

[Second Reprint]

SENATE, No. 2577

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED FEBRUARY 23, 2009

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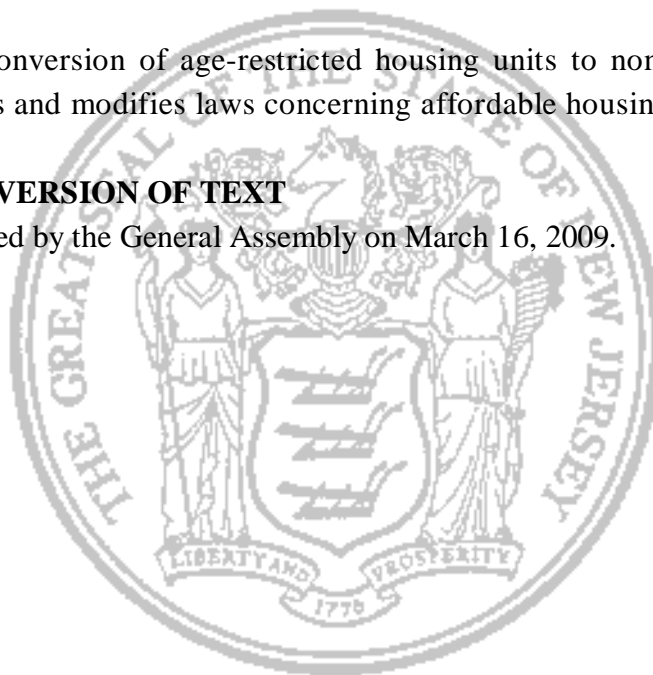
District 5 (Camden and Gloucester)

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 amended by the General Assembly on March 16, 2009.



(Sponsorship Updated As Of: 3/17/2009)

1 AN ACT concerning 'affordable housing and' 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
36 policy and plan appropriate for all New Jerseyans, it has not yet
37 commenced operation;

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

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.

1 development to meet this rule, and to meet demographic needs; and
2 h. Under currently deteriorating national economic conditions,
3 it is appropriate to take immediate action at this time to create the
4 opportunity to increase the production and supply of workforce
5 housing through the conversion of the over-supplied age-restricted
6 market to meet the needs of New Jersey's residents who require
7 smaller, more reasonably priced homes.

8
9 2. As used in P.L. , c. (C.) (pending before the
10 Legislature as this bill):

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

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

18 "Age-restricted development" means a community that complies
19 with the "housing for older persons" exception from the federal
20 "Fair Housing Amendments Act of 1988," Pub.L.100-430 (42
21 U.S.C. ss.3601 et seq.) for that community as set forth in section
22 100.301 of Title 24, Code of Federal Regulations.

23 "Attached housing" means housing units that share a common
24 wall.

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

27 "Department" means the Department of Community Affairs.

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

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

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

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

44 "Municipality" means any city, borough, town, township, or
45 village.

46 "Non-restricted ¹['development'] status¹ means 'the status of'
47 an age-restricted development that has ¹['been changed to an open

1 market development where the age restriction has been eliminated]
2 received approval to become a converted development¹.

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

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

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

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

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

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

35 c. No affordable housing units complying with applicable
36 Council on Affordable Housing standards or market-rate housing
37 units associated with such a converted development shall be
38 construed as generating any **2[growth] fair**² share affordable
39 housing obligation for a municipality.

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

1 the developer shall provide notice prior to a hearing on the
2 application in the manner prescribed by section 7.1 of P.L.1975,
3 c.291 (C.40:55D-12).

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

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

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

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

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

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

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

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

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

41

42 5. A unit in a converted development shall conform to all
43 requirements imposed pursuant to the “State Uniform Construction
44 Code Act,” P.L.1975, c.217 (C.52:27D-119 et seq.). It shall also
45 conform to any requirements for, and limitations on, size and square
46 footage imposed pursuant to a preliminary approval. However, any
47 floor plans of the dwelling units may be revised without requiring
48 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 ¹~~non-restricted~~ converted¹ 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 ²~~shall not~~ may² be ²reasonably² revised ²~~other than~~² to
6 accommodate additional parking, different recreation improvements
7 and other amenities, infrastructure enhancements, a needed
8 reduction in the number of units, ²height requirements, revision to
9 dwelling footprints that do not modify square footage of the
10 development or the individual dwellings,² or a needed change to
11 construct the affordable units as attached housing.

12 b. In order to construct the affordable units as attached
13 housing, to meet accessibility requirements, or provide them as
14 rental units, the affordable units may be constructed in one section
15 of the 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, ²~~footprint~~ floor area ratio², number of
18 bedrooms and ²total² 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. ,
21 c. (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
7 Ombudsman shall be guided by a review of whether the applicant
8 has demonstrated satisfaction of the review criteria set forth in
9 section 4 of P.L. , c. (C.) (pending before the Legislature
10 as this bill). Upon finding that the criteria have been satisfied, the
11 Smart 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

17 ¹11. ²a.² An approving board shall issue a resolution
18 memorializing its decision on an application for a converted
19 development within the time period set forth in subsection g. of
20 section 6 of P.L.1975, c.291 (C.40:55D-10). In the event that an
21 approving board denies an application for a converted development
22 or approves an application subject to conditions deemed
23 unsatisfactory to the applicant, the applicant may appeal that
24 determination to the court in a summary manner. Such an appeal
25 shall be filed within 30 days of the applicant's receipt of the
26 resolution ²[of denial]² issued by the approving board. The notice
27 of appeal shall include the plans and reports, if any, submitted by
28 the applicant to the approving board in support of the request for
29 approval of a converted development, a copy of the transcript of the
30 hearing before the approving board, and any other items that
31 comprise the record before the approving board.¹

32 ²b. In deciding an appeal, the court shall consider whether the
33 applicant complied with the criteria contained in section 3 and
34 section 4 of P.L. , c. (C.) (pending before the Legislature as
35 this bill). Upon finding that the criteria have been satisfied, the
36 court may make an order instructing the board to approve the
37 converted development, along with any reasonable conditions of
38 approval deemed necessary by the court.²

39

40 ¹12. Notwithstanding any law, rule or regulation to the contrary,
41 a municipality that has received substantive certification from the
42 council shall be permitted to give preference for occupancy for up
43 to 50 percent of all available affordable housing units in a converted
44 development to those households having members who work or
45 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 federal or State law, then affirmative
9 marketing requirements under regulations promulgated to effectuate
10 the “Fair Housing Act,” P.L.1985, c.222 (C.52:27D-301 et al.) shall
11 be 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 26 U.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.