



REAL ESTATE DEPARTMENT

ALERT

S-2577 – NEW LAW ATTEMPTS TO REVIVE RESIDENTIAL DEVELOPMENT BY GIVING DEVELOPERS AN OPPORTUNITY TO RELEASE PROJECTS FROM AGE-RESTRICTIONS

On July 2, 2009, Governor Corzine signed Bill S-2577 into law in an attempt to reduce the existing glut of approved age-restricted housing projects and increase the potential stock of “affordably priced workforce housing.” S-2577 establishes procedures that developers must follow to apply for the conversion of age-restricted projects into developments with no age restriction (a “Converted Development”). In exchange for the conversion, the developer is required to set aside 20 percent of the units in the Converted Development as affordable units in accordance with the Council on Affordable Housing’s (COAH’s) Regulations.

This alert outlines the critical components of S-2577, including what projects are eligible for conversion; what procedures will guide the administration of applications for conversion; and what enforcement mechanisms are available for applicants that are improperly denied conversion.

WHAT PROJECTS ARE ELIGIBLE FOR CONVERSION?

Under S-2577, the project’s age-restriction requirements may be lifted provided that the developer meets the following qualifications:

- The developer obtained preliminary or final approval for construction of the development prior to July 2, 2009;
- The developer of the age-restricted development has not sold or collected a deposit for the sale of any of the development’s dwelling units;
- The developer agrees to set aside 20 percent of the units of the Converted Development for sale or rental as COAH-compliant affordable housing units;

- The project meets the Department of Community Affairs’s Residential Site Improvement Standards parking requirements for non-age-restricted residential use;
- The recreational amenities have been modified to accommodate a Converted Development; and
- The project has adequate water supply and sanitary sewer capacity to meet the requirements of the Converted Development.

A developer may reduce the number of units in the event the developer is unable to meet the parking requirements, water or sanitary sewer capacity projected for the proposed Converted Development.

WHAT PROCEDURES WILL GUIDE THE ADMINISTRATION OF APPLICATIONS FOR CONVERSION?

Applications for conversion will be administered under the following guidelines consistent with the Municipal Land Use Law procedures:

- The land use board that originally approved the age-restricted project shall have jurisdiction over the application for conversion.
- Applicants for conversion are required to provide notice of the hearing pursuant to N.J.S.A. 40:55D-12.
- Applicants must establish that they are able to meet criteria required for conversion.
- Applicants may reasonably revise the layout of approved site plans to accommodate additional parking, changes in amenities, reductions in units and similar changes. However, the approved floor area ratio and square footage

under the original approving resolution may not be increased.

- The board shall issue a written determination of completeness within 30 days of the submission of an application. Failure to do so will result in the application for conversion being automatically deemed complete.
- Upon the determination of completeness, the board is required to render a decision within 60 days, absent an extension request by the applicant. Failure to issue a decision within this timeframe will result in an automatic approval of the application.
- The board must determine: (a) whether the applicant has satisfied the eligibility criteria for conversion; and (b) whether the application can be granted (i) without substantial detriment to the public good and (ii) without substantial impairment to the intent and purpose of the zone plan and zoning ordinance. The applicant has the burden to demonstrate that these criteria are satisfied.
- The board shall pass a memorializing resolution within 45 days of the date of the meeting at which the decision was made.

WHAT ENFORCEMENT MECHANISMS ARE AVAILABLE FOR APPLICANTS THAT ARE IMPROPERLY DENIED CONVERSION?

An applicant that is denied conversion may appeal the determination to the court within 30 days of the applicant's receipt of the resolution, not the standard 45-day appeal period under Rule 4:69-6(a)(3). The court's review is based on the record before the municipal board. Should the court determine that the application for conversion was unreasonably denied, the court may issue an order instructing the board to

approve the Converted Development and may further impose any reasonable conditions that the court deems necessary.

ADDITIONAL CONSIDERATIONS

In considering whether to apply for conversion of an approved age-restricted project, a developer should note the following factors:

- A municipality may not impose application fees for conversion applications. However, applicants may be charged reasonable escrow fees in conjunction with the review of the application by its professionals and consultants.
- Any affordable housing units generated through a Converted Development shall automatically become part of the municipality's fair share plan and shall be counted towards the municipality's affordable housing obligation.
- S-2577 provides that all units in the Converted Development shall be excluded from Growth Share. This is a significant benefit to municipalities because it assists municipalities in meeting COAH requirements. Municipalities may use Converted Developments as affordable housing sites, without the "penalty" of factoring in the market units into its growth share.
- Municipalities may set aside COAH units in Converted Developments specifically for persons who live or work in the municipality.
- Applications for conversions shall be considered permitted uses in the zoning districts in which the property is located. Accordingly, applicants will not be required to apply for a use variance even if the application was originally approved by the zoning board of adjustment.

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