

# HERE'S WHAT DEVELOPERS NEED TO KNOW ABOUT NEW JERSEY'S NEW LAW ON ELECTRICAL VEHICLE PARKING CREDITS

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As many property developers know all too well, complying with local minimum parking requirements can be one of the biggest hurdles to overcome when seeking land use approvals. But in recent good news, the New Jersey Legislature has made it easier, and more environmentally friendly, to reduce a project's total number of required spaces by instead providing electric vehicle charging stations ("EVCS") or "make-ready" [1] parking spaces.

Back in 2021, Governor Murphy signed into law Senate Bill 3223 amending the Municipal Land Use Law ("MLUL") to promote the installation of EVCS in development plans.[2] The law also established new zoning standards for both EVCS and make-ready parking spaces, with EVCS designated as permitted accessory uses in all municipal zoning districts. Significantly, electric vehicle charging infrastructure was also designated as an "inherently beneficial use," or one promoting the general welfare of the community, making it much easier to obtain Board approval for EV projects.

Of particular importance to local developers is the statute's provision allowing two credits for each EV or make-ready parking space for up to 10 percent of the total minimum required parking, thus helping them comply with minimum parking requirements.[3] This can be seen as a boon to developers struggling to comply with local ordinance minimum parking standards by allowing them to make up for a parking deficiency by constructing EV stalls.

This same provision, however, has also raised questions as to how the credits should be rounded up, and whether developers should be able to exceed the 10 percent limit if rounding up to the next full parking space would reduce their total parking requirement by more than 10 percent.

## New Jersey's Appellate Division Recent Clarification for EV Credit Calculation

The Appellate Division recently addressed these questions as they applied to an applicant seeking to be designated a redeveloper in Belmar.[4] In *Sackman Enterprises, Inc. v. Mayor and Council of the Borough of Belmar*, the court considered Sackman's challenge of the Borough's denial of its concept plans as inconsistent with the Seaport Redevelopment Plan, alleging that the Borough improperly held that redevelopers were not permitted to apply the new EV Statute at the concept plan stage. In rejecting Sackman's concept plan, which included both traditional and EV parking spaces, the Borough found that the planned parking did not comply with the Borough's Parking Ordinance, among other issues. The Mayor and Borough Council had previously rejected no less than six development proposals put forth by Sackman due to square footage and parking concerns.[5] The trial court upheld the governing body's



decision, finding that the Borough's consistency was not arbitrary, capricious or unreasonable. More specifically, the trial court agreed that the EV credits should not apply at the concept plan stage, and even if Sackman could apply the new statute, their proposed number of EV parking spaces exceeded the 10 percent credit limit.[6] The Appellate Division, on review, considered first whether a governing body serving as Redevelopment Agency is obligated to apply EV parking credits at the concept plan consistency review or if it could be deferred to the preliminary site plan review phase. To that end, the court found that the EV Statute must apply at the concept review stage, "[o]therwise, a plan that was consistent with a town's redevelopment plan would then be changed at the preliminary site plan approval, and the original compliance would no longer stand. This would lead to an absurd result because the final development would not match the redevelopment plan." [7]

Next, the court considered the important question as to how to interpret Section F of the statute, which provides that "[a]ll parking space calculations for electric vehicle supply equipment and Make-Ready equipment pursuant to this section shall be rounded up to the next full parking space." [8] The parties disagreed as to when exactly the amount should be rounded up, with the Borough conditioning the rounding up on the decimal being greater than 0.5.[9] Following the plain meaning of the statute, the court held that the calculation must always be rounded up to the next whole parking spot to account for the partial space, regardless of the decimal falling below 0.5.[10]

Unfortunately for the developer, here, the court rejected its argument that a rounded-up EV credit should reduce the total required parking by more than the 10 percent limit set forth under Section E. In applying the EV credit to Sackman's required 84 total parking spaces under the concept plan, Sackman would be required to set aside 9 EV parking spaces.[11] However, the court rejected Sackman's contention that the rounded up 9 EV credits should decrease the total number of parking spaces required by more than 10 percent. Thus Sackman's

proposal to construct 66 traditional parking spaces with 9 EV parking spaces fell short of the Borough's minimum 84 parking space requirement, and for this reason was deemed inconsistent with the Redevelopment Plan. The Borough's decision to reject the concept plan was therefore affirmed because Sackman "failed to overcome the high threshold of arbitrary, capricious, and unreasonable conduct." [12]

### How Will This Affect Your Project?

This decision will impact developers across New Jersey as municipalities wrestle with the State's incentivization of EV credits. But the court's strict interpretation of the 10 percent credit limit should not deter developers from taking advantage of the EV Statute. After all, a 10 percent reduction in the minimum parking requirement could be the difference between a fully conforming application and one with variances.

Moving forward, developers seeking to be designated redevelopers should be sure to include any EV credits they plan to claim at the concept review stage, letting the municipality know early on exactly how they plan to satisfy the parking standards set forth in the redevelopment plan.



## References:

[1] “‘Make-Ready’ means the pre-wiring of electrical infrastructure at a parking space, or set of parking spaces, to facilitate easy and cost-efficient future installation of Electric Vehicle Supply Equipment or Electric Vehicle Service Equipment, including, but not limited to, Level Two EVSE and direct current fast chargers. Make Ready includes expenses related to service panels, junction boxes, conduit, wiring, and other components necessary to make a particular location able to accommodate Electric Vehicle Supply Equipment or Electric Vehicle Service Equipment on a ‘plug and play’ basis. ‘Make-Ready’ is synonymous with the term ‘charger ready,’ as used in P.L.2019, c. 362 (C.48:25-1 et al.).” N.J.S.A. 40:55D-5.; [2]N.J.S.A. 40:55D-66.20 (hereinafter “EV Statute”); [3] This excludes single-family homes and retailers providing 25 or fewer off-street parking spaces.; [4]Sackman Enterprises, Inc. v. Mayor & Council of Belmar, No. A-1102-22, 2024 WL 676240, at \*1 (N.J. Super. Ct. App. Div. Feb. 20, 2024).; [5] Carly Baldwin, Monmouth County Judge Throws Out Developer’s Lawsuit in Belmar, Patch (Nov. 3,

2022,3:03PM),<https://patch.com/newjersey/manasquan/belmar-claims-victory-legal-battle-over-st-rose-parking-lot>.; [6]Id. at \*2.; [7]Id. at \*4.; [8]N.J.S.A. 40:55D-66.20(f).; [9]Sackman, 2024 WL 676240, at \*4.; [10]Ibid.; [11]Id. at \*5.; [12] Id. at \*2.

## About the Author



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