

**COMMUNITY AFFAIRS**

**DIVISION OF CODES AND STANDARDS**

**Uniform Construction Code**

**Flood-Resistant Construction**

**Proposed Amendments: N.J.A.C. 5:23-2.15 and 2.18**

**Proposed New Rule: N.J.A.C. 5:23-6.3A**

Authorized By: Richard E. Constable, III, Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 52:27D-124.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2014-012.

Submit written comments by March 22, 2014, to:

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The agency proposal follows:

**Summary**

This proposal would add the appropriate subcode section references to the Rehabilitation Subcode regarding flood-resistant construction. These requirements would be imposed only when the local floodplain administrator determines that an existing building is undergoing a “substantial improvement.” This proposal is part of an ongoing effort to work with the Department of Environmental Protection (DEP) to provide consistency with the Uniform Construction Code (UCC) and Federal Emergency Management Agency (FEMA) regulations.

For projects involving new construction, additions, or buildings that are deemed to be a substantial improvement, the proposed amendments to N.J.A.C. 5:23-2.18(b)1ii(2) would require the submittal of the lowest floor elevation and as-built elevation documentation, in addition to the existing requirement for the foundation location survey for buildings located in a flood hazard area. Proposed new N.J.A.C. 5:23-6.3A provides that, for buildings in designated flood hazard areas, any work that constitutes a substantial improvement of the existing building, as determined by the local floodplain administrator, shall comply with the applicable flood-resistant construction requirements in the appropriate sections of the building subcode and of the one- and two-family dwelling subcode referenced in the rule. Section 1612 of the building subcode includes a reference to “ASCE 24,” which contains language that is similar to Sections R322.1.6 and R322.1.7 of the one- and two-family dwelling subcode, entitled “Protection of mechanical and electrical systems” and “Protection of water supply and sanitary sewage systems,” respectively.

Finally, the requirement for a design professional is addressed. Under New Jersey law, a homeowner may prepare his or her own drawings. However, under the National

Flood Insurance Program rules (44 CFR 60), a design professional is required for new construction or substantial improvements in the V zone of a flood hazard area. An amendment to N.J.A.C. 5:23-2.15(f) is proposed to reflect this Federal requirement.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

### **Social Impact**

The proposed amendments and new rule are expected to have the beneficial effect of ensuring, in cooperation with the Department of Environmental Protection, that proper flood-resistant construction methods are followed in areas that are determined by the local floodplain administrator to be subject to flooding, thus providing protection against the social costs of destruction of property by floods.

### **Economic Impact**

The proposed amendments and new rule are expected to have the beneficial effect of ensuring, in cooperation with the Department of Environmental Protection, that proper flood-resistant construction methods are followed in areas that are determined by the local floodplain administrator to be subject to flooding, thus providing protection against the economic costs of destruction of property by floods. The proposed amendments have the additional economic benefit of resulting in insurance premium reductions for property owners. Because these proposed amendments and new rule repeat or reference the requirements already contained in the National Flood Insurance Program rules, they do not add costs for affected property owners. It may be anticipated that, by increasing the clarity of the requirements and by incorporating them by reference into the Uniform

Construction Code, property owners may avoid the added cost of compliance or of significantly higher flood insurance premiums that would be incurred were they to undertake a project that did not comply with the applicable requirements of the National Flood Insurance Program rules.

### **Federal Standards Statement**

The proposed amendments and new rule are consistent with, and do not exceed, flood protection standards established by the Federal Emergency Management Agency under the National Flood Insurance Program rules, 44 CFR 59 and 60.

### **Jobs Impact**

The proposed amendments are not expected to result in the generation or loss of jobs.

### **Agriculture Industry Impact**

The Department does not anticipate that the proposed amendments would impact the agriculture industry.

### **Regulatory Flexibility Analysis**

The proposed amendments and new rules would require owners of properties subject to flood-resistant construction requirements, whether “small businesses,” as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., or not, to submit lowest floor elevation and as-built elevation documentation in order to provide assurance that necessary flood resistance measures are being taken. There is no basis for any modification of these requirements, which are intended to be consistent with Department of Environmental Protection requirements, based on the size or nature of the owning entity. The proposed amendments are not otherwise expected to impose any

reporting, recordkeeping or compliance requirements on small businesses or to require them to engage any professional services they would not otherwise need to engage. Please refer to the Economic Impact above. The requirement to use the services of a design professional is an existing requirement of the National Flood Insurance Program rules. In incorporating this requirement into the Uniform Construction Code, the Department hopes to eliminate any confusion that might be engendered by the existence of differing requirements in State and Federal rules. In projects subject to the National Flood Insurance Program rules, those rules would govern.

### **Housing Affordability Impact Analysis**

This proposed amendments and new rule are intended to ensure that State Uniform Construction Code rules concerning flood-resistant construction are consistent with rules of the Department of Environmental Protection. The amendments and new rule would not be likely to have an impact on the production of affordable housing.

### **Smart Growth Development Impact Analysis**

This proposed amendments and new rule are intended to ensure that State Uniform Construction Code rules concerning flood-resistant construction are consistent with rules of the Department of Environmental Protection. The amendments and new rule would be not be likely to have any impact upon housing production within Planning Areas 1 and 2 or within designated centers under the State Development and Redevelopment Plan.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

5:23-2.15 Construction permits—application

(a) – (e) (No change.)

(f) Plans, plan review, plan release:

1. Plans and specifications: The application for the permit shall be accompanied by no fewer than two copies of specifications and of plans drawn to scale, with sufficient clarity and detail dimensions to show the nature and character of the work to be performed. Plans submitted shall be required to show only such detail and include only such information as shall be necessary to demonstrate compliance with the requirements of the code and these regulations or to facilitate inspections for code conformity. When quality of materials is essential for conformity to the regulations, specific information shall be given to establish such quality; and this code shall not be cited, or the term "legal" or its equivalent be used, as a substitute for specific information.

i. – viii. (No change.)

ix. Architect's or engineer's seal: The seal and signature of the registered architect or licensed engineer who prepared the plans shall be affixed to each sheet of each copy of the plans submitted and on the first or title sheet of the specifications and any additional supportive information submitted.

**(1) Exception:** The construction official shall waive the requirement for sealed plans in the case of a single family home owner who had prepared his or her own plans for the construction, addition, reconstruction, alteration, renovation, or repair of a detached structure used or intended to be used exclusively as his or her private residence providing that the owner shall submit an affidavit attesting to the fact

that he or she has personally prepared the plans and provided further that said plans are in the opinion of the construction official, and appropriate subcode official, legible and complete for purposes of ensuring compliance with the regulations. **This exception shall not apply to new construction or substantial improvement of a home in a V zone in a flood hazard area.**

x.-xii. (No change.)

2. – 4. (No change.)

#### 5:23-2.18 Inspections

(a) (No change.)

(b) Inspections during the progress of work: The construction official and appropriate subcode officials shall carry out periodic inspections during the progress of work to ensure that work inspected conforms to the requirements of the code.

1. Inspections of one- and two-family dwellings for which construction must cease until the inspection is made shall be limited to the following:

i. (No change.)

ii. Foundations and all walls up to grade level prior to covering or back filling;

(1) (No change.)

(2) For new construction, [and] additions, **and buildings that are determined to be a substantial improvement pursuant to N.J.A.C. 5:23-6.3A**, the foundation location survey, **including the lowest floor elevation and as-built elevation documentation**, for a building that is located in a flood [plain] **hazard area shall be**

**submitted to the construction official and to the local floodplain administrator and shall include [flood hazard] elevation certificates as required by section 1612.5 of the building subcode or section [R301.2.4] R322.1.10 of the one-and two-family dwelling subcode; the documentation and certificates shall be submitted prior to further vertical construction;**

iii. – iv. (No change.)

2. – 4. (No change.)

(c) – (h) (No change.)

#### **5:23-6.3A Flood-resistant construction**

**(a) For buildings in designated flood hazard areas, any work that constitutes a substantial improvement of the existing building, as determined by the local floodplain administrator, shall comply with the applicable flood-resistant construction requirements below:**

**1. Group R-5 buildings: Section R322 of the one- and two-family dwelling subcode.**

**2. All other buildings:**

**i. Building subcode: Sections 801.5; 1203.3.2, Exception 5; 1403.5; 1403.6; 1603.1.7; 1605.2.2; 1605.3.1.2; 1612; and 1805.1.2.1.**

**ii. Mechanical subcode: Sections 301.13, 602.4, 603.13, 1206.9.1, and 1305.2.1.**

**iii. Fuel gas subcode: Section 301.11.**