



GOVERNOR SIGNS LAW ALLOWING FOR CONVERSION OF AGE-RESTRICTED DEVELOPMENTS TO DEVELOPMENTS WITHOUT AGE CONTROLS

On July 2, 2009, Governor Corzine signed into law S2577 that allows for the conversion of certain age-restricted developments to developments with no age-restrictions subject to the approval of a municipal or regional planning board, zoning board of adjustment or joint land use board. The Law recognizes the need to provide housing that is affordable for the general workforce population in this time of economic difficulty via the conversion of certain age-restricted developments, which subject to certain exceptions, generally restrict occupancy of a unit to persons 55 years of age or older, to developments with no age controls.

Eligibility Requirements and Application Deadlines

In order to be eligible for a conversion, (1) the developer must have received preliminary or final approval for construction of the age-restricted development prior to July 2, 2009; (2) the developer of the age-restricted development cannot be holding a deposit for, or have conveyed, any unit within the development; and (3) the developer of the age-restricted development must be willing to set aside 20% of the units in the development as affordable housing units in accordance with the regulations promulgated by the Council on Affordable Housing pursuant to the Fair Housing Act, N.J.S.A. 52:27D-301 et seq. The Law provides that an application for conversion needs to be filed by July 31, 2011 with the Approving Board, which is the municipal or regional planning board, zoning board of adjustment or joint land use board that originally granted approvals for the age-restricted development ("Approving Board"). An Approving Board may extend this time period for up to an additional 24 months if it finds that poor economic conditions continue to adversely affect the real estate market in New Jersey.

Application Requirements and Process

In order to undertake the conversion of the age-restricted development, the developer is required to submit an application for an amended approval to the Approving Board. The Approving Board is to review the application to determine that the site, following conversion to a non-age-restricted development, complies with all of the following site improvement and infrastructure requirements:

- The site meets the Residential Site Improvement Standards for the residential land uses in a converted development set forth in N.J.S.A. 5:21-4.14-4.16;



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- The recreation improvements and other amenities have been revised, as needed, to meet the needs of a converted development;
- The water supply system and sanitary sewer system are adequate to meet the needs of the converted development pursuant to N.J.A.C. 5:21-5.1 and N.J.A.C. 7:14A-23.3, respectively. If additional water supply or sewer capacity is needed, and the developer is unable to obtain the additional supply or capacity, the number of dwelling units in the development must be reduced accordingly;
- If additional parking is needed, and the developer is unable to provide the required parking, the number of dwelling units in the development must be reduced accordingly;
- If additional parking is provided and increases the amount of impervious coverage by more than 1%, the stormwater system calculations and improvements must be revised accordingly.
- The converted development must comply with the State Uniform Construction Code Act, N.J.S.A. 52:27D-119 et seq.

In addition to reviewing the application to determine that the above requirements are met, the Approving Board is to review the application to ensure that 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 quoted language mirrors the language of N.J.S.A. 40:55D-70 providing the negative criteria requirements for the approval of a grant of a variance under the terms of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

Ability to Modify The Development

The Law sets forth provisions that offer reasonable modifications of the age-restricted development proposed for conversion to accommodate additional parking, recreation improvements, infrastructure enhancements, etc. associated with a non-age-restricted development. However, subject to a limited exception, the size, height, floor area ratio, number of bedrooms and total square footage of buildings as part of the preliminary or final approval for the age-restricted development may not be increased, but may be decreased for a converted development.

Appeal Process and Standard of Review

The Law provides that an Approving Board is to issue a resolution memorializing its decision and that an applicant may appeal any denial or unsatisfactory conditions of an approval to the court in a summary manner within 30 days of receipt by the applicant of the memorializing resolution. The court is to review the actions of the Approving Board for the reasonableness of its decision.

If you have any questions concerning this Law, including the process and requirements for submission of an application for such a conversion, please do not hesitate to contact John A. Giunco, Esq., Scott Anderson, Esq., or Brian H. Harvey, Esq. This memorandum is not to be considered as legal advice but a notice to make you aware of the constantly changing status of laws impacting development in the State of New Jersey.



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