

[N.J.A.C. 5:23A](#)

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 53 No. 16, August 16, 2021

NJ - New Jersey Administrative Code > TITLE 5. COMMUNITY AFFAIRS > CHAPTER 23A. CONSTRUCTION BOARDS OF APPEALS

Title 5, Chapter 23A -- Chapter Notes

Statutory Authority

CHAPTER AUTHORITY:

[N.J.S.A. 40:55D-53.2](#).a, 52:27D-119, and 52:27D-192.

History

CHAPTER SOURCE AND EFFECTIVE DATE:

Effective: December 17, 2020.

See: [53 N.J.R. 123\(b\)](#).

CHAPTER HISTORICAL NOTE:

Chapter 23A, Construction Boards of Appeals, was adopted as R.1996 d.236, effective May 20, 1996 (operative January 1, 1997). See: [27 N.J.R. 4050\(a\)](#), [28 N.J.R. 2586\(a\)](#).

Pursuant to Executive Order No. 66(1978), Chapter 23A, Construction Boards of Appeals, was readopted as R.2001 d.195, effective May 16, 2001. See: [32 N.J.R. 2521\(a\)](#), [33 N.J.R. 2097\(b\)](#).

Chapter 23A, Construction Boards of Appeals, was readopted as R.2006 d.404, effective October 26, 2006. See: [37 N.J.R. 4600\(a\)](#), [38 N.J.R. 5010\(c\)](#).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 23A, Construction Boards of Appeals, was scheduled to expire on October 26, 2013. See: [43 N.J.R. 1203\(a\)](#).

Chapter 23A, Construction Boards of Appeals, was readopted, effective September 25, 2013. See: [45 N.J.R. 2329\(d\)](#).

Chapter 23A, Construction Boards of Appeals, was readopted, effective December 17, 2020. See: Source and Effective Date.

Annotations

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Research References & Practice Aids

CHAPTER EXPIRATION DATE:

Chapter 23A, Construction Boards of Appeals, expires on December 17, 2027.

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§ 5:23A-1.1 Title; authority; scope; intent

(a) This chapter, which is promulgated under authority of [N.J.S.A. 52:27D-124](#), 52:17D-198, 40A:14A-43, 40A:14B-76 and 40:55D-53.2a, shall be known as, and may be cited as, the "Rules Governing Construction Boards of Appeals."

(b) This chapter shall govern all aspects of the administration and implementation by construction boards of appeals of the provisions of the State Uniform Construction Code Act ([N.J.S.A. 52:27D-119](#) et seq.), the Uniform Construction Code rules ([N.J.A.C. 5:23](#)) and the subcodes incorporated herein by reference, the Uniform Fire Safety Act ([N.J.S.A. 52:27D-192](#) et seq.), the Uniform Fire Code ([N.J.A.C. 5:70](#)) and associated rules, P.L. 1995, c.54, and P.L. 1999, c.11.

(c) It is the intention of the Department of Community Affairs that these rules facilitate uniformity in procedure and a high level of quality in performance so as to allow construction boards of appeals to properly discharge the duties and functions that have been assigned to them by the Legislature under the State Uniform Construction Code Act, the Uniform Fire Safety Act, P.L. 1995, c.54, and P.L. 1999, c.11.

(d) Unless otherwise specified, all provisions of this chapter are equally applicable to matters arising under any of the statutes or rules listed in (b) above.

(e) Each construction board of appeals shall have authority to adopt and enforce local rules that are not inconsistent with this chapter or with any of the statutes or rules listed in (b) above.

History

HISTORY:

Amended by R.2004 d.36, effective January 20, 2004.

See: [35 New Jersey Register 4632\(a\)](#), [36 New Jersey Register 467\(a\)](#).

In (a), inserted "40A:14A-43, 40A:14B-76" following "52:17D-198,"; in (b), substituted "[N.J.A.C. 5:70](#)" for "[N.J.A.C. 5:18](#)" and inserted ", and P.L. 1999, c.11" following "c.54"; in (c), inserted ", and P.L. 1999, c.11" following "c.54".

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§ 5:23A-1.2 Establishment of construction boards of appeals

- (a) The governing body of each county shall, by resolution, establish a construction board of appeals that shall exercise its functions in accordance with this chapter.
- (b) The governing body of any municipality that has its own local enforcing agency may, by ordinance, establish a construction board of appeals. Any such board shall exercise its functions in accordance with this chapter.
- (c) The governing bodies of two or more municipalities that have established a joint enforcing agency may, pursuant to an interlocal agreement approved by ordinances of all participating municipalities, establish a joint construction board of appeals. Any such board shall exercise its functions in accordance with this chapter.
- (d) Copies of all such resolutions, ordinances and interlocal agreements shall be filed by the governing bodies with the Office of Regulatory Affairs of the Division of Codes and Standards.
- (e) In any municipality in which a municipal or joint construction board of appeals has been established, the county board of appeals shall only exercise jurisdiction in cases arising under P.L. 1995, c.54 or P.L. 1999, c.11.
- (f) A municipality that either establishes or discontinues a municipal construction board of appeals, or either joins or discontinues participation in a joint municipal board, shall give prompt notice of such action to the county governing body, the county construction board of appeals and the Office of Regulatory Affairs of the Division of Codes and Standards. In the absence of a municipal or joint municipal board having jurisdiction, all appeals from a municipality shall be heard by the county board.
- (g) The appointing authority shall annually designate one regular member of the board to serve as chairperson and another regular member of the board to serve as vice-chairperson. The vice-chairperson shall serve as chairperson in the event of the absence or disqualification of the chairperson.
- (h) The appointing authority of a county shall appoint a secretary, who need not be a member of the board. In the case of a municipal board, the secretary shall be appointed by the appointing authority of the municipality. In the case of a joint board, the secretary shall be appointed in a manner determined by agreement of the participating municipalities.

History

HISTORY:

Amended by R.2004 d.36, effective January 20, 2004.

See: [35 New Jersey Register 4632\(a\)](#), [36 New Jersey Register 467\(a\)](#).

In (e), inserted "or P.L. 1999, c.11" following "P.L. 1995, c.54".

Annotations

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[N.J.A.C. 5:23A-1.3](#)

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§ 5:23A-1.3 Membership of construction boards of appeals

(a) Every construction board of appeals shall include five regular members.

1. Regular members shall be appointed for a term of four years by the appointing authority of the county or municipality in question or, in the case of a joint municipal board, by means mutually determined by the governing bodies of such municipalities.
2. For the members first appointed, the appointing authority shall designate the appointees' terms so that one shall be appointed for a term of one year, one for a term of two years, one for a term of three years, and two for a term of four years.
3. Vacancies on the board shall be filled for the unexpired term.
4. Members may be removed by the authority appointing them for cause.
5. A person may serve on more than one construction board of appeals.
6. Unless otherwise provided by county or municipal resolution or ordinance, as the case may be, a board member shall not be required to be a resident of the county or municipality in which the board exercises jurisdiction.
7. No more than two regular members of any board shall be members of the same profession or occupation.

(b) Qualifications for regular members shall be as follows:

1. At least one regular member shall be as qualified as a plumbing subcode official;
2. At least one regular member shall be as qualified as an electrical subcode official;
3. At least one regular member shall be a registered architect, or a licensed professional engineer with building construction experience, or other person as qualified as a building subcode official;
4. At least one regular member shall be as qualified as a fire protection subcode official; and
5. At least one regular member shall be certified as a fire official.

(c) The requirements of (b) above shall not be construed as requiring that there be a separate regular member in each of the qualification categories set forth in (b)1 through 5. One regular member may satisfy these requirements with regard to more than one such qualification category.

(d) A construction board of appeals shall also include at least five alternate members.

1. Alternate members shall be appointed to staggered terms, in the same manner as the initial appointment of regular members.
2. Alternate members shall be so chosen so that there will be at least one alternate member in each qualification category set forth in (b)1 through 5 above.

3. When a regular member of the board is absent, the alternate member in the same qualification category shall serve in that regular member's place; provided, however, that any alternate member who is as qualified as an elevator subcode official shall serve in the place of any absent regular member in any case involving the elevator safety subcode, if there is no other regular member of the board present who is as qualified as an elevator subcode official .

4. If a regular member who is not in one of the qualification categories set forth in (b)1 through 5 above is absent, or if a regular member and an alternate member who are both in the same qualification category are absent and the appeal does not involve that qualification category, or if another regular member is present who meets the requirements of the same qualification category as does the regular member who is absent, the chairperson of the board shall determine which alternate member shall vote in the place of the absent regular member.

5. Alternate members shall have the right to participate in all board deliberations, but shall not vote unless serving in the place of a regular member.

(e) Each county construction board of appeals shall also include two special members, one of whom shall be a licensed professional engineer with municipal site improvement construction experience and one of whom shall be a builder. The special members shall be appointed for four-year terms and shall serve as additional members of the board only in cases involving appeals of municipal or municipal utilities authority or sewerage authority fees pursuant to P.L. 1995, c.54 or P.L. 1999, c.11.

1. Alternates may be appointed for the special members in the same manner, and subject to the same qualification requirements, as the special members.

(f) Each regular, alternate or special member shall be qualified by experience or training to perform the duties of a member of the board. In the case of regular and alternate members, regardless of whether they are in one of the qualification categories set forth in (b)1 through 5 above, such qualification shall be no less than that which is required of a construction or subcode official under subsection 8b of the State Uniform Construction Code Act ([N.J.S.A. 52:27D-126](#), subsection b); provided, however, that board members shall not be required to hold construction code licensure.

(g) Whenever a change to this chapter is made that affects the composition of construction boards of appeals, the appointing authority shall only implement the change when the term of any affected member(s) expires. This provision shall also apply in any case in which the adoption of this chapter affects the composition of a construction board of appeals.

(h) The board chairperson shall annually provide the Office of Regulatory Affairs of the Division of Codes and Standards with a list of the names and addresses of the regular, alternate and special members of the board and of the board secretary and any other contact person. Such information shall be updated whenever a change occurs.

History

HISTORY:

Amended by R.2004 d.36, effective January 20, 2004.

See: [35 New Jersey Register 4632\(a\)](#), [36 New Jersey Register 467\(a\)](#).

In (e), substituted "municipal or municipal utilities authority or sewerage authority fees pursuant to P.L. 1995, c.54 or P.L. 1999, c.11" for "municipal fees pursuant to P.L. 1995, c.54".

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[N.J.A.C. 5:23A-1.4](#)

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§ 5:23A-1.4 Post-appointment educational requirements for board members

(a) Except as otherwise provided in (b) below, each regular or alternate member of a construction board of appeals, other than an alternate special member, shall be required to attend a general course for members of construction boards of appeals within 12 months of appointment or within 12 months of the announcement by the Department of Community Affairs of the availability of the course, whichever is later. At least two months' prior notice of any announcement of the availability of a course shall be given to all construction boards of appeals by the Department.

(b) As an alternative to attending the general course for members of construction boards of appeals, a regular or alternate board member (other than an alternate special board member) may complete both the subcode official course and the fire official course offered by the Department of Community Affairs.

(c) The Department of Community Affairs may require that board members satisfactorily complete more specialized training consistent with their duties as board members, including, without limitation, training concerning P.L. 1995, c.54 and P.L. 1999, c.11. Special members and alternate special members shall be required to attend training concerning P.L. 1995, c.54 and P.L. 1999, c.11 within 12 months of appointment or within 12 months of announcement by the Department of Community Affairs of the availability of the course, whichever is later.

(d) Failure to comply with the requirements of this section shall be deemed good cause for removal by the appointing authority.

History

HISTORY:

Amended by R.2004 d.36, effective January 20, 2004.

See: [35 New Jersey Register 4632\(a\)](#), [36 New Jersey Register 467\(a\)](#).

In (c), inserted "P.L. 1999, c.11" following "P.L. 1995, c.54" throughout.

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[N.J.A.C. 5:23A-1.5](#)

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§ 5:23A-1.5 Board meetings

(a)Board meetings shall be held as often as may be necessary in order to comply with time limits for board action established by statute or by this chapter, but in no case shall a board schedule meetings less frequently than once a month.

1.Special meetings shall be scheduled when necessary by the chairperson of the board. Notice of any special meeting shall be given to all board members by telephone or fax transmission at least 48 hours prior to the time of the special meeting; provided, however, that notice of special meetings shall not be required to be given to special members of the board when the special meeting does not involve any cases arising under P.L. 1995, c.54 or P.L. 1999, c.11.

2.Public notice of all scheduled and special meetings shall be given, and meetings shall be open to the public, as required by the Open Public Meetings Act ([N.J.S.A. 10:4-6](#) et seq.). Additionally, copies of all notices of meetings shall be provided by each board to the Office of Regulatory Affairs.

3.All hearings shall be recorded and tapes or transcripts shall be made available upon request at the expense of the requesting party.

(b)If there is no business pending before a board, the chairperson may cancel a scheduled meeting. Notice of any such cancellation shall, if time permits, be given to all members, by telephone or by fax transmission, at least 48 hours prior to the scheduled meeting time.

(c)If there is no business pending before a board involving an appeal under P.L. 1995, c.54 or P.L. 1999, c.11, notice to that effect shall be given to the special members and any alternate special members, if time permits, by telephone or by fax transmission, at least 48 hours prior to the scheduled meeting.

(d)The following apply to conflict situations:

1.No person serving in any local enforcing agency shall participate as a board member in any case arising out of, or otherwise involving, that enforcing agency.

2.No employee of a public entity shall participate as a board member in any case involving any property owned or leased by that public entity.

3.No person shall participate as a board member in any case in which he or she has been involved as a supplier of services or materials, or has been involved in the preparation of plans or specifications, or has any other personal or financial interest.

(e)Except as otherwise provided in (e)1 below, failure of a regular or special member to be present at more than 50 percent of all meetings of the board during any calendar year shall be considered good cause for removal by the appointing authority; provided, however, that any meeting during which the member would be disqualified from participating in all scheduled matters, pursuant to (d) above, or any meeting for which arrangements were made in advance, with the consent of the chairperson, for the substitution of an alternate, shall not be considered in computing attendance for purposes of this subsection.

1.The attendance of special members shall not be required at any meeting at which no appeals under P.L. 1995, c.54 or P.L. 1999, c.11 are scheduled to be heard, and any such meeting shall not be considered in computing the attendance of the special members.

History

HISTORY:

Amended by R.2004 d.36, effective January 20, 2004.

See: [35 New Jersey Register 4632\(a\)](#), [36 New Jersey Register 467\(a\)](#).

Inserted reference to P.L. 1999, c.11 throughout.

Annotations

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[N.J.A.C. 5:23A-2.1](#)

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§ 5:23A-2.1 Hearing applications

(a) A person who is aggrieved by any ruling, action, notice, order or decision of a local enforcing agency that enforces either the State Uniform Construction Code or the Uniform Fire Code, including, without limitation, any refusal to grant an application or any failure or refusal to act upon an application, but not including any order requiring the taking of emergency measures pursuant to [N.J.A.C. 5:23-2.32\(b\)](#), may file an application for a hearing with the secretary of the construction board of appeals having jurisdiction.

1. Any such application shall be filed by the 15th day after receipt by the person of written notice of the ruling, action, order or notice complained of, or, in the case of inaction by a local enforcing agency, by the 15th day after the expiration of the period allowed for action by the local enforcing agency.

(b) In cases arising under P.L. 1995, c.54 or P.L. 1999, c.11, an applicant for approval who is aggrieved by any charge to an escrow account or a deposit by any municipal or municipal utilities authority or sewerage authority professional or consultant, or the cost of the installation of improvements estimated by the municipal or municipal utilities authority or sewerage authority engineer, may file an appeal with the county construction board of appeals.

1. Any such appeal shall be filed within 45 days from receipt of the informational copy of the professional's voucher or the notice from the municipal or municipal utilities authority or sewerage authority engineer, as the case may be; provided, however, that if the professional has not supplied an applicant with an informational copy of the voucher, any appeal shall be filed within 60 days of receipt of the municipal statement of activity against the deposit or escrow account.

2. An applicant may file an appeal regarding an ongoing series of charges by a professional during a period not exceeding six months to demonstrate that they represent a pattern of excessive or inaccurate charges; such charges need not be appealed individually.

(c) The appeal shall be in writing and shall briefly set forth the appellant's position. It shall include the name and address of the applicant, the address of the building or site in question, and the permit number (if applicable), and shall reference the specific provision(s) of a statute or rule upon which the applicant is relying and set forth the extent and nature of the applicant's reliance upon such provision(s). The applicant may append to the written application any data or information that he or she may deem appropriate. In the case of an appeal arising under P.L. 1999, c.11, the applicant shall include a statement specifically outlining the dates, time and personnel in dispute.

1. Upon receipt of a copy of the application for a hearing, the enforcing agency (or, in the case of an appeal under P.L. 1995, c.54 or P.L. 1999, c.11, the municipality, the municipal utilities authority or sewerage authority, the approving authority and/or professional) shall provide the construction board of appeals with a copy of the full record of the application below, including a detailed explanation of the reasons for denial of the applicant's request.

(d) Simultaneously with the filing of any application for a hearing, the person filing the application shall provide a copy thereof to the local enforcing agency or, in the case of an appeal under P.L. 1995, c.54 or P.L. 1999, c.11, to the municipality or municipal utilities authority or sewerage authority, the approving authority and any

professional whose charge is the subject of the appeal. Proof of compliance with this requirement shall be filed with the board secretary. Such proof may be in the form of a certified mail receipt, a signed receipt for personal delivery or a sworn statement.

(e) The application shall be accompanied by a fee in the sum of \$ 50.00, or such other fee not exceeding \$ 100.00 as may be established by the county or municipal governing body having jurisdiction over the board or by interlocal agreement, as the case may be. An application shall not be considered complete unless accompanied by the fee; provided, however, that the fee shall be waived where the application is based upon the failure of an enforcing agency to act within a required time frame.

History

HISTORY:

Amended by R.2003 d.201, effective May 19, 2003.

See: [35 N.J.R. 303\(a\)](#), [35 N.J.R. 2207\(a\)](#).

In (a), in the intro. paragraph inserted ", but not including any order requiring the taking of emergency measures pursuant to [N.J.A.C. 5:23-2.32\(b\)](#)," following "act upon an application".

Amended by R.2004 d.36, effective January 20, 2004.

See: [35 N.J.R. 4632\(a\)](#), [36 N.J.R. 467\(a\)](#).

In (c), added the last sentence in the introductory paragraph; inserted references to P.L. 1999, c.11 and the municipal utilities authority or sewerage authority throughout.

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Case Notes

Plaintiffs, an individual and his towing company, were not deprived of procedural due process by the issuance of notices that they would be deprived of property at some future date under [N.J.A.C. 5:23-2.32\(a\)](#) because of the failure to obtain a certificate of occupancy and that if they wished to contest this future deprivation, they would need to request a hearing before a township's construction board of appeals within 15 days. However, when the township, through a construction official, took the threatened enforcement actions anyway after plaintiffs filed a request for a hearing and before they had an opportunity to be heard, and in the absence of any requirement for the emergency enforcement of construction laws under [N.J.S.A. 52:27D-208](#) and [N.J.A.C. 5:23-2.32\(b\)](#), then a reasonable jury could find that the plaintiffs' due process rights were violated. [Simmermon v. Gabbianelli, 865 F. Supp. 2d 589, 2012 U.S. Dist. LEXIS 42658 \(2012\)](#).

Matter considered on appeal to Construction Board of Appeals of citations for construction violations related to controversy between one municipality and one individual concerning one tract of land; only one filing fee could be collected. [Egg Harbor River Campground v. Atlantic County Const. Bd. of Appeals, 284 N.J.Super. 318, 664 A.2d 1305 \(L.1995\)](#).

N.J.A.C. 5:23A-2.1

Appellate rights of applicant denied construction permit; procedure. [*Bell v. Twp. of Bass River, 196 N.J. Super. 304, 482 A.2d 208 \(Law Div. 1984\).*](#)

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§ 5:23A-2.2 Hearing procedures

(a) All parties to any dispute shall be accorded full opportunity to address the construction board of appeals, present testimony and examine and cross-examine witnesses, consistent with reasonable rules of procedure and due process. All testimony shall be under oath or affirmation. Parties shall be allowed to appear through legal counsel or public or corporate officers. Construction, subcode and fire officials may appear and testify on behalf of their local enforcing agencies.

(b) A quorum of the board for cases arising under the State Uniform Construction Code Act or the Uniform Fire Safety Act shall consist of three regular and/or alternate members. A quorum of the board for cases arising under P.L. 1995, c.54 or P.L. 1999, c.11 shall consist of four regular and/or alternate and/or special members.

(c) Except as otherwise provided in (d) below, when there are not five regular and/or alternate members present to consider an appeal, or if five regular and/or alternate members are present but a code discipline that is involved in a construction code case is not represented, or if no regular or alternate member who is certified as a fire official is present to hear a fire code case, or if either of the special members, or an alternate meeting the same qualifications requirement, is not present in a case arising under P.L. 1995, c.54 or P.L. 1999, c.11, either party shall be entitled to have the hearing adjourned. If neither party requests an adjournment, the case may be heard by the board if a quorum is present.

1. In a case involving the elevator safety subcode, a party shall only have a right to an adjournment due to the absence of a board member having elevator subcode qualification if there is at least one regular or alternate member of the board who has such qualification.

(d) No adjournment shall be granted without the consent of the local enforcing agency having jurisdiction in any case involving issues of life safety in an occupied building. If, in any such case, a quorum is not present, or a quorum is present but does not include either a representative of any construction code discipline that is required to be represented on the board and is involved in the case or a certified fire official, as the case may be, the case shall not be heard and the appeal shall be deemed to have been denied.

(e) At the beginning of each hearing, the chairperson, or the person presiding in his or her absence, shall state for the record the statute under which the appeal is being brought, the nature and date of the action appealed from, the date the appeal was filed and the basis of the appeal. Thereafter, the matter shall proceed with the representative of the municipality or the professional hired by the municipality or municipal agency, as the case may be, explaining the basis for the action, ruling, order, notice or fee, as the case may be. The appellant, or his or her representative, shall then present the basis for his or her disagreement.

1. Both parties shall be allowed to present witnesses and offer evidence and to examine and cross-examine witnesses, consistent with principles of due process and fairness. Motions and objections may be filed in writing without the necessity of an appearance by the party, but written testimony not subject to cross-examination shall not be allowed; provided, however, that any writings that would be admissible in a court of law shall not be deemed to be included within the prohibition of "written testimony." Any board member may question any witness at the conclusion of that witness' questioning by the parties.

2. By having filed an appeal, a party shall be deemed to have consented to the entry upon the site of members and staff of the board. Any member who has visited a site subsequent to the filing of the appeal shall disclose that fact on the record prior to a party's presentation and shall be subject to questions from either party or any board member pertaining to the visit. A board member shall not, during the course of any such visit, engage in any discussion of issues involved in the case, and shall give a full account of any conversations that do take place in the course of any such visit as part of the disclosure of having visited the site.

3. Neither the board nor any individual member shall discuss any case with either party, including the representative of a party, without the other party, or the representative of the other party, being present; provided, however, that this prohibition shall not apply to statements made on the record in a hearing of which the other party was given notice and the opportunity to participate.

(f) In all cases, the board shall have the power to administer oaths and to issue subpoenas to compel the attendance of witnesses and the production of relevant evidence. The provisions of the "County and Municipal Investigations Law," P.L. 1953, c.38 ([N.J.S.A. 2A:67A-1](#) et seq.) shall apply.

History

HISTORY:

Amended by R.2004 d.36, effective January 20, 2004.

See: [35 N.J.R. 4632\(a\)](#), [36 N.J.R. 467\(a\)](#).

In (b) and (c), inserted "or P.L. 1999, c.11" following "P.L. 1995, c.54".

Amended by R.2006 d.355, effective October 2, 2006.

See: [38 N.J.R. 1789\(a\)](#), [38 N.J.R. 4175\(a\)](#).

Rewrote (e)2.

Annotations

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Case Notes

Chairman of county construction board of appeals had judicial immunity from civil rights claim for allegedly causing board to not consider landowners' appeal from county construction officer's decision. [Akins v. Deptford Tp., D.N.J.1993, 813 F.Supp. 1098](#), affirmed 995 F.2d 215, certiorari denied 114 S.Ct. 478, 126 L.Ed.2d 429, affirmed 17 F.3d 1428.

Clerk of county construction board of appeals had judicial immunity from civil rights liability for alleged intentional failure to file landowners' appeal from county construction officer's decision. [Akins v. Deptford Tp., D.N.J.1993, 813 F.Supp. 1098](#), affirmed 995 F.2d 215, certiorari denied 114 S.Ct. 478, 126 L.Ed.2d 429, affirmed 17 F.3d 1428.

N.J.A.C. 5:23A-2.2

Due process was not violated by failure of county construction board of appeals to accept and process appeal from decision of county construction officer. [Akins v. Deptford Tp., D.N.J.1993, 813 F.Supp. 1098](#), affirmed 995 F.2d 215, certiorari denied 114 S.Ct. 478, 126 L.Ed.2d 429, affirmed 17 F.3d 1428.

Board of Review procedures in permit denial reviews. [Bell v. Twp. of Bass River, 196 N.J.Super. 304, 482 A.2d 208 \(Law Div.1984\)](#).

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[N.J.A.C. 5:23A-2.3](#)

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 53 No. 16, August 16, 2021

NJ - New Jersey Administrative Code > TITLE 5. COMMUNITY AFFAIRS > CHAPTER 23A. CONSTRUCTION BOARDS OF APPEALS > SUBCHAPTER 2. BOARD PROCEDURES

§ 5:23A-2.3 Board decisions

(a) Except as otherwise provided in (b) below, the construction board of appeals shall hear any appeal, render a decision thereon, and file its decision with a statement of the reasons therefore with the enforcing agency or, in the case of a matter arising under P.L. 1995, c.54 or P.L. 1999, c.11, with the municipality or approving authority or municipal utilities authority or sewerage authority, not later than 10 business days following submission of the appeal. In any case involving an appeal from an action, decision, notice or order of a local enforcing agency, the decision shall either affirm, reverse or modify the action, decision, notice or order of the enforcing agency or remand the matter to the enforcing agency for further action. In the case of any reversal, modification or remand, the board shall include in its statement of reasons the specific details of the nature and extent of the board's disagreement with the enforcing agency.

1. The board shall provide copies of the decision, by certified or registered mail, to the applicant and to any other parties entitled to notice pursuant to [N.J.A.C. 5:23A-2.1\(c\)](#).

2. Copies of decisions shall be filed with the Department of Community Affairs within 10 business days of the issuance of the decision as follows:

i. In cases arising under the State Uniform Construction Code Act or under P.L. 1995, c.54 or P.L. 1999, c.11, with the Office of Regulatory Affairs of the Division of Codes and Standards; and

ii. In cases arising under the Uniform Fire Safety Act, with the Division of Fire Safety.

3. Copies of all board decisions shall be deemed to be public records and shall be available for public inspection at the offices of both the board and of any local enforcing agency or other governmental agency that is a party to a case.

(b) With the consent of the applicant, the period of time for the board to issue its decision may be extended beyond 10 business days; provided, however, that in any case involving issues affecting life safety in an occupied building, any such extension shall also require the consent of the local enforcing agency.

1. In any case involving the appeal of a fire code imminent hazard order issued pursuant to [N.J.S.A. 52:27D-208](#), the hearing shall be held, and the decision issued, within 48 hours of the receipt by the board of the request; provided, however, that if the hearing is not scheduled to be held within that 48 hour period, the board secretary shall promptly so notify the applicant so that he or she may apply to the Department for an administrative hearing, as provided in [N.J.S.A. 52:27D-208](#).

(c) Failure by the board to hear an appeal and render and file a decision thereon within the time limits prescribed in this section shall be deemed to be a denial of the appeal.

(d) Any party, including any enforcing agency, may appeal from a decision of a construction board of appeals to the Law Division of the Superior Court within the time allowed by the rules of court.

1. The local enforcing agency shall immediately comply with the ruling of the construction board of appeals unless a stay is obtained either from the board or from the Superior Court.

(e)In all cases, decisions shall be based upon applicable statutory, rule and code provisions and upon the evidence presented and accepted by the board.

1. Decisions shall be consistent with the intent of the applicable statutes and rules. In matters arising under the State Uniform Construction Code Act, the board shall be bound by interpretations and bulletins issued by the Department of Community Affairs pursuant to [N.J.A.C. 5:23-3.9](#). Copies of all such interpretations and bulletins shall be provided to all boards and enforcing agencies by the Department.

(f)The failure of a party to appear or to present evidence shall not result automatically in a decision in favor of the other party.

(g)The board may reduce a penalty that is under appeal if it is clearly excessive or may void it if it is found not to be authorized by statute or by rule. The board shall specifically explain its reasoning in any case in which it reduces a penalty that is already below the maximum permitted and shall explain why the reduction is not likely to impede the deterrence of future violations. In determining whether to reduce a penalty, the board shall consider the extra costs required of the local enforcing agency due to the actions or inaction of the appellant regarding compliance. A valid penalty shall not be totally abated if the local enforcing agency demonstrates the lack of a good faith compliance effort on the part of the applicant prior to the imposition of the penalty.

1. A penalty may not be reduced except to the extent that it is clearly excessive. Any determination as to whether a penalty is excessive shall take into account the maximum amount of penalty that might have been imposed for the particular violation. No reduction in the amount of a penalty may be made final unless the violation either has been abated by the time of the hearing or shall have been abated within 30 days thereafter.

2. On an appeal of a penalty, the penalty as originally assessed by the enforcing agency, unless unauthorized by statute or by rule, shall be automatically reinstated if the violation remains unabated after 30 days following receipt by the applicant of the decision, unless an extension of time for abatement of the violation has been granted by the enforcing agency. The board shall inform the appellant of these facts.

3. On an appeal of a penalty, the appellant may not offer argument that the violation(s) for which the penalty was issued did not exist, and the board shall accept the existence of the violation(s) as having been proven, provided that a notice of the underlying violation has been served and either no timely appeal was filed or the violation notice was sustained on appeal.

(h)On an appeal from a failure or refusal to issue a permit, the board may deny the appeal and return the matter to the enforcing agency for appropriate action or may direct the enforcing agency to grant the permit if the appellant is so entitled in accordance with the code. If the board determines to direct that the permit be granted, the enforcing agency shall provide the board with any recommendations that it may have as to conditions or limitations. The board shall either direct that these conditions or limitations be included or provide specific reasons for not doing so.

(i)On an appeal relating to a variation or variance, as the case may be, the board may grant the variation or variance and shall impose such conditions as may be appropriate to comply with the intent and purpose of the applicable code. No variation or variance shall be granted absent proof that the applicant submitted the necessary application to the local enforcing agency and either the application was denied or no action was taken within the time allowed by the applicable rule (20 business days in Uniform Construction Code cases and 30 days in Uniform Fire Code cases).

1. In Uniform Construction Code cases, the board shall be bound by the provisions of [N.J.A.C. 5:23-2.9](#).

2. In Uniform Fire Code cases, the board shall be bound by the provisions of [N.J.A.C. 5:70-2.14](#).

(j)A written decision shall contain the following:

1. A statement of the date the appellant received the notice, order, decision, informational copy of a voucher or municipal statement of activity against a deposit or escrow account being appealed, the

date the appeal was filed, the appearances or absences of the parties and the board members participating;

2.A statement of pertinent facts, as follows:

i. In a Uniform Construction Code or Uniform Fire Code case, the statement shall include the type of use, the nature of the violation cited and of the action appealed, the basis of the appeal and the basis for the notice, order or decision. A copy of the local enforcing agency's notice, order or decision shall be appended to the decision, unless to do so would be unduly burdensome, in which case the omission shall be explained.

ii. In a P.L. 1995, c.54 or P.L. 1999, c.11 case, the statement shall include the nature of the service rendered to the municipality, municipal utilities authority or sewerage authority, the identification of the approving authority, the identification of the professional who rendered the service, the amount of time spent by the professional or other persons in rendering the service, the amount charged for the service, the amount of that charge that is in dispute and the basis of the dispute. A copy of the professional's voucher or the municipal or municipal utilities authority or sewerage authority statement of activity against the deposit or escrow account, whichever is applicable, shall be appended to the decision.

3.A statement of the names and areas of expertise of any expert witnesses, the party on behalf of which each expert witness testified and whether any materials not in the record were used by the expert witness. If so, the decision shall include copies or descriptions of such materials.

4. In any case involving a penalty, the board shall state the maximum permissible penalty applicable and explain the reason for any reduction.

5. The decision shall include the board's analysis of the case, including its understanding of the code provisions or other provisions of law applicable to the case.

i. If, in a Uniform Construction Code or Uniform Fire Code case, the board determines to reverse or modify the action taken by a local enforcing agency, or to direct that action be taken by a local enforcing agency, it shall provide a specific and detailed explanation of the basis for its action, including reference to any technical code provisions relied upon.

ii. In any case arising under P.L. 1995, c.54 or P.L. 1999, c.11, the board shall provide a specific and detailed explanation of its basis for a determination that a disputed charge either is or is not valid and of its basis for any modification of any charge.

6. There shall be a statement of disposition containing the board's determination.

History

HISTORY:

Administrative correction.

See: [35 New Jersey Register 219\(d\)](#).

Amended by R.2004 d.36, effective January 20, 2004.

See: [35 New Jersey Register 4632\(a\)](#), [36 New Jersey Register 467\(a\)](#).

Inserted references to P.L. 1999, c.11 and municipal utilities authority or sewerage authority throughout.

Annotations

Notes

[Chapter Notes](#)

Case Notes

Chairman of county construction board of appeals had judicial immunity from civil rights claim for allegedly causing board to not consider landowners' appeal from county construction officer's decision. [Akins v. Deptford Tp., D.N.J.1993, 813 F.Supp. 1098](#), affirmed 995 F.2d 215, certiorari denied 114 S.Ct. 478, 126 L.Ed.2d 429, affirmed 17 F.3d 1428.

Clerk of county construction board of appeals had judicial immunity from civil rights liability for alleged intentional failure to file landowners' appeal from county construction officer's decision. [Akins v. Deptford Tp., D.N.J.1993, 813 F.Supp. 1098](#), affirmed 995 F.2d 215, certiorari denied 114 S.Ct. 478, 126 L.Ed.2d 429, affirmed 17 F.3d 1428.

Due process was not violated by failure of county construction board of appeals to accept and process appeal from decision of county construction officer. [Akins v. Deptford Tp., D.N.J.1993, 813 F.Supp. 1098](#), affirmed 995 F.2d 215, certiorari denied 114 S.Ct. 478, 126 L.Ed.2d 429, affirmed 17 F.3d 1428.

Regulation valid permitting appeal of board decision; Law Division proper forum to review action of administrative body with single locality authority; scope of proceedings; decision standards. [Bell v. Twp. of Bass River, 196 N.J.Super. 304, 482 A.2d 208 \(Law Div.1984\)](#).

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[N.J.A.C. 5:23A-2.4](#)

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§ 5:23A-2.4 Construction Board of Appeals: records retention

(a)Copies of the following shall be retained;

- 1.Applications to the Construction Board of Appeals and the Decisions of the Construction Board of Appeals, including any attachments to the applications or decisions, shall be retained for a period of at least seven years, or until the end of any known litigation, whichever is longer; and
- 2.Recordings of proceedings (audio or video) shall be retained for at least one year.

History

HISTORY:

New Rule, R.2006 d.75, effective February 21, 2006.

See: [37 N.J.R. 3110\(a\)](#), [38 N.J.R. 1183\(a\)](#).

Annotations

Notes

[Chapter Notes](#)

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