

CHAPTER 82

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

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

C.45:22A-46.3 Findings, declarations relative to affordable housing.

1. The Legislature finds and declares that:

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

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

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

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

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

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

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

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

C.45:22A-46.4 Definitions relative to affordable housing.

2. As used in P.L.2009, c.82 (C.45:22A-46.3 et seq.):

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

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

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

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

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

“Department” means the Department of Community Affairs.

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

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

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

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

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

“Non-restricted status” means the status of an age-restricted development that has received approval to become a converted development.

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

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

C.45:22A-46.5 Conditions for change to a converted development.

3. a. During the period of time set forth in section 9 of P.L.2009, c.82 (C.45:22A-46.11), any age-restricted development shall be eligible to be changed to a converted development, pending approving board approval, provided that the development meets all of the following conditions:

(1) preliminary or final approval for construction of the development has been granted prior to the effective date of P.L.2009, c.82 (C.45:22A-46.3 et seq.);

(2) the developer of the age-restricted development is not holding a deposit for, or has not conveyed, any dwelling unit within the development;

(3) the developer of the age-restricted development agrees that 20 percent of the units in the development will be provided as affordable units in accordance with regulations promulgated by the Council on Affordable Housing pursuant to the “Fair Housing Act,” P.L.1985, c.222 (C.52:27D-301 et al.).

b. Any housing unit which is provided under the provisions of P.L.2009, c.82 (C.45:22A-46.3 et seq.), and which is affordable to households of low- and moderate income, shall automatically become part of a municipal fair share plan, if applicable, and as such shall be eligible for credits to meet the municipality’s obligation for affordable housing pursuant to the “Fair Housing Act,” P.L.1985, c. 222 (C.52:27D-301 et al.).

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

C.45:22A-46.6 Application to change to a converted development.

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

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

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

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

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

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

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

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

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

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

c. If the approving board determines that the requirements of P.L.2009, c.82 (C.45:22A-46.3 et seq.) have been satisfied, and the conversion can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance, the application for the conversion shall be approved.

C.45:22A-46.7 Conformance of unit in converted development to C.52:27D-119 et seq.

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

C.45:22A-46.8 Revision of layout, site plan permitted.

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

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

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

C.45:22A-46.9 Completed application, decision.

7. a. Within 30 days after the submission of an amended application pursuant to this act, the approving board shall advise the applicant in writing whether the amended application is complete, with completeness to be determined based upon whether the applicant has submitted documentation addressing the issues described in section 4 of P.L.2009, c.82 (C.45:22A-46.6). If no such writing asserting incompleteness for any such reason is provided to the applicant within the 30-day period, the application shall be deemed complete for purposes of review by the approving board.

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

c. Applicants seeking approval for a converted development pursuant to P.L.2009, c.82 (C.45:22A-46.3 et seq.) shall not be charged application fees, although reasonable escrow fees may be charged pursuant to section 13 of P.L.1991, c.256 (C.40:55D-53.2).

C.45:22A-46.10 Filing of revised preliminary subdivision or site plan with municipal engineer.

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

C.45:22A-46.11 Submission of application to approving board.

9. An application for approval to change a development from age-restricted to non-restricted status, pursuant to section 4 of P.L.2009, c.82 (C.45:22A-46.6), may be submitted to the approving board at anytime before the first day of the 25th month next following the effective date of P.L.2009, c.82 (C.45:22A-46.3 et seq.); provided, however, that the approving board may extend this time period by an additional 24 months if it finds, at the end of the initial period, that poor economic conditions continue to adversely affect the real estate market in New Jersey.

C.45:22A-46.12 Development approvals deemed vested.

10. All development approvals for a development that changes from age-restricted to non-restricted status pursuant to P.L.2009, c.82 (C.45:22A-46.3 et seq.) shall be deemed vested in accordance with the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.), and extended as permitted under the "Permit Extension Act of 2008," P.L.2008, c.78 (C.40:55D-136.1 et seq.). In the case of a prior approval that was not extended as permitted under the "Permit Extension Act of 2008," the period of vesting and protection shall not be less than 24 months from the date of approval of the application to change to a non-restricted status.

C.45:22A-46.13 Issuance of resolution memorializing decision; appeal.

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

b. In deciding an appeal, the court shall consider the reasonableness of the decision of the approving board. Upon finding that the conversion should have been approved the court may make an order instructing the board to approve the converted development, along with any reasonable conditions of approval deemed necessary by the court.

C.45:22A-46.14 Preference for occupancy by municipality permitted.

12. Notwithstanding any law, rule or regulation to the contrary, a municipality that has received substantive certification from the council shall be permitted to give preference for

occupancy for up to 50 percent of all available affordable housing units in a converted development to those households having members who work or reside in the municipality.

C.45:22A-46.15 Waiver of affirmative marketing requirements under certain circumstances.

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

C.45:22A-46.16 Determination of credits granted against fair share obligation.

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

15. This act shall take effect immediately.

Approved July 2, 2009.