shall issue a resolution
35 memorializing its decision on an application for a converted
36 development within the time period set forth in subsection g. of
37 section 6 of P.L.1975, c.291 (C.40:55D-10). In the event that an
38 approving board denies an application for a converted development
39 or approves an application subject to conditions deemed
40 unsatisfactory to the applicant, the applicant may appeal that
41 determination to the court in a summary manner. Such an appeal
42 shall be filed within 30 days of the applicant’s receipt of the
43 resolution ²[of denial]² issued by the approving board. The notice
44 of appeal shall include the plans and reports, if any, submitted by
45 the applicant to the approving board in support of the request for
46 approval of a converted development, a copy of the transcript of the

1 hearing before the approving board, and any other items that
2 comprise the record before the approving board.¹

3 ²b. In deciding an appeal, the court shall consider³ [whether the
4 applicant complied with the criteria contained in section 3 and
5 section 4 of P.L. , c. (C.) (pending before the Legislature as
6 this bill). Upon finding that the criteria have been satisfied,] the
7 reasonableness of the decision of the approving board. Upon
8 finding that the conversion should have been approved³ the court
9 may make an order instructing the board to approve the converted
10 development, along with any reasonable conditions of approval
11 deemed necessary by the court.²

12
13 ¹12. Notwithstanding any law, rule or regulation to the contrary,
14 a municipality that has received substantive certification from the
15 council shall be permitted to give preference for occupancy for up
16 to 50 percent of all available affordable housing units in a converted
17 development to those households having members who work or
18 reside in the municipality.¹

19
20 ¹13. Under any rental or purchase program implemented to
21 prevent the homelessness of persons who have experienced or may
22 experience the foreclosure and loss of their personal residence, or
23 any program which addresses the needs of low and moderate
24 income households residing within the municipality including, but
25 not limited to, State, federal or local programs, if the persons
26 benefitting from the program are otherwise income qualified to
27 occupy such housing under federal or State law, then affirmative
28 marketing requirements under regulations promulgated to effectuate
29 the “Fair Housing Act,” P.L.1985, c.222 (C.52:27D-301 et al.) shall
30 be waived to permit such persons to occupy, rent or purchase the
31 housing units which they may have previously occupied or owned.¹

32
33 ¹14. For the purpose of determining credits to be granted against
34 the fair share obligation of a municipality under the requirements of
35 P.L.1985, c.222 (C.52:27D-301 et al.) and the regulations
36 promulgated to effectuate that act, a housing unit financed in whole
37 or in part through the allocation of federal Low-Income Housing
38 Tax Credits shall be eligible to be credited if the requirements of
39 federal law pursuant to 26 U.S.C. s.42 have been met for that unit.
40 In the event the federal requirements have been met, the provisions
41 of the Uniform Housing Affordability Controls promulgated by the
42 New Jersey Housing and Mortgage Finance Agency shall not be
43 applied to inhibit or prevent the crediting of the housing unit against
44 the municipal fair share obligation.¹

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46 ¹[12.] 15.¹ This act shall take effect immediately.

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