

SENATE, No. 2577

STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED FEBRUARY 23, 2009

Sponsored by:

Senator PAUL A. SARLO

District 36 (Bergen, Essex and Passaic)

Senator JOSEPH F. VITALE

District 19 (Middlesex)

SYNOPSIS

Allows for change of age-restricted housing units to non-age-restricted housing units under certain circumstances.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/27/2009)

1 AN ACT concerning the development of non-age-restricted
2 communities and supplementing Title 45 of the Revised Statutes.

3

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

6

7 1. The Legislature finds and declares that:

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

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

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

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

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

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

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

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

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

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

6 “Approving board” means the municipal or regional planning
7 board, zoning board of adjustment, or joint land use board that
8 issued the initial site plan or subdivision approvals for the given
9 age-restricted development.

10 “Age-restricted development” means a community that complies
11 with the “housing for older persons” exception from the federal
12 “Fair Housing Amendments Act of 1988,” Pub.L.100-430 (42
13 U.S.C. ss.3601 et seq.) for that community as set forth in section
14 100.301 of Title 24, Code of Federal Regulations.

15 “Attached housing” means housing units that share a common
16 wall.

17 “Converted development” means a proposed age-restricted
18 development that will be marketed instead with no age restrictions.

19 “Department” means the Department of Community Affairs.

20 “Developer” means the legal or beneficial owner or owners of a
21 lot or of any land proposed to be included in a proposed
22 development, including the holder of an option or contract to
23 purchase, or other person having an enforceable proprietary interest
24 in such land.

25 “Fair share plan” means the plan that describes the mechanisms
26 and the funding sources, if applicable, by which a municipality
27 proposes to address its affordable housing obligation as established
28 in the housing element, and includes the draft ordinances necessary
29 to implement that plan in accordance with section 10 of P.L.1985,
30 c.222 (C.52:27D-310) and the regulations adopted by the Council
31 on Affordable Housing to effectuate that section.

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

34 “Municipality” means any city, borough, town, township, or
35 village.

36 “Non-restricted development” means an age-restricted
37 development that has been changed to an open market development
38 where the age restriction has been eliminated.

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

44

45 3. a. During the period of time set forth in section 9 of P.L. ,
46 c. (C.) (pending before the Legislature as this bill), any age-
47 restricted development shall be eligible to be changed to a non-
48 restricted development, pending approving board approval,

1 provided that the development meets all of the following
2 conditions:

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

6 (2) the developer of the age-restricted community is not holding
7 a deposit for the sale of any dwelling unit within the development;

8 (3) the developer of the age-restricted community agrees that an
9 amount not exceeding 20 percent of the units in the development
10 will be provided as affordable units in accordance with regulations
11 promulgated by the Council on Affordable Housing pursuant to the
12 “Fair Housing Act,” P.L.1985, c.222 (C.52:27D-301 et al.).

13 b. Any affordable unit which is provided under the provisions of
14 P.L. , c. (C.) (pending before the Legislature as this bill)
15 shall automatically become part of a municipal fair share plan, if
16 applicable, and as such shall be eligible for credits to meet the
17 municipality’s obligation for affordable housing pursuant to the
18 “Fair Housing Act.”

19 c. No affordable housing units complying with applicable
20 Council on Affordable Housing standards or market-rate housing
21 units associated with such a converted development shall be
22 construed as generating any growth share affordable housing
23 obligation for a municipality.
24

25 4. a. A developer seeking to change an age-restricted
26 development approval to a converted development approval shall
27 file an application with the approving board seeking an amendment
28 to the previously granted approvals requesting the authority to
29 develop the land as a converted development. At such time, the
30 developer shall also file a copy of said notice with the municipal
31 clerk of the municipality in which the development is located and
32 the developer shall provide notice prior to a hearing on the
33 application in the manner prescribed by section 7.1 of P.L.1975,
34 c.291 (C.40:55D-12).

35 (1) No application for an amended approval seeking the
36 authority to construct a converted development shall be considered
37 a “use variance” or other “d’ variance” application pursuant to
38 subsection d. of section 57 of P.L.1975, c.291 (C.40:55D-70). Both
39 planning boards that initially granted approvals for the age-
40 restricted development and zoning boards of adjustment that
41 initially granted approvals for the age-restricted development shall
42 have the legal authority to grant amended approvals for a converted
43 development without the need to seek relief pursuant to subsection
44 d. of section 57 of P.L.1975, c.291 (C.40:55D-70), it being the
45 intent of this bill that such converted developments are to be
46 considered permitted uses in the zoning district in which they are
47 located.

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

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

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

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

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

15 (5) if additional water supply or sewer capacity is needed and the
16 developer is unable to obtain additional supply or capacity, the
17 number of dwelling units in the development has been reduced
18 accordingly;

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

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

25

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

33

34 6. a. In the case of an age-restricted development which is
35 being changed to a non-restricted development, the layout of a
36 subdivision or site plan approved pursuant to the “Municipal Land
37 Use Law,” P.L.1975, c.291 (C.40:55D-1 et seq.) shall not be revised
38 other than to accommodate additional parking, different recreation
39 improvements and other amenities, infrastructure enhancements, a
40 needed reduction in the number of units, or a needed change to
41 construct the affordable units as attached housing.

42 b. In order to construct the affordable units as attached housing,
43 to meet accessibility requirements, or provide them as rental units,
44 the affordable units may be constructed in one section of the
45 development with a separate management entity if such a
46 management entity is required due to the nature of the development.

47 c. The size, height, footprint, number of bedrooms and square
48 footage of buildings established as part of a preliminary or final

1 approval for an age-restricted development shall not be increased,
2 but may be decreased for a converted development, except that the
3 number of bedrooms for the affordable units only may be increased
4 within the footprint to meet the bedroom distribution requirements
5 as established in the Uniform Housing Affordability Controls.

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7 7. a. Within 30 days after the submission of an amended
8 application pursuant to this bill, the approving board shall advise
9 the applicant in writing whether the amended application is
10 complete, with completeness to be determined based upon whether
11 the applicant has submitted documentation addressing the issues
12 described in section 4 of P.L. , c. (C.) (pending before the
13 Legislature as this bill). If no such writing asserting incompleteness
14 for any such reason is provided to the applicant within the 30 day
15 period, the application shall be deemed complete for purposes of
16 review by the approving board.

17 b. The approving board shall render a decision on an application
18 for a converted development within 60 days of a determination of
19 application completeness, unless the time frame is extended by the
20 applicant. If no such decision is rendered by the approving board
21 within the time period, including extensions, the application shall
22 be deemed approved and the applicant shall in such a case follow
23 the procedures set forth in section 5 of P.L.1985, c.516 (C.40:55D-
24 10.4).

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

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

42
43 9. An application for approval to change a development from
44 age-restricted to non-restricted status, pursuant to section 4 of
45 P.L. , c. (C.) (pending before the Legislature as this bill),
46 may be submitted to the approving board at anytime before the first
47 day of the 25th month next following the effective date of P.L. , c.
48 (C.) (pending before the Legislature as this bill); provided,

1 however, that the approving board may extend this time period by
2 an additional 24 months if it finds, at the end of the initial period,
3 that poor economic conditions continue to adversely affect the real
4 estate market in New Jersey.

5
6 10. All development approvals for a development that changes
7 from age-restricted to non-restricted status pursuant to P.L. , c.
8 (C.) (pending before the Legislature as this bill) shall be
9 deemed vested in accordance with the “Municipal Land Use Law,”
10 P.L.1975, c.291 (C.40:55D-1 et seq.), and extended as permitted
11 under the “Permit Extension Act of 2008,” P.L.2008, c.78
12 (C.40:55D-136.1 et seq.).

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

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

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40 12. This act shall take effect immediately.

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STATEMENT

45 This bill would allow for the change of a proposed age-restricted
46 development to be marketed instead without age restrictions,
47 pending approval by the local planning or zoning board.

1 To be eligible for conversion, a developer must agree to set aside
2 a percentage of the units in the development, not to exceed 20
3 percent, for the provision of affordable housing. These units would
4 automatically count towards fulfilling a municipality's affordable
5 housing obligation under the "Fair Housing Act." Neither those
6 affordable units nor market rate units within such a development
7 would generate an additional growth share obligation under the bill.

8 The bill also provides that to be eligible for conversion,
9 preliminary or final approval for the construction of the
10 development must have been granted prior to the bill's effective
11 date. Additionally, the developer must not be holding any deposits
12 for the sale of units within the community.

13 Under the bill, a developer seeking to convert an age-restricted
14 community must file an application with the local planning board or
15 zoning board of adjustment that granted initial approval of the age-
16 restricted development as to which conversion is to be sought.

17 Prior to issuing an amended approval for such a converted
18 development, the local board must receive documentation from a
19 developer demonstrating that the following site improvement and
20 infrastructure requirements have been met:

- 21 • the site meets parking standards established in the
22 Residential Site Improvement Standards;
- 23 • the recreation improvements and other amenities have been
24 revised, as needed;
- 25 • the water supply and sanitary sewer systems are adequate for
26 the needs of the converted development;
- 27 • if additional water supply or sewer capacity is needed and
28 the developer is unable to obtain it, the number of dwelling
29 units has been reduced;
- 30 • if additional parking is needed, and the developer is unable
31 to provide it, the number of dwelling units has been reduced;
32 and
- 33 • if additional parking is provided and increases the amount of
34 impervious cover by more than one percent, the storm water
35 system calculations and improvements have been revised
36 accordingly.

37 The bill also provides that a converted development must
38 conform to applicable building codes, and requirements for, and
39 limitations on, size and square footage imposed pursuant to a
40 preliminary approval. Additionally, it is the intent of this bill that
41 the layout of a subdivision or site plan should not ordinarily be
42 revised other than to accommodate parking, recreational
43 improvements, infrastructure enhancements, a reduction in the
44 number of units, and to accommodate the affordable units as
45 attached housing. Similarly, the size, height, footprint, number of
46 bedrooms and square footage of buildings must not be increased,
47 but may be decreased. However, the number of bedrooms for the

1 affordable units must meet Uniform Housing Affordability Controls
2 requirements.

3 Finally, the bill allows for appeals to the Smart Growth
4 Ombudsman if local approval for a converted development is
5 denied.