

PUBLIC NOTICES

COMMUNITY AFFAIRS

(a)

DIVISION OF CODES AND STANDARDS

Notice of Action on Petition for Rulemaking Uniform Construction Code

N.J.A.C. 5:23-2.7 and 2.17A

Petitioner: New Jersey League of Municipalities; New Jersey Building Officials, Inc.; Municipal Construction Code Officials of New Jersey; New Jersey Fire Prevention and Protection Association; New Jersey Plumbing Inspectors Associations, Inc.; and New Jersey Municipal Electrical Inspector Association.

Take notice that on June 24, 2019, the Department of Community Affairs received a petition for rulemaking seeking amendments to N.J.A.C. 5:23-2.7, Ordinary maintenance, and 2.17A, Minor work. The petitioners state that the requested amendments would modify the rules adopted on March 5, 2018, at 50 N.J.R. 955(a) for reasons of clarity and public safety. Letters of support for the petition were received from the Borough of Alpine, the Borough of Glassboro, the Borough of Fanwood, the Borough of Hawthorne, Maurice River Township, Middle Township, the New Jersey Building Officials Association, Robbinsville Township, the Township of Commercial, the Township of Hillsborough, the Township of Mahwah, the Township of Scotch Plains, the Township of Springfield, the Township of Verona, the Township of Washington, the Township of Willingboro, West Amwell Township, and Woolwich Township. A notice acknowledging receipt of the petition was published in the August 5, 2019 New Jersey Register at 51 N.J.R. 1375(a).

Take further notice that the petition was duly considered pursuant to law. The Department has determined to approve the petition in part, as described below. The portions that are being denied are also described below. For those portions that have been approved, the Department is initiating its rulemaking process to make the revisions.

A copy of this notice has been mailed to the petitioners.

Response to the petition follows:

1. The petitioner requests an amendment to N.J.A.C. 5:23-1.4, Definitions, "minor work" to change the definition to exclude any project that requires a "prior approval." As currently stated at N.J.A.C. 5:23-5.17A, the projects described as "minor work" are sufficiently small, such that "prior approvals" would not be required. N.J.A.C. 5:23-1.4 defines the term "prior approval" and lists the following as examples: zoning, soil erosion and sediment control, highway curb cuts, water and sewer treatment work approvals, coastal areas facilities review, compliance of underground storage tank systems, educational adequacy review of public school facilities, Pinelands review, and compliance of abandoned wells. The work described as minor work should not trigger any of these prior approvals; therefore, this portion of the petition is denied.

2. The petitioner requests an amendment to N.J.A.C. 5:23-2.7(c)1ii to reinstate the limit on the installation or replacement of drywall and plaster to 25 percent of wall or ceiling area of a room. The petition also recommends amending the current text to "clarify a portion of the recent rule which has caused considerable confusion." The March 5, 2018 rule adoption merely removed the arbitrary limitation of 25 percent of the wall area of a room for which a construction permit would not be required and replaced it with a limit of 25 percent of the wall area of the one- or two-family dwelling unit. The limitation based on the room area was overly restrictive and illogical. There was no limit on performing the work "wall by wall," thus, eliminating the need for a permit. The Department determined that requiring plans and a permit for replacement of more than 25 percent of the interior of a dwelling to be reasonable. Regarding the petitioners' claim of lack of clarity, the text being described as unclear has been in the Uniform Construction Code for many years, and it has not caused any confusion. For these reasons, this portion of the petition is denied.

3. The petitioner requests an amendment to N.J.A.C. 5:23-2.7(c)1iii to allow the installation of an unlimited quantity of various wall finishes, including vinyl wall covering in any "use group." Chapter 8 of the 2015 International Building Code, the building subcode, regulates the interior finish allowed on wall surfaces based on Group designation (not "use group"). These limitations are based on the flame spread and smoke development ratings for the actual product. As such, these types of finishes are highly regulated and should not be allowed to be installed without a construction permit except for one- and two-family dwelling units, as allowed pursuant to N.J.A.C. 5:23-2.7(c)1ii(1). It is for this reason and the rejection of the requested amendment to item 2 above, this portion of the petition is denied.

4. The petitioner requests an amendment to N.J.A.C. 5:23-2.7(c)1v to exclude fire doors from the Ordinary Maintenance provisions and to amend the text that requires the replaced window or door to be made in the same opening (changing the word "may" to "shall" in the second sentence). The current requirements at N.J.A.C. 5:23-2.7(b)4 state that Ordinary Maintenance may not include any work affecting structural or fire safety. Thus, as written, the regulation currently prohibits the replacement of a fire door as Ordinary Maintenance, however, this limitation is not stated specifically in the list of work. The proposed amendment will make it clear that this type of project has, and should, require the issuance of a construction permit. Regarding the suggested amendment in the second sentence, as written, the text allows ("may") the applicant to replace the window or door in the same opening provided ("shall") it does not reduce the required height, width, or net clear opening of the previous window or door assembly. The current text is grammatically accurate, thus, this portion of the petition is denied.

5. The petitioner requests an amendment to N.J.A.C. 5:23-2.7(c)1vi to reword the current language to allow the repair or replacement of non-load bearing partitions as Ordinary Maintenance only when such work is "identical in construction and location as those replaced." The Department agrees with the first part of the suggested amendment to consider the replacement of a non-load bearing partition as Ordinary Maintenance. With regard to the second part of the suggested amendment, the Department will revise the suggested language to be consistent with the terminology used in Subchapter 6 of the Uniform Construction Code, the Rehabilitation Subcode. The revised text will provide that using materials or components identical to, or closely similar to, the existing non-load bearing partition and in the same location as those replaced.

6. The petitioner requests an amendment to N.J.A.C. 5:23-2.7(c)1vii to provide a list of building equipment and accessories that may be installed without a permit. The Department agrees and will revise the text to include the following statement before the list: "including, but not limited to."

7. The petitioner requests an amendment to N.J.A.C. 5:23-2.7(c)1viii to remove the term "decoration" from the list and to limit trim to "solid wood or non-combustible material and to an area not to exceed 10 percent of the wall or ceiling surface." The term "decoration" has been included in the Uniform Construction Code for many years and it has not caused confusion. The Department believes the petitioner is confusing the term "decoration" with interior finishes; interior finishes are a defined term and "decoration" is not included within the definition. The loss of life cited in the petition was caused by interior finishes, not by decorations. Interior finishes are regulated by N.J.A.C. 5:23-2.7(c)1ii, which limits installation to one- and two-family dwellings. It should be noted that, at item 3 above, the petitioner requested to dramatically expand the allowance for installation of interior finishes; as noted above, the Department denied that requested amendment. With regard to the proposed limitation on the permissible material and amount of the trim, the proposed amendment would be overly restrictive, as trim is not limited in this way for any building. It should be noted that regardless of the need for a construction permit, the work being performed must comply with the requirements of the Uniform Construction Code. Should a code official observe trim not in compliance with the building subcode, it should be cited as a violation. It is for this reason that this portion of the petition is denied.

8. The petitioner requests an amendment to N.J.A.C. 5:23-2.7(c)1ix to prohibit the installation of flooring material on walls or ceilings. If the material is installed on a surface other than a floor it is no longer flooring material, it is a wall covering or a ceiling covering. It should be noted that this provision has been in the Uniform Construction Code for many years. It is for this reason that this portion of the petition is denied.

9. The petitioner requests an amendment to N.J.A.C. 5:23-2.7(c)1x to restore the 25 percent limit on the amount of roofing material that may be replaced without a permit. The petition states that an "entirely new roof should be inspected to ensure that the substrate is sound, the supporting structure is not over stressed, existing attic ventilation is not compromised and that the shingles are nailed properly." The petition further states that full replacement should be considered Minor Work. Because Minor Work, as currently written, requires an inspection within three days, the substrate, concealed portions of the supporting structure and nailing pattern on the shingles would not be inspected as part of a Minor Work permit. Furthermore, the installation of shingles is not considered a mandatory inspection (N.J.A.C. 5:23-2.18(b)) for which construction must cease, again, eliminating the ability to inspect the portion of the project suggested by the petitioner. History has proven that very few agencies actually inspected roof coverings on one- and two-family dwellings when a Minor Work permit was required. For these reasons, this portion of the petition is denied.

10. The petitioner requests an amendment to N.J.A.C. 5:23-2.7(c)1xiii to "amend the code to exclude the repair or replacement of the structural supports of a deck without a permit." The petitioner goes on to state: "The replacement of the primary structure of a deck which is 12 feet or 600 feet above the ground is not trivial and should not be done without a permit." The Department agrees with this statement, but not the requested change. N.J.A.C. 5:25-2.7(b)2 currently states that any work affecting structural or fire safety shall not be considered Ordinary Maintenance. Therefore, the replacement of the primary structure of ANY deck, regardless of height above grade requires the issuance of a construction permit. The current provisions allow for the repair or replacement of any non-structural portion of a deck, porch or stoop that does not support a roof or portion of the building. It is for these reasons that this portion of the petition is denied.

11. The petitioner requests an amendment to N.J.A.C. 5:23-2.7(c)2vii to require permits for shower and combination shower/bath valves in schools and residential occupancies. The amendment to allow the installation of shower and combination shower/bath valves in single-family dwellings was adopted on December 15, 2003. Since that time, the Department is unaware of any scalding incidents caused by the rule change. The rule adoption of March 5, 2018, expanded the allowance to install replacement valves in single-family dwellings to include all occupancies. As such, this portion of the petition to overturn the rule adopted in 2003 is denied.

12. The petitioner requests an amendment to N.J.A.C. 5:23-2.7(c)2ix to require permits for the installation of traps on culinary sinks in food handling establishments. It appears that the petitioner is concerned with the replacement of grease interceptors, not traps on culinary sinks. They are not the same. The installation of a grease interceptor, which prevents the grease commonly found in culinary sinks from contaminating the public sewage system, continues to require a construction permit. It is for this reason that this portion of the petition is denied.

13. The petitioner requests an amendment to N.J.A.C. 5:23-2.7(c)2x to require a construction permit for the replacement of more than one plumbing fixture in occupancies other than single-family dwellings. There is no safety concern associated with the replacement of more than one plumbing fixture; thus, it serves no purpose to require a permit when a building owner wishes to replace more than one plumbing fixture. An inspection for this type of work does not add sufficient value to justify requiring a permit. It is for these reasons that this portion of the petition is denied.

14. The petitioner requests an amendment to N.J.A.C. 5:23-2.7(c)3i to restore permit requirements for certain electrical fixtures. The proposed amendment would limit fixtures exempt from permits to those of less than 240 volts to ground, which are typically those with the highest voltage utilized by general service fixtures. The Department agrees with this portion of the petition and will propose it in a future rulemaking.

15. The petitioner requests an amendment to N.J.A.C. 5:23-2.7(c)3v, (c)5vi, and (c)5ix to restore permit requirements for the replacement of kitchen range hoods and bathroom exhaust fans that vent to internal building shafts. The Department agrees with these portions of the petition and will propose them in a future rulemaking.

16. The petitioner requests an amendment to N.J.A.C. 5:23-2.17A(b)1 to require the applicant to include a summary of the work being performed, the location of the work, and the date and time that the work will be undertaken. Additionally, the petitioner requests an amendment to state that the notice required by this section is deemed to be consent for the enforcing agency to enter and inspect in the same manner as a permit application. The Department agrees with amendment to require the notice include a summary of work and the location of work. Whereas this has always been implied with the requirement for notice, there is value in stating the obvious. The Department rejects the request to require the notice to include the date and time the work will be undertaken. It is unreasonable to require the permit applicant to schedule the date and time for the work to be performed with the enforcing agency. The Department agrees with the request to include the language of consent. The concept of Minor Work has been included in the Uniform Construction Code for many years and this language is an improvement to the section.

17. The petitioner requests an amendment to N.J.A.C. 5:23-2.17A(b)2 to include ramifications in cases when the Minor Work permit is not paid. The Department disagrees. If the permit applicant has not paid for the permit, the permit is not issued; any subsequent work would be work without a permit and would be a violation of the Uniform Construction Code. It is for this reason that this portion of the petition is denied.

18. The petitioner requests an amendment to N.J.A.C. 5:23-2.17A(c)1ii to delete alteration work in one- and two-family dwellings from the Minor Work category. This section was not amended by the March 4, 2018 rulemaking. This long-standing provision in the Uniform Construction Code has been utilized effectively and should remain. It is for this reason that this portion of the petition is denied.

19. The petitioner requests an amendment to N.J.A.C. 5:23-2.17A(c)1iii to add "rails, windows and doors" to the list of items to be included as Minor Work in structures other than one- and two-family dwellings. Window and door replacement, in the same opening, has been included as Ordinary Maintenance for many years. This change would conflict with N.J.A.C. 5:23-2.7(c)1v. The inclusion of "rails" is not useful, as the term is undefined in any of the adopted subcodes. It is for these reasons that this portion of the petition is denied.

20. The petitioner requests an amendment to delete N.J.A.C. 5:23-2.17A(c)1iv, thus, requiring the full permitting procedures of the Uniform Construction Code be applicable to repairs and renovation work in Group B, Group F, Group M, or Group S. The text recommended for deletion was not part of the March 5, 2018 rulemaking. This text was adopted November 5, 2012, as part of another rule categorized as "plan release with conditions." These rules have been in place for over six years and have not proven confusing (as claimed by the petitioner). Furthermore, the petitioner incorrectly states that a "gut rehab of a twenty-story building could be a renovation." By definition at N.J.A.C. 5:23-6.2, this type of work would be categorized as a reconstruction. It is for these reasons that this portion of the petition is denied.

21. The petitioner requests an amendment to N.J.A.C. 5:23-2.17A(c)1iv to add the replacement of more than 25 percent of the roofing material in a one- and two-family dwelling to the list of Minor Work. This is a companion request to Item #9 above that is denied, therefore, this request for change is also denied.

22. The petitioner requests an amendment to N.J.A.C. 5:23-2.17A(c)3 to reinstate high pressure boilers as work that will require a full permit. The replacement of a high pressure boiler should require the submittal of construction documents (plans) and, therefore, should not be considered Minor Work. Therefore, the Department agrees with this request for amendment.

23. The petitioner requests an amendment to N.J.A.C. 5:23-2.17A(c)5ii to require full permits for radon mitigation systems in all occupancies except single-family dwellings and residential buildings where the system is vented directly to the exterior. The petitioners are concerned that the contractor may improperly penetrate fire resistance rated assemblies. The Department agrees with the concern, but not with the solution. Rather than

limit the application of a Minor Work permit to single-family and other residential buildings, the Department will amend the current requirements to allow the work to be considered Minor Work, except for instances when a fire resistance rated assembly is to be penetrated.

24. The petitioner requests an amendment to N.J.A.C. 5:23-2.17A(c)5iii for clarity. The format of the regulations impacted by the March 4, 2018 adoption is preferred. This section lists an exception in the same format as other exceptions throughout the chapter. Listing the exception as requested by the petition would be inconsistent with the codification used throughout the chapter. It is for this reason that this portion of the petition is denied.

25. The petitioner requests an amendment to N.J.A.C. 5:23-2.17A(d) to restore the 30-day requirement for inspection of Minor Work. The March 5, 2018 rulemaking changed this long-standing provision to three business days to reflect an outpouring of concern for safety. The Department continues to believe that the expansion of Ordinary Maintenance has afforded the local enforcing agency the ability to perform Minor Work inspections in a more timely manner. When these inspections are needed, a 30-day period between the time the work has been completed and the time an inspection is performed is not reasonable. It is for this reason that this portion of the petition is denied.

ENVIRONMENTAL PROTECTION

(a)

WATER RESOURCE MANAGEMENT DIVISION OF WATER MONITORING AND STANDARDS

Adopted Amendment to the Ocean County Water Quality Management Plan Public Notice

Take notice that on October 1, 2019, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11-1 et seq., and the Water Quality Management Planning rules, N.J.A.C. 7:15, the New Jersey Department of Environmental Protection (Department) adopted an amendment (Program Interest No. 435448, Activity No. AMD190003) to the Ocean County Water Quality Management Plan. The amendment expands the sewer service area of the Ocean County Utilities Authority (OCUA) Northern Water Pollution Control Facility by 5.9 acres to serve a proposed residential development on a portion of Block 13301, Lots 7 through 9, 21, and 23; Jackson Township, Ocean County. The proposed project, identified as "Clearstream Subdivision," consists of a proposed residential subdivision of five five-bedroom, single-family homes that would generate a projected wastewater flow of 1,500 gallons per day (gpd), based on flow calculated in accordance with N.J.A.C. 7:14A-23.3, to be received by the OCUA Northern Water Pollution Control Facility (NJPDES Permit #NJ0028142). Preliminary notice was published in the New Jersey Register on July 1, 2019, at 51 N.J.R. 1136(b). No comments were received during the comment period.

This amendment has been reviewed pursuant to the Water Quality Management Planning rules at N.J.A.C. 7:15. This notice represents the Department's determination that the amendment is compliant with the regulatory criteria at N.J.A.C. 7:15-3.3, 3.5, 4.4, and 4.5, as described below.

In accordance with N.J.A.C. 7:15-3.3(b), site specific amendments are limited to modifications of the eligible sewer service area needed to address a specific project or activity. N.J.A.C. 7:15-3.5(j)2 requires that site specific amendments proposing to add 100 or more acres or generating 20,000 gpd or more of wastewater flow must update the wastewater treatment capacity analysis prepared in accordance with N.J.A.C. 7:15-4.5(b) to include the proposed project or activity. The proposed project involves less than 100 acres and will generate less than 20,000 gpd of wastewater flow; therefore, update of the wastewater treatment plant capacity analysis is not required.

In accordance with N.J.A.C. 7:15-3.5(g)6, the Department instructed the applicant to request written statements of consent from OCUA, Jackson Township, and the Ocean County Board of Chosen Freeholders. The OCUA stated in a letter dated June 27, 2019, that it would not take a formal position on the proposed amendment. Jackson Township stated in an email dated August 7, 2019, that it would not take a formal position on the proposed amendment. The Ocean County Department of Planning stated in an email dated August 15, 2019, that the county would not take a formal position on the proposed amendment.

Pursuant to N.J.A.C. 7:15-4.4(d), the following are not eligible for delineation as sewer service areas, except as otherwise provided at N.J.A.C. 7:15-4.4(i), (j), (k), and (l): environmentally sensitive areas (ESAs) identified under N.J.A.C. 7:15-4.4(e) as endangered or threatened wildlife species habitat, Natural Heritage Priority Sites, riparian zones of Category One waters and their tributaries, or wetlands; coastal planning areas identified under N.J.A.C. 7:15-4.4(f); and ESAs subject to 201 Facilities Plan grant conditions under N.J.A.C. 7:15-4.4(g). The Department conducted an evaluation of the project site using a GIS shapefile provided by the applicant compared to the Department's GIS data layers available at <http://www.nj.gov/dep/gis/listall.html> and/or other information as noted below, to determine the presence of any such areas in accordance with N.J.A.C. 7:15-4.4(e), (f), and (g) and made the following findings:

- The Department determined that the expanded sewer service area does not contain any areas mapped as endangered and threatened wildlife species habitat Rank 3, 4, or 5 on the Department's Landscape Maps of Habitat for Endangered, Threatened or Other Priority Wildlife based on the "Landscape Project Data" Version 3.3 GIS data layers in accordance with N.J.A.C. 7:15-4.4(e)1.
- The Department determined that the expanded sewer service area does not contain any areas mapped as Natural Heritage Priority Sites based on the "Natural Heritage Priority Sites" GIS data layer in accordance with N.J.A.C. 7:15-4.4(e)2.
- The Department determined that the expanded sewer service area does not contain any Category One (C1) waters or 300-foot riparian zones along any C1 waters or upstream tributaries within the same HUC-14 watershed of any C1 waters based on the "Surface Water Quality Standards" GIS data layer in accordance with N.J.A.C. 7:13-4.1(c)1 and 7:15-4.4(e)3.
- The Department determined that the expanded sewer service area does not contain any wetlands based on the "Wetlands 2012" GIS data layer and confirmed by Freshwater Wetlands Letter of Interpretation (LOI): Line Verification File #1511-17-0014.1 FWW170001.
- The Department determined that the expanded sewer service area does not contain any Coastal Fringe Planning Areas, Coastal Rural Planning Areas, or Coastal Environmentally Sensitive Planning Areas mapped on the CAFRA Planning Map based on the "CAFRA Layers" GIS layer in accordance with N.J.A.C. 7:15-4.4(f).
- The Department determined that there are no 201 Facilities Plan grant conditions applicable to the project site based on the U.S. Environmental Protection Agency list of New Jersey counties with ESA grant conditions at <https://www.epa.gov/npdes-permits/environmentally-sensitive-area-esa-grant-condition-waiver-program-region-2> in accordance with N.J.A.C. 7:15-4.4(g).

Pursuant to N.J.A.C. 7:15-4.4(h)1 and 2, the Department considered the land uses allowed in zoning ordinances and future land uses shown in municipal or county master plans. The Jackson Township Planning Board issued Resolution 2018-15 on May 7, 2018, granting Preliminary and Final Major Subdivision Approval for this project. The Ocean County Planning Board voted for Preliminary and Final Major Subdivision Approval for this project at their November 20, 2018, planning board meeting.

Sewer service is not guaranteed by adoption of this amendment since it represents only one part of the permit process and other issues may need to be addressed. Inclusion in the sewer service area resulting in adoption of this amendment does not eliminate the need to obtain all necessary permits, approvals, or certifications required by any Federal, State,