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

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 51 No. 15, August 5, 2019

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§ 5:23-2.1 Title; scope; intent

(a) This part of the regulations, adopted pursuant to authority of the State Uniform Construction Code Act, and entitled "Administration and enforcement; process", shall be known and may be cited throughout the regulations as N.J.A.C. 5:23-2, and when referred to in subchapter 2 of this chapter, may be cited as this subchapter.

(b) Unless otherwise specifically provided, all references to article or section numbers, or to provisions not specifically identified by number, shall be construed to refer to such article, section or provision of this subchapter.

(c) Except as is otherwise specified, these regulations shall control all matters concerning the construction, alteration, addition, repair, removal, demolition, use, location and occupancy of all buildings and structures and their service equipment as herein defined, and shall apply to existing or proposed buildings and structures in the State of New Jersey.

(d) The regulations shall be construed to secure its expressed intent, which is to insure public safety, health and welfare insofar as they are affected by building construction, through structural strength, adequate egress facilities, sanitary equipment, light and ventilation, and fire safety; and, in general, to secure safety to life and property from all hazards incident to the design, erection, repair, removal, demolition or use and occupancy of buildings, structures or premises.

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§ 5:23-2.2 Matter covered

(a) The provisions of the regulations shall apply to all buildings and structures and their appurtenant construction, including vaults, area and street projections, and accessory additions; and shall apply with equal force to municipal, county, State, and private buildings, except where such buildings are otherwise specifically provided for by the regulations.

1.Manufacturing, production, and process equipment, as defined at *N.J.A.C. 5:23-1.4*, is not under the jurisdiction of the Uniform Construction Code. Equipment, processes, or operations involving combustible dust as defined by the building subcode shall not be considered manufacturing, production, or process equipment, and, therefore, shall be subject to the requirements of this chapter.

2.Manufactured homes constructed and installed under 24 CFR Parts 3280 and 3285, respectively, is not under the jurisdiction of the Uniform Construction Code. The relocation or rehabilitation of manufactured homes is under scope of the Uniform Construction Code.

(b)A building or structure shall not be constructed, extended, repaired, removed, renovated, altered or reconstructed in violation of these provisions, except that no permit shall be required for ordinary maintenance as provided herein, and except further that the raising, lowering or moving of a building or structure on the same lot, as a unit, necessitated by a change in legal grade or widening of a street, shall be permitted, provided the building or structure is not otherwise altered or its use or occupancy changed.

1.Any new work, such as foundations or utility connections shall, however, be in accordance with the regulations.

(c) Any requirement essential for structural, fire or sanitary safety of a building or structure, or essential for the safety of the occupants thereof, and which is not specifically covered by the regulations, shall be determined by the construction official, and appropriate subcode official.

(d) The continuation of occupancy or use of a building or structure, or of a part thereof, contrary to the provisions of the regulations, shall be deemed a violation and subject to the remedies prescribed in this subchapter.

(e) Where provisions herein specify requirements for structural, fire and sanitary safety, no provision of any municipal zoning or other municipal code shall conflict, govern or have effect. Where the provisions herein specify requirements with respect to location, use, permissible area and height, and the municipal zoning code establishes requirements as well, then the more restrictive requirements of this code or the zoning code shall govern.

History

HISTORY:

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Amended by 1981 d.134, effective May 7, 1981.

See: 13 N.J.R. 119(a), 13 N.J.R. 258(b).

(e): "other municipal" was "general".

Administrative Correction to (b): Changed "construed" to "constructed".

See: 22 N.J.R. 2503(b).

Amended by R.1998 d.28, effective January 5, 1998.

See: *29 N.J.R. 3603(a)*, *30 N.J.R. 129(a)*.

Rewrote (b), new exception that no permit required for ordinary repairs.

Amended by R.2003 d.473, effective December 15, 2003.

See: *35 N.J.R. 2421(a)*, *35 N.J.R. 5543(a)*.

In (b), substituted "maintenance" for "repairs" in the introductory paragraph.

Amended by R.2013 d.081, effective June 3, 2013.

See: *44 N.J.R. 1303(a)*, *45 N.J.R. 1393(a)*.

Added (a)1.

Amended by R.2018 d.021, effective January 16, 2018.

See: *49 N.J.R. 306(a)*, *50 N.J.R. 303(a)*.

In the introductory paragraph of (a), inserted a comma following "State"; and in (a)1, added the second sentence.

Amended by R.2019 d.083, effective August 5, 2019.

See: *51 N.J.R. 3(a)*, *51 N.J.R. 1269(a)*.

Added (a)2.

Annotations

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Portable fire extinguishers could not be required to be placed in hotel and motel efficiency units with cooking facilities. *Venuti v. Cape May County Const. Bd. of Appeals, 231 N.J.Super. 546, 555 A.2d 1175 (A.D.1989).*

Construction code official authorized to determine particular fire code prevention requirements of building where building use deviates in any significant respect from building uses "specifically covered" by fire prevention subcode; hearing held by construction board of appeals was procedurally deficient. In the Matter of the "Analysis of Walsh Trucking Occupancy and Sprinkler System," *215 N.J.Super. 22, 2, 521 A.2d 883 (App.Div.1987).*

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N.J.A.C. 5:23-2.3

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§ 5:23-2.3 Applicability

These regulations shall apply to all construction undertaken after the effective date of the regulations or any subsequent amendment thereof.

History

HISTORY:

Amended by R.1998 d.28, effective January 5, 1998.

See: *29 N.J.R. 3603(a)*, *30 N.J.R. 129(a)*.

Annotations

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Forum for seeking double damages under *Planned Real Estate Development Full Disclosure Act (PREDFDA) was Superior Court. Department of Community Affairs, Div. of Housing and Urban Development v. Atrium Palace Syndicate, 259 N.J.Super. 578, 614 A.2d 1069 (A.D.1992).*

Site lighting installations at locations without construction permits were in violation of uniform construction code act. Public Service Electric and gas company v. *Department of Community Affairs, 94 N.J.A.R.2d (CAF) 13.*

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§ 5:23-2.4 Alterations, replacements and damages

(a) Existing structures, when repaired, renovated, altered or reconstructed, shall conform to the requirements of N.J.A.C. 5:23-6, Rehabilitation Subcode.

(b) If an existing structure is damaged by fire or any other cause, the requirements of N.J.A.C. 5:23-6, Rehabilitation Subcode, shall apply to the restoration of such building or structure.

(c) Any work which is mandated by any housing, property or fire safety maintenance code, standard or regulation or other State or local law requiring improvements to buildings or structures shall be made to conform only to the requirements of that code, standard, law or regulation and shall not be required to conform to the subcodes adopted pursuant to this chapter unless the code requiring the alteration so provides.

1.Except as otherwise provided in *N.J.A.C. 5:23-6.2(g)*, any requirement of any other code, standard, regulation, ordinance or law that is more restrictive than any requirement of N.J.A.C. 5:23-6 applicable to the same issue shall not be enforceable.

History

HISTORY:

Amended by R.1985 d.16, effective February 4, 1985.

See: 16 N.J.R. 3073(b), 17 N.J.R. 275(a).

(a)7 added.

Amended by R.1995 d.144, effective March 20, 1995 (operative July 1, 1995).

See: 26 N.J.R. 2698(a), 26 N.J.R. 3524(a), 27 N.J.R. 1180(a).

Amended by R.1995 d.381, effective July 17, 1995.

See: 27 N.J.R. 970(a), *27 N.J.R. 2715(a)*.

Amended by R.1998 d.28, effective January 5, 1998.

See: *29 N.J.R. 3603(a)*, *30 N.J.R. 129(a)*.

Rewrote (a) stating existing structures shall conform to 5:23-6, "Rehabilitation Subcode"; deleted (a)1 through (a)6; rewrote (b), (c) and inserted (c)1; deleted (a)7i through (b)1.

Amended by R.2002 d.5, effective January 7, 2002.

See: *33 N.J.R. 3392(a)*, *34 N.J.R. 267(a)*.

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Rewrote (c)1.

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§ 5:23-2.5 Concerning increase in size

If the structure is increased in floor area or height, then the increased portion of the structure shall conform to the requirements of this chapter applicable to new construction, while any related work within the existing structure shall conform with the requirements of N.J.A.C. 5:23-6, Rehabilitation Subcode.

History

HISTORY:

Amended by R.1988 d.389, effective August 15, 1988.

See: 20 N.J.R. 1026(a), 20 N.J.R. 2073(a).

Amended by R.1993 d.61, effective February 1, 1993.

See: 24 N.J.R. 1421(a), 25 N.J.R. 463(c).

Hardwired smoke detectors added.

Amended by R.1994 d.433, effective September 6, 1994 (operative January 1, 1995).

See: 26 N.J.R. 1910(a), 26 N.J.R. 3706(a).

Amended by R.1997 d.409, effective October 6, 1997.

See: *29 N.J.R. 2736(a)*, *29 N.J.R. 4281(a)*.

In (a)2, amended NFiPA reference.

Amended by R.1998 d.28, effective January 5, 1998.

See: *29 N.J.R. 3603(a)*, *30 N.J.R. 129(a)*.

Rewrote (a) to conform with "Rehabilitation Subcode"; deleted (a)1 through (c)

Annotations

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Municipal order under zoning ordinance to remove sleeping trailers and disconnect utilities used by refinery repair crew proper exercise of police power; action not preempted by *Occupational Safety and Health Act. Twp. of Greenwich v. Mobil Oil Corp., 504 F.Supp. 1275 (D.N.J.1981).*

Permits required to ensure use of proper materials and construction methods; permit requirements not inconsistent with pollution control laws; sewerage authority obliged to obtain local permits and approval before beginning pumping station construction. *Shupack v. Manasquan River Regional Sewerage Authority, 194 N.J.Super. 199, 476 A.2d 816 (App.Div.1984).*

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§ 5:23-2.6 Change of use

(a) Continuation of existing use: The legal use of any structure existing on the effective date of the regulations may be continued without change, except as may be specifically provided in these regulations or in any property or fire safety maintenance code, or minimum housing standard or regulation, adopted pursuant to law.

1.A certificate of continued occupancy shall be granted upon request, subject to this subchapter.

(b) Change of use: It shall be unlawful to change the use of any structure or portion thereof without the prior application for and issuance of a certificate of occupancy as provided below.

1.A certificate of occupancy shall be issued, provided such structure shall comply with the provisions of N.J.A.C. 5:23-6, Rehabilitation Subcode. After a change of use has been made to a building or structure, the reestablishment of a prior use is prohibited, unless the building complies with the provisions of N.J.A.C. 5:23-6, Rehabilitation Subcode, for the prior use.

i.Buildings meeting the requirements of *N.J.A.C. 5:23-6.31(p)* shall be entitled to a certificate of occupancy for Group R-1. The certificate of occupancy shall be subject to the condition that it shall be valid for a bed and breakfast use only.

2.If any non-residential occupancy, other than Use Groups F, H or S, accommodates seven or more non-consecutive group overnight stays within a calendar year for persons over 21/2 years of age, and the activities involve planned periods of sleep, the building is considered to have undergone a change of use. In such a case, it shall be necessary to apply for and be issued a Certificate of Occupancy. This shall be a dual Certificate of Occupancy to allow Use Group R-1 in addition to the existing use of the building. Any facility that accommodates six or fewer overnight stays within a calendar year shall obtain a permit under the Uniform Fire Code, *N.J.A.C. 5:70*. Group overnight stays in Use Groups F, H and S shall be prohibited.

3.The use of an existing structure as a "special amusement building," as defined in the building subcode, shall be a change in the character of use of the existing building. The building or portion thereof shall be required to comply with *N.J.A.C. 5:23-6.31(a)*5vii.

i.Exception: The use of an existing structure or portion thereof as a special amusement building for not more than 15 days in a calendar year provided that a permit for such use has been issued by the local fire official pursuant to the Uniform Fire Safety Act, *N.J.S.A. 52:27D-192* et seq.

History

HISTORY:

Amended by R.1985 d.16, effective February 4, 1985.

See: 16 N.J.R. 3073(b), 17 N.J.R. 275(a).

(a) Added text: "or fire safety" and "or minimum housing standard or regulation".

Amended by R.1993 d.662, effective December 20, 1993.

See: 25 N.J.R. 3891(a), 25 N.J.R. 5918(a).

Amended by R.1995 d.144, effective March 20, 1995 (operative July 1, 1995).

See: 26 N.J.R. 2698(a), 26 N.J.R. 3524(a), 27 N.J.R. 1180(a).

Amended by R.1995 d.611, effective December 4, 1995 (operative April 4, 1996).

See: *27 N.J.R. 3257(a)*, *27 N.J.R. 4884(a)*.

Amended by R.1998 d.28, effective January 5, 1998.

See: *29 N.J.R. 3603(a)*, *30 N.J.R. 129(a)*.

New heading "Change of use"; rewrote (b); added "Rehabilitation Subcode" in (b)1; deleted (b)1i through (c).

Amended by R.2002 d.255, effective August 5, 2002.

See: *33 N.J.R. 4177(a)*, *34 N.J.R. 2783(a)*.

In (b), added 2.

Amended by R.2003 d.157, effective April 21, 2003.

See: *34 N.J.R. 4247(a)*, *35 N.J.R. 1663(b)*.

In (b), added 3.

Administrative correction.

See: *35 N.J.R. 5062(a)*.

Amended by R.2004 d.423, effective November 15, 2004.

See: *36 N.J.R. 3004(a)*, *36 N.J.R. 5090(a)*.

In (b)3, deleted "temporary or permanent" preceding "use of an existing structure" in the first sentence, and deleted "the building subcode and fire protection subcode requirements of" preceding the NJAC reference in the last sentence, of the introductory paragraph, added i.

Amended by R.2006 d.120, effective April 3, 2006.

See: *37 N.J.R. 3753(a)*, *38 N.J.R. 1567(a)*.

Added (b)1i.

Amended by R.2018 d.021, effective January 16, 2018.

See: *49 N.J.R. 306(a)*, *50 N.J.R. 303(a)*.

In the introductory paragraph of (b), substituted "provided below" for "herein provided"; and in (b)1, inserted a comma following "issued" and added the second sentence.

Annotations

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Civil rights action challenging township actions regarding use of property as church were not ripe for adjudication until township planning board decided site plan application and any need for variance. *Trinity Resources, Inc. v. Township of Delanco, D.N.J.1994, 842 F.Supp. 782.*

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§ 5:23-2.7 Ordinary maintenance

(a) Ordinary maintenance to structures may be made without filing a permit application with or giving notice to the construction official.

(b) Ordinary maintenance shall not include any of the following:

1.The cutting away of any wall, partition or portion thereof;

2.The removal or cutting of any structural beam or bearing support;

3.The removal or change of any required means of egress, or rearrangement of parts of a structure affecting the exitway requirements;

4.Any work affecting structural or fire safety;

5.Any work that will increase the nonconformity of any existing building or structure with the requirements of the regulations;

6.Addition to, or alteration, replacement or relocation of:

i.Any standpipe;

ii. Water supply, sewer, drainage, gas, soil, waste, vent or similar piping;

iii. Electrical wiring, except that the following shall be considered ordinary electrical maintenance:

(1) Communications wiring in a Class 3 structure provided that the installation does not involve the alteration or penetration of a fire-rated assembly and is not in a hazardous location as defined in Chapter 5 of the electrical subcode.

(A) For the purposes of applying this provision, communications wiring shall mean any wiring covered by Chapter 8 of the electrical subcode. Communications wiring shall also include data circuits between computers/information technology equipment, which may be classified as "communications circuits," in accordance with Article 725 of the electrical subcode; or

iv. Mechanical or other work affecting public health or general safety; or

7.Any work undertaken for the purpose of lead abatement.

(c) The following items are ordinary maintenance and shall be treated as such by every enforcing agency. No permit for, inspections of, or notice to the enforcing agency of ordinary maintenance shall be required. This is not an all-inclusive listing of ordinary maintenance.

1.Ordinary building maintenance shall include:

i.Exterior and interior painting;

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ii. Installation, repair, or replacement of interior finishes of less than 25 percent of the wall area in a one- or two-family dwelling. This shall include plastering and drywall installation;

(1) Vinyl wall covering of any amount is ordinary maintenance;

(2) Paneling shall not be considered ordinary maintenance;

iii. Wall papering at any location;

iv. The replacement of glass in any window or door. However, the replacement glass shall be of a type and quality that complies with the minimum requirements of the code;

v.The replacement of any window or door, including garage doors, in the same opening without altering the dimensions or framing of the original opening. This shall include storm windows and storm doors. The replacement of means of egress and emergency escape windows and doors may be made in the same opening without altering the dimensions or framing of the original opening, and shall not reduce the required height, width, or net clear opening of the previous window or door assembly;

vi. The repair or replacement of any non-structural component, such as a partition railing in one- and two-family dwellings;

vii. The repair, replacement, or installation of any non-structural elements, such as cabinets;

viii. The repair, replacement, or installation of any interior or exterior trim, decoration, or moldings;

ix. The repair, replacement, or installation of any flooring material with a new material;

x.The repair or replacement of existing roof covering on detached one- and two-family dwellings;

xi. The repair or replacement of existing siding on one- and two-family dwellings.

(1) Exception: The repair or replacement of polypropylene siding shall not be ordinary maintenance;

xii. The repair or replacement of existing siding with like material not exceeding 25 percent of the total building exterior wall area in other than one- and two-family dwellings.

(1) Exception: The repair or replacement of polypropylene siding shall not be ordinary maintenance;

xiii. The repair or replacement of any part of a deck, porch, or stoop that does not provide structural support for any roof or portion of a building;

xiv. The repair, replacement, or installation of screens;

xv. The installation of insulation, except foam plastic insulation, when installed adjacent to or not more than one and a half inches from an interior finish;

xvi. The repair, replacement, or installation of exterior gutters and leaders; and

xvii. The installation of a storable spa or hot tub that is provided with a lockable safety cover that complies with ASTM F1346.

2.Ordinary plumbing maintenance shall include:

i.Replacement of hose bib valves. Replacement hose bib valves shall be provided with an approved atmospheric vacuum breaker;

ii. Refinishing of existing fixtures. Relining of fixtures shall not be considered to be ordinary maintenance;

iii. Replacement of ball cocks. Replacement ball cocks must be an approved anti-siphon type;

iv. Repair of leaks involving the replacement of piping;

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v.Clearance of stoppages;

vi. Replacements of faucets or working parts of faucets;

vii. Replacement of valves (including shower or combination bath/shower valves);

viii. Replacements of working parts of valves, including, but not limited to, shower or combination bath/shower valves;

ix. Replacement of traps;

x.Replacement of fixtures with a similar fixture provided that no change in the piping arrangement is made; and

xi. Replacement of domestic clothes washers and domestic dishwashers.

3.Ordinary electrical maintenance shall include:

i.The replacement of any receptacle, switch, or lighting fixture, or part thereof, not containing emergency battery packs with a like or similar item. Receptacles in locations where ground-fault circuit interrupter protection, damp/wet, or tamper-resistant are required shall comply with Section 406.4(D) of the electrical subcode;

ii. Repairs to any installed electrically operated equipment such as doorbells, communication systems, and any motor operated device. Provided, however, that if fire protection systems are interrupted for repairs the fire official shall be notified in accordance with the building subcode;

iii. Installation of communications wiring in a Class 3 structure, provided that the rearrangement does not involve penetration of a fire-rated assembly and is not in a hazardous location as defined in Chapter 5 of the electrical subcode;

(1) For the purposes of applying these provisions, communications wiring shall mean any wiring covered by Chapter 8 of the electrical subcode, such as telephone, radio antenna, or coaxial cable TV wiring. Communications wiring shall also include data circuits between computers/information technology equipment, which may be classified as "communications circuits," in accordance with Article 725 of the electrical subcode;

iv. Replacement of domestic dishwashers;

v.Replacement of kitchen range hoods in dwelling units, provided that the replacement hood exhaust rate does not exceed the exhaust rate of the existing hood or the exhaust rate of the replacement hood does not exceed 400 cubic feet per minute (cfm);

vi. The installation of a burglar alarm, security system, or doorbell in one- and two-family dwellings; and

vii. The installation of a plug-in landscape irrigation unit under 30 volts at one- or two-family dwellings.

4.Ordinary fire protection maintenance shall include:

i.The replacement of any sprinkler or smoke alarm, smoke detector, or heat detector head with a like device;

ii. The repair or replacement of any component of a fire alarm or smoke and heat detection equipment (other than the replacement of a fire alarm control panel);

iii. The installation of battery-powered smoke alarms; and

iv. The installation of battery-powered or plug-in type carbon monoxide alarms.

5.Ordinary heating, ventilation, and air conditioning maintenance shall include:

i.Replacement of motors, pumps and fans of the same capacity;

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ii. Repair and replacement of heating, supply and return piping and radiation elements, which does not require rearrangement of the piping system;

iii. Repair and replacement of duct work;

iv. Repair of air conditioning equipment and systems;

v.Repair or replacement of control devices for heating and air conditioning equipment;

vi. Replacement of kitchen range hoods in dwelling units, provided that the replacement hood exhaust rate does not exceed the exhaust rate of the existing hood or the exhaust rate of the replacement hood does not exceed 400 cfm;

vii. Replacement of domestic clothes dryers serving, and located within, dwelling units, provided that no change in fuel type, pipe size, or location or electrical characteristics is required;

viii. Replacement of domestic stoves and domestic ovens in dwelling units, provided no change in fuel type, pipe size, or location or electrical characteristics is required;

ix.The replacement of bathroom exhaust fans in dwelling units; and

x.The application of liquid applied lining material inside an existing chimney.

6.Ordinary elevator maintenance shall include:

i.The following work on elevator brakes:

(1) Installation of new linings;

(2) Replacement of brake switches, brake stand pivot bushings, and bearings or the reaming out and use of oversized pins. Replacement or repair of brake magnets, magnet coils and/or core sleeves;

(3) Renewal of phase splitting coils; and

(4) Re-babbitting of brake pin holes (gearless), and realigning of brake stands to pulleys.

ii. The following controller/selector repairs:

(1) Installation of overload relays and potential switches, and installation or replacement of reverse phase relays;

(2) Replacement of damaged resistance tubes, grids, broken controller panel sections, main power or brake rectifiers, power and light transformers, and microprocessor printed circuit boards. Replacement or reconditioning of dash pots and retarders;

(3) Renewal of switch bases, armatures, hinge pins, coils, contacts and shunt leads; and

(4) Adjustment of controller to original design specifications.

iii. The following work on motor generators:

(1) Installation of four stem brush rigging on exciter, installation or renewal of bearing oil gauges, and renewal of sleeve or ball bearings;

(2) Replacement of generator armatures, commutators, commutator brushes, and turning down and undercutting of commutators;

(3) Rewinding of generator armatures, stators and field controls;

(4) Removal for testing on a work bench, reinsulating, banding and reinstallation of motor generators; and

(5) Repair of solid state drives and adjustments of generator compounding.

iv. The following work on hoist motors:

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(1) Installation or renewal of bearing oil gauges, renewal of sleeve or ball bearings, and re-babbitting of sleeve bearings (gearless);

(2) Replacement of motor armatures, rotors, motor collector rings, commutators, commutator brushes, and turning down and undercutting of commutators;

(3) Rewinding of stators, armatures, and field coils; and

(4) Removal for testing on a work bench, reinsulation, banding and reinstallation of hoist motors and realignment of motors to worm shafts.

v.The following work on machines:

(1) Installation of new demountable drive sheave rims, new drive shafts, new integral drive sheaves, split couplings;

(2) Replacement of worms, gears, worm shaft housings, thrust bearings, thrust housings, external ring gears and pinions, machine drums, solid drive sheaves with demountable drive sheaves, and sheave bearing. Replacement or repair of stop motion switches, slack cable switches, replacement of drive sheave linings. Regrooving of drive sheaves;

(3) Re-babbitting of main bearings, external gears and bearings, and worm shaft housings;

(4) Renewal of sleeve bearings, drum buffers, and drum shafts;

(5) Re-securing of loose brake pulleys and realignment of brake pulleys, with motor gear shaft; and

(6) Removal of bearing shims.

vi. The following work on suspension means, compensating ropes and compensating chains:

(1) Replacement or re-socketing of hoist ropes and replacement of compensating ropes or chains, governor ropes, and hitches; and

(2) Shortening of hoist ropes due to a rope stretch.

vii. The following work on governors:

(1) Re-calibration, sealing, and reconditioning of governors; and

(2) Replacement or reconditioning of governor rope tension sheaves.

viii. The following work on overhead, deflector, car and counterweight sheaves:

(1) Replacement or repair of sheaves, sheave bearings and sheave shafts; and

(2) Re-babbitting of sheave bearings.

ix. The following work on hoistways:

(1) Replacement of traveling cables and other hoistway wiring;

(2) Repair of counterweights, hoistway switches, hydraulic pistons, oil lines in the pit, and repacking of packing glands; and

(3) Repair or replacement of hoistway door equipment, rollers relating cables, gibs, hall buttons, lanterns, position indicator stations, and all existing related equipment, selector tapes, cables, dust covers, toe guards and hoistway fascia, and repair or replacement of all existing pit equipment with like equipment.

x.The following work on rails and guides:

(1) Realignment or replacement of main or counterweight rail sections with like products; and

(2) Repair or replacement of guide shoe liners or car and counterweight guides with like product.

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xi. The following work on cabs:

(1) Installation or replacement of main and auxiliary car operating panels, emergency lighting, communication devices, door protective and reopening devices, car position indicators, and in-car lanterns;

(2) Repair or replacement of operating station on top of cars, door operating devices, motors, linkages, hangers, etc., hoistway door drive mechanisms, clutches, etc., side emergency exit latching devices and electrical switches, floor leveling and selector drive devices, terminal slow down and limiting devices, load weighing devices (on top of car and under car isolation), keyless entry and security devices, top of car intrusion devices, closed-circuit TV surveillance devices, lighting fixtures in the car on top of the car and under the car; and

(3) Replacement of ceilings with code approved materials, and of door sills, cab flooring, walls and panels with materials equivalent to those being replaced in respect to weight and fire resistance.

History

HISTORY:

Amended by R.1993 d.487, effective October 4, 1993.

See: 25 N.J.R. 2159(a), 25 N.J.R. 4592(a).

Amended by R.1993 d.580, effective November 15, 1993.

See: 25 N.J.R. 3692(a), 25 N.J.R. 5145(c).

Amended by R.1995 d.381, effective July 17, 1995.

See: 27 N.J.R. 970(a), 27 N.J.R. 2715(a).

Amended by R.1999 d.424, effective December 6, 1999.

See: 31 N.J.R. 2428(a), 31 N.J.R. 4001(c).

Substituted references to ordinary maintenance for references to ordinary repairs throughout; and in (a), substituted a reference to permit applications for a reference to applications.

Amended by R.2004 d.131, effective April 5, 2004.

See: 35 N.J.R. 5336(a), 36 N.J.R. 1755(a).

Recodified former 5:23-9.3(a) as new (c), and inserted "building" preceding "maintenance" in the introductory paragraph of 1, inserted "or replacement" preceding "of any non-structural member" in vi, substituted "shall" for "will" preceding "be permitted under" in viii and substituted "maintenance" for "repairs" in 3i.

Amended by R.2004 d.467, effective December 20, 2004.

See: 36 N.J.R. 2122(a), 36 N.J.R. 5709(b).

In (b), substituted "Ordinary" for "Such" preceding "maintenance" in the introductory paragraph and rewrote 6iii; in (c), rewrote 3iii.

Amended by R.2007 d.39, effective February 5, 2007 (operative July 1, 2007).

See: 38 N.J.R. 3706(a), 39 N.J.R. 370(a).

In (c)3i, substituted ", including" for ". Replacement of" and deleted "in the electrical subcode, shall not be considered ordinary electrical maintenance" following "required".

Amended by R.2008 d.369, effective December 15, 2008.

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See: 40 N.J.R. 4651(a), 40 N.J.R. 6958(a).

In (c)6ii(2), deleted the last sentence; in (c)6vi, substituted "suspension means" for "hoist ropes"; in (c)6vii(1), deleted ", or replacement of governors with like equipment" following "governors"; and in (c)6xi(3), substituted "sills" for "saddles".

Amended by R.2011 d.270, effective November 7, 2011.

See: 43 N.J.R. 1297(a), 43 N.J.R. 2999(a).

In (c)3i, substituted ", damp/wet or tamper-resistant are required (Sections 210.8, 406.8 and 406.11, respectively, of the electrical subcode)" for "is required".

Amended by R.2012 d.181, effective November 5, 2012.

See: 44 N.J.R. 1757(a), 44 N.J.R. 2556(a).

In (c)1viii, deleted ", except carpeting," preceding "with", and deleted ". However, installation of carpeting in one and two family dwellings shall be permitted under ordinary maintenance" from the end.

Amended by R.2018 d.021, effective January 16, 2018.

See: 49 N.J.R. 306(a), 50 N.J.R. 303(a).

In (c)1xiii, deleted "and" from the end; in (c)1xiv, substituted "; and" for a period; added (c)1xv; rewrote (c)3i; in the introductory paragraph of (c)5, inserted a comma following "ventilation"; in (c)5iv and (c)5v, deleted "and" from the end; rewrote (c)5vi; in (c)5vii, substituted a semicolon for a period at the end; in (c)5viii, substituted "; and" for a period; and added (c)5ix.

Amended by R.2018 d.090, effective March 5, 2018.

See: 49 N.J.R. 2327(a), 50 N.J.R. 955(a).

Rewrote (c)1 through (c)5.

Petition for rulemaking.

See: *51 N.J.R. 1289(b)*.

Annotations

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Case Notes

Municipal order under zoning ordinance to remove sleeping trailers and disconnect utilities used by a refinery repair crew proper exercise of police power; action not preempted by *Occupational Safety and Health Act. Twp. of Greenwich v. Mobil Oil Corp., 504 F.Supp. 1275 (D.N.J.1981).*

ALJ rejected claims by the state that a landlord was not entitled to a grant from the Landlord Rental Repair Program (LRRP) with respect to one of two low-income apartment units owned by him and damaged in Superstorm Sandy because the nature of the repairs that were undertaken for the former unit, including installation, repair or replacement of interior finishes and flooring materials were such that it was fixed to the satisfaction of local building officials. That being so, the fact that the unit continued to be occupied did not disqualify the landlord from the grant.

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Crowell v. Dep't of Community Affairs, Sandy Recovery Div., OAL DKT. NO. CAF 03790-15, 2015 N.J. AGEN LEXIS 554, Initial Decision (July 1, 2015).

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N.J.A.C. 5:23-2.8

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§ 5:23-2.8 Installation of equipment

(a) When the installation, extension or alteration of mechanical equipment, refrigeration, air conditioning or ventilating apparatus, plumbing, gas piping, electric wiring, heating system or other equipment is specifically controlled by the provisions of this chapter, it shall be unlawful to use such equipment until a certificate of occupancy or certificate of approval, as the case may be, has been issued therefor by the construction official having jurisdiction. Use of elevator devices shall be subject to *N.J.A.C. 5:23-12.9*.

1.Exception: Equipment replacement under minor or emergency work may be put into use prior to the issuance of a certificate of approval.

(b) The Department shall have exclusive authority to approve systems for indirect apportionment of heating costs in multiple dwellings.

History

HISTORY:

Amended by R.1991 d.509, effective October 7, 1991.

See: 23 N.J.R. 2236(a), 23 N.J.R. 3001(a).

Stylistic changes.

Amended by R.1996 d.323, effective July 15, 1996, (operative January 1, 1997).

See: *28 N.J.R. 2112(a)*, *28 N.J.R. 3549(a)*.

Amended by R.2003 d.384, effective October 6, 2003.

See: *35 N.J.R. 2422(a)*, *35 N.J.R. 4712(a)*.

Designated the existing paragraph as (a) and added (b).

Amended by R.2011 d.269, effective November 7, 2011.

See: *43 N.J.R. 904(a)*, *43 N.J.R. 3008(a)*.

Added (a)1.

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N.J.A.C. 5:23-2.9

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§ 5:23-2.9 Variations and exceptions

(a) No variations or exceptions from the requirements of any subcode of these regulations may be made, except upon the following findings:

1.That strict compliance with any specific subcode provision, if required, would result in practical difficulty to such owner; and

2.That the exception, if granted, will not jeopardize the health, safety and welfare of intended occupants and the public generally.

(b) Except as may be otherwise specified in this chapter, no variations shall be granted from any of the requirements of N.J.A.C. 5:23-2, 4 or 5.

History

HISTORY:

Amended by 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)*.

Added (b).

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§ 5:23-2.10 Applications for variations

(a) An application for a variation pursuant to this section shall be filed in writing with the construction official and shall state specifically:

1.A statement of the requirements of the subcode from which a variation is sought;

2.A statement of the manner by which strict compliance with said provisions would result in practical difficulties;

3.A statement of the nature and extent of such practical difficulties; and

4.A statement of feasible alternatives to the requirements of the subcode which would adequately protect the health, safety and welfare of the occupants or intended occupants and the public generally.

History

HISTORY:

Administrative Correction to (a): Changed "set" to "state".

See: 22 N.J.R. 2503(b).

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§ 5:23-2.11 Review of variation applications

Within 20 business days next succeeding the receipt by the construction official of the application, it shall be denied or granted by written order stating the reasons therefor. The application shall be deemed denied for purposes of appeal if no decision is forthcoming within such 20-day period. Records of all applications for variation, and actions taken thereon shall be available for public inspection at the enforcing agency during normal business hours.

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§ 5:23-2.12 Final decision on variations

The appropriate subcode official(s) shall make the final determination with respect to matters within their jurisdiction. The construction official shall notify the applicant of that determination. Whenever an application for a variation shall result in contradictory or inconsistent determinations by different subcode officials having jurisdiction pursuant to N.J.A.C. 5:23-3, the construction official shall rule as to which subcode official's determination shall be final, and shall notify the applicant of that ruling. Whenever the construction official shall be certified in a particular subcode, he may modify the determination of the subcode official.

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§ 5:23-2.13 Authority to grant variations

The enforcing agency with plan review responsibility shall have the sole authority to grant variations.

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N.J.A.C. 5:23-2.14

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§ 5:23-2.14 Construction permits--when required

(a) It shall be unlawful to construct, enlarge, repair, renovate, alter, reconstruct or demolish a structure, or change the use of a building or structure, or portion thereof, or to install or alter any equipment for which provision is made or the installation of which is regulated by this chapter without first filing an application with the construction official, or the appropriate subcode official where the construction involves only one subcode, in writing and obtaining the required permit therefor.

1.Notwithstanding any provision of (b) below to the contrary, a permit shall be required for any work to abate violations cited in a Notice of Violation and Order to Terminate (F213) issued after a certificate of occupancy has been issued.

2.A permit is required when undertaking a project involving lead abatement for which a lead abatement clearance certificate is required pursuant to *N.J.A.C. 5:23-2.23(p)*.

(b) The following are exceptions from (a) above:

1.Ordinary maintenance as defined in *N.J.A.C. 5:23-2.7* shall not require a permit or notice to the enforcing agency;

2.Minor work as defined by *N.J.A.C. 5:23-2.17A* shall require a permit. However, work may proceed, upon notice to the enforcing agency, before the permit is issued;

3.Emergency work not involving lead abatement, except that notice shall be given as soon thereafter as is practicable, and a permit shall be applied for not later than 72 hours thereafter.

4.Exceptions to permit requirements for temporary structures, tents, tensioned membrane structures, canopies, and greenhouses are as follows:

i.Temporary structures: A construction permit is not required for the erection, operation or maintenance of any temporary structures (excluding tents, tensioned membrane structures, canopies, and greenhouses) covering an area less than 120 square feet, including all connecting areas or spaces with a common means of egress or entrance and which remain in place for less than 180 days;

ii. Tents, tensioned membrane structures, and canopies: A construction permit is not required for tents, tensioned membrane structures, and canopies that meet all of the criteria in (b)4ii(1) through (5) below. Tents, tensioned membrane structures, and canopies meeting the following criteria shall be subject to the permitting requirements of the Uniform Fire Code (*N.J.A.C. 5:70-2.7*).

(1) The tent, tensioned membrane structure, or canopy is 140 feet or less in any dimension and 16,800 square feet or less in area whether it is one unit or is composed of multiple units;

(2) The tent, tensioned membrane structure, or canopy remains in place or will remain in place for fewer than 180 days;

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(3) The tent, tensioned membrane structure, or canopy is used or occupied only between April 1 and November 30;

(4) The tent, tensioned membrane structure, or canopy does not have a permanent anchoring system or foundation; and

(5) The tent, tensioned membrane structure, or canopy does not contain platforms or bleachers greater than 11 feet in height.

iii.A temporary greenhouse, also called a "hoophouse" or "polyhouse," meeting the criteria stated in *N.J.A.C. 5:23-3.2(d)*, shall not require a permit.

iv. Regardless of whether the tent, tensioned membrane structure, canopy, or greenhouse requires a permit, a permit shall be required for any electrical equipment, electrical wiring or mechanical equipment that would otherwise require a permit.

5.A gas utility company shall not be required to obtain a permit or give notice to the enforcing agency for the replacement of interior gas utility company-owned metering (meter and related appurtenances) with exterior gas utility company owned-metering provided that the work is performed by qualified employees of the gas utility company.

i.When the work is performed by a contractor hired by the gas utility, the following shall apply:

(1) The contractor must be a licensed master plumber or a licensed heating, ventilation, air conditioning, and refrigeration contractor;

(2) The utility company must have in place a quality control program, staffed by employees of the utility company, to oversee the work of the contractor. The quality control personnel will inspect and provide documentation for all work performed by the contractor;

(3) The utility company must deliver, to the local enforcing agency, a list of all addresses where the work will be performed;

(4) The local enforcing agency will randomly choose 10 percent of the addresses and issue permits and perform inspections of the completed work. Fees will be paid for these permits.

(A) If the rate of failed inspections is 20 percent or greater, the Department shall be notified and 50 percent of all of the utility company's work associated with this program must be inspected in accordance with this protocol until the failure rate is reduced to below 20 percent; and

(5) Certificates of approval will be issued only for those addresses where construction permits were issued.

6.A permit shall not be required for a sign that meets all of the following conditions; provided, however, that the construction official shall have authority to require the removal of any sign that creates an unsafe condition or otherwise to require correction of any such condition:

i.It is supported by uprights or braces in or upon the ground surface;

ii. It is not served by an electrical circuit directly connected to the sign;

iii. It is not greater than 25 square feet in surface area (one side); and

iv. It is not more than six feet above the ground (mounted height).

7.Lead abatement work performed on a steel structure or other superstructure or in a commercial building.

8.A construction permit for building work shall not be required for garden-type utility sheds and similar structures that are 200 square feet or less in area, 10 feet or less in height, and accessory to buildings of Group R-2, R-3, R-4, or R-5 and which do not contain a water, gas, oil, or sewer connection. A construction permit for electrical work shall be required, when applicable.

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9.A permit shall not be required for fences six feet or less in height. This exception does not apply to barriers surrounding public or private swimming pools.

10.A construction permit is not required for an outdoor maze, unless it is six feet or greater in height or contains any electrical equipment. Outdoor mazes that do not require a permit are subject to the permitting requirements of the Uniform Fire Code (*N.J.A.C. 5:70-2.7*).

i.For the purposes of applying this requirement, an outdoor maze is an attraction that lacks a roof and is designed to disorient patrons, reduce vision, present barriers, or otherwise impede the flow of traffic and does not consist solely of living rooted plants such as corn stalks or trees, but includes mazes created from plants that have been cut and attached to an object to support them.

(c) An annual construction permit may be issued by the construction official to educational, industrial, institutional, mercantile, business and government facilities based upon submission of the following in duplicate:

1.Identification of the facility and the buildings covered by the application for the annual permit.

2.Identification of the location within the facility where the annual permit records will be maintained.

3.A listing of the names, titles and trade specialties of the facility's full-time maintenance staff.

4.The name of the person responsible for the maintenance logs, job assignments and quality control.

5.A statement from the management of the facility attesting that the maintenance staff performing work under the annual permit are under the direct supervision of a qualified individual, as set forth under *N.J.A.C. 5:23-2.14(e)*1, or are individually qualified in their respective trades.

i.Evidence of qualification shall be journeyman status, civil service status, trade experience, trade school certification, college degree, State licensure pursuant to law or other appropriate evidence of competence.

ii. No person employed on the maintenance staff of a facility shall be deemed to be qualified to engage in lead abatement unless he or she has been certified by the New Jersey Department of Health pursuant to section 3 of P.L. 1993, c.288 (N.J.S.A. 26:20-3) (see *N.J.A.C. 8:62*).

6.A statement from the management explaining their procedures for providing training at Department seminars on construction codes on a regular basis for at least one, but not more than three, individuals per subcode.

7.A statement from the management explaining the procedures of the applicant to ensure proper quality control of the work performed under the annual permit.

8.Receipt of the required annual permit fee and training registration fee.

(d) The Construction Official, upon review of the application, may issue or deny an annual construction permit in whole or in part. The construction permit (Form F-170) shall state that the permit is an annual permit and indicate the technical subcodes in which the facility is approved to do work under the annual permit. A copy of the annual permit shall be forwarded by the Construction Official to the Department of Community Affairs Training Section along with the appropriate training registration fee.

(e) Conditions of the annual permit are as follows:

1.The "annual permit" may be issued for building/fire protection, electrical, mechanical or plumbing work or any combination of those classifications of work, providing that the individual responsible for work done under the annual permit possesses knowledge as evidenced in accordance with *N.J.A.C. 5:23-2.14(c)*5, in the technical work classification for which the annual permit is sought.

i.An approved copy of the annual permit application shall be kept at a facility's maintenance office within the municipality having jurisdiction for review by the Construction Official and appropriate subcode official. The Construction Official shall be notified of the location of the facilities maintenance office.

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2.The life of the annual construction permit shall be limited to one year;

3.The facility shall maintain a construction log of all work performed. The construction log shall contain the date, a brief description and estimated or actual cost of the project. This log shall be subject to a quarterly inspection by the construction official or his authorized representative. Any business record showing when and where work was done and the extent of such work shall be deemed to be a construction log: Applications for the renewal of the "annual permit" shall be filed with the Construction Official at least 60 days prior to the expiration of the current annual permit. The facility application shall make current the information previously submitted to the Construction Official. The application for renewal shall be accompanied by the established fee.

4.The annual permit covers all work subject to this chapter done by the facility's full-time maintenance staff, but shall not include work performed by outside contract even if the contractor is hired by the facility and is working under direct supervision of the facility's maintenance staff. Work performed by outside contract shall be subject to applicable UCC regulations and State Licensure Law.

5.A permanent work log, approved by the construction official, of all work done under the "annual permit" must be maintained at a facilities maintenance office on site or must be available at the time of the inspection upon 24 hours notice of such inspection. The log must contain the date, a brief description of the work, photographs for any work which was not inspected prior to closing as set forth in (e)8 below, and the name of the person supervising the work. The log shall be retained for three years.

6.Architectural or engineering drawings, as required by law for work done under the annual permit, shall be prepared by a registered architect or licensed engineer as defined by the statutory requirements of the professional registration laws of this State and shall be kept permanently on file and be made available to the Construction Official and appropriate subcode official, for review upon request.

7.The appropriate subcode official, at least two (2) times a year, shall perform inspections of the facility for which an annual permit has been issued. The maximum time between inspections shall be a six month period.

8.Work that is normally inspected prior to closing shall be ordered to be reopened by the facility upon written notice from the Construction Official or appropriate subcode official if he has reason to believe that a violation is present. A photograph shall be taken of any work intended to be enclosed without inspection.

9.Any work that is done under the supervision of the facilities maintenance staff and under a regular construction permit shall be entered into the annual permit log. The construction permit number shall be listed as a part of the entry.

10. Training for annual permits shall be provided at the seminars for code officials.

i.The facility shall provide a list of at least one, but not more than three, individuals per subcode who are required to complete five hours of continuing education per year.

ii. The Department shall maintain the training records for each annual permit. The annual permit shall not be renewed unless the facility completes the training for each issued subcode.

iii. The Department shall notify the construction official who issued the permit if the training has not been completed.

11. Any changes to the annual construction permit application shall be forwarded to the Construction Official within 30 days of the change.

12. The following work is not permitted under an annual permit:

i.Any work done on a facility that would result in a change of use of a building or part of a building;

ii. New buildings and additions regardless of size;

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iii. Renovation, alteration or reconstruction work completed between inspection periods in an area in excess of 5,000 square feet per building;

iv. Any work done on a facility that would result in an increase to the area of a building;

v.The installation or alteration of a sprinkler system;

vi. Any work that affects the required means of egress;

vii. Any modification work, other than routine maintenance, that affects life safety systems, such as, but not limited to:

(1) Emergency lighting systems;

(2) Smoke and heat detection systems;

(3) Stand-by generator systems;

(4) Emergency smoke evacuation systems.

viii. Any work which would disturb asbestos and require a permit to perform.

(f) Construction requirements for commercial farm buildings shall be as set forth in *N.J.A.C. 5:23-3.2(d)*.

(g) No person shall construct, enlarge, alter, reconstruct, or demolish a retaining wall or series of retaining walls having a total height four feet or greater, or a retaining wall less than four feet having a negative impact on a foundation, without first obtaining a construction permit. The height of a retaining wall shall be the sum of the heights of all retaining walls on the same slope and shall be measured from the bottom of the footing to the top of the wall.

1.Exceptions: This requirement shall not apply to any retaining wall that is intended to be dedicated to the municipality and is subject to regulation, inspection, and the issuance of bonds under Article 6, Subdivision and Site Plan Review and Approval, of the Municipal Land Use Law, P.L. 1975, c. 291 (*N.J.S.A. 40:55D-37* et seq.) nor shall it apply to any retaining wall subject to review and approval by a county engineer or by the State Department of Transportation.

History

HISTORY:

As amended, R.1981 d.462, eff. December 7, 1981.

See: 13 N.J.R. 390(a), 13 N.J.R. 885(d).

(c)1i: added "under the control and supervision of a person"; (c)1iii: added "any business construction log."

Amended by R.1985 d.351 effective July 15, 1985.

See: 17 N.J.R. 1029(a), 17 N.J.R. 1756(b).

Section substantially amended.

Amended by R.1986 d.213, effective June 16, 1986.

See: 17 N.J.R. 2490(a), 18 N.J.R. 1266(a).

Subsection (e) substantially amended.

Administrative Correction: "facility's" changed from "facilities" throughout.

See: 22 N.J.R. 2503(b).

Amended by R.1990 d.558, effective November 19, 1990.

See: 22 N.J.R. 1969(b), 22 N.J.R. 3483(a).

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Conditional exemption for hoophouses or polyhouses added.

Amended by R.1991 d.60, effective February 19, 1991.

See: 22 N.J.R. 3609(a), 23 N.J.R. 405(b).

Gas utilities exempt from permit and notice requirements.

Amended by R.1991 d.325, effective July 1, 1991.

See: 23 N.J.R. 805(a), 23 N.J.R. 2046(a).

Mechanical work added to (e)1.

Amended by R.1992 d.230, effective June 1, 1992.

See: 24 N.J.R. 168(a), 24 N.J.R. 2052(a).

Form numbers changed in (d).

Amended by R.1993 d.662, effective December 20, 1993.

See: 25 N.J.R. 3891(a), 25 N.J.R. 5918(a).

Amended by R.1995 d.381, effective July 17, 1995.

See: 27 N.J.R. 970(a), *27 N.J.R. 2715(a)*.

Amended by R.1995 d.475, effective September 5, 1995 (operative January 1, 1996).

See: 27 N.J.R. 1716(a), *27 N.J.R. 3325(a)*.

Rewrote (c)6 and (e)10.

Amended by R.1996 d.297, effective July 1, 1996 (operative October 1, 1996).

See: *28 N.J.R. 1586(b)*, *28 N.J.R. 3301(a)*.

In (b) added exception for signs.

Amended by R.1997 d.302, effective July 21, 1997 (operative September 24, 1997).

See: *29 N.J.R. 2202(a)*, *29 N.J.R. 3242(b)*.

Added (b)7.

Amended by R.1998 d.28, effective January 5, 1998.

See: *29 N.J.R. 3603(a)*, *30 N.J.R. 129(a)*.

Rewrote (a); added (a)1 stating exception; amended (e)4 and (e)12iii.

Administrative change.

See: *31 N.J.R. 135(b)*.

Amended by R.1999 d.424, effective December 6, 1999.

See: *31 N.J.R. 2428(a)*, *31 N.J.R. 4001(c)*.

In (a)1 and (b)1, substituted references to ordinary maintenance for references to ordinary repairs.

Amended by R.2000 d.166, effective April 17, 2000.

See: *31 N.J.R. 4151(a)*, *32 N.J.R. 1376(a)*.

In (b), added 8 and 9.

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Administrative correction.

See: *34 N.J.R. 2965(a)*.

Amended by R.2003 d.187, effective May 5, 2003.

See: *34 N.J.R. 4248(a)*, *35 N.J.R. 1939(c)*.

In (b), rewrote 4.

Amended by R.2004 d.67, effective February 17, 2004.

See: *35 N.J.R. 4627(a)*, *36 N.J.R. 949(b)*.

In (b)8, substituted "that" for ", which" preceding "are 100 square feet or less in area", substituted "Group R-2, R-3, R-4 or R-5" for "Use Groups R-2, R-3 or R-4", and inserted "the requirements at" preceding "*N.J.A.C. 5:23-9.9*".

Amended by R.2005 d.228, effective July 18, 2005.

See: *37 N.J.R. 163(a)*, *37 N.J.R. 2673(b)*.

Added (g).

Amended by R.2006 d.157, effective May 1, 2006.

See: *37 N.J.R. 3108(a)*, *38 N.J.R. 1824(a)*.

Deleted (a)1; and in (b), rewrote 4 and added (b)10.

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

See: *38 N.J.R. 1789(a)*, *38 N.J.R. 4175(a)*.

Rewrote (a)1.

Administrative correction.

See: *38 N.J.R. 5355(b)*.

Amended by R.2009 d.126, effective April 20, 2009.

See: *41 N.J.R. 16(a)*, *41 N.J.R. 1725(a)*.

In (b)8, substituted "construction permit for building work" for "permit", inserted "and which do not contain a water, gas, oil or sewer connection", and rewrote the last sentence.

Amended by R.2010 d.291, effective December 20, 2010.

See: *42 N.J.R. 1943(a)*, *42 N.J.R. 3053(a)*.

In (d), inserted a comma following "application" and deleted "C" following "F-170".

Amended by R.2011 d.269, effective November 7, 2011.

See: *43 N.J.R. 904(a)*, *43 N.J.R. 3008(a)*.

In the introductory paragraph of (a), deleted ", or to undertake a project involving lead abatement in accordance with *N.J.A.C. 5:17*," following "chapter"; added (a)2; and rewrote (b)3.

Amended by R.2016 d.116, effective September 19, 2016.

See: *48 N.J.R. 531(a)*, *48 N.J.R. 1908(a)*.

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In the introductory paragraph of (g), inserted "and shall be measured from the bottom of the footing to the top of the wall"; and in (g)1, substituted "Exceptions:" for "Exception", and inserted "nor shall it apply to any retaining wall subject to review and approval by a county engineer or by the State Department of Transportation".

Amended by R.2018 d.021, effective January 16, 2018.

See: *49 N.J.R. 306(a)*, *50 N.J.R. 303(a)*.

Rewrote (b)5.

Amended by R.2018 d.090, effective March 5, 2018.

See: *49 N.J.R. 2327(a)*, *50 N.J.R. 955(a)*.

In (b)8, substituted "200" for "100", and inserted a comma following "oil".

Annotations

Notes

Chapter Notes

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End of Document

N.J.A.C. 5:23-2.15

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NJ - New Jersey Administrative Code > TITLE 5. COMMUNITY AFFAIRS > CHAPTER 23. UNIFORM CONSTRUCTION CODE > SUBCHAPTER 2. ADMINISTRATION AND ENFORCEMENT; PROCESS

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§ 5:23-2.15 Construction permits--application

(a) The application for a permit shall be submitted on the standard Construction Permit Application form prescribed by the Commissioner at *N.J.A.C. 5:23-4.5(b)*2 and shall be accompanied by the required fee, as provided for in this subchapter and *N.J.A.C. 5:23-4*. The application shall contain a general description of the proposed work, its location, the use and occupancy of all parts of the building or structure, and all portions of the site or lot not covered by the building or structure, and such additional information as may be required by the construction official, which shall include, but not be limited to, the following:

1.The name and address of the owner: Where the owner is not a resident of the State, he shall designate a resident as agent for the purpose of service of any notices or orders which may be necessary. Such address shall not be limited to a post office box, but shall specify a physical location where such owner or agent may be found during normal business hours. Where the owner is a corporation, partnership or other business entity, the application shall indicate the names and addresses of the officers, or other responsible persons upon whom service may be made;

2. The street address and lot and block number of the property upon which the building or structure is proposed to be erected;

3.A description of the proposed work, including the use group classification, proposed construction type, lot ground coverage in square feet, total floor area in square feet, total building or structure volume in cubic feet, the total number of plumbing fixtures, the total number of electrical fixtures, outlets and major appliances, a description of the type of heating system, the source of water supply, the mode of sanitary waste disposal and a listing of any special, unusual or hazardous facilities proposed for inclusion in the building or structure;

4.The estimated cost of the work for which a permit is sought, including but not limited to building construction, on-site construction, and all integral equipment, built-in furnishings and finishes. Where any material or labor proposed for installation in the building or structure is furnished or provided at no cost, its normal or usual cost shall be included in the estimated cost;

5.A statement that all required State, county, and local prior approvals have been given, including such certification as the construction official may require;

i.Exception: For permit applications which lack one or more prior approvals, but are otherwise complete, plan review shall proceed as provided at (f)4ii(1) below;

6.For Class 1 structures or for a smoke control system installed in any structure, a list of all materials and work requiring special inspections, and a list of agencies, qualified licensed professionals, or firms intended to be retained for conducting those inspections in accordance with the requirements of the building subcode;

7.If the work involves lead abatement, the applicant shall provide the following:

i.A copy of the scope of work which shall describe precisely the location and extent of the work;

ii.A sketch plan showing the locations where abatement work is to be performed and showing emergency egress routes for any occupants to be in the building during abatement;

iii.A record of all materials to be used for all phases of the job, including encapsulants, enclosures, containment materials and replacement components, as appropriate;

iv.A copy of the lead evaluation report, if any has been done, prepared by a business firm certified by the Department pursuant to *N.J.A.C. 5:17* to do lead evaluation; and

v.The degree to which any lead hazard identified in any report prepared by a lead evaluation firm certified by the Department will be abated; and

8.If the work involves reconstruction, an identification of the work area, except where plans are filed with the application, in which case the work area shall be delineated on the plans.

(b) In addition to the requirements of (a) above, the following information shall be required on any application for a construction permit when such information is available, but not later than the commencement of work.

1.The names and addresses of all contractors engaged or planned for engagement by the owner in the execution of the work.

i.A current validated State builder registration card shall be shown by the contractor and the registration number of the contractor shall be recorded on the permit, pursuant to the New Home Warranty and Builder's Registration Act (*N.J.S.A. 46:3B-1* et seq.), if the project is a one or two family dwelling, condominium or cooperative, unless it is to be built in whole or in part by an owner, in which case an affidavit shall be filed by the owner on a form prescribed by the Department of Community Affairs, in which he acknowledges that work done by him, or by a subcontractor working under his supervision, is not covered under the New Home Warranty and Builders' Registration Act and states that he will disclose this information to any person purchasing the property from him within 10 years of the date of issuance of a certificate of occupancy.

2.The name and license number of the contractor(s) or subcontractor(s) for plumbing; electrical; or heating, ventilating, air conditioning, and refrigeration work, where such work is proposed.

i. Plumbing, electrical, heating, ventilating, air conditioning, and refrigeration work shall not be undertaken except by persons licensed to perform such work pursuant to law, except in the case of a single-family homeowner on his or her own dwelling

ii. The seal and signature of the licensed plumbing; electrical; or heating, ventilating, air conditioning, and refrigeration contractor(s) shall be affixed to the corresponding subcode application form.

3.The name and address of the responsible person who will be in charge of the work and who is responsible to the owner for ensuring that all work is installed and completed in conformity with the regulations. The person may be the design architect or engineer, the contractor or a third party acceptable to the construction official.

4.If the work involves lead abatement, one of the following shall be supplied:

i.The name and Department certification number issued pursuant to *N.J.A.C. 5:17* of any business firm undertaking the lead abatement; or

ii. If the work is to be done by employees of the owner of the property, the name and New Jersey Department of Health certification number issued pursuant to *N.J.A.C. 8:62* of each such employee; or

iii. If the work is to be done on an owner-occupied single family dwelling, a certification by the owner stating that he or she owns and occupies the property as a principal place of residence, will be performing the abatement work, and has received the written information for homeowners prepared by the Department explaining the danger of improper lead abatement, procedures for conducting safe lead abatement, and the availability of certified lead abatement contractors or of any available training for homeowners.

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5.If the work involves fire protection equipment, any contractor performing such work shall have the appropriate certification issued pursuant to *N.J.S.A. 52:27D-25n* et seq. The certification number of the contractor shall appear on the permit application.

i.Exception: Certification shall not be required for licensed electrical contractors or for licensed alarm contractors installing fire alarms.

ii. Exception: Certification shall not be required for homeowners performing work within their residences.

iii. Exception: Certification shall not be required for in-house employees performing routine maintenance work, inspections, or testing of fire protection equipment.

iv. Exception: Certification shall not be required for contractors who install water supply lines outside a building.

6.If the work involves a landscape irrigation system, any contractor performing such work shall be certified pursuant to the Landscape Irrigation Contractors Certification Act, *N.J.S.A. 45:5AA-1* et seq. The seal and signature of the certified contractor shall be affixed to the permit application.

i.Exception: Certification shall not be required for public employees performing work on property of the public entity, for vendors of landscape irrigation components, materials or equipment delivering, rendering advice or assistance or performing normal warranty service for such equipment, for contractors installing or performing work on irrigation equipment to be used solely for agricultural purposes or for licensed plumbing contractors.

ii. Exception: Certification shall not be required for homeowners performing work on landscape irrigation systems on their own properties.

7.If the work involves a burglar alarm, fire alarm, or electronic security system, any contractor performing such work shall be licensed pursuant to *N.J.S.A. 45:5A-18* et seq. The license number of the contractor shall appear on the permit application.

i.Exception: Licensure shall not be required for telephone utility or cable television companies regulated by the Board of Public Utilities or for licensed electrical contractors.

ii. Exception: Licensure shall not be required for homeowners performing work on burglar alarms, fire alarms, or electronic security systems in their own homes.

8.If work involves a home improvement performed by a contractor, such contractor shall be registered pursuant to *N.J.S.A. 56:8-136* et seq. The registration number of the contractor shall appear on the permit application. No number shall be required to be provided by any person performing a home improvement who is not required to be registered, in accordance with (b)8ii, iii, v, vi or viii below. The appropriate license, registration or certification number and documentation shall be provided by any person exempt from registration as a contractor pursuant to (b)8iv or vii below.

i.For purposes of this paragraph, "home improvement" shall mean and include any work subject to the code that involves the reconstruction, alteration, renovation, repair or demolition of the whole or any part of any building in Group R-2, R-3, R-4 or R-5, or in any building or structure appurtenant thereto, or the conversion of an existing building in another group into a building in Group R-2, R-3, R-4 or R-5;

ii. Exception: Registration shall not be required for any person performing a home improvement upon a building or structure in Group R-2, R-3, R-4 or R-5 owned by that person, or by a member of that person's immediate family;

iii. Exception: Registration shall not be required for any person performing a home improvement, without any charge for his or her services, upon a residential or non-commercial property owned by a bona fide charity or other non-profit organization;

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iv. Exception: Registration shall not be required for any person regulated by the State as an architect, professional engineer, landscape architect, land surveyor, electrical contractor, master plumber, locksmith, burglar alarm business, fire alarm business, liquefied petroleum gas marketer, lead evaluation or abatement contractor or asbestos abatement contractor, or any other person in any other related profession requiring registration, certification or licensure by the State of New Jersey, who is acting within the scope of practice of that profession;

v.Exception: Registration shall not be required for any person employed by a community association or cooperative corporation or by a landlord who is making home improvements within the person's scope of employment at the residential or non-commercial property that is owned or leased by the community association or cooperative corporation or landlord;

vi. Exception: Registration shall not be required for any public utility, as defined under *N.J.S.A. 48:2-13*;

vii. Exception: Registration shall not be required for any person licensed as a home financing agency, a home repair contractor or a home repair salesman pursuant to *N.J.S.A. 17:16C-77*, provided that the person is acting within the scope of such license, and provided that such license number shall appear on the permit application;

viii. Exception: Registration shall not be required for any home improvement retailer with a net worth of more than $ 50,000,000 or any employee of such home improvement retailer who is making or selling such home improvements within the person's scope of employment by the home improvement retailer. This exception shall not apply to persons working as subcontractors for any such home improvement retailer.

9.If the work involves home elevation, any contractor performing such work shall be registered pursuant to *N.J.S.A. 56:8-136* et seq. and shall be in compliance with the applicable provisions of *N.J.A.C. 13:45A-17* and 17A. The registration number of the contractor shall appear on the permit application and the application shall include the certification required pursuant to *N.J.S.A. 52:27D-123*.16.

i.For purposes of this paragraph, "home elevation" shall mean and include any home improvement that involves raising an entire building of Group R-2, R-3, R-4, or R-5 to a higher level above the ground.

10. Contractors who are not subject to State licensing, registration or certification shall be subject to any applicable licensing, registration or certification requirement established by municipal ordinance. Any municipal license, registration or certification number issued to any such contractor shall be included in any application for a construction permit for work to be done by such contractor.

11. In the event of any change of contractor or person in charge of work under (b)1 through 10 above, such change shall be filed as an amendment to the application.

(c)A separate application and permit shall be required for each building.

(d) Application for a permit shall be made by the owner, or his or her agent, a licensed engineer, architect, plumbing, electrical, heating, ventilation, air conditioning, and refrigeration, or other contractor employed in connection with the proposed work. If the application is by a person other than the owner, it shall be accompanied by an affidavit of the owner or the authorized person making the application, that the proposed work is authorized by the owner, and that the applicant is authorized to make such application. All issued permits shall remain the property of the owner, even if the application was made by a contractor or authorized agent.

(e) Construction permits for individual tenant spaces in multi-tenant buildings shall be issued pursuant to *N.J.A.C. 5:23-2.23A*.

(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

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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.Site diagram: There shall also be filed a site plan showing to scale the size and location of all the new construction and all existing structures on the site, distances from lot lines and the established street grades; accessible route(s) for buildings required by *N.J.A.C. 5:23-7* and Chapter 11 of the building subcode to be accessible; and it shall be drawn in accordance with an accurate boundary line survey. In the case of demolition, the site plan shall show all construction to be demolished and the location and size of all existing structures and construction that are to remain on the site or plot.

(1) Where any of the conditions in (f)1i(1)(A) through (C) below are met, a plan shall be submitted to the Construction Official detailing the manner in which the adjoining property will be protected. The Construction Official is authorized to utilize special technical services as per *N.J.A.C. 5:23-2.19*. No permit shall be issued until such plan has been filed.

(A) The foundation for the new building is immediately adjacent to an existing foundation, such that the existing foundation may be impacted by the construction work being performed;

(B) The footing for the new building is higher or lower than the footing for an existing building and the distance between the edges of the footings is equal to or less than the distance between the bottoms of the footings; or

(C) The new building roof is higher than the building roof on the adjoining property and the building roof of the adjoining property is a flat, hip or gable roofs with a slope of less than 70 degrees and the roof of the adjoining property is located 20 or fewer feet from the face of the new building.

ii. Building plans and specifications shall contain the following information:

(1) Foundation, floor, roof and structural plans;

(A) For buildings with roof or other truss systems, a truss layout and permanent truss bracing plan shall be submitted. This plan shall show all the permanent lateral and other bracing locations for individual truss members as well as the connections between the truss system and other components of the structural system necessary for the permanent lateral bracing of the entire structural system.

(2) Door, window and finish schedules; and

(3) Sections, details, connections and material designations.

iii. Electrical plans and specifications shall contain: Floor and ceiling plans; lighting, receptacles, motors and equipment; service entry location, line diagram and wire, conduit and breaker sizes.

iv. Plumbing plans and specifications shall contain: Floor plan; fixtures, pipe sizes, and other equipment and materials; riser diagram(s) with pipe sizes, fixture schedule, and sewage disposal.

v.Mechanical plans and specifications shall contain: Floor or ceiling plans; equipment, distribution location, size, and flow; gas riser diagram(s) with pipe sizes and input ratings; location of dampers and safeguards; and all materials.

vi. Energy calculations: Calculations showing compliance with the energy subcode shall be submitted for all new buildings and additions to existing buildings. As provided in (f)1vii below, these calculations shall be signed and sealed by the design professional, with the exception of

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calculations for class 3 structures, which may be submitted by the heating, ventilation, air conditioning, and refrigeration contractor.

(1) For detached one- and two-family residential buildings and other residential buildings three stories or less in height, compliance may be demonstrated by the submission of NJ Clean Energy Program for Residential New Construction compliance documentation or other "above code" program documentation, the submission of printouts from software recognized by the Department, such as REScheck, or conforming with the prescriptive packages described in the current energy subcode compliance bulletin. REScheck software is available from the U.S. Department of Energy at *www.energycodes.gov*.

(A) To document compliance using REScheck, users shall meet or exceed the applicable provisions of the energy subcode. Please see the current energy subcode compliance bulletin for further guidance.

(2) For all other buildings, compliance may be shown with the COMcheck compliance software or equivalent, submission of the compliance forms found in the COMcheck user's manual or the ASHRAE 90.1 user's manual for the edition of ASHRAE adopted under the energy subcode. The COMcheck user's manual and software are available from the U.S. Department of Energy at *www.energycodes.gov*. The ASHRAE 90.1 user's manual is available from the American Society of Heating, Refrigerating and Air-conditioning Engineers Inc., at *www.ashrae.org*.

(A) To document compliance using COMcheck, users shall meet or exceed the applicable provisions of the energy subcode. Please see the current energy subcode compliance bulletin for further guidance.

vii. Engineering details and specifications: The construction official and appropriate subcode official may require adequate details of structural, mechanical, plumbing, and electrical work, including computations, stress diagrams, and other essential technical data to be filed. All engineering plans and computations shall bear the seal and signature of the licensed engineer or registered architect responsible for the design. Plans for buildings shall indicate how required structural and fire-resistance rating will be maintained for penetrations made for electrical, mechanical, plumbing, and communication conduits, pipes, and systems.

(1) Plumbing plans for class 3 structures may be prepared by persons licensed pursuant to "The Master Plumber Licensing Act," *N.J.S.A. 45:14C-1* et seq. Electrical plans for class 3 structures may be prepared by persons licensed pursuant to "The Electrical Contractors Licensing Act," *N.J.S.A. 45:5A-1* et seq.

(2) Whenever the licensing board pursuant to either of the above Acts shall provide for a seal evidencing that the holder is licensed, such shall be acceptable to the enforcing agency in lieu of affidavit.

(3) Mechanical plans for class 3 structures may be prepared by licensed heating, ventilation, air conditioning, and refrigeration contractors.

viii. Work area: For reconstruction work in an existing structure, the work area shall be clearly delineated on the plans.

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

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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 the structural design, specifications, and plans for new construction or substantial improvement of a home in a V zone in a flood hazard area, which must be developed or reviewed by a registered architect or licensed engineer pursuant to the National Flood Insurance Program rules, 44 CFR 60.3.

x.The construction official upon the advice of the appropriate subcode official may waive the requirement for plans when the work is of a minor nature.

xi. Those portions of the plans that are required to be submitted and which are not included at the time of application shall be listed by the design professional as part of the application.

(1) All documents prepared by people other than the design professional shall be reviewed by the design professional and submitted with a letter indicating that they have been reviewed and found to be in conformance with the regulations for the design of the building.

xii. Building, electrical, plumbing and mechanical work required to be shown may be shown on a single set of plans or a single drawing so long as the drawings are clear and legible.

2.Prototype plan filing: Where a design is used repeatedly at different locations in a municipality or throughout the State, the plans and specifications may be submitted for "prototype" release and filed as follows:

i.Two complete sets of the plans and specifications for each prototype shall be submitted with a request for prototype plan release. The plans and specifications shall be signed and sealed by a licensed or registered design professional. The plans and specifications will be stamped as released and the plan number and date will be recorded with the prototype release so that prototype plan release may be confirmed for any subsequent use of the released prototype plans. Mirror-image designs shall not be a permitted option, and shall require separate prototype plan release, except for plans that are validated as identical to the original prototype, as provided in (f)2i(1) below. Prototype applications that include a foundation design shall specify the conditions and limitations of that design;

(1) Plans for a mirror-image design may be submitted with a letter signed and sealed by the design professional stating that the mirror-image design is identical to the original prototype, but reversed;

ii. Permit applications that rely on a released prototype shall consist of two copies of the following permit-specific documents to facilitate a thorough field inspection of the work. (As per *N.J.A.C. 5:23-2.16(e)*, one set of the released plans shall be retained by the construction official and the second set shall be kept at the building site.)

(1)A plot plan that is signed and sealed by a registered architect, licensed professional engineer, or licensed land surveyor that includes the location of all utility services, including septic connections;

(2)A specific foundation design or certification that the prototype foundation design is suitable for the site;

(3)A reference set of plans that includes and clearly identifies each of the options to be used for the building that is the subject of the permit application. The reference set of plans is not required to be signed and sealed;

(4) Exterior elevations of the specific building;

(5) The prototype file identification number;

(6) The plan number and date of the released prototype plan; and

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(7) When an automatic fire sprinkler system is installed, the fire sprinkler system demand, including either hose stream allowances or the required domestic demand, as applicable, at the available water supply shall be documented.

iii. Plans that contain deviations that were not released as part of the prototype shall not be considered a prototype and shall require the submission of a new permit application and application fees for that project to the appropriate plan review agency.

3.Examination of plans: All plans submitted and any amendments thereto accompanied by the required documentation and application, and upon payment of the fee established by the enforcing agency, shall be numbered, docketed and examined promptly after their submission for compliance with the provisions of the regulations.

4.Plan review:

i.Department review: When a review and release of plans by the Department is required pursuant to *N.J.A.C. 5:23-3.11* or requested for a prototype plan intended for use Statewide, the owner or agent of the owner shall file an application for construction plan release for each project, along with three sets of plans (two sets for prototypes), specifications and such other supporting information as the Department may require on forms obtained from the Department. The plans, specifications and other supporting information shall conform to the requirements of (e) above.

(1) Release of plans: Plans complying with the provisions of the regulations shall be released by the Department and written notice of approval shall be given the applicant promptly and no later than 20 business days after the submission thereof. Plans failing to comply with the provisions of the code shall be rejected and a written notice of rejection, stating the grounds for rejection, shall be given to the applicant not later than 20 business days after the submission thereof. Whenever plans have been rejected and are thereafter revised and resubmitted, the revised plans shall be released if the grounds for rejection have been corrected and code compliance has been demonstrated. In that case, a written notice of release shall be given to the applicant not later than seven business days after the resubmission of the revised plans. When the grounds for rejection have not been corrected or when code compliance has not been demonstrated, a written notice of rejection stating the grounds for rejection shall be given to the applicant not later than seven business days after the resubmission of the revised plans.

(2) Endorsement of released plans: All plans and amendments thereto, when approved by the department, shall be stamped or endorsed "released", followed by a notation of the date of plan release. One set of such released plans shall be retained by the department, two sets of such released plans shall be submitted to the local enforcing agency with the application for construction permit as herein provided.

(3) Partial filing: When circumstances require, a project may be filed in part (that is, footings, structural, electrical, plumbing, and so forth). Each partial submittal shall include sufficient detail to assure that the proposed portion of work complies with the regulations. A plan "release" for such a portion of work shall be issued without prejudice as to whether a "release" shall be issued for the entire project.

(4) Construction permits: Owners and their agents shall not apply to a local enforcing agency for a construction permit for any building or structure for which a Department plan review and release is required by N.J.A.C. 5:23-3, unless such review and release has been applied for and received by the applicant as evidenced by presentation of released plans to the local enforcing agency.

(5) Time limitation of application: An application for a plan review shall be deemed to have been abandoned 12 months after date of filing, unless such application has been diligently prosecuted or a release has been issued; except that, for reasonable cause, the Department may grant one or more extensions of time for additional periods not exceeding 90 days each.

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(A) When plans are submitted for local review that are required to be reviewed by the Department, the local enforcing agency shall so notify the owner or agent in writing no later than three business days after the submission of the plans.

ii. Local enforcing agency plan review: Where a Department plan review is not required by the regulations, an applicant for a construction permit shall be deemed to have applied for a local enforcing agency plan review by filing an application for a construction permit.

(1) If required State, county or local prior approvals have not been granted, plan review shall proceed provided that the application for a permit is otherwise complete and the plan review fee has been paid. No permit shall be issued until all required State, county and local approvals are in place.

(A) Exception: Permit applicants applying for plan review of individual owner-occupied one- or two family home addition or alteration projects must have zoning approval in place before plan review shall proceed.

(2) When the plans submitted with an application for a construction permit or amendment thereto are accompanied by plans which have been released by the Department, then further municipal plan review and fee therefor shall not be required. Release of the plans by the Department shall not prevent enforcing agency officials from thereafter requiring correction of any errors in said plans or from issuing a stop work order when in violation of the regulations. In such case the enforcing agency shall notify the Department;

iii. Validity of plan or prototype release: The released plans or prototype (Department or local) shall be valid for the purposes of applying for a construction permit until six months after the operative date of the next edition of the code, as set forth in *N.J.A.C. 5:23-1.6*.

iv. Time limitation of application: An application for a permit for any proposed work shall be deemed to have been abandoned six months after date of filing, unless such application has been diligently prosecuted or a permit shall have been issued; except that for reasonable cause, the construction official may grant one or more extensions of time for additional periods not exceeding 90 days each.

v.Amended plans and specifications: Amendments may be filed at any time; such amendments shall be deemed part of the original application and, when released, shall be filed therewith. Amended plans and specifications shall be required where deviations affect matters controlled by the code and, in the judgment of the subcode official having jurisdiction, such amended plans are necessary to assist in the determination of code compliance. The official may require the affected portions of the work to be halted until amended plans and specifications are released. If the amendment involves a substantial deviation from the original application, a new affidavit of consent may be required by the construction official. If a Department plan review was required originally, the enforcing agency shall not permit an amendment to the plans or specifications unless the amendment has been released by the Department.

vi. Building systems: Structural, electrical and mechanical designs performed and certified by licensed architects or engineers need not be checked in detail by the staff of the enforcing agency, but shall remain as the responsibility of the professional certifying such design.

vii.A schematic or sketch plan, when required pursuant to this subsection, shall not be deemed to be a construction copy of a plan and shall therefore not be required to be signed or sealed by a registered architect or licensed professional engineer.

History

HISTORY:

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Amended by R.1985 d.352, effective July 15, 1985.

See: 17 N.J.R. 1031(a), 17 N.J.R. 1758(a).

(b)1i: deleted text "The registration number of the contractor", and added "A current validated . . . contractor and the".

Amended by R.1985 d.479, effective September 16, 1985.

See: 17 N.J.R. 1462(a), 17 N.J.R. 2248(b).

(b)2ii added. (d) text added "All issued permits . . .".

Administrative Correction: Cleaned up typographical errors.

See: 22 N.J.R. 2503(b).

Amended by R.1992 d.244, effective June 15, 1992.

See: 24 N.J.R. 1147(a), 24 N.J.R. 2243(a).

Text added at (a)6 on Class I structure.

Amended by R.1993 d.353, effective July 19, 1993.

See: 25 N.J.R. 1629(a), 25 N.J.R. 3147(a).

Amended by R.1995 d.381, effective July 17, 1995.

See: 27 N.J.R. 970(a), *27 N.J.R. 2715(a)*.

Amended by R.1995 d.544, effective October 16, 1995.

See: *27 N.J.R. 2827(a)*, *27 N.J.R. 3933(a)*.

Amended by R.1997 d.304, effective July 21, 1997.

See: *29 N.J.R. 2204(a)*, *29 N.J.R. 3248(a)*.

In (e)1, substituted "no fewer" for "no less"; and in (e)1i, inserted reference to accessible routes.

Amended by R.1998 d.28, effective January 5, 1998.

See: *29 N.J.R. 3603(a)*, *30 N.J.R. 129(a)*.

Amended (a)6, (a)7v and (e)3v; inserted (a)8 and (e)1vii.

Amended by R.2003 d.187, effective May 5, 2003.

See: *34 N.J.R. 4248(a)*, *35 N.J.R. 1939(c)*.

Rewrote the section.

Amended by R.2003 d.216, effective May 19, 2003.

See: *35 N.J.R. 16(a)*, *35 N.J.R. 2203(a)*.

Rewrote the section.

Amended by R.2004 d.144, effective April 5, 2004.

See: *35 N.J.R. 4944(a)*, *36 N.J.R. 1753(a)*.

Rewrote (e).

Amended by R.2006 d.32, effective January 17, 2006.

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See: *37 N.J.R. 2918(a)*, *38 N.J.R. 484(a)*.

Added (b)5 through 7; recodified former (b)5 as (b)8 and rewrote the reference to (b)1, 2, 3, 4 as "(b)1 through 7."

Amended by R.2006 d.127, effective April 3, 2006.

See: *37 N.J.R. 4599(a)*, *38 N.J.R. 1572(a)*.

Recodified former (b)8 as (b)10 and rewrote the reference "(b)1 through 7" as "(b)1 through 9"; added (b)8 and (b)9.

Administrative correction.

See: *38 N.J.R. 3776(b)*.

Amended by R.2007 d.124, effective May 7, 2007.

See: *38 N.J.R. 3708(a)*, *39 N.J.R. 1669(a)*.

Rewrote (e)1ix; in (e)4i(4), substituted "Department" for "department"; and added (e)4i(4)(A).

Amended by R.2007 d.125, effective May 7, 2007.

See: *38 N.J.R. 3707(a)*, *39 N.J.R. 1671(a)*.

Added new (e); and recodified former (e) as (f).

Amended by R.2007 d.231, effective August 6, 2007.

See: *39 N.J.R. 722(a)*, *39 N.J.R. 3295(a)*.

In (f)1vi(1), substituted "07-2" for "03-2" and "at *www.nj.gov/dca/codes*" for ", PO Box 802, Trenton, New Jersey 08625"; added (f)1vi(1)(A); in (f)1vi(2), deleted "EZ" following "Check" two times and "or from Pacific Northwest National Laboratory, PO Box 999, ATTN: K5-20, Richland, Washington 99352" following "*www.energycodes.gov*" and substituted "at *www.ashrae.org*" for ", 1791 Tullie Circle, NE, Atlanta, GA 30329"; and added (f)1vi(2)(A).

Administrative correction.

See: *39 N.J.R. 3914(a)*.

Administrative correction.

See: *39 N.J.R. 4571(a)*.

Amended by R.2008 d.39, effective March 3, 2008.

See: *39 N.J.R. 2175(a)*, *40 N.J.R. 1084(a)*.

Added (f)1i(1).

Administrative correction.

See: *40 N.J.R. 1829(a)*.

Amended by R.2009 d.49, effective February 2, 2009.

See: *40 N.J.R. 5318(a)*, *41 N.J.R. 733(a)*.

In the introductory paragraph of (f)2i, inserted a comma following "option", inserted the fourth occurrence of "shall", and inserted ", except for plans that are validated as identical to the original prototype, as provided in (f)2i(1) below"; and added (f)2i(1) and (f)4i(5).

Amended by R.2009 d.162, effective May 18, 2009.

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See: *40 N.J.R. 4268(a)*, *41 N.J.R. 2094(a)*.

Added new (f)4ii(1); and recodified former (f)4ii(1) as (f)4ii(2).

Amended by R.2011 d.270, effective November 7, 2011.

See: *43 N.J.R. 1297(a)*, *43 N.J.R. 2999(a)*.

In (a)6, inserted "or any structure with a smoke control system".

Amended by R.2012 d.139, effective July 16, 2012.

See: *44 N.J.R. 8(a)*, *44 N.J.R. 1969(a)*.

In the introductory paragraph of (f)1vi(1), and in (f)1vi(1)(A) and (f)1vi(2)(A), substituted "11-1" for "07-2"; in (f)1vi(1), deleted "from the Department of Community Affairs, Division of Codes and Standards at *www.nj.gov/dca/codes* or" following "available"; in (f)1vi(1)(A), inserted "meet or" and substituted "IECC/2009" for "IECC/2003 by two percent or more"; in the introductory paragraph of (f)1vi(2), substituted a comma for "and" following "Heating"; and in (f)1vi(2)(A), substituted "ASHRAE/2007" for "ASHRAE/2004".

Amended by R.2013 d.081, effective June 3, 2013.

See: *44 N.J.R. 1303(a)*, *45 N.J.R. 1393(a)*.

In (a)6, substituted "1" for "I"; in the introductory paragraph of (f)1vi, and in (f)1vii(1) and (f)1vii(3), substituted "3" for "III" throughout; in the introductory paragraph of (f)1vi(1), substituted "one- and" for "one-and"; and in (f)1vii(1), substituted "Act,' " for "Act'," twice.

Amended by R.2014 d.117, effective July 21, 2014.

See: *46 N.J.R. 160(a)*, *46 N.J.R. 1685(a)*.

Recodified (f)1ix in part as (f)1ix(1), and in (f)1ix(1), inserted "Exception:", a comma following "renovation", and the last sentence.

Special amendment, R.2014 d.161, effective October 1, 2014 (to expire May 12, 2015).

See: *46 N.J.R. 2186(a)*.

Added new (b)9; recodified former (b)9 and (b)10 as (b)10 and (b)11; and in (b)11, substituted "10" for "9".

Adopted concurrent amendment, R.2015 d.077, effective April 15, 2015.

See: *46 N.J.R. 2186(a)*, *47 N.J.R. 989(b)*.

Provisions of R.2014 d.161 adopted without change.

Amended by R.2016 d.116, effective September 19, 2016.

See: *48 N.J.R. 531(a)*, *48 N.J.R. 1908(a)*.

Added (a)5i.

Amended by R.2018 d.021, effective January 16, 2018.

See: *49 N.J.R. 306(a)*, *50 N.J.R. 303(a)*.

In the introductory paragraph of (a), inserted a comma following "structure"; in (a)6, substituted the first occurrence of "for" for "any structure with", inserted "installed in any structure", and inserted a comma following "professionals"; rewrote (d); and rewrote (f)1iv through (f)1vii.

Amended by R.2018 d.153, effective August 20, 2018.

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See: *49 N.J.R. 2332(a)*, 50 N.J.R. 1888(a).

In the introductory paragraph of (f)1i, substituted "*N.J.A.C. 5:23-7* and Chapter 11 of the building subcode" for "*N.J.A.C. 5:23-7.1*".

Annotations

Notes

Chapter Notes

Case Notes

Zoning permit may be required pursuant to *Municipal Land Use Law but not Uniform Construction Code Act. Acqua Development Corp. v. Township of Holmdel, 287 N.J.Super. 578, 671 A.2d 636 (L.1995).*

Compliance with former *N.J.A.C. 5:23-2.5* requirements for permit to non-contractor owner to perform repairs. *Winn v. Margate City, 204 N.J.Super. 114, 497 A.2d 928 (Law Div.1985).*

Requirement of architect's or engineer's seal on plans does not broaden scope of engineering practice into architecture; engineer's plan limitations. *State Board of Architects v. North, 197 N.J.Super. 349, 484 A.2d 1297 (Ch.Div.1984).*

Prior-approval rule discussion; zoning matters involved in construction must be resolved before issuance of permits. *Bell v. Twp. of Bass River, 196 N.J.Super. 304, 482 A.2d 208 (Law Div.1984).*

Construction permit application and fee requirements under former *N.J.A.C. 5:23-2.5*; municipal requirement for payment of property taxes before issuance of permit invalid as preempted by legislation. *Home Builders League of South Jersey, Inc. v. Evesham Twp., 174 N.J.Super. 252, 416 A.2d 81 (Law Div.1980).*

Construction permit applicant must provide assurances that prior approvals obtained. Riggins v. Pinelands Commission, 8 N.J.A.R. 441 (1985).

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N.J.A.C. 5:23-2.15A

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 52 No. 16, October 5, 2020

NJ - New Jersey Administrative Code > TITLE 5. COMMUNITY AFFAIRS > CHAPTER 23. UNIFORM CONSTRUCTION CODE > SUBCHAPTER 2. ADMINISTRATION AND ENFORCEMENT; PROCESS

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§ 5:23-2.15A Construction permit for a single-family residence

(a) Any application for a construction permit for a single family residence shall be accompanied by at least two copies of plans drawn to scale, with sufficient clarity and detailed dimensions to show the nature and character of the work to be performed. Plans submitted shall not be required to show more detail or include more information than is reasonably necessary to assure compliance with the requirements of the Uniform Construction Code and rules in this chapter.

(b) Plans containing the following information shall be considered to meet the requirements of (a) above:

1.Site diagram consisting of a site plan showing size and location of all new and existing construction on the site with distances from lot lines and indicating new building services, location and size.

2.Construction plans consisting of a scale drawing showing foundation, floor plans, and elevations, including structural framing notes for all floors, ceilings and roofs. Only girders and columns need be identified and located on the plan. Included on the drawings shall be a loading schedule indicating the live loads for which the structure is designed.

3.The following details and submissions shall be required:

i.A cross section through one typical wall showing construction details from footing to and including roof framing. This section shall indicate all construction materials used including roofing, vapor barriers, sheathing type and thickness, insulation type and thickness, windows, glazing type if other than standard window glazing is used, interior finish material, floor type and thickness, structure, foundation and footings. Decorative material shall not be required to be shown unless it contributes to the structural integrity of the section.

ii. When roof or other truss systems are used, the details required by *N.J.A.C. 5:23-2.15(f)*1ii(1)(A) shall be shown.

iii. Electrical details indicating lighting; receptacles; motors and equipment; smoke detectors; service entrance locations; size and type (overhead or underground); panel size, location; number of proposed circuits. A symbol legend shall be included.

iv. Plumbing details indicating the locations of fixtures and a notice or table listing water and drainage pipe sizes. A note stating if sewage disposal is to public sewer or individual septic system shall be included.

v.Mechanical details indicating the type of heating system; location, size and type of heating unit, noting the distribution method and indicating design rates, location of fire dampers and safeguards; and location, type and size of flue.

vi. Energy subcode compliance, applicable to new residences and additions to existing residences, shall be demonstrated with either detailed calculations, the submission of NJ Clean Energy Program for Residential New Construction compliance documentation or other "above code" program documentation, the submission of printouts from software recognized by the Department,

such as REScheck, or conforming with the prescriptive packages described in the current energy subcode compliance bulletin. REScheck software is available from the U.S. Department of Energy at www.energycodes.gov.

(1) To document compliance using REScheck, users shall meet or exceed the applicable requirements of the energy subcode. Please see the current energy subcode compliance bulletin for further guidance.

4.The drawings shall bear the seal and signature of the registered architect or licensed engineer who prepared the plans 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.

i.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 the purposes of ensuring compliance with the regulations.

ii. Plumbing plans; electrical plans; and heating, ventilating, air conditioning, and refrigeration plans may be prepared by licensed plumbers, licensed electrical contractors, and licensed heating, ventilating, air conditioning, and refrigeration contractors, respectively, in accordance with this subchapter.

(1) Energy subcode compliance documentation from (b)3vi above may be submitted by the licensed heating, ventilating, air conditioning, and refrigeration contractor.

5.Construction plans, and electrical, plumbing, and mechanical details may be shown on more than one drawing.

6.Where a permit application is based upon a released prototype plan, the permit application shall include the items listed at N.J.A.C. 5:23-2.15(f)2ii.

7.The Construction Official, upon the advice of the appropriate subcode official, may waive any or all of the requirements for plans in (b)1 through 6 above when the work is of a minor nature.

History

HISTORY:

Amended by R.2003 d.216, effective May 19, 2003.

See: 35 N.J.R. 16(a), 35 N.J.R. 2203(a).

In (b)3, inserted "and submissions" following "details" in the introductory paragraph, added new ii, recodified former ii through iv as iii through v and added vi.

Administrative correction.

See: 35 N.J.R. 2865(a).

Amended by R.2004 d.144, effective April 5, 2004.

See: 35 N.J.R. 4944(a), 36 N.J.R. 1753(a).

Rewrote (b)6.

Administrative correction.

See: 39 N.J.R. 4571(a).

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Amended by R.2012 d.139, effective July 16, 2012.

See: *44 N.J.R. 8(a)*, *44 N.J.R. 1969(a)*.

In (b)3vi, substituted "REScheck" for "RES Check" twice and "11-1" for "03-2", and deleted "from the Department of Community Affairs, Division of Codes and Standards, PO Box 802, Trenton, New Jersey 08625 or" following "available".

Recodified from *N.J.A.C. 5:23-9.2* and amended by R.2013 d.081, effective June 3, 2013.

See: *44 N.J.R. 1303(a)*, *45 N.J.R. 1393(a)*.

Section was "Interpretation: Construction Permit for a single-family residence". In (b)3vi, inserted ", applicable to new residences and additions to existing residences," and the first occurrence of "the submission of"; and rewrote (b)4.

Amended by R.2018 d.021, effective January 16, 2018.

See: *49 N.J.R. 306(a)*, *50 N.J.R. 303(a)*.

Rewrote (b)3vi.

Annotations

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N.J.A.C. 5:23-2.16

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 51 No. 15, August 5, 2019

NJ - New Jersey Administrative Code > TITLE 5. COMMUNITY AFFAIRS > CHAPTER 23. UNIFORM CONSTRUCTION CODE > SUBCHAPTER 2. ADMINISTRATION AND ENFORCEMENT; PROCESS

§ 5:23-2.16 Construction permits--procedure

(a) Action on application: The construction official or the appropriate subcode official in the case of construction involving only one trade or subcode, shall examine or cause to be examined all applications for permits and amendments thereto, and approve or deny in whole or in part the application, within 20 business days. If the application is denied in whole or in part, the enforcing agency shall set forth the reasons therefor in writing. If an enforcing agency fails to grant, in whole or in part, or deny an application within 20 business days, such failure shall be deemed a denial of the application for purposes of an appeal to the Construction Board of Appeals, unless such period of time has been extended with the consent of the applicant. Whenever plans have been rejected and are thereafter revised and resubmitted, the revised plans shall be released if the deficiencies that were stated as grounds for rejection have been corrected and code compliance has been demonstrated. In that case, a written notice of release shall be given to the applicant not later than seven business days after the resubmission of the revised plans. When the grounds for rejection have not been corrected or when code compliance has not been demonstrated, a written notice of rejection stating the grounds for rejection shall be given to the applicant not later than seven business days after the resubmission of the revised plans.

1.Exception: For a building designed in conformance with the one-and two-family dwelling subcode, where the Department or local enforcing agency has released a prototype plan which is to be used for the work covered by the permit application, the construction official shall act on the application within three business days.

i.Where the prototype release did not include the foundation detail, the construction official shall act on the application within seven business days.

2.Exception: For a building designed in conformance with the building subcode, where the Department or local enforcing agency has released a plan which is to be used for the work covered by the permit application, provided that the permit is complete, the construction official shall act on the application within five business days.

3.Exception--Plan Release with Conditions and Permit Issuance: In buildings of Group B, F, M, or S, for alteration or reconstruction projects performed in accordance with N.J.A.C. 5:23-6, unless the code official finds that the plans are so deficient that they cannot be used as a means of determining code compliance upon inspection, the construction official shall act on the permit application by identifying and providing to the permit applicant a list of those conditions that require correction for code compliance, as follows:

i.A plan release with conditions shall mean that a list of code deficiencies identified through plan review shall be attached to the plans with the condition that the deficiencies so identified will have been corrected and will be code compliant upon inspection.

ii. The plan release with conditions shall identify any deferred submittals necessary to perform an inspection.

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iii.A timeframe for the receipt by the enforcing agency of the deferred submittals and for the correction of code deficiencies shall be specified in the plan release with conditions. If revised drawings are determined to be necessary, a timeframe for submitting revised drawings shall be specified in the plan release with conditions.

iv. The plans shall be released with conditions and the permit application shall be acted upon following the written acceptance by the permit applicant of the conditions attached to the plan release. When the list of conditions attached to the plan release is provided to the permit applicant, the enforcing agency shall provide a copy of the conditions attached to the plan release to the design professional of record.

(1) The issuance of a plan release with conditions notwithstanding, the construction permit shall not be issued until the conditions of all prior approvals, as defined at *N.J.A.C. 5:23-1.4*, have been met in accordance with *N.J.A.C. 5:23-2.15(a)*5.

v.Plan release with conditions shall not apply to a change of use or to a change in the character of use in accordance with N.J.A.C. 5:23-6.

(b) Suspension of permit: Any permit issued shall become invalid if the authorized work is not commenced within 12 months after issuance of the permit, or if the authorized work is suspended or abandoned for a period of six months after the time of commencing the work.

(c) Previous approvals: The rules shall not require changes in the plans, construction or designated use of a building for which a lawful permit has been heretofore issued or otherwise lawfully authorized, and the construction of which shall have been actively prosecuted within six months after the operative date of the rules and completed with dispatch. This six months provision shall also apply to subsequent amendments.

(d) Signature to permit: The construction official shall attach his signature to every permit; or he may authorize a subordinate to affix such signature thereto. By doing so he shall certify that each responsible subcode official shall have reviewed and approved the application for permit.

(e) Released plans: The construction official shall stamp or endorse in writing both sets of plans released, and one set of such released plans shall be retained and the other set shall be kept at the building site, open to inspection of the construction official or the construction official's authorized representative at all reasonable times.

1.For plans released pursuant to (a)3 above, the conditions shall be attached to the plans that are retained on site and the plans that are retained by the enforcing agency and shall be available for use in performing inspections.

(f) Revocation of permits:

1.The construction official may revoke a permit or approval issued under the provisions of this code in the following cases:

i.If the applicant has submitted any false statement or misrepresentation of fact in the application or on the plans on which the permit or approval was based; or

ii. If the project for which the permit was obtained is not completed by the third anniversary of the date of the issuance of the permit. If a project is not completed by such date, the permit holder may apply to the enforcing agency for a one-year extension of time for completion of the project. The enforcing agency shall not unreasonably withhold approval of any such extension request. If the project is not completed within the time allowed, the enforcing agency shall take such action under the code as may be appropriate, including, without limitation, demolition of the structure, in which case the legal authority of the jurisdiction shall institute appropriate action against the owner of the property for recovery of the costs incurred. The provisions of this subparagraph shall not apply to:

(1) Improvements to the interior of a building in which the permit holder is currently residing, if such improvements are not visible from outside of the property;

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(2) Any building in which all exterior work and all required site improvements have been completed; or

(3) Any project currently under the control of a mortgagee in possession.

(g) Approval of part: The construction official shall issue a permit for the construction of foundations or any other part of a building or structure before the entire plans and specifications for the whole building or structure have been submitted, provided adequate information and detailed statements have been filed complying with all the pertinent requirements of this code. The holder of such permit for the foundations or other part of a building or structure shall proceed at his own risk with the building operation and without assurance that a permit for the entire structure will be granted.

(h) Posting of permit: A true copy of the construction permit shall be kept on the site of operations open to inspection during the entire time of prosecution of the work and until the completion of the same.

(i) Notice of start: At least 24 hours notice of start of work under a construction permit shall be given to the construction official.

(j) Conditions of permit: The issuance of the construction permit shall be conditioned upon the following:

1.The payment of appropriate fees;

2.That work will conform to the requirements of the code applicable to the work for which the permit has been issued including prior approvals and any approved amendments thereto;

3.That the permit is a license to proceed with the work and shall not be construed as authority to violate, cancel or set aside any of the provisions of the regulations;

4.That the owner, his agent, contractor or other employees will assist the enforcing agency in its inspection work, if requested; and

5.That all escrows required to be paid by the applicant, pursuant to *N.J.A.C. 5:23-4.17(d)*, in connection with work done under permits issued for development-wide violation correction, pursuant to *N.J.A.C. 5:23-2.35(a)*1, have been paid unless there is an appeal pending. For purposes of applying this paragraph, any escrow due from any person or entity affiliated with the applicant by way of having any common officers, directors, or shareholders with at least a ten percent interest shall be deemed to be due from the applicant.

(k) Upon request of the local health department, the construction official shall supply copies of permits issued for lead abatement work.

History

HISTORY:

Amended by R.1993 d.420, effective September 7, 1993.

See: 25 N.J.R. 2158(a), 25 N.J.R. 4072(a).

Amended by R.1995 d.381, effective July 17, 1995.

See: 27 N.J.R. 970(a), *27 N.J.R. 2715(a)*.

Amended by R.1995 d.544, effective October 16, 1995.

See: *27 N.J.R. 2827(a)*, *27 N.J.R. 3933(a)*.

Amended by R.1997 d.409, effective October 6, 1997.

See: *29 N.J.R. 2736(a)*, *29 N.J.R. 4281(a)*.

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Amended by R.1998 d.36, effective January 5, 1998.

See: *29 N.J.R. 4214(a)*, *30 N.J.R. 193(a)*.

Deleted (k); recodified existing (*l*) as (k).

Amended by R.2003 d.216, effective May 19, 2003.

See: *35 N.J.R. 16(a)*, *35 N.J.R. 2203(a)*.

Rewrote the section.

Amended by R.2004 d.144, effective April 5, 2004.

See: *35 N.J.R. 4944(a)*, *36 N.J.R. 1753(a)*.

In (a), rewrote 1 and added 2.

Amended by R.2004 d.364, effective October 4, 2004 (operative January 14, 2005).

See: *36 N.J.R. 2604(a)*, *36 N.J.R. 4440(a)*.

Rewrote (f).

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

See: *38 N.J.R. 1789(a)*, *38 N.J.R. 4175(a)*.

In (j)4, substituted "; and" for a period at the end; and added (j)5.

Amended by R.2007 d.124, effective May 7, 2007.

See: *38 N.J.R. 3708(a)*, *39 N.J.R. 1669(a)*.

In (a)2, deleted "prototype" preceding "plan", inserted "provided that the permit is complete,", and substituted "five" for "seven".

Administrative correction.

See: *40 N.J.R. 3991(a)*.

Amended by R.2010 d.291, effective December 20, 2010.

See: *42 N.J.R. 1943(a)*, *42 N.J.R. 3053(a)*.

In (f)1ii, deleted "or January 24, 2005, whichever is later" following the second occurrence of "permit" and deleted "the" preceding "such date".

Amended by R.2012 d.181, effective November 5, 2012.

See: *44 N.J.R. 1757(a)*, *44 N.J.R. 2556(a)*.

In the introductory paragraph of (a), substituted "therefor" for "therefore"; and added (a)3 and (e)1.

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Construction permit could be voided by developer suspending construction for period of more than six months. *Palatine I v. Planning Bd. of Tp. of Montville, 133 N.J. 546, 628 A.2d 321 (1993).*

Determination as to whether conditions of a prior approval have been met is made by the agency or official authorized to issue the prior approval, not the construction code enforcing agency. *Club Flirt v. Dep't of Community Affairs, OAL Dkt. No. CAF 09333-06, 2007 N.J. AGEN LEXIS 336,* Final Decision (March 26, 2007).

Appeal of a local planning board's decision that construction does not conform to the approved site plan is to the Law Division of Superior Court; in the event of a final court decision reversing the planning board's ruling, any order to stop construction that was based on the planning board's ruling would be rescinded. A planning board's ruling cannot be contested indirectly in an administrative proceeding to hear an appeal of the stop construction order that is a necessary consequence of the planning board's ruling. *Club Flirt v. Dep't of Community Affairs, OAL Dkt. No. CAF 09333-06, 2007 N.J. AGEN LEXIS 336,* Final Decision (March 26, 2007).

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N.J.A.C. 5:23-2.16A

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 51 No. 15, August 5, 2019

NJ - New Jersey Administrative Code > TITLE 5. COMMUNITY AFFAIRS > CHAPTER 23. UNIFORM CONSTRUCTION CODE > SUBCHAPTER 2. ADMINISTRATION AND ENFORCEMENT; PROCESS

§ 5:23-2.16A. Records retention

(a) Copies of the following documents shall be retained by the construction official for the life of the building or structure:

1.Construction applications;

2.Permits;

3.Permit updates;

4.Decisions on applications for variations;

5.Decisions of the Construction Board of Appeals;

6.Certificates of occupancy;

7.Elevator inspections;

8.The ongoing inspection control card; and

9.Notices of unsafe structure.

(b) Permits that have been revoked shall be kept for at least three years, or until the building or structure is demolished, whichever comes first.

(c) Plans and specifications including amended drawings, shall be retained by the construction official for a period of at least 10 years unless litigation is pending.

1.Plans and specifications, including amended drawings, shall be retained for the life of the building or structure for the following:

i.Hospitals and emergency care facilities;

ii. Fire, rescue and police stations;

iii. Designated emergency shelters;

iv. Designated emergency preparedness, communication, and operation centers;

v.Power generating stations;

vi. Buildings of Groups H-1 or H-2;

vii. Prisons;

viii. Casino hotels;

ix. Aviation control towers;

x.Air traffic control centers; and

xi. Emergency aircraft hangers.

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2.Inspection and certificate logs shall be retained by the construction official for a period of at least 10 years.

(d) Copies of additional documents may be retained at the discretion of the construction official.

History

HISTORY:

New Rule, R.2006 d.24, effective January 17, 2006.

See: *37 N.J.R. 2111(a)*, *38 N.J.R. 485(a)*.

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N.J.A.C. 5:23-2.17

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§ 5:23-2.17 Demolition or removal of structures; abandoned wells

(a) Service connections: Before a structure can be demolished or removed, the owner or agent shall notify all utilities having service connections within the structure, such as water, electric, gas, sewer and other connections. A permit to demolish or remove a structure shall not be issued until releases are obtained from all utilities that provided service to the property, stating that their respective service connections and appurtenant equipment, such as meters and regulators, have been removed or sealed or plugged in a safe manner.

(b) Abandoned wells:

1.In the event that there is a well on the property that has been abandoned, or that will be abandoned in conjunction with the proposed demolition, a permit to demolish or remove a structure on that property shall not be issued until a certification has been obtained from a well driller licensed by the Department of Environmental Protection indicating that the well has been sealed in accordance with N.J.A.C. 7:9-9. If such certification is not presented within 15 days of the application for the permit, the construction official shall give notice of the absence of such certification to the Bureau of Water Allocation, Department of Environmental Protection, PO Box 029, Trenton, NJ 08625-0029.

2.Notice shall also be given by the construction official to the Bureau of Water Allocation in the event of any demolition activity found to have been undertaken without a permit at a building or premises currently or previously served by a well and in any other case in which no permit application for demolition has been made but the construction official becomes aware that a well has been, or is about to be, abandoned without having been sealed by a licensed well driller.

(c) Notice to adjoining owners: Only when written notice has been given by the applicant to the owners of adjoining lots and to the owners of wired or other facilities, of which the temporary removal may be necessitated by the proposed work, shall a permit be granted for the demolition or removal of a building or structure.

(d) Lot regulation: Whenever a structure is demolished or removed, the premises shall be maintained free from all unsafe or hazardous conditions by the proper regulation of the lot, restoration of established grades and the erection of the necessary retaining walls and fences in accordance with the provisions of the appropriate subcodes.

(e) Asbestos abatement: Before a structure can be demolished or removed, the owner or agent shall document that the requirements of USEPA 40 CFR 61 subpart M have been or shall be met. A permit to demolish or remove the structure shall not be issued until the owner or agent notifies the enforcing agency that all friable asbestos or asbestos-containing material that will become friable during demolition or removal has been or will be properly abated prior to demolition.

History

HISTORY:

Amended by R.1993 d.198, effective June 7, 1993.

See: 24 N.J.R. 1422(a), 25 N.J.R. 2519(b).

Amended by R.1993 d.420, effective September 7, 1993.

See: 25 N.J.R. 2158(a), 25 N.J.R. 4072(a).

Amended by R.1997 d.409, effective October 6, 1997.

See: *29 N.J.R. 2736(a)*, *29 N.J.R. 4281(a)*.

Amended by R.1998 d.36, effective January 5, 1998.

See: *29 N.J.R. 4214(a)*, *30 N.J.R. 193(a)*.

Added (b); and recodified existing (b) through (d) as (c) through (e).

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§ 5:23-2.17A Minor work

(a) The issuance of a permit shall not be required before minor work may proceed. The owner, or an architect or contractor acting on behalf of the owner, shall, however, provide notice of the work to the enforcing agency before work begins.

(b) Notice of work; application:

1.Notice of minor work shall be oral or written and submitted in person or electronically to local enforcement agency and shall be given before work commences;

2.In addition to the notice, the owner or his or her agent shall be required to file a permit application. The completed permit application shall be delivered in person or by mail to the enforcing agency, within five business days from the date of the notice. The fee shall be paid prior to the issuance of the construction permit.

(c) Minor work:

1.Minor work shall mean and include:

i.The construction or total replacement of any porch or stoop that does not provide structural support for any roof or portion of a building;

ii. Renovation or alteration work in an existing one or two-family dwelling, provided that no primary structural members are altered in any way, and further provided that the work does not constitute reconstruction; and

iii. Repair or replacement with no reconfiguration of space of any non-structural component such as a partition in structures other than one- and two-family dwellings; or

iv. Repair and/or renovation work in a Group B, Group F, Group M, or Group S occupancy performed in accordance with N.J.A.C. 5:23-6, but shall not include work categorized as ordinary maintenance pursuant to N.J.A.C. 5:23-2.7.

2.Minor work shall also mean and include the replacement of any existing plumbing piping work with new and approved material of like capacity; the installation of drinking fountains and condensate drains in existing structures; the replacement of existing water heaters with new ones of like capacity; and the new installation of fixtures in existing space of dwellings where the new installation of additional fixtures can be accommodated with no increase in the size of the water distribution system, water service, or house drain.

3.Minor work shall also mean and shall include the replacement of existing boilers, warm air furnaces, air conditioning units, and air conditioning condensing units with new appliances of like capacity.

4.Minor work shall also mean and include new electrical work incidental to the installation of air conditioning, equipment, clothes dryers, and ranges or ovens in one and two-family dwellings; the installation of five or fewer outlets where existing circuits and/or available space for circuits and service

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are adequate to support the load in one and two-family dwellings (fishing shall be considered minor work regardless of the number of fixtures/receptacles); the replacement of existing wiring with new wiring of the same capacity in one- and two-family dwellings provided that the new wiring shall be of a type approved for the use by the code.

5.Minor work shall also mean and include the following:

i.The installation of any fire detection or suppression device in any one-or two-family dwelling;

ii. The installation of a radon mitigation system provided no new electrical work is required;

iii. The installation of a burglar alarm, security system, or doorbell in structures other than one- and two-family dwellings.

(1) Exception: Controlled, delayed, or sensor released egress doors;

iv. The installation of communications wiring in any Class 1 or Class 2 structure or any Class 3 structure involving the penetration of a fire-resistance rated assembly.

(1) For the purposes of applying this provision, communications wiring shall mean any wiring covered by Chapter 8 of the electrical subcode. Communications wiring shall also include data circuits between computers/information technology equipment, which may be classified as "communications circuits," in accordance with Article 725 of the electrical subcode; and

v.Any change of an existing transmission means from a digital alarm communicator transmitter to a fire alarm supervising station.

(1) For the purposes of applying this provision, transmission means shall mean the existing phone line(s) that transmit fire alarm signals from a digital alarm communicator transmitter to the supervising station. A certified fire alarm service company, licensed fire alarm company or licensed electrical contractor shall submit Form F-391 signed by the contractor to provide a verification statement in writing to the fire subcode official within 24 hours that all required signals remain operational after the new transmission means is installed.

6.Minor work shall not include lead abatement.

7.Minor work on elevator devices shall also mean and include work as outlined in N.J.A.C. 5:23-12.8(b) and not involving any structural modification to a building.

(d) Inspection of minor work:

1.Inspections shall be required for minor work and the enforcing agency shall inspect any such work within three business days of the request for inspection;

i.Exception: The replacement of an existing transmission means shall not require an onsite inspection by the fire subcode official as long as the verification form required by (c)5v(1) above is received within 24 hours of installation; and

2.The construction official shall issue a certificate of approval stating that the work performed under a Minor Work Permit substantially complies with the UCC. The inspection shall be based upon what is visible at the time of said inspection and the certificate of approval shall so indicate.

History

HISTORY:

Amended by R.1991 d.509, effective October 7, 1991.

See: 23 N.J.R. 2236(a), 23 N.J.R. 3001(a).

Stylistic changes.

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Amended by R.1993 d.580, effective November 15, 1993.

See: 25 N.J.R. 3692(a), 25 N.J.R. 5145(c).

Amended by R.1993 d.663, effective December 20, 1993.

See: 25 N.J.R. 4546(a), 25 N.J.R. 5927(a).

Amended by R.1995 d.381, effective July 17, 1995.

See: 27 N.J.R. 970(a), 27 N.J.R. 2715(a).

Amended by R.1995 d.476, effective September 5, 1995 (operative January 1, 1996).

See: 27 N.J.R. 1846(a), 27 N.J.R. 3325(b).

Rewrote (d).

Amended by R.1995 d.564, effective November 6, 1995 (operative March 1, 1996).

See: 27 N.J.R. 2829(a), 27 N.J.R. 4281(b).

N.J.A.C. 5:23-2.17A(c)6xxv through xxvii, as added by R.1995 d.564, operative May 1, 1996.

Amended by R.1998 d.28, effective January 5, 1998.

See: 29 N.J.R. 3603(a), 30 N.J.R. 129(a).

Amended (c)1i through (c)1iii.

Amended by R.2000 d.166, effective April 17, 2000.

See: 31 N.J.R. 4151(a), 32 N.J.R. 1376(a).

In (c)6, inserted a reference to 2508 in vii, inserted a new xxv, and recodified former xxv through xxvii as xxvi through xxviii.

Amended by R.2003 d.473, effective December 15, 2003.

See: 35 N.J.R. 2421(a), 35 N.J.R. 5543(a).

In (c)6, substituted "modification" for "alteration".

Amended by R.2004 d.467, effective December 20, 2004.

See: 36 N.J.R. 2122(a), 36 N.J.R. 5709(b).

In (c), rewrote 4.

Amended by R.2008 d.369, effective December 15, 2008.

See: 40 N.J.R. 4651(a), 40 N.J.R. 6958(a).

In the introductory paragraph of (c)6, substituted "in N.J.A.C. 5:23-12.8(b)" for "below" and deleted "and as scoped within the applicable sections of Part XII of ASME A17.1 referenced in the building subcode:" from the end; and deleted (c)6i through (c)6xxviii.

Amended by R.2011 d.269, effective November 7, 2011.

See: 43 N.J.R. 904(a), 43 N.J.R. 3008(a).

In (c)2, deleted "hot" preceding "water heaters", substituted "bathtubs" for "tubs", and inserted "clothes"; added new (c)3; and recodified former (c)3 through (c)6 as (c)4 through (c)7.

Amended by R.2011 d.270, effective November 7, 2011.

See: 43 N.J.R. 1297(a), 43 N.J.R. 2999(a).

Incorporated the amendment by R.2011 d.269; and in (c)4, substituted "fewer 125 or 250" for "less 110 or 220".

Amended by R.2012 d.139, effective July 16, 2012.

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See: 44 N.J.R. 8(a), 44 N.J.R. 1969(a).

In (c)5iv(1), inserted "and" at the end; and added (c)5v and (d)1i.

Amended by R.2012 d.181, effective November 5, 2012.

See: 44 N.J.R. 1757(a), 44 N.J.R. 2556(a).

Added (c)8.

Amended by R.2018 d.090, effective March 5, 2018.

See: 49 N.J.R. 2327(a), 50 N.J.R. 955(a).

Rewrote (b) and (c); and in the introductory paragraph of (d)1, substituted "three business days" for "30 days".

Petition for rulemaking.

See: *51 N.J.R. 1289(b)*.

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N.J.A.C. 5:23-2.18

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§ 5:23-2.18 Inspections

(a) Preliminary inspection: Before issuing a permit, the construction official and appropriate subcode official shall, where necessary, examine or cause to be examined all buildings, structures and sites for which an application has been filed for a construction permit.

(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.The bottom of footing trenches before placement of footings;

(1) In the case of pile foundations, a pile log and certification prepared by a licensed design professional shall take the place of the inspection required by (b)1i above. Such certification shall include, but not be limited to, verification that the size, type, and location of the piles conforms to the released plans and that the piles are properly set to support the design loads. Such certification shall be based upon personal observations made by the design professional at the site;

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

(1) For new construction, a foundation location survey showing all building corners of the foundation and the elevation of the top of the foundation wall shall be submitted to the construction official as soon as possible after the installation of the foundation wall. It is not necessary for work to cease for the preparation and submission of this survey. A land surveyor licensed in the State of New Jersey shall prepare the survey. The proposed foundation location and elevation as shown on the original plot plan shall also be shown on the foundation location survey.

(A) Exception: A foundation location survey shall not be required for additions, decks, swimming pools, sheds or similar structures.

(2) For new construction, additions, and work that is 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 hazard area shall be submitted to the construction official and to the local floodplain administrator and shall include elevation certificates as required by section 1612.5 of the building subcode or section R322.1.10 of the one- and two-family dwelling subcode; the documentation and certificates shall be submitted prior to further vertical construction;

iii. Utility services, including septic;

iv. Mid-point inspections shall include the following:

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(1) Building Subcode: All structural framing, connections, wall and roof sheathing, and insulation.

(A) The framing inspection shall take place after the rough electrical and plumbing inspections and after the installation of the heating, ventilation and/or air conditioning duct system.

(B) For buildings containing roof or other truss systems, a truss system and permanent truss bracing inspection shall be performed prior to the installation of any interior roof truss covering material. Where the truss design utilizes the interior finish as bracing for the bottom cord, that portion of the bracing shall be part of the final inspection and shall be in addition to the components of the final inspection in (d) below.

(C) The insulation inspection shall be performed after all other subcode rough inspections and prior to the installation of any interior finish material.

(D) Prior to inspection, the responsible person in charge of work shall provide to the building inspector a signed framing checklist (Form F390) to be verified and initialed by the inspector and then made part of the permit file for buildings of Type V construction.

(2) Electrical Subcode: Rough wiring, panel and service installation.

(3) Plumbing Subcode: Rough piping.

2.Inspections for all subcodes of construction, other than one- and two-family dwellings, shall be limited to those required for one- and two-family dwellings and the following: fire suppression systems; heat producing devices; any special inspections required by any subcode of the regulations;

i.The mid-point inspection shall include a review for compliance with *N.J.A.C. 5:23-7*, the Barrier Free Subcode, for buildings required by *N.J.A.C. 5:23-7.1* to be accessible.

ii. The requirement for a framing checklist, established at (b)1iv(D) above, shall apply to buildings of Type V construction of Groups R-2, R-3 and R-4 only.

3.Any additional inspections, as permitted by this chapter and as may be required by the municipality, shall be of the type and nature that construction may continue without interruption;

4.Additional inspection schedule: Where buildings proposed for construction exceed two stories in height or by their nature pose complex or unusual inspection problems, the construction official or appropriate subcode official may specify additional inspections to the applicant in writing prior to the issuance of a permit and during construction in the case of unforeseeable circumstances.

(c) Notice for inspection:

1.The owner or other responsible person in charge of work shall notify the enforcing agency when the work is ready for any required inspection specified herein or required by the construction official or appropriate subcode official. This notice shall be given at least 24 hours prior to the time the inspection is desired. This notice shall represent an attestation on the part of the owner, other than single-family owner-occupants performing their own work, or other responsible person in charge of work, that the work has been completed in conformance with the code and is ready for inspection.

2.Inspections shall be performed within three business days of the time for which it was requested. The work shall not proceed in a manner which will preclude the inspection until it has been made.

(d) Final inspection: Upon completion of the building or structure, and before the issuance of a certificate of use and occupancy required herein, a final inspection shall be made, and any violations of the code shall be noted and the holder of the permit shall be notified of any discrepancies by the construction official. The final inspection shall include:

1.Building and Fire Subcode: Installation of all interior and exterior finish materials, sealing of exterior joints, mechanical system and any other required equipment.

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2.Electrical Subcode: Wiring, devices and fixtures.

3.Plumbing Subcode: Piping, trim and fixtures.

4.Tests required by any provision of the adopted subcodes.

5.A review for compliance with *N.J.A.C. 5:23-7*, the Barrier Free Subcode, for all buildings required by *N.J.A.C. 5:23-7.1* to be accessible.

6.Verification of compliance with *N.J.A.C. 5:23-3.5*, Posting structures.

(e) Inspections records: The enforcing agency shall make a written record of all inspections, including any discrepancies or violations noted and shall maintain those reports as a public record which shall be available for public inspection during normal business hours.

(f) Department inspections: At the request of an enforcing agency, the Department may assist the enforcing agency in the inspection of any construction, provided that the enforcing agency has submitted the plans and specifications for such construction to the Department.

(g) The construction official shall serve as an agent of the Bureau of Housing Inspection of the Department of Community Affairs for the purpose of inspecting newly constructed and altered hotels and multiple dwellings in order to enforce the provisions of the regulations for the maintenance of hotels and multiple dwellings (*N.J.A.C. 5:10*). Responsibility for inspection may be delegated to the appropriate sub-code official(s).

(h) Periodic inspections: The building subcode official or fire protection subcode official may periodically inspect all existing buildings and structures, except one and two family dwellings, for compliance with the rules with respect to posting. Such inspection shall specify any violation of the rules with respect to the posting of floor load, occupancy load and use group of the building.

History

HISTORY:

Amended by R.1981 d.182, effective June 4, 1981.

See: 13 N.J.R. 187(b), 13 N.J.R. 333(b).

Amended by R.1992 d.244, effective June 15, 1992.

See: 24 N.J.R. 1147(a), 24 N.J.R. 2243(a).

Class I inspections added to (b)1iv.

Amended by R.1996 d.323, effective July 15, 1996 (operative January 1, 1997).

See: *28 N.J.R. 2112(a)*, *28 N.J.R. 3549(a)*.

Amended by R.1997 d.304, effective July 21, 1997.

See: *29 N.J.R. 2204(a)*, *29 N.J.R. 3248(a)*.

Added (b)1ii(1) and (d)1.

Amended by R.2000 d.166, effective April 17, 2000.

See: *31 N.J.R. 4151(a)*, *32 N.J.R. 1376(a)*.

In (d), added 2; and added (h).

Amended by R.2003 d.187, effective May 5, 2003.

See: *34 N.J.R. 4248(a)*, *35 N.J.R. 1939(c)*.

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In (b), rewrote 1iv.

Amended by R.2003 d.216, effective May 19, 2003.

See: *35 N.J.R. 16(a)*, *35 N.J.R. 2203(a)*.

Rewrote the section.

Administrative correction.

See: *35 N.J.R. 3298(a)*.

Amended by R.2006 d.75, effective February 21, 2006.

See: *37 N.J.R. 3110(a)*, *38 N.J.R. 1183(a)*.

Added (b)1iv(1)(E).

Amended by R.2007 d.46, effective February 5, 2007.

See: *38 N.J.R. 872(a)*, *39 N.J.R. 370(b)*.

In (c)1, added new third sentence, and recodified former third sentence as new (c)2.

Administrative correction.

See: *39 N.J.R. 3914(a)*.

Amended by R.2008 d.192, effective July 21, 2008.

See: *39 N.J.R. 4985(a)*, *40 N.J.R. 4314(b)*.

In the introductory paragraph of (b)1, substituted "one- and" for"one-and"; and in the introductory paragraph of (b)1ii(1), inserted "and the elevation of the top of the foundation wall", "or professional engineer" and "and elevation", and inserted the second sentence.

Administrative correction.

See: *40 N.J.R. 5579(a)*.

Amended by R.2009 d.48, effective February 2, 2009.

See: *40 N.J.R. 5319(a)*, *41 N.J.R. 733(b)*.

Deleted former (b)1iv(1)(D); recodified former (b)1iv(1)(E) as (b)1iv(1)(D); in (b)1iv(1)(D), inserted "(Form F390)" and "for buildings of Type V construction"; and added (b)2ii.

Amended by R.2009 d.126, effective April 20, 2009.

See: *41 N.J.R. 16(a)*, *41 N.J.R. 1725(a)*.

In (b)1ii(1)(A), deleted "as described in *N.J.A.C. 5:23-9.9*" following "sheds".

Amended by R.2014 d.117, effective July 21, 2014.

See: *46 N.J.R. 160(a)*, *46 N.J.R. 1685(a)*.

Rewrote (b)1ii(2).

Special amendment, R.2014 d.161, effective October 1, 2014 (to expire May 12, 2015).

See: *46 N.J.R. 2186(a)*.

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Rewrote (b)1i.

Adopted concurrent amendment, R.2015 d.077, effective April 15, 2015, with changes effective May 18, 2015.

See: *46 N.J.R. 2186(a)*, *47 N.J.R. 989(b)*.

In (b)1i(1), inserted the first occurrence of "design", deleted "engineer" following the first occurrence of "professional", and substituted the second occurrence of "design professional" for the second occurrence of "engineer".

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Administrative law judge recommended the revocation of an electrical contractor's license under *N.J.S.A. 45:1-21*. The contractor admitted to overcharging three customers by a considerable margin contrary to *N.J.A.C. 13:31-3.7(a)* and performing electrical work without first obtaining permits as required under N.J.A.C. 13.31-3.2. He failed to obtain timely inspections once work was completed in contravention of *N.J.A.C. 13:31-3.2(b)* and *N.J.A.C. 5:23-2.18(a)*1, and his unlicensed son signed and sealed permit applications in at least five cases contrary to *N.J.A.C. 13:31-3.3*. In re Suspension or Revocation of the License of Joseph C. Chickachop to Engage in the Bus. of Elec. Contracting in the *State of New Jersey, OAL DKT. NO. BDS 2081-13, 2015 N.J. AGEN LEXIS 27,* Initial Decision (January 13, 2015).

Initial Decision (2007 N.J. AGEN LEXIS 561) adopted, which ordered a 60-day suspension of petitioner's Building Subcode Official and Building Inspector H.H.S. licenses for violations of *N.J.A.C. 5:23-2.18(b)* and *5:23-2.24(a)*; petitioner approved framing inspections and issued a certificate of occupancy on the subject project that did not meet the conditions of the approved plans and specification, approved alternate material in lieu of the architect's specified material resulting in an overspanning of the joists, and overlooked a required flush girder beam creating an excessive deflection, which caused the second and third floors of the home to sag. *Anstiss v. Office of Regulatory Affairs, OAL Dkt. No. CAF 11448-06, 2007 N.J. AGEN LEXIS 547,* Final Decision (August 17, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 561) adopted, which ordered revocation of petitioner's Construction Official license where petitioner failed to make sure that the proper reports and inspections were in the file prior to the issuance of temporary certificates of occupancy and petitioner previously had been cited for violations concerning the same project; petitioner's responsibility toward the properties did not cease because a subordinate signed the certificates, and petitioner failed to provide the necessary documentation even after it was requested by the Department investigator. *Anstiss v. Office of Regulatory Affairs, OAL Dkt. No. CAF 11448-06, 2007 N.J. AGEN LEXIS 547,* Final Decision (August 17, 2007).

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N.J.A.C. 5:23-2.18A

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§ 5:23-2.18A Utility load management device installation programs

(a) Whenever a public utility proposes to undertake a program of installing load management devices at the properties of a substantial number of service customers within a limited period of time, it may apply to the Department for permission to utilize the procedure set forth in this section.

(b)A utility with a program to install load management devices shall submit detailed information to the Department on the design of the device.

(c) The utility shall provide an educational program acceptable to the Department to acquaint any interested Department personnel and municipal subcode officials with the device and with installation and operating procedures.

(d) The utility shall insure that all devices to be installed are identical in design, listed and labeled or otherwise approved according to this chapter for their intended use.

(e) At least one month in advance of any installations, the utility shall submit to the Department, and to each affected municipality, notice of the anticipated number of installations to be performed in each municipality. A maximum and a minimum figure may be submitted where there is uncertainty about the number to be scheduled by customers. An approximate number of weeks for installations in that municipality shall be given along with an approximate number of installations per week.

1.Each week, in advance of installation, the utility shall notify the municipality of any change in the anticipated number of installations for that week. No weekly number of installations shall be so great that the cumulative number of installations in the municipality shall exceed the maximum anticipated number submitted.

2.Prior to the commencement of any installation, and as soon as may be practicable, the utility or its contractors will provide to each municipality notice of the actual sites of installations.

3.The Department and the municipalities shall be notified as soon as possible in the event of any change in existing schedules by the utility or its contractors.

(f) On the Monday following installations, the utility shall submit to each municipality a completed permit application for all installations completed in the municipality's jurisdiction during the preceding week.

1.A listing of all permits so delivered shall be filed by the utility with the Department.

2.All devices installed during that week, by a single contractor, shall be included on that application. The application shall include the Construction Permit Application and an Electrical Subcode Technical Section.

3.Since the permit is not, typically, for work at a single location, the block number shall be entered as "UCC 2.18" and the lot as "A." The work site location shall be the name of the municipality and the owner in fee shall be the utility.

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4.In addition to the Construction Permit Application, the utility or contractor shall supply the municipality a complete listing of locations where the devices, listed on this permit, were installed. This list shall include owner's name, owner's address, block and lot, date of installation, type of device(s) installed, and the contractor's name.

(g) If, for any reason, a permit application, or any part, is found to have been submitted in error, the utility or its contractors shall notify the municipality as soon as possible.

(h) When all required municipal and utility inspections have been approved, a single certificate of approval, for that permit, shall be issued to the utility.

(i) If any municipality or the Department has reason to suspect that permit applications are being mishandled or carelessly accounted for, an investigation may be conducted of the utility's permit files for this project and of any permits in the possession of individual contractors in the utility's employ for this project.

(j) The utility shall pay to each municipality 30 percent of the permit fees otherwise due and owing.

(k) The municipality shall inspect 30 percent of the installations performed and shall record the results of those inspections. The utility shall inspect at least 10 percent of the installations performed and shall record the results of those inspections and forward those results concurrently to the municipality and to the Department weekly.

(l) If a municipality or a utility discovers a defect rate of not less than seven percent for any contractor employed by the utility, the Department shall be immediately notified. The Department shall investigate and, in the interest of public safety, shall be authorized to order that:

1.The offending contractor cease to be employed by the utility for this project;

2.The utility remit the fees necessary to inspect all existing installations of the offending contractor in all municipalities where that contractor has performed work;

3.That each municipality affected perform inspections of all the offending contractor's existing installations; and

4.That the utility or its designees correct or remove all defective installations to the satisfaction of the municipal officials.

(m) If, at any time, the Department tabulates a program-wide defect rate equal to or exceeding three percent, the utility shall be notified and the inspection rate and fee rate in (j) and (k) above shall rise to 50 percent.

(n) If the three percent or greater program-wide defect rate cannot be reduced within two weeks, the program may be terminated by the Department by notifying the utility and all affected municipalities.

(o)A municipality in which a defect rate equal to or greater than seven percent has been twice reported to the Department and which has reason to believe that the program cannot be successfully implemented within its jurisdiction may notify the Department and the utility of the need for termination of the program in that municipality. The Department, upon verifying the accuracy of the municipality's claim, shall issue a notice to the utility and to the municipality ordering the termination of the program in that municipality.

History

HISTORY:

New Rule, R.1989 d.550, effective November 6, 1989.

See: 21 N.J.R. 233(a), 21 N.J.R. 3458(a).

Amended by R.1994 d.28, effective January 18, 1994.

See: 25 N.J.R. 4546(b), 26 N.J.R. 352(a).

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Amended by R.1996 d.512, effective November 4, 1996.

See: *28 N.J.R. 3697(a)*, *28 N.J.R. 4782(a)*.

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§ 5:23-2.18B Utility area lighting facility installation program

(a) Whenever an electric utility proposes to undertake installation of area lighting facilities located on private property on metal poles with an underground electric feed, having no ancillary utility facilities attached to said poles, the utility shall follow the procedures set forth in this section.

(b) Installation of an area lighting facility shall be treated as minor work in accordance with *N.J.A.C. 5:23-2.17A*. The utility shall, within five business days after verbal notice to the enforcing agency of a proposed installation, mail a permit application to the enforcing agency setting forth, at a minimum, the identity of the utility, the street address and location of the site lighting facilities, the number of facilities to be installed and a description of the installation.

(c) The utility shall pay a fee which shall be computed at 25 percent of the otherwise applicable permit fee chargeable for such installations as per the Department fee schedule established under *N.J.A.C. 5:23-4.20(c)*2i(2) and iii(1).

(d) If any violations are noted by an inspector, the inspector shall notify the affected utility and the Department. Code officials shall not issue "Stop Construction Orders" or "Notices of Violation" for such installations unless expressly authorized to do so by the Department.

History

HISTORY:

New Rule, R.1998 d.362, effective July 20, 1998.

See: *30 N.J.R. 1122(a)*, *30 N.J.R. 2644(b)*.

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§ 5:23-2.18C Use and occupancy of swimming pools, spas and hot tubs

(a) It shall be unlawful to continue the use and occupancy of a swimming pool, spa or hot tub until a copy of a valid bonding and grounding certificate has been made available to the construction official, the pool, spa or hot tub has been inspected, and an electrical certificate of compliance has been issued. This requirement shall apply to any swimming pool, hot tub or spa located on any property other than one or two-family residential property and includes, but is not limited to, pools, hot tubs or spas open for the use of members, residents or the public.

1.The electrical certificate of compliance shall be issued annually by the local enforcing agency upon the presentation of a valid bonding and grounding certificate, satisfactory completion of an inspection by the electrical subcode official and payment of an inspection fee. This certificate shall be evidence that, based upon a visual inspection, the wiring in or around the pool pump and associated electrical equipment is free from electrical safety hazards, and meets the applicable requirements of the electrical subcode.

2.The bonding and grounding certificate shall be issued in accordance with *N.J.A.C. 5:23-2.20(e)*.

3.A bonding and grounding certificate shall also be required for swimming pools, spas, or hot tubs which either are newly constructed or have undergone modifications that impact the bonding or grounding system. No additional visual inspection shall be required for the issuance of an electrical certificate of compliance where a construction permit is issued for the electrical work pertaining to the pool, spa, or hot tub.

(b) The most recent bonding and grounding certificate and electrical certificate of compliance shall be posted in accordance with *N.J.A.C. 5:23-3.5(f)*.

History

HISTORY:

New Rule, R.2000 d.47, effective February 7, 2000.

See: *31 N.J.R. 2314(a)*, *32 N.J.R. 443(a)*.

Administrative correction.

See: *35 N.J.R. 4861(a)*.

Amended by R.2009 d.100, effective April 6, 2009.

See: *40 N.J.R. 5900(a)*, *41 N.J.R. 1397(a)*.

In (a)1, substituted "electrical subcode" for "1996 National Electrical code".

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§ 5:23-2.19 Special technical services

(a) Whenever the construction official and the appropriate subcode official determine that a need for special technical services exists with regard to a particular project for which the municipal enforcing agency is classified to perform plan review, the construction official may require the applicant to obtain and furnish to the construction official, at the applicant's expense, a report from a licensed engineer or registered architect. Such report shall contain the information deemed necessary by the construction official to aid in his determination. Such may include, but not be limited to:

1.Analysis of materials and installation or design methods not covered by the provisions of the subcodes;

2.Site investigation;

3.Structural analysis;

4.Building systems analysis (that is, mechanical, electrical, vertical transportation, and so forth).

(b) The commissioner reserves the right to further regulate the performance of special technical services.

History

HISTORY:

Amended by R.1998 d.28, effective January 5, 1998.

See: *29 N.J.R. 3603(a)*, *30 N.J.R. 129(a)*.

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§ 5:23-2.20 Tests and special inspections

(a) All tests required by the provisions of the regulations shall be made and conducted under the supervision of the enforcing agency in accordance with such inspection and test procedures as may be prescribed by the provisions of the regulations, with the expense of all tests and special inspections to be borne by the owner or lessee or by the contractor performing the work.

1.Except as otherwise provided, tests conducted by persons authorized to conduct such tests in accordance with this chapter are not required to be witnessed by the local enforcing agency, unless the local enforcing agency determines such witnessing to be necessary.

(b) All special inspections, as provided in the building subcode, shall apply to Class 1 buildings and a smoke control system installed in any building. A special inspector shall be independent of the contractor and shall be responsible to the building owner or building owner's agent. Special inspectors shall be certified in the appropriate specialty.

1.Special inspections for soil conditions and pile foundations shall be performed under the direct supervision of a New Jersey licensed engineer.

(c) The construction official may accept tests and test reports of the Department and other government agencies, as well as signed statements and supporting inspection and test reports filed by qualified licensed professionals or approved agencies or firms.

(d) In lieu of requiring the removal and reinstallation of the chimney vent connector for purposes of inspection of the chimney or vent as per N.J.A.C. 5:23-2:18, the construction official shall accept a Chimney Verification for Replacement of Fuel-Fired Equipment (Form F-370), signed by the contractor who installed the replacement fuel-fired equipment. Verification from homeowners shall not be accepted in lieu of the required inspection.

1.A permit applicant using the Chimney Verification for Replacement of Fuel-Fired Equipment Form (Form F-370) for minor or emergency work must provide this form along with the permit application.

(e) The bonding and grounding certificate for swimming pools, spas and hot tubs, shall be issued by a recognized electrical testing agency or a New Jersey State licensed electrical contractor. This certificate shall verify the continuity and integrity of the bonding and grounding system. It shall be valid for five years from the date of issuance. The bonding and grounding certificate may cover more than one swimming pool, spa, and/or hot tub unit.

History

HISTORY:

Amended by R.1992 d.244, effective June 15, 1992.

See: 24 N.J.R. 1147(a), 24 N.J.R. 2243(a).

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Special inspections added.

Amended by R.1995 d.249, effective June 5, 1995, (operative October 1, 1995).

See: 27 N.J.R. 619(a), 27 N.J.R. 2187(a).

Added (c).

Amended by R.1996 d.512, effective November 4, 1996.

See: *28 N.J.R. 3697(a)*, *28 N.J.R. 4782(a)*.

Amended by R.1997 d.376, effective September 15, 1997.

See: *29 N.J.R. 2741(a)*, *29 N.J.R. 4102(a)*.

In (c), inserted "Form (F-370)", substituted "contractor" for "person" and added last sentence.

Amended by R.2000 d.47, effective February 7, 2000.

See: *31 N.J.R. 2314(a)*, *32 N.J.R. 443(a)*.

Added (d).

Amended by R.2003 d.187, effective May 5, 2003.

See: *34 N.J.R. 4248(a)*, *35 N.J.R. 1939(c)*.

Added a new (b); recodified former (b) through (d) as (c) through (e).

Amended by R.2006 d.381, effective November 6, 2006.

See: *38 N.J.R. 35(a)*, *38 N.J.R. 4691(a)*.

In the introductory paragraph of (b), added the last sentence; and added (b)1.

Amended by R.2010 d.195, effective September 7, 2010.

See: *41 N.J.R. 3140(a)*, *42 N.J.R. 2043(a)*.

In the introductory paragraph of (b), inserted "and any building that contains a smoke control system".

Amended by R.2011 d.269, effective November 7, 2011.

See: *43 N.J.R. 904(a)*, *43 N.J.R. 3008(a)*.

Rewrote the introductory paragraph of (d); and added (d)1.

Amended by R.2012 d.179, effective November 5, 2012.

See: *44 N.J.R. 1679(a)*, *44 N.J.R. 2557(a)*.

In the introductory paragraph of (a), deleted "and" following "agency" and a comma following "lessee", substituted "tests and special inspections" for "test and inspections", and inserted "by" following the second occurrence of "or"; added (a)1; and in (e), inserted the last sentence.

Amended by R.2013 d.081, effective June 3, 2013.

See: *44 N.J.R. 1303(a)*, *45 N.J.R. 1393(a)*.

In the introductory paragraph of (b), substituted "1" for "l".

Amended by R.2018 d.021, effective January 16, 2018.

See: *49 N.J.R. 306(a)*, *50 N.J.R. 303(a)*.

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In the introductory paragraph of (b), deleted "any building that contains" preceding "a smoke", and inserted "installed in any building".

Amended by R.2018 d.153, effective August 20, 2018.

See: *49 N.J.R. 2332(a)*, 50 N.J.R. 1888(a).

In the introductory paragraph of (d), substituted "shall" for "may".

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§ 5:23-2.21 Construction control

(a) Responsibilities: The provisions of this section shall define the construction controls required for all buildings involving professional architecture/engineering services and delineate the responsibilities of such professional services together with those services that are the responsibility of the contractor during construction.

(b) Professional architecture or engineering services:

1.Design: All new, renovation, alteration, reconstruction, expansion, addition or modification work involving the practice of professional architecture or engineering, as defined by the statutory requirements of the professional registration and licensing laws of this State, shall be prepared by registered architects or licensed engineers. All plans, computations and specifications required for a construction permit application must be prepared by or under the direct supervision of a registered architect or licensed engineer and bear his or her signature and seal in accordance with the State's statutes and regulations governing the professional registration and licensing of architects and engineers.

(c) Responsible person in charge of work: The owner shall designate a person to be in charge of the work who shall be responsible for:

1.Verification of all controlled materials per building subcode requirements of testing, certification and identification;

2.Special inspection of critical construction components;

3.Submission of amended plans and specifications whenever substantial deviations are necessary or desired, or when required to do so pursuant to *N.J.A.C. 5:23-2.15(f)*4v; and

4.The responsible person in charge of work shall perform the necessary services and be present on the construction site on a regular and periodic basis to determine that, generally, the work is proceeding in accordance with the code and any conditions of the construction permit.

(d) Reporting: At the completion of the construction, the responsible person in charge of work shall submit to the construction official a report as to the satisfactory completion and the readiness of the project for occupancy and shall certify that, to the best of the responsible person's knowledge and belief, such has been done substantially in accordance with the code and with those portions of the plans and specifications controlled by the code, with any substantial deviations noted.

(e) Construction contractor services: The actual construction of the work shall be the responsibility of the contractor(s) as identified on the approved construction permit and shall involve:

1.Execution of work in accordance with the regulations;

2.Execution and control of all methods of construction in a safe and satisfactory manner;

3.Execution of all work in accordance with the code and those portions of the plans and specifications controlled by the code;

4.In general, render all such construction services as required to effect a safe and satisfactory installation of the project;

5.Upon completion of the construction, the contractor shall certify to the best of the contractor's knowledge and belief that such has been done substantially in accordance with the code and with those portions of the plans and specifications controlled by the code, with any substantial deviation specifically noted.

(f) The provisions of this section do not relieve the enforcing agency of any of the responsibilities required by the regulations.

History

HISTORY:

Amended by R.1998 d.28, effective January 5, 1998.

See: *29 N.J.R. 3603(a)*, *30 N.J.R. 129(a)*.

Amended by R.2003 d.216, effective May 19, 2003.

See: *35 N.J.R. 16(a)*, *35 N.J.R. 2203(a)*.

Rewrote the section.

Administrative correction.

See: *39 N.J.R. 4571(a)*.

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Initial Decision (2006 N.J. AGEN LEXIS 428) adopted, which found that while the photographs and testimony indicated that 105 Mary Street had some structural supports, the lack of evidence that each and every element that required structural support had been adequately braced or shored forced a conclusion that the *N.J.A.C. 5:23-2.21(e)(4)* requirement to effect a wholly safe installation had not been met. *Office of Local Code Enforcement, Dep't of Community Affairs v. Brassel, OAL Dkt. No. CAF 02684-06, 2006 N.J. AGEN LEXIS 512,* Final Decision (June 16, 2006).

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§ 5:23-2.22 Premanufactured construction

(a) Premanufactured construction certified in accordance with N.J.A.C. 5:23-4A and 4D, as applicable, and carrying an appropriate label, shall be accepted as conforming to the requirements of the regulations to the extent provided for by the particular label for purposes of local construction inspection approval.

1.Prior to accepting the unit, the appropriate subcode official may require the performance of nondestructive tests.

2.In the case of visible signs of damage and/or any visible code violations, the construction official shall consider the seriousness of the nonconformance or damage and accordingly issue a Temporary Certificate of Occupancy or Certificate of Occupancy or deny such Certificate. If a Temporary Certificate is issued or a Certificate is denied, the construction official shall request that the label-issuing agency reaffirm in writing that the assembly still conforms to the regulations and notify the Department in writing.

3.No inspection requiring disassembly, damage to, or destruction of certified premanufactured construction shall be conducted.

(b) The appropriate subcode officials shall inspect the installation of any premanufactured unit or assembly other than the initial installation of manufactured homes to determine compliance with the regulations and the approved plans. Installation includes all utility connections and all work installed or completed on site.

History

HISTORY:

Amended by R.1994 d.96, effective February 22, 1994.

See: 25 N.J.R. 5388(a), 26 N.J.R. 1073(a).

Amended by R.2008 d.213, effective August 4, 2008.

See: 39 N.J.R. 2411(a), 40 N.J.R. 4523(b).

In the introductory paragraph of (a), substituted "through 4D, as applicable" for "or 4B".

Amended by R.2019 d.083, effective August 5, 2019.

See: 51 N.J.R. 3(a), 51 N.J.R. 1269(a).

In the introductory paragraph of (a), substituted "and 4D" for "through 4D"; and rewrote (b).

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§ 5:23-2.23 Certificate requirements

(a) New buildings: A building or structure hereafter erected shall not be used or occupied in whole or part until a form of certificate of occupancy shall have been issued by the construction official.

1.The enforcing agency shall upon application by the owner issue a certificate of occupancy when all requirements of the regulations have been met.

(b) Buildings hereafter renovated or altered: A building or structure hereafter renovated or altered shall not be occupied or used until the certificate of approval shall have been issued by the construction official, certifying that the work has been completed in accordance with the provisions of the code, except as is otherwise provided in the regulations. Any use or occupancy which was not discontinued during the work of renovation or alteration shall be discontinued within 30 calendar days after the completion of the alteration, unless the certificate of approval is secured from the enforcing agency.

(c) Building hereafter reconstructed: A building or structure, or portion thereof, hereafter reconstructed shall not be used until a certificate of occupancy shall have been issued for the entire building or structure or the portion being reconstructed, as the case may be, by the construction official, certifying that the work has been completed in accordance with the provisions of the code, except as otherwise provided in these rules.

(d) Building hereafter extended: No addition which increases the height or area of an existing building or structure shall be used until a certificate of occupancy shall have been issued by the construction official certifying that the work has been completed in accordance with the provisions of the code, except as otherwise provided in these rules.

(e) Existing buildings: Upon request of the owner of an existing building or structure, the construction official, with the approval of the subcode officials, shall issue a certificate of continued occupancy provided that there are not violations of law or orders of the construction official pending and it is established after inspection and investigation of available municipal records that the alleged use of the building or structure has lawfully existed. The certificate of continued occupancy shall evidence only that a general inspection of the visible parts of the building has been made, and that no violations of *N.J.A.C. 5:23-2.14* have been determined to have occurred and no unsafe conditions violative of *N.J.A.C. 5:23-2.32(a)* have been found. Nothing in this subsection shall prevent the continued lawful use and occupancy of any such lawfully existing building or structure.

(f) Change of use: It shall be unlawful to change the use of any structure, or portion thereof, without the prior application for, and issuance of, a certificate of occupancy. A certificate of occupancy shall be issued, provided such structure shall comply with the provisions of N.J.A.C. 5:23-6, Rehabilitation Subcode. After a change of use has been made in a building or structure, the reestablishment of a prior use is prohibited, unless the building complies with the provisions of N.J.A.C. 5:23-6, Rehabilitation Subcode, for the prior use.

(g) Temporary certificate of occupancy: Upon the written request for a temporary certificate of occupancy by the holder of a permit, the construction official shall issue, and may renew, a temporary certificate of occupancy for a building or structure or part thereof when the work covered by the permit shall have been substantially

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completed, provided that such portion or portions may be occupied safely prior to full completion of the building or structure without endangering health or safety.

1.The temporary certificate of occupancy and each subsequent renewal shall list the work to be completed and shall be valid for a reasonable period of time to complete the specified work. The municipal tax assessor shall be notified when the temporary certificate of occupancy is issued.

2.The request for a temporary certificate of occupancy may be denied when there are outstanding fees or penalties, when the required warranties, licenses or registrations are not in place, or the conditions of prior approvals affecting health and safety of the building occupants have not been met.

i.In the case of soil conservation, a temporary certificate of occupancy shall be denied if a Report of Compliance or Report of Compliance with Conditions is not issued by the soil conservation district pursuant to *N.J.A.C. 2:90*.

(h) Certificates for individual tenant spaces in multi-tenant buildings shall be issued pursuant to *N.J.A.C. 5:23-2.23A*.

(i) Application: A written application for a certificate of occupancy shall be filed with the enforcing agency by the owner or his agent. The application shall include the following:

1.The name and address of the owner or his agent;

2.The location of the building or structure;

3.If a change of use is contemplated, the current and proposed use groups;

4.The statement by the responsible person in charge of work, that to the best of his or her knowledge all work has been completed in accordance with the permit and the regulations;

5.A statement of the final cost of construction work, including the basic structure, all on-site improvements, built-in furnishings and fixtures and all integral equipment exclusive of process or manufacturing equipment;

6.A set of amended drawings, if required by the construction official and the appropriate subcode official(s), when the dimensions, lay out or appearance of the building or structure deviates substantially from the released plans and specifications filed with the construction permit application; and

7.A test and balance report for mechanically ventilated Class 1 and 2 buildings of Use Groups B and E submitted by a licensed professional engineer or by a test and balance professional certified by the Associated Air Balance Council, the National Environmental Balancing Bureau, or equivalent certification through a nationally recognized organization. The signed report shall include:

i.Minimum quantity of outdoor air required by code;

ii. Minimum quantity of outdoor air specified in the design;

iii. Actual measured outdoor cubic feet/minute (CFM) or a derived quantity, if actual measurement is not possible; and

iv. Actual measured total CFM.

(j) Contents of certificate: When a building or structure is entitled thereto, the construction official shall issue a certificate of occupancy within 10 business days after written application therefor.

1.The certificate shall certify the purpose for which the building or structure may be used in its several parts.

2.The certificate of occupancy shall specify: the use group(s), in accordance with the provisions of the building subcode; the maximum live load on all floors as prescribed in the building subcode; the occupancy load in the building and all parts thereof as defined in the building subcode; and any special stipulations and conditions of the construction permit.

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3.The construction official shall affix his signature to the certificate and, by so doing, shall certify that the building or structure has been approved for occupancy by all applicable subcode officials in accordance with the provisions of N.J.A.C. 5:23-3.

(k) No temporary or final certificate of occupancy shall be granted until all required utilities, including but not limited to water, sewer, electric and gas are installed and in service.

(l)Equipment listed below, which has been determined by the Department to create a significant potential hazard to public health and safety, shall be granted a certificate of compliance by the construction official based upon the findings of the appropriate subcode official or approved agency for the time period specified. Such equipment shall periodically be reinspected or tested in accordance with the provisions of the regulations prior to the expiration of a certificate of compliance and any violation shall be corrected before a new certificate may be issued. No device shall continue in operation unless a valid certificate of compliance has been reissued.

1.High pressure boilers: 12 months;

2.Refrigeration systems: 12 months;

3.Pressure vessels: 12 months;

4.Backflow preventers that are designed to be tested and used to isolate sources of contamination as defined in the plumbing subcode: 12 months.

i.Exception: Testable backflow preventers not used to isolate a high hazard source of contamination that are installed on water supplies in one- and two-family dwellings.

5.Swimming pools, spas and hot tubs: 12 months.

(m) Certificate of Approval: A certificate of approval shall be issued for all work that requires a construction permit but does not require a certificate of occupancy. No application shall be required for a certificate of approval.

(n) Revocation: The enforcing agency may revoke a certificate of occupancy whenever a condition of a certificate has been violated.

(*o*)Time limit: The provisions of the regulations do not preclude periodic certification pursuant to other applicable laws and ordinances.

(p) Lead Abatement Clearance Certificate: Following a lead hazard abatement job performed by a business firm or by an employee or employees of the owner of a property, a written application for a lead abatement clearance certificate shall be filed with the enforcing agency by the owner or the owner's agent. The application shall include a certification by the firm or person performing the work that all applicable provisions of *N.J.A.C. 5:17* have been met, including the clearance requirements, and that the components or areas in the scope of work submitted in the permit application are lead safe.

1.When the lead hazard abatement work includes encapsulation or enclosure, the certification by the firm or person performing the work shall include any recommendations for on-going maintenance or precautions to be taken to maintain the integrity of the encapsulation or enclosure.

2.When all lead hazards identified in an evaluation report prepared by a firm licensed by the Department pursuant to *N.J.A.C. 5:17* have been totally and permanently abated, the certification shall so state.

3.When an owner-occupant of a single-family house is performing the work, a lead abatement clearance certificate may be requested by the owner. The application for a lead abatement clearance certificate shall include a statement signed by a lead evaluation contractor certified by the Department pursuant to *N.J.A.C. 5:17*, or signed by an individual inspector/risk assessor certified by the New Jersey Department of Health pursuant to *N.J.A.C. 8:62* indicating that the clearance standards contained in *N.J.A.C. 5:17* have been met and that all components or areas in the scope of work submitted in the permit application have been rendered lead-safe.

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i.When lead abatement work has been performed by an owner-occupant pursuant to an order issued by a local health department, a lead abatement clearance certificate shall be required.

4.When lead abatement work has been performed pursuant to an order issued by a local health department, no lead abatement clearance certificate shall be issued without the approval of the local health department.

5.When lead abatement work has been performed on a steel structure or other superstructure or in a commercial building, no lead abatement clearance certificate shall be required.

(q) The continued validity of a certificate of occupancy shall be contingent upon maintenance of the level of code compliance existing at the time of issuance of the certificate of occupancy and upon compliance with any orders issued by the construction official pursuant to *N.J.A.C. 5:23-2.35*.

History

HISTORY:

Amended by R.1984 d.120, effective April 16, 1984.

See: 16 N.J.R. 179(a), 16 N.J.R. 873(a).

(c): "*N.J.A.C. 5:23-2.14* have been determined . . . have been found,"; "lawful" added.

Amended by R.1987 d.91, effective February 2, 1987.

See: 18 N.J.R. 2348(a), 19 N.J.R. 289(c).

Added new (i)2; renumbered (i)2.-9. as (i)3.-10.

Amended by R.1988 d.167, effective April 18, 1988.

See: 20 N.J.R. 223(b), 20 N.J.R. 893(b).

Added text to (b) "after the completion of the alteration".

Amended by R.1991 d.180, effective April 1, 1991.

See: 23 N.J.R. 257(a), 23 N.J.R. 1028(b).

In (i), deleted inspections of sprinkler systems, hazardous uses and places of assembly.

Amended by R.1991 d.325, effective July 1, 1991.

See: 23 N.J.R. 805(a), 23 N.J.R. 2046(a).

Potentially hazardous equipment approvals time-limited at (i); elevator requirements added at (j).

Amended by R.1992 d.147, effective April 6, 1992.

See: 24 N.J.R. 170(a), 24 N.J.R. 1397(a).

Elevators wholly within R-2 residences exempt.

Amended by R.1993 d.421, effective September 7, 1993.

See: 25 N.J.R. 2161(a), 25 N.J.R. 4073(a).

Amended by R.1993 d.662, effective December 20, 1993.

See: 25 N.J.R. 3891(a), 25 N.J.R. 5918(a).

Amended by R.1994 d.434, effective September 6, 1994 (operative January 1, 1995).

See: 26 N.J.R. 1911(a), 26 N.J.R. 3706(b).

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Amended by R.1995 d.381, effective July 17, 1995.

See: 27 N.J.R. 970(a), *27 N.J.R. 2715(a)*.

Amended by R.1995 d.476, effective September 5, 1995 (operative January 1, 1996).

See: 27 N.J.R. 1846(a), *27 N.J.R. 3325(b)*.

Rewrote (j).

Amended by R.1997 d.302, effective July 21, 1997 (operative September 24, 1997).

See: *29 N.J.R. 2202(a)*, *29 N.J.R. 3242(b)*.

Added (m)5.

Amended by R.1998 d.28, effective January 5, 1998.

See: *29 N.J.R. 3603(a)*, *30 N.J.R. 129(a)*.

Amended (b); added new (c) and (d); recodified existing (c) as (e); recodified existing (d) as (f) and amended it to include reference to N.J.A.C. 5:23-6; recodified existing (e) through (m) as (g) through (*o*).

Amended by R.2000 d.47, effective February 7, 2000.

See: *31 N.J.R. 2314(a)*, *32 N.J.R. 443(a)*.

In (k), inserted references to installations throughout, inserted "and no installation shall be opened for use or occupancy" following "operation" and substituted "issued" for "reissued" at the end of the last sentence of the introductory paragraph, and added 5.

Amended by R.2000 d.166, effective April 17, 2000.

See: *31 N.J.R. 4151(a)*, *32 N.J.R. 1376(a)*.

Rewrote k(4).

Amended by R.2001 d.347, effective October 1, 2001.

See: *32 N.J.R. 3218(a)*, *33 N.J.R. 3430(a)*.

Rewrote (g).

Amended by R.2003 d.216, effective May 19, 2003.

See: *35 N.J.R. 16(a)*, *35 N.J.R. 2203(a)*.

In (h), neutralized the gender reference and deleted ", the approved plans" following "the permit" in 4 and rewrote 6; substituted "code" for "approved permit" throughout.

Amended by R.2003 d.385, effective October 6, 2003.

See: *35 N.J.R. 2423(a)*, *35 N.J.R. 4713(a)*.

Added (p).

Amended by R.2005 d.199, effective July 5, 2005.

See: *37 N.J.R. 565(a)*, *37 N.J.R. 2474(a)*.

In (g), inserted "list the work to be completed and shall" following "each subsequent renewal shall" and "specified" preceding "work" in the first sentence of 1, and added 2i.

Amended by R.2007 d.125, effective May 7, 2007.

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See: 38 N.J.R. 3707(a), 39 N.J.R. 1671(a).

Added new (h); and recodified former (h) through (p) as (i) through (q).

Administrative correction.

See: 40 N.J.R. 3991(a).

Amended by R.2008 d.192, effective July 21, 2008.

See: 39 N.J.R. 4985(a), 40 N.J.R. 4314(b).

In (q), updated the N.J.A.C. reference.

Amended by R.2009 d.164, effective May 18, 2009.

See: 40 N.J.R. 6683(a), 41 N.J.R. 2094(b).

In (g)1, deleted ", but not less than 60 days" following "specified work".

Amended by R.2009 d.267, effective September 8, 2009.

See: 40 N.J.R. 6684(a), 41 N.J.R. 3217(a).

In the introductory paragraph of (*l*), deleted a comma following "regulations" and following the second occurrence of "compliance"; in the introductory paragraph of (*l*)4, inserted "that are designed to be tested and", and deleted "high hazard" following "isolate"; and added (*l*)4i.

Amended by R.2013 d.081, effective June 3, 2013.

See: 44 N.J.R. 1303(a), 45 N.J.R. 1393(a).

In (i)7, substituted "1" for "I", "2" for "II", and a comma for "or" following "Council", and inserted ", or equivalent certification through a nationally recognized organization".

Amended by R.2018 d.021, effective January 16, 2018.

See: 49 N.J.R. 306(a), 50 N.J.R. 303(a).

In (f), inserted the first and second sentences, and inserted a comma following "prohibited".

Annotations

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Civil rights action challenging township actions regarding use of property as church were not ripe for adjudication until township planning board decided site plan application and any need for variance. *Trinity Resources, Inc. v. Township of Delanco, D.N.J.1994, 842 F.Supp. 782.*

Condominium vendor committed unconscionable practice within scope of Consumer Fraud Act. Cybul v. Atrium Palace Syndicate, 272 N.J.Super. 330, 639 A.2d 1146 (A.D.1994), certification denied *137 N.J. 311, 645 A.2d 140.*

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Penalties could not be imposed on condominium vendor for failure to obtain temporary certificates of occupancy. *Department of Community Affairs, Div. of Housing and Urban Development v. Atrium Palace Syndicate, 259 N.J.Super. 578, 614 A.2d 1069 (A.D.1992).*

Purchasers were entitled to return of deposit for failure of vendors to timely perform. *Department of Community Affairs, Div. of Housing and Development v. Atrium Palace Syndicate, 247 N.J.Super. 511, 589 A.2d 1046 (A.D.1991),* certification denied *126 N.J. 338, 598 A.2d 895.*

Not substantially complete condominium unit could not be occupied. *Department of Community Affairs, Div. of Housing and Development v. Atrium Palace Syndicate, 247 N.J.Super. 511, 589 A.2d 1046 (A.D.1991),* certification denied *126 N.J. 338, 598 A.2d 895.*

Certificates of occupancy cannot bar occupancy. *Department of Community Affairs, Div. of Housing and Department v. Atrium Palace Syndicate, 247 N.J.Super. 511, 589 A.2d 1046 (A.D.1991),* certification denied *126 N.J. 338, 598 A.2d 895.*

Developer's failure to timely issue temporary certificate of occupancy (TCO) required refund of purchasers' deposits. *Department of Community Affairs, Div. of Housing and Development v. Atrium Palace Syndicate, 244 N.J.Super. 329, 582 A.2d 821 (A.D.1990),* certification denied *126 N.J. 317, 598 A.2d 878.*

Judgment dismissing landlords' complaint challenging certain license fees as ultra vires was affirmed because none of the challenged ordinances were ultra vires in that the fees charged under them were reasonably related to the municipalities' exercise of their obligation to promote the safety and welfare of their residents. *Cona v. Township of Washington, 2018 N.J. Super. LEXIS 124 (2018).*

Landlords were subject to ordinances that require that they obtain certificates of occupancy under certain circumstances, which might include the payment of a separate fee and that some degree of overlap may occur. That overlap does not limit a municipality's ability to offset its costs for providing services for rental units by charging fees, as long as they are not simply exercises in revenue production. *Cona v. Township of Washington, 2018 N.J. Super. LEXIS 124 (2018).*

Building does not qualify for property tax exemption if certificate of occupancy issued after assessment date; use of building for exempt purposes prior to issuance of certificate irrelevant to exemption issue (citing former *N.J.A.C. 5:23-2.7*). *Grace & Peace Fellowship Church, Inc. v. Cranford Twp., 4 N.J.Tax 391 (Tax Ct.1982).*

Research References & Practice Aids

LAW REVIEW AND JOURNAL COMMENTARIES:

Arbitration--Condominiums--Consumer Fraud Act. Steven P. Bann, 137 N.J.L.J. No. 2, 65 (1994).

Attorneys fees--Condominiums--Damages--DCA--PREDFDA. 132 N.J.L.J. No. 9, 45 (1992).

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N.J.A.C. 5:23-2.23A

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 51 No. 15, August 5, 2019

NJ - New Jersey Administrative Code > TITLE 5. COMMUNITY AFFAIRS > CHAPTER 23. UNIFORM CONSTRUCTION CODE > SUBCHAPTER 2. ADMINISTRATION AND ENFORCEMENT; PROCESS

§ 5:23-2.23A Permits and certificates for multi-tenant buildings

(a) Construction permits for multi-tenant buildings shall be issued as follows:

1.A single construction permit shall be issued for the entire structure including all tenant spaces if:

i.The permit applicant is undertaking all the work;

ii. All the work is, or will be shown as, a single set of plans;

iii. All work is intended to be undertaken by the same team of contractors; and

iv. The certificate of occupancy or certificate of approval, as applicable, for all tenant spaces will be sought before or at the same time as that for the entire building. Plans for individual tenant spaces may be submitted as permit updates if all of the above conditions are met.

2.A separate permit shall be required for any tenant space if any of the following conditions apply:

i.The tenant is undertaking the fit-up work within the tenant space;

ii. The plans for the tenant space work will be prepared by a design professional different from the one that prepared the plans for the base building;

iii. The work will be undertaken by one or more contractors who are different from the contractors for the base building; or

iv. The permit is being applied for after a temporary certificate of occupancy or certificate of occupancy has been issued for the base building.

3.Fees for construction permits for multi-tenant buildings shall be applied pursuant to *N.J.A.C. 5:23-4.18(c)*6.

(b) Temporary certificates of occupancy for individual tenant spaces in multi-tenant buildings shall be issued as follows:

1.A temporary certificate of occupancy shall be issued for each tenant space provided that portion of the building may be occupied safely prior to full completion of the building, the common area(s) serving that tenant space has a temporary certificate of occupancy or a certificate of occupancy, and the unfinished portions of the building for which temporary certificates of occupancy or certificates of occupancy are not being sought do not present life safety hazards.

i.Temporary certificates of occupancy may be issued floor by floor or tenant space by tenant space.

(c) Certificates of occupancy or certificates of approval, as applicable, shall be issued for individual tenant spaces in multi-tenant buildings as follows:

1.A certificate of occupancy or certificate of approval shall be issued provided the work authorized by the construction permit has been completed in accordance with the Uniform Construction Code and all conditions of prior approvals, if applicable, have been met.

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2.The construction official may issue a certificate of occupancy or certificate of approval for a portion(s) of the building provided all of the work authorized by the construction permit has been completed in accordance with the Uniform Construction Code and all conditions of prior approvals, if applicable, have been met and provided that the unfinished portions of the building do not present life safety hazards.

3.Certificates of occupancy or certificates of approval, as applicable, may be issued floor by floor or tenant space by tenant space.

(d) Construction permits, temporary certificates of occupancy, and certificates of occupancy shall be issued in accordance with the procedures set forth at *N.J.A.C. 5:23-2.15* and *2.23*, respectively.

History

HISTORY:

New Rule, R.2007 d.125, effective May 7, 2007.

See: *38 N.J.R. 3707(a)*, *39 N.J.R. 1671(a)*.

Annotations

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N.J.A.C. 5:23-2.24

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§ 5:23-2.24 Conditions of certificate of occupancy

(a) Certificate of occupancy shall be conditioned upon the following:

1.That the completed project meets the conditions of the construction permit, and all prior approvals and has been done substantially in accordance with the code and with those portions of the plans and specifications controlled by the code;

2.That all required fees have been paid in full;

3.That all necessary inspections have been completed and that the completed project meets the requirements of the regulations;

4.That all violations have been corrected and that any assessed penalties have been paid;

5.That all protective devices and equipment required to be installed by the regulations will continue to be operational as required by the regulations.

(b) No certificate of occupancy shall be issued for any new home, built by a builder, as such terms are defined in *N.J.A.C. 5:25-1.3*, except after filing by the builder with the construction official of proof that the new home has been enrolled in either the State New Home Warranty Security Plan or a private plan approved by the Department of Community Affairs. If the new home is enrolled in the State New Home Warranty Security Plan, proof shall be in the form of a validated copy of the Certificate of Participation, required pursuant to *N.J.A.C. 5:25-5.5*, and proof of payment of the warranty premium.

(c) No certificate of occupancy shall be issued for any new home built by an owner or in which any design, construction, plumbing or electrical work has been done by the owner unless the owner shall file with the construction official an affidavit in which he certifies that all work has been done in conformity with applicable law, acknowledges that work done by him or by any subcontractor working under his supervision, is not covered under the New Home Warranty and Builders' Registration Act (*N.J.S.A. 46:3B-1* et seq.) and states that he will disclose this to any person purchasing the property from him within 10 years of the date of issuance of a certificate of occupancy. The affidavit shall be filed on a form prescribed by the Department of Community Affairs.

(d) No certificate of occupancy shall be issued for any building used or intended to be used as a rooming house or a boarding house, as such terms are defined in section 3 of the Rooming and Boarding House Act of 1979 (P.L. 1979, c.496; *N.J.S.A. 55:13B-1* et seq.), except after filing by the owner with the construction official of a photocopy of a license to own a rooming or boarding house issued to the owner by the Department of Community Affairs.

(e) No certificate of occupancy shall be issued for a hotel or multiple dwelling, as defined in the Hotel and Multiple Dwelling Law (*N.J.S.A. 55:13A-1* et seq.), except after filing by the owner with the construction official of a photocopy of a certificate of registration issued by the Bureau of Housing Inspection of the Department of Community Affairs.

(f) No certificate of occupancy shall be issued for any building containing one or more elevators unless all of the elevators in the building have been registered with the Department in accordance with N.J.A.C. 5:23-12.

(g) Whenever a liquefied petroleum gas installation subject to the Department's jurisdiction pursuant to *N.J.A.C. 5:23-3.11(j)* is part of a project that requires a construction permit, no certificate of occupancy or certificate of approval shall be issued except after filing by the owner with the construction official of a photocopy of a permit to operate and fill issued by the New Jersey Department of Community Affairs, Division of Codes and Standards, Bureau of Code Services, PO Box 816, Trenton, New Jersey 08625-0816.

(h) No certificate of occupancy shall be required in the case of minor work as provided for by *N.J.A.C. 5:23-2.17A*.

History

HISTORY:

Amended by R.1991 d.509, effective October 7, 1991.

See: 23 N.J.R. 2236(a), 23 N.J.R. 3001(a).

Text added at (f).

Amended by R.1995 d.476, effective September 5, 1995 (operative January 1, 1996).

See: 27 N.J.R. 1846(a), *27 N.J.R. 3325(b)*.

Rewrote (f).

Amended by R.2001 d.141, effective May 7, 2001.

See: *32 N.J.R. 3917(a)*, *33 N.J.R. 746(a)*, *33 N.J.R. 1399(d)*.

Added new (g); recodified former (g) as (h).

Amended by R.2003 d.216, effective May 19, 2003.

See: *35 N.J.R. 16(a)*, *35 N.J.R. 2203(a)*.

Rewrote (a)1.

Amended by R.2003 d.200, effective May 19, 2003.

See: *35 N.J.R. 7(a)*, *35 N.J.R. 2187(a)*.

In (g), amended the N.J.A.C. reference and substituted "Bureau of Code Services" for "Bureau of Boiler and Pressure Compliance".

Administrative correction.

See: *35 N.J.R. 3608(a)*.

Amended by R.2007 d.231, effective August 6, 2007.

See: *39 N.J.R. 722(a)*, *39 N.J.R. 3295(a)*.

In (g), substituted "Whenever a liquefied petroleum gas installation subject to the Department's jurisdiction pursuant to *N.J.A.C. 5:23-3.11(j)* is part of a project that requires a construction permit, no" for "No" and "permit to operate and fill issued by" for "notice of LP gas installation filed, pursuant to *N.J.A.C. 5:18-6.4(a)*, with" and deleted "for any building or project that includes a vapor delivery liquefied petroleum gas installation that is greater than 250 gallons, but not more than 2,000 gallons" following "shall be issued".

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Annotations

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Case Notes

Tax assessor erred in relying only on the issuance of a certificate of occupancy for his determination that plaintiff's property was completed for purposes of N.J.S.A. 40A:21-16, because a certificate of occupancy is not an official determination that the structure is substantially ready for its intended use. Lowe's Home Ctrs., Inc. v. City of Millville, 25 N.J. Tax 591, 2010 N.J. Tax LEXIS 20 (Tax Ct. 2010).

Citation to former N.J.A.C. 5:23-2.7; municipal requirement for payment of property taxes before permit issuance invalid as preempted by legislation. Home Builders League of South Jersey, Inc. v. Evesham Twp., 174 N.J.Super. 252, 416 A.2d 81 (Law Div.1980).

Initial Decision (2007 N.J. AGEN LEXIS 561) adopted, which ordered a 60-day suspension of petitioner's Building Subcode Official and Building Inspector H.H.S. licenses for violations of N.J.A.C. 5:23-2.18(b) and 5:23-2.24(a); petitioner approved framing inspections and issued a certificate of occupancy on the subject project that did not meet the conditions of the approved plans and specification, approved alternate material in lieu of the architect's specified material resulting in an overspanning of the joists, and overlooked a required flush girder beam creating an excessive deflection, which caused the second and third floors of the home to sag. Anstiss v. Office of Regulatory Affairs, OAL Dkt. No. CAF 11448-06, 2007 N.J. AGEN LEXIS 547, Final Decision (August 17, 2007).

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N.J.A.C. 5:23-2.25

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§ 5:23-2.25 Establishment of fees

The municipality, in accordance with this chapter, shall establish by ordinance enforcing agency fees for the following activities: plan review; construction permits; certificate of occupancy; elevator device inspections and tests; demolition permit; moving of building permit; lead abatement clearance certificate; annual electrical inspection of swimming pools, spas and hot tubs; and sign permit. The fee shall be collected prior to the issuance of the permit or certificate. A schedule of such fees shall be posted in the office of the construction official and shall be accessible to the public.

History

HISTORY:

Amended by R.1991 d.325, effective July 1, 1991.

See: 23 N.J.R. 805(a), 23 N.J.R. 2046(a).

Elevator activities added.

Amended by R.1995 d.381, effective July 17, 1995.

See: 27 N.J.R. 970(a), *27 N.J.R. 2715(a)*.

Administrative correction.

See: *29 N.J.R. 2267(a)*.

Administrative correction.

See: *29 N.J.R. 3721(a)*.

Deleted reference to certificate of compliance and certificate of approval.

Amended by R.2000 d.47, effective February 7, 2000.

See: *31 N.J.R. 2314(a)*, *32 N.J.R. 443(a)*.

Inserted a reference to annual electrical inspection of swimming pools, spas and hot tubs in the first sentence.

Annotations

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Citation to former N.J.A.C. 5:23-4.8 fee standards; municipal requirement for payment of property taxes before permit issuance invalid as preempted by legislation. Home Builders League of South Jersey, Inc. v. Evesham Twp., 174 N.J.Super. 252, 416 A.2d 81 (Law Div.1980).

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N.J.A.C. 5:23-2.26

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 51 No. 15, August 5, 2019

NJ - New Jersey Administrative Code > TITLE 5. COMMUNITY AFFAIRS > CHAPTER 23. UNIFORM CONSTRUCTION CODE > SUBCHAPTER 2. ADMINISTRATION AND ENFORCEMENT; PROCESS

§ 5:23-2.26 (Reserved)

History

HISTORY:

Repealed by R.2004 d.144, effective April 5, 2004.

See: *35 N.J.R. 4944(a)*, *36 N.J.R. 1753(a)*.

Section was "Plan Review Fees".

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§ 5:23-2.27 Refunds

In the case of discontinuance of a building project, the volume of the work actually completed shall be computed. Any excess for the uncompleted work shall be returned to the permit holder; except that all penalties that may have been imposed on the permit holder under the requirements of the regulations shall first be collected. Plan review fees are not refundable.

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N.J.A.C. 5:23-2.28

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§ 5:23-2.28. Volume computation

(a) General: For the determination of the permit fees, the volume of the structure shall be computed as provided in this section.

(b) Structures: The volume of the structure shall include all enclosed dormers, porches, penthouses and other enclosed portions of the structure measured from the top of the floor assembly of the first story above grade to the mean height of a pitched roof, or the average height of the top of the roof beams of a flat roof.

1.With a basement/cellar: When a basement/cellar is included in the design of a structure, the volume of the basement shall be measured from the basement/cellar floor to the top of the floor assembly of the first story above grade and added to the structure volume calculation from (b) above.

2.Without a basement/cellar: When a structure does not include a basement/cellar in the design, the volume of the space below the floor assembly of the first story above grade shall be measured by using the distance from the top of the floor assembly of the first story above grade to the bottom of the footings divided by five (one-fifth the total distance), but this distance is not to exceed 21/2 feet below the top of the floor assembly of the first story above grade, and then added to the structure volume calculation from (b) above.

(c) Open sheds: For open sheds and structures of a similar character, the volume shall be measured within the perimeter of the roof for a height from the grade line to the mean roof level.

(d) No fee shall be required for premanufactured construction, assembly or components transported to a construction site. A fee shall be required for work performed at the site, including, but not limited to, foundation systems, structural installations and external utility connections.

(e) No fee shall be required for commercial farm buildings, or portions of, constructed of pre-engineered systems specified in *N.J.A.C. 5:23-3.2(d)* 3. A fee shall be required, unless exempted, for commercial farm building work performed at the site.

History

HISTORY:

As amended, R.1982 d.7, eff. February 1, 1982.

See: 13 N.J.R. 717(a), 14 N.J.R. 142(a).

(e) added.

Amended by R.1995 d.603, effective November 20, 1995 (operative March 20, 1996).

See: *27 N.J.R. 2655(a)*, *27 N.J.R. 4699(a)*.

Amended by R.2005 d.446, effective December 19, 2005.

See: *37 N.J.R. 2747(a)*, *37 N.J.R. 4907(a)*.

Deleted former (b) and (c); added new (b); recodified former (d)-(f) as (c)-(e).

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N.J.A.C. 5:23-2.29

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§ 5:23-2.29 Entry

(a) The owner of any premises upon which a building or structure is to be constructed shall be deemed to have consented to inspection, by the enforcing agency, of the entire premises and of any and all construction being performed on it until a certificate of occupancy has been issued.

(b) An inspector, or team of inspectors, on presentation of proper credentials, shall have the right to enter and inspect such premises, and any and all construction thereon, for purposes of insuring compliance with the provisions of the applicable construction permit, and the regulations. All inspection pursuant to the act and the regulations shall be between the hours of 9:00 A.M. and 5:00 P.M. on business days, or when construction is actually being undertaken; provided, however, that inspections may be conducted at other times if the enforcing agency has reasonable cause to believe that an immediate danger to life, limb or property exists, or if permission is given by an owner, or his agent, architect, engineer or builder. No person shall accompany an inspector or team of inspectors on any inspection pursuant to the regulations, unless his presence is necessary for the enforcement of the regulations, or unless consent is given by an owner or his agent, architect, engineer or builder.

(c) Any construction official, subcode official or any inspector, presenting themselves for inspection of any occupied building shall present to the owner the owner's agent or occupant their personal identification as provided by the municipality.

(d) After the certificate of occupancy shall have been granted, the construction official shall not enter upon such premises for purpose of inspection, unless upon reasonable grounds to believe that a condition of the certificate of occupancy has been violated, or in the case of equipment granted approvals of limited duration pursuant to this subchapter, or in the case of emergencies, or unsafe buildings, or upon reasonable cause to believe construction work is underway without a permit having been issued.

(e) Nothing herein is intended to limit the right of a municipality to adopt property maintenance regulations and provide for inspection, pursuant to any other law, ordinance or judicial decision of this State. However, no such regulation shall conflict with any provision of the regulations.

History

HISTORY:

Administrative Correction to (b): Changed "than" to "that".

See: 22 N.J.R. 2503(b).

Annotations

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§ 5:23-2.30 Violation, notice and orders

(a) Whenever the construction official or the appropriate subcode official shall determine that there exists a violation of the provisions of the regulations or where there exists a violation of a permit or certificate issued under the regulations, the appropriate subcode official shall issue a notice of violation and orders to terminate directing the discontinuance of the illegal action or condition and the correction of the violation.

(b) The notice and orders shall contain at least the following information:

1.The name and address of the owner; the address at which the violation occurred; the name and address of the person to whom the order is directed, and if it be other than the owner, a copy shall be delivered to the owner or his agent stating that the owner bears joint responsibility for bringing about compliance with the person named and that if a penalty is imposed, the enforcing agency will not issue a certificate of occupancy until such penalty has been paid; the permit number; a citation to the sections of the regulations violated; an order to terminate violations within a time specified in the order; the amount of penalty assessed, if any, and if cumulative, an explanation of the method of computation; and shall be signed by the appropriate subcode official or the construction official.

2.Unless an immediate hazard to health and safety is posed, the construction official or appropriate subcode official shall permit such time period for correction as is reasonable within the context of the situation.

(c) Extensions: The construction official may grant extensions of time whenever he shall determine that despite diligent effort, compliance cannot be accomplished within the time specified in the notice. If, however, such extension shall be for a period in excess of three business days, or if more than one extension of less than three business days is sought, the construction official shall require a written application of extension stating the need, upon which he shall rule in writing, and which shall be made a part of the permanent file of the project.

History

HISTORY:

Amended by R.2003 d.216, effective May 19, 2003.

See: *35 N.J.R. 16(a)*, *35 N.J.R. 2203(a)*.

In (a), deleted ", or of a detailed statement or plan approved thereunder," following "provisions of the regulations".

Amended by R.2007 d.124, effective May 7, 2007.

See: *38 N.J.R. 3708(a)*, *39 N.J.R. 1669(a)*.

In (a), substituted "appropriate subcode" for "construction" preceding "official shall issue"; in (b)1, substituted "or" for "and" following "subcode official"; and in (b)2, inserted "official or appropriate subcode".

Administrative correction.

See: *39 N.J.R. 3296(a)*.

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Penalty assessed against property owners for violations of housing code; failure to request an extension of time for reinspection. *Piercy v. Department of Community Affairs, 94 N.J.A.R.2d (CAF) 27.*

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N.J.A.C. 5:23-2.31

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§ 5:23-2.31 Compliance

(a) If the notice of violation and orders to terminate have not been complied with, the construction official in addition to any other available remedies likely to bring about compliance, may request the legal counsel of the municipality, or of the joint enforcement agency, or the Attorney General in the case of the State, to institute the appropriate proceeding at law or in equity to restrain, correct, or abate such violation or to require the removal or termination of the unlawful use of the building or structure in violation of the provisions of the regulations or of the order or direction made pursuant thereto.

(b) Penalties:

1.Any person or corporation, including an officer, director or employee of a corporation, shall be subject to a penalty if that person:

i.Violates any of the provisions of the act or the regulations;

ii. Constructs a structure or building in violation of a condition of a building permit;

iii. Fails to comply with any order issued by an enforcing agency or the department;

iv. Makes a false or misleading written statement, or omits any required information or statement in any application or request for approval to an enforcing agency or the department.

2.Anyone who knowingly refuses entry or access to an inspector lawfully authorized to inspect any premises, building or structure pursuant to the act or the regulations, or who unreasonably interferes with such an inspection, shall be subject to a fine of not more than $ 250.00.

3.With respect to (b)1iii above, a person shall be guilty of a separate offense for each day that he fails to comply with a stop construction order validly issued by an enforcing agency or the department and for each week that he fails to comply with any other order validly issued by an enforcing agency or the department. With respect to (b)1i and iv above, a person shall be guilty of a separate offense for each violation of any provision of the act or the regulations and for each false or misleading written statement or omission of required information or statement made in any application or request for approval to an enforcing agency or the department. With respect to (b)1ii above, a person shall be guilty of a separate offense for each violation of conditions of a construction permit.

4.No such penalty shall be assessed except upon notice of violation and orders to terminate and upon the expiration of the time period delineated in the notice; except that in the case of a false or misleading statement pursuant to (b)1iv above, the failure to obtain a construction permit or request required inspections, or allowance of occupancy prior to receipt of a certificate of occupancy, an order to pay a penalty shall be issued immediately upon the discovery of the violation.

5.The construction official may separately serve a notice of penalty assessment and order to pay a penalty.

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6.The penalties pursuant to this section may be collected pursuant to the "Penalty Enforcement Law of 1999" (*N.J.S.A. 2A:58-10* et seq.). Jurisdiction to enforce such penalties is conferred upon judges of the municipal court and of the Superior Court. Suit may be brought by a municipality or the State of New Jersey. Payment of a money judgment pursuant hereto shall be remitted in the case of a suit brought by a municipality to the municipal treasurer and in the case of a suit brought by the State of New Jersey to the State Treasurer.

(c) The construction official may assess a monetary penalty whenever such shall be likely to assist in bringing about compliance.

(d) Stop construction order:

1.If the construction of a structure or building is being undertaken contrary to the provisions of the regulations, or other applicable laws or ordinances, the enforcing agency may issue a stop construction order in writing which shall state the reasons for such order and the conditions under which construction may be resumed and which shall be given to the owner or the holder of the construction permit or to the person performing the construction. If the person doing the construction is not known, or cannot be located with reasonable effort, the notice may be delivered to the person in charge of, or apparently in charge of, the construction.

2.If, at the time of inspections requested pursuant to *N.J.A.C. 5:23-2.18(c)*, a pattern or practice is identified and documented in writing of the same code violation(s) occurring in most or all of the dwelling units inspected within a housing development, affecting framing, fire safety or structural safety, the construction official may issue a stop construction order for all buildings within the development. A copy of the supporting documentation, including the violations, citations, and blocks and lots, shall be given to the owner or responsible person in charge of the project. A copy of the stop construction order shall be forwarded to the Department as per *N.J.A.C. 5:23-4.5(h)*1xi. Relief from any such stop construction order may be conditioned upon submission to the enforcing agency of an acceptable supervision and management plan. This plan shall include the institution of quality controls to ensure that the pattern of violations does not continue and the identification of qualified personnel to implement the plan. If the plan is not submitted within five business days of the issue date of the stop construction order, the order shall take effect.

3.No person shall continue, or cause to allow to be continued, the construction of a building or structure in violation of a stop construction order, except with the permission of the enforcing agency to abate a dangerous condition or remove a violation, or except by court order.

4.If an order to stop construction is not obeyed, the enforcing agency may apply to the appropriate court as otherwise established by law for an order enjoining the violation of the stop construction order. The remedy for violation of such an order provided in this subsection shall be in addition to, and not in limitation of, any other remedies provided by law.

(e) Penalties may be levied by an enforcing agency as follows:

1.Up to $ 1,000 per violation for failure or refusal to comply with any lawful order, unless the failure or refusal to comply is done with the knowledge that it will endanger the life or safety of any person, in which case the penalty shall be up to $ 2,000 per violation;

2.Up to $ 2,000 per violation for failure to obtain a required permit prior to commencing construction or for allowing a building to be occupied without a certificate of occupancy;

3.Up to $ 2,000 per violation for failure to comply with a stop construction order;

4.Up to $ 2,000 per violation for willfully making a false or misleading written statement, or willfully omitting any required information or statement in any application or request for approval;

5.Up to $ 500.00 per violation for any violation not covered under (e)1 through 4 above;

6.For purposes of this subsection, in an occupied building, a code violation involving fire safety, structural soundness or the malfunctioning of mechanical equipment that would pose a life safety

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hazard shall be deemed to endanger the life or safety of a person. In an unoccupied building, a code violation of a requirement intended to protect members of the public who are walking by the property shall be deemed to endanger the life or safety of a person.

History

HISTORY:

Amended by R.2004 d.365, effective October 4, 2004.

See: *36 N.J.R. 2605(a)*, *36 N.J.R. 4441(a)*.

In (b), inserted "of 1999" following "Penalty Enforcement Law", amended the N.J.S.A. reference in (6), and substituted "and of the Superior Court" for "in addition to the courts specified by *N.J.S.A. 2A:58-2*"; added (e).

Amended by R.2007 d.46, effective February 5, 2007.

See: *38 N.J.R. 872(a)*, *39 N.J.R. 370(b)*.

Rewrote (d).

Amended by R.2007 d.124, effective May 7, 2007.

See: *38 N.J.R. 3708(a)*, *39 N.J.R. 1669(a)*.

In the introductory paragraph of (b), substituted a colon for a semicolon at the end; and in (b)5, deleted ", whenever he shall not have done so in the original notice and orders" following "pay a penalty".

Administrative correction.

See: *40 N.J.R. 113(a)*.

Annotations

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Civil rights action challenging township actions regarding use of property as church were not ripe for adjudication until township planning board decided site plan application and any need for variance. *Trinity Resources, Inc. v. Township of Delanco, D.N.J.1994, 842 F.Supp. 782.*

Pursuant to *N.J.A.C. 5:23-4.15(a)*, the Department may suspend or revoke its authorization when a private on-site agency submits fraudulent or materially inaccurate information. This remedy is in addition to any other remedies provided by the regulations under *N.J.A.C. 5:23-2.31(b)*, allowing a penalty of up to $ 500 in the case of a false or misleading written statement made to the Department that is not willful, and *N.J.A.C. 5:23-2.31(e)*, allowing for a penalty of up to $ 2,000 in a case where such a statement is made willfully; therefore, *N.J.A.C. 5:23-4.15(a)*1 does not preclude the levying of a penalty in addition to, or in lieu of, suspension or revocation of an authorization previously given to a private on-site inspection agency (adopting with modification *2009 N.J. AGEN LEXIS*

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700).Office of Regulatory Affairs v. EIC Inspection Agency Corp., OAL Dkt. No. CAF 01069-09, 2009 N.J. AGEN LEXIS 1022, Final Decision (November 12, 2009).

Initial Decision (2006 N.J. AGEN LEXIS 428) adopted, which continued a stop work order on a home site construction project because: (1) removal of the table-type shoring and bracing for the adjoining building violated the construction permit conditions, and (2) the absence of documentation by an engineer or approval by an engineer of the changes to the shoring also violated the permit. *Office of Local Code Enforcement, Dep't of Community Affairs v. Brassel, OAL Dkt. No. CAF 02684-06, 2006 N.J. AGEN LEXIS 512,* Final Decision (June 16, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 319) adopted as modified, which concluded that license revocation was warranted for a building inspector who accepted several bribes and attempted to negotiate another bribe, but monetary penalties would not be imposed based on the inspector's representation that he cooperated with law enforcement officials investigating and prosecuting other individuals relative to the bribery. *Office of Regulatory Affairs v. DiStefano, OAL Dkt. No. CAF 4604-05, 2006 N.J. AGEN LEXIS 518,* Final Decision (April 17, 2006).

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§ 5:23-2.32 Unsafe structures

(a) All buildings or structures that shall become unsafe, or unsanitary, or that contain deficient or blocked exitway facilities, or which constitute a fire hazard or are otherwise dangerous to human life or the public welfare, or that by reason of illegal or improper use or occupancy shall be deemed unsafe buildings or structures, shall be taken down and removed or made safe and secure. A vacant building that is unguarded or open at door or window shall be deemed a fire hazard and unsafe within the meaning of this chapter.

1.Examination and record of damaged structure: The appropriate subcode official shall examine every building or structure reported as dangerous, unsafe structurally, unsanitary or constituting a fire hazard and shall prepare a report to be filed in a docket of unsafe structures and premises, stating the use of the structure, the nature of the hazard, the nature and estimated amount of damages, if any, caused by collapse or failure.

2.Notice of unsafe structure: If an unsafe or unsanitary condition is found in a building or structure, the construction official shall serve a written notice describing the building or structure deemed unsafe and specifying the required repairs or improvements to be made to render the building or structure safe and secure, or requiring the unsafe building or structure or portion thereof to be vacated or demolished within a stipulated time. Such notice shall require the person thus notified to immediately declare to the construction official his or her acceptance or rejection of the terms of the order. Such person may seek review before the Construction Board of Appeals within 15 days of receipt of the notice.

3.Restoration of unsafe structure: A building or structure condemned by the construction official may be restored to a safe condition in accordance with N.J.A.C. 5:23-6, Rehabilitation Subcode. A certificate of approval or certificate of occupancy, as appropriate, shall be obtained prior to reoccupancy of the building or structure.

4.Posting notice of unsafe structure: If the person addressed with a notice of unsafe structure cannot be found within the municipality after diligent search, then such notice shall be sent by registered or certified mail to the last known address of such person, as on file with the office of the tax collector, and a copy of the notice of unsafe structure shall be posted in a conspicuous place on the premises; and such procedures shall be deemed the equivalent of personal notice.

5.Upon refusal or neglect of the person served with a notice of unsafe structure to comply with the requirements of the order to abate the unsafe condition, the construction official shall, in addition to any other remedies herein provided, forward the matter to the legal counsel of the jurisdiction for an action to compel compliance.

(b) Emergency measures:

1.When, in the opinion of the construction official and appropriate subcode officials, there is actual and immediate danger of failure or collapse of a building or structure or any part thereof which would endanger life, or when any structure or part of a structure has fallen and life is endangered by the occupation of the building or structure, the construction official is hereby authorized and empowered to

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order and require the occupants to vacate the same forthwith. The construction official shall cause to be posted at each entrance to such building a notice reading as follows: This structure is unsafe and its use or occupancy has been prohibited by the construction official, and it shall be unlawful for any person to enter such building or structure except for the purpose of making the required repairs or demolishing the same. The order of the construction official shall be effective immediately.

2.Temporary safeguards: When, in the opinion of the construction official, there is actual and immediate danger of collapse or failure of a building or structure or any part thereof which would endanger life, the construction official shall cause the necessary work to be done to render such building or structure or part thereof temporarily safe, whether or not the legal procedure herein has been instituted. Such work may include such demolition as may be necessary in order to eliminate any actual and immediate danger to human life; provided, however, that any demolition work shall not commence until at least 24 hours following service of notice of the pending demolition upon the owner, unless such service is not possible because the identity or the address of the owner cannot be determined from public records. Upon expiration of the 24-hour period, demolition may proceed unless stayed by order of the Superior Court.

3.Closing streets: When necessary for the public safety, the construction official may temporarily close sidewalks, streets, buildings and structures and places adjacent to such unsafe structure, and prohibit the same from being used.

4.Emergency repairs or demolition: For the purpose of this section, the construction official shall employ the necessary labor and materials to perform the required work as expeditiously as possible.

5.Costs of emergency repairs: Costs incurred in the performance of emergency work shall be paid from the treasury of the jurisdiction on certificate of the construction official; and the legal authority of the jurisdiction shall institute appropriate action against the owner of the premises for the recovery of such costs.

6.Appeals: An emergency order issued by a municipal construction official pursuant to this subsection shall be appealable only to a court of competent jurisdiction.

History

HISTORY:

Amended by R.1991 d.509, effective October 7, 1991.

See: 23 N.J.R. 2236(a), 23 N.J.R. 3001(a).

C.O. required prior to reoccupancy.

Amended by 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)*.

Amended by R.1999 d.424, effective December 6, 1999.

See: *31 N.J.R. 2428(a)*, *31 N.J.R. 4001(c)*.

Rewrote (a)3.

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

See: *35 N.J.R. 303(a)*, *35 N.J.R. 2207(a)*.

Rewrote (b).

Annotations

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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 (D.N.J. 2012).*

New Jersey limited liability company (LLC) that declared Chapter 11 bankruptcy was awarded $ 241,283 in damages after a construction official who worked for the City of East Orange, New Jersey, ordered the demolition of a building the LLC owned without giving the LLC proper notice of his decision under N.J.A.C. 5:23-2.32 and 5:23-2.33. Although the court found that the building was worth $ 321,711 at the time it was demolished, it reduced the award by 25% pursuant to New Jersey's Comparative Negligence Act, N.J.S.A. 2A:15-5.1, because the LLC had not acted with due diligence in moving forward with repairs it intended to make. 106 *N. Walnut, Llc v. City of E. Orange (in re 106 N. Walnut, Llc), 2011 Bankr. LEXIS 2769 (United States Bankruptcy Court For The District Of New Jersey 2011).*

Civil rights action challenging township actions regarding use of property as church were not ripe for adjudication until township planning board decided site plan application and any need for variance. *Trinity Resources, Inc. v. Township of Delanco, D.N.J.1994, 842 F.Supp. 782.*

Various city defendants were properly granted summary judgment in a suit brought by a property owner alleging wrongful demolition of part of its building following a fire because the notice requirements contained in N.J.A.C. 5:23-2.32(b)(2) and the summary hearing safeguards provided in N.J.S.A. 40:48-2.5(f)(2) were inapplicable because the fire chief, acting pursuant to N.J.S.A. 40A:14-54.1, had sole authority to direct the ongoing fire operations, including the demolition of the building, in order to protect the lives and property endangered by the fire, and he had not yet declared the fire to be out. *Crystal Ice-bridgeton, Llc v. City of Bridgeton, 428 N.J. Super. 576, 54 A.3d 848, 2012 N.J. Super. LEXIS 176 (App.Div. 2012).*

In a dispute involving property insurance coverage, a trial court properly granted summary judgment to the insured for repair work to other parts of a damaged building since there was a clear causal connection between the collapse of the seventh floor and the code official's mandate to bring the remaining floors into compliance to prevent them from collapsing. But for wind damage to the seventh floor of the insured's building (a covered claim), the insured would not have been required to bring the wall-to floor connections in the rest of the building up to current code standards, therefore, those additional repairs were covered under the policy. *Deb Assocs. v. Greater N.y. Mut. Ins. Co., 407 N.J. Super. 287, 970 A.2d 1074, 2009 N.J. Super. LEXIS 124 (App.Div. 2009).*

Mobile park owner that leased space to mobile home owners could not require residents to convert from oil heat to gas heat as condition of approving prospective purchases. *Garden Park Mobile Home Owners Ass'n v. Garden Park Associates, 292 N.J.Super. 442, 678 A.2d 1191 (L.1996).*

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City, as landowner, did not have immunity from claim it negligently maintained buildings in dangerous condition, resulting in spread of fire to surrounding buildings. *Saldana v. DiMedio, 275 N.J.Super. 488, 646 A.2d 522 (A.D.1994).*

If activities of building inspector and public works director required discretionary decisions and were subject to qualified immunity, standard of liability would be whether decisions were palpably unreasonable or whether they merely failed to follow mandates of higher-up decisions. *Saldana v. DiMedio, 275 N.J.Super. 488, 646 A.2d 522 (A.D.1994).*

"Dangerous condition" for tort liability was satisfied with respect to surrounding buildings damaged by fire which spread from buildings on city-owned lots. *Saldana v. DiMedio, 275 N.J.Super. 488, 646 A.2d 522 (A.D.1994).*

Loss of housing which occurred when premises was evacuated for safety of tenants upon broken water main was a natural disaster that precluded payment of relocation benefits. *Union Gardens' v. Township of Montclair, 95 N.J.A.R.2d (CAF) 85.*

Research References & Practice Aids

LAW REVIEW AND JOURNAL COMMENTARIES:

Tort Claims Act--Landlords. P.R. Chenoweth, 138 N.J.L.J. No. 2, 77 (1994).

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N.J.A.C. 5:23-2.33

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§ 5:23-2.33 Service of notice

Except as is specifically provided for by the act with respect to stop construction orders, service of notices and orders pursuant to this section shall be upon the owner or the person specified as agent for receipt of same in the application for a permit or the person responsible for the work or in the case of unsafe structures upon any agent or person in control of the building. Service may be made by personal delivery or by leaving a copy at the dwelling house or usual place of abode of such person, with a competent member of his household of the age of 14 years or older than residing therein, or by any other method or upon any other person approved pursuant to Rules 4:4-4 and 4:4-5 of the New Jersey Supreme Court, or which is otherwise consistent with due process.

Annotations

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Case Notes

New Jersey limited liability company (LLC) that declared Chapter 11 bankruptcy was awarded $ 241,283 in damages after a construction official who worked for the City of East Orange, New Jersey, ordered the demolition of a building the LLC owned without giving the LLC proper notice of his decision under *N.J.A.C. 5:23-2.32* and *5:23-2.33*. Although the court found that the building was worth $ 321,711 at the time it was demolished, it reduced the award by 25% pursuant to New Jersey's Comparative Negligence Act, *N.J.S.A. 2A:15-5*.1, because the LLC had not acted with due diligence in moving forward with repairs it intended to make. 106 *N. Walnut, Llc v. City of E. Orange (in re 106 N. Walnut, Llc), 2011 Bankr. LEXIS 2769 (United States Bankruptcy Court For The District Of New Jersey 2011).*

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§ 5:23-2.34 Protection of adjoining properties and public rights of way

(a) Owners who undertake construction, rehabilitation, or demolition work at their properties shall protect adjoining properties and public rights of way from damage or hazardous conditions caused by the work.

1.In instances where it may be necessary to access the adjoining property to provide such protection, the owner intending to undertake the construction, rehabilitation, or demolition work that could potentially damage adjoining properties shall deliver written notice of such intent to the owners of the affected properties. The notice shall request written permission to enter the adjoining properties to determine the measures that must be taken to safeguard the properties from damage.

i.Written consent from the owners of the adjoining properties must be obtained prior to entering the properties.

ii. In those cases where owners of adjoining properties refuse access, work shall not proceed unless access to the properties is granted by the courts.

2.Upon approval of measures to safeguard adjoining properties, the owner intending to undertake the construction, rehabilitation, or demolition work shall provide a copy of the measures to the owners of adjoining properties and shall request and obtain written permission from the owners of the adjoining properties to implement the measures prior to the commencement of work.

(b) The measures to be taken to safeguard adjoining properties or public rights of way shall be submitted with the permit application for review and approval by the construction official. For projects undertaken using partial filing or partial releases, such measures shall be submitted for review and shall have been approved prior to the issuance of a construction permit for the portion of the work requiring the safeguarding of adjoining properties or public rights of way. Effective March 18, 2018:

1.Sections 3302, 3303, 3304, 3306, 3307, and 3308 of the building subcode shall be used as the minimum safeguards for all buildings and structures regulated by the one- and two-family dwelling subcode.

2.Where necessary to protect the public right of way, sidewalk, or street bridging, designed in accordance with the applicable requirements of the building subcode, shall be installed over public rights of way to protect persons and vehicles. Construction documents prepared by a design professional shall be submitted and released prior to the installation of sidewalk or street bridging. The sidewalk or street bridging shall be inspected and certified by the licensed design professional prior to the start of construction work that may threaten the public right of way. The released drawings shall be available, upon request, at the site while the sidewalk or street bridging is in place.

(c) Effective March 18, 2018, for cranes of more than 160 feet in height, including jibs and any other extensions to the boom, located on a construction site or for cranes of more than 50 feet in height with a maximum rated capacity of greater than 20 tons located in a public right of way, measures shall be taken to protect adjoining property and public rights of way from any hazard to life or property that may be caused by the siting or use of the crane. Such measures may be omitted where the crane placement is such that failure would impact only the

construction site itself and would not imperil any adjoining property, public right of way, or any building(s) or area(s) on the same property as the construction site occupied by other than construction workers.

1.An owner intending to use a crane that is sited on or lifts over a public way shall obtain approval from the local police or traffic safety department or the appropriate county or State authority. Approval to close the street and sidewalk while the crane is in operation shall be accepted as adequately protecting the public right of way.

2.Documentation for operation of a crane shall include a site plan indicating crane placement, support, or foundation, as appropriate, reach and lift limits, crane operating procedures to be followed under various wind or other environmental conditions, and any plans in place to control operation of the crane to minimize risk to adjoining property or public rights of way.

3.For erection of a tower crane, the required documentation shall include a signed and sealed plan for the footing layout and design, including a soils report, and a certification by the design professional of record that installation was performed in accordance with this plan and the manufacturer's specifications for the crane.

i.The tower and base shall have elevations shot to confirm that no movement has occurred after jumps. Additionally, the entity owning or operating the crane(s) shall maintain weekly reports of maintenance and connections to superstructure, as inspected and certified by the design professional.

History

HISTORY:

Repealed by 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)*.

Section was "Construction board of appeals".

New Rule, R.2008 d.39, effective March 3, 2008.

See: *39 N.J.R. 2175(a)*, *40 N.J.R. 1084(a)*.

Section was "Reserved".

Amended by R.2017 d.234, effective December 18, 2017.

See: *49 N.J.R. 1275(a)*, *49 N.J.R. 3819(a)*.

Section was "Protection of adjoining properties". Rewrote the section.

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§ 5:23-2.35 Enforcement actions after issuance of certificate(s) of occupancy

(a) Subsequent to the issuance of a certificate of occupancy, the construction official shall issue a notice of violation for any violation of the provisions of the Code in effect at the time of permit application that comes to his or her attention. Pursuant to *N.J.S.A. 2A:14-1*.1, no notice of violation may be issued to the developer or to any contractor more than 10 years after issuance of the certificate of occupancy.

1.If violations of any of the following provisions of the Code in effect at the time of permit application are found in a residential structure in a development, other than Group R-1, subsequent to the issuance of a certificate of occupancy, the construction official shall issue such notices and orders as may be necessary to ensure that all units within the development that might have similar violations are inspected for such violations and that any such violations found are cited and abated:

i. *N.J.A.C. 5:23-2.32*, Unsafe structures;

ii. The following provisions of the building subcode:

(1) Chapter 4, Special Detailed Requirements Based on Use and Occupancy, except for sections 401, 402.3, 403.2.2, 409, 412;

(2) Chapter 7, Fire and Smoke Protection Features;

(3) Section 803, Wall and Ceiling Finishes;

(4) Chapter 9, Fire Protection Systems; and

(5) Chapter 10, Means of Egress, except for sections 1011.5.4, 1011.5.5, 1011.11, 1011.12, 1029.13, 1029.15, and 1029.16;

iii. The following provisions of the one- and two-family dwelling subcode:

(1) Section R302.1, Exterior walls (Fire-Resistant Construction);

(2) Section R302.2, Townhouses (Fire-Resistant Construction);

(3) Section R-302.3, Two-family dwellings (Fire-Resistant Construction); and

(4) Section R314, Smoke Alarms.

iv. The following provisions of the electrical subcode:

(1) Section 240.3, Other Articles;

(2) Section 240.4, Protection of Conductors;

(3) Section 250.4, General Requirements for Grounding and Bonding;

v.Subchapter 7, the barrier free subcode; and

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vi. Any structural deficiency, which is present or likely to occur that has the potential for injury or significant damage to the livability of a home. This shall include any structural member that exceeds the permitted deflection established at *N.J.A.C. 5:23-6.5(c)*1i through iii.

2. The municipality may retain the services of a professional engineer or registered architect, to be paid at an hourly rate and to work subject to the supervision and control of the construction official, for inspections, review of plans and supporting documents and preparation of reports and documents, in connection with enforcement of (a)1 above provided that the professional retained is independent of both the builder and the homeowner and has no actual or apparent conflict of interest that would call into question his or her ability to carry out these duties impartially. Any person carrying out inspections under such a contract shall be, at a minimum, a licensed engineer or a registered architect or shall have a bachelor's degree from an accredited institution of higher education in engineering or in architecture, or in engineering or architectural technology and shall have not less than five years of experience in the design, construction or rehabilitation of woodframe structures.

History

HISTORY:

Repealed by 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)*.

Section was "Applicant's right of appeal; procedure".

New Rule, R.2006 d.355, effective October 2, 2006.

See: *38 N.J.R. 1789(a)*, *38 N.J.R. 4175(a)*.

Amended by R.2008 d.192, effective July 21, 2008.

See: *39 N.J.R. 4985(a)*, *40 N.J.R. 4314(b)*.

Section was "Enforcement actions in residential developments after issuance of certificate(s) of occupancy". In (a)1ii(1), substituted "403.14" for "403.12, 406.1, 406.2, 406.3.1, 406.3.2, 406.3.3, 406.3.4, 406.3.5, 406.3.6, 406.3.7, 406.4, 406.5"; in (a)1ii(5), substituted "1009.3.2, 1009.3.3, 1009.10, 1009.11, 1025.11, 1025.13 and 1025.14" for "1003.3.3.3.1, 1003.3.3.3.2, 1003.3.3.11, 1003.3.12, 1008.9, 1009.11, and 1008.12"; in (a)1iii(1), substituted "Section" for "Sections" and "Exterior walls" for "R-302.2 and R-302.3, Required Fire Resistance Ratings"; in (a)1iii(2), substituted "R-313" for "R-317"; and in (a)1iii(3), substituted "R-317.1" for "R-321.1" and "R-317.2" for "R-321.2"; and in (a)1vi, inserted a comma following "deficiency" and inserted "through iii".

Amended by R.2010 d.291, effective December 20, 2010.

See: *42 N.J.R. 1943(a)*, *42 N.J.R. 3053(a)*.

In (a)1ii(1), substituted "403.2.2" for "403.14"; and rewrote (a)1ii(5), (a)1iii(1), (a)1iii(2) and (a)1iii(3).

Administrative correction.

See: *43 N.J.R. 174(a)*.

Amended by R.2018 d.021, effective January 16, 2018.

See: *49 N.J.R. 306(a)*, *50 N.J.R. 303(a)*.

Rewrote (a)1i through (a)1iv.

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§ 5:23-2.36 (Reserved)

History

HISTORY:

Repealed by 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)*.

Section was "Procedure of the board".

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§ 5:23-2.37 Elevation of an existing building

(a) Service connections: Before a building can be elevated, the owner or agent shall notify all utilities having service connections within the building, such as water, electric, gas, sewer, and other connections. A permit to elevate shall not be issued until releases are obtained from all utilities that provide service to the property, stating that their respective service connections and appurtenant equipment, such as meters and regulators, have been removed or sealed or plugged in a safe manner.

1.Exception: No release from the utility shall be required for the disconnection of water or sewer service outside of the utility right-of-way.

(b) Method of elevation: The permit application shall include the proposed method of elevation or equipment to be used, including an estimate of the lifting load and identification of the locations for the principal lift beams, lateral support beams, and cribbing, if any. All supports, including, but not limited to, jacks, beams, cribbing, and strapping, shall be of sufficient size and strength to support the estimated lifting load.

(c) Equipment: The elevation shall employ a synchronized hydraulic jacking system or a method or equipment deemed to be equivalent. For purposes of evaluating the equivalency of any proposed method or equipment, the construction official or building subcode official may request additional supporting documentation pursuant to *N.J.A.C. 5:23-2.19* and *3.7*.

(d) Protection of adjoining property: In cases where the lot size or the location of the building on the lot is such that there is a need to protect adjoining property or public rights of way, a plan for providing such protection shall be included as part of the permit application. The construction official may require that the plans be prepared by a New Jersey licensed design professional.

History

HISTORY:

Repealed by 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)*.

Section was "Decision of the board".

Special New Rule, R.2014 d.161, effective October 1, 2014 (to expire May 12, 2015).

See: *46 N.J.R. 2186(a)*.

Section was "Reserved".

Adopted concurrent new rule, R.2015 d.077, effective April 15, 2015.

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See: *46 N.J.R. 2186(a)*, *47 N.J.R. 989(b)*.

Provisions of R.2014 d.161 adopted without change.

Amended by R.2018 d.021, effective January 16, 2018.

See: *49 N.J.R. 306(a)*, *50 N.J.R. 303(a)*.

Added (a)1.

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§ 5:23-2.38 Departmental appeal

(a) Whenever the Department shall act as the enforcing agency under the State Uniform Construction Code Act (*N.J.S.A. 52:27D-128*), an appeal in lieu of the appeal to the county, municipal or joint construction board of appeals may be made to the Hearing Coordinator, Division of Codes and Standards, Department of Community Affairs, PO Box 802, Trenton, NJ 08625.

1.The case shall be adjudicated before the Office of Administrative Law and the final decision shall be issued by the Commissioner.

2.Such hearings shall be governed by the provisions of the Administrative Procedure Act, *N.J.S.A. 52:14B-1* et seq., and the Uniform Administrative Procedure Rules, *N.J.A.C. 1:1*, and the time provisions applicable to construction boards of appeal.

(b) Any party in interest aggrieved by any decision made by a facility manager or owner or administering agency with respect to compliance with either the Barrier Free Recreation Standards (*N.J.A.C. 5:23-7.15* through *7.31*) or the Playground Safety Subcode (N.J.A.C. 5:23-11) shall have the right to appeal the decision to the Department.

1.The Department shall forward a copy of the complaint to the facility manager and to the facility owner or agency responsible for administration of the facility and shall request a response from the facility manager.

2.The facility manager shall respond in writing within 45 days of receipt of the request.

3.The Department shall review the response and shall determine whether the complaint is justified and what corrective measures shall be required to be taken by the facility owner or administering agency. The Department shall make such determination and issue any necessary orders within 60 days.

4.In the event that the owner or administering agency of a facility appeals any such order and the Department determines that a contested case exists, it shall forward such case for adjudication in an administrative hearing before the Office of Administrative Law and the final decision shall be issued by the Commissioner. Hearings shall be conducted in accordance with the provisions of the Administrative Procedure Act (*N.J.S.A. 52:14B-1* et seq.) and the Uniform Administrative Procedure Rules (*N.J.A.C. 1:1*).

5.A "party in interest" may be either the owner, or authorized representative of the owner, of the premises that is the subject of the decision or an occupant, user or prospective occupant or user, of the premises, or a group representative of such occupants, users or prospective occupants or users; provided, however, that an occupant, user or representative group shall only be deemed to be a party in interest if notice of such interest has been given to the Department by the party prior to the issuance of the Department's determination.

History

HISTORY:

Amended by R.1982 d.436, effective December 20, 1982.

See: 14 N.J.R. 734(a), 14 N.J.R. 1449(a).

Added appeals to be made to the Division of Housing, cases to be heard by the OAL with final decision by the Commissioner. Also added APA cite.

Amended by R.1988 d.352, effective August 1, 1988.

See: 19 N.J.R. 1270(a), 20 N.J.R. 1873(b).

Added (b).

Amended by R.1991 d.428, effective August 19, 1991.

See: 23 N.J.R. 1730(a), 23 N.J.R. 2500(d).

In (b), added codification 1 through 5. In (b)3, added "what corrective measures shall be required by owner or agency".

Amended by R.1997 d.409, effective October 6, 1997.

See: *29 N.J.R. 2736(a)*, *29 N.J.R. 4281(a)*.

In (a), inserted N.J.S.A. reference, amended Division name, and designated second and third sentences as (a)1 and 2; in (a)2, amended N.J.S.A. references and substituted "construction boards of appeal" for "county or municipal boards".

Amended by R.1997 d.417, effective October 6, 1997.

See: *29 N.J.R. 3387(a)*, *29 N.J.R. 4285(a)*.

In (a), amended where to appeal.

Amended by R.1999 d.351, effective October 18, 1999.

See: *31 N.J.R. 1838(a)*, *31 N.J.R. 3082(a)*.

In (b), inserted a reference to owners and administering agencies, and changed N.J.A.C. reference in the introductory paragraph.

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§ 5:23-2.39 Automatic fire suppression systems

(a) Applications for tax exemption pursuant to P.L. 1983, c.309 shall be made on a form prepared by the Department of Treasury, Division of Taxation, and made available to the public at the office of the enforcing agency.

(b) Construction official's responsibilities:

1.The construction official shall have responsibility for determining the eligibility of any proposed automatic fire suppression systems.

2.The construction official shall consult with the appropriate subcode officials in determining conformity with the building and fire protection subcodes and their referenced standards, as well as, where applicable, the most recently published editions of NFPA 13D, NFPA 20, NFPA 22 and NFPA 24. A system shall only be eligible for tax exemption if it conforms to such of these standards as are applicable to that type of automatic fire suppression system and appurtenant installations.

i.A system shall not be deemed ineligible because it is in a new building or because it only provides coverage to part of a building.

3.The construction official shall, in addition, review the cost estimates provided by the applicant.

4.The construction official may require documentation in the form of signed contracts, contractor estimates and the like if he deems it necessary.

5.The construction official shall grant or deny certification of the system prior to issuance of the construction permit and shall notify the applicant of his decision at that time.

6.The construction official shall forward a copy of the approved application for exemption to the municipal assessor for his action upon issuance of the certificate of occupancy or certification of completion.

(c) The enforcing agency, after giving written notice to the owner, may revoke such certification whenever any of the following appears:

1.The exemption was obtained by fraud or misrepresentation;

2.The claimant for tax exemption has failed substantially to proceed with the construction, reconstruction, installation or acquisition of an automatic fire suppression system;

3.The mechanical system to which the certificate relates has ceased to be used for the primary purpose of providing automatic fire suppression and is being used for a different primary purpose;

4.The claimant for tax exemption hereunder has so departed from the equipment, design and construction previously certified by the enforcing agency that, in the opinion of said enforcing agency, the automatic fire suppression system is not suitable and reasonably adequate for the purpose of providing automatic fire suppression.

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(d) The construction official shall notify the assessor in writing of the revocation of the certification.

(e) Appeals may be made regarding the decision of the construction official to the Construction Board of Appeals having jurisdiction, in accordance with *N.J.A.C. 5:23A*.

History

HISTORY:

New Rule, R.1984 d.121, effective April 16, 1984.

See: 16 N.J.R. 180(a), 16 N.J.R. 874(a).

This section replaces 5:23-6.2, Construction Official's Responsibilities, which was recodified as *N.J.A.C. 5:23-6.1(b)*.

Recodified from 5:23-6.2 by R.1987 d.387, effective October 5, 1987.

See: 19 N.J.R. 433(b), 19 N.J.R. 1793(a).

Recodified from 5:23-6.4 and amended by R.1997 d.409, effective October 6, 1997.

See: *29 N.J.R. 2736(a)*, *29 N.J.R. 4281(a)*.

In (e), amended N.J.A.C. reference.

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