

4. When a historic building is used as a historic museum, the building shall be classified as Use Group B provided that the following conditions are met:

i. A limit on occupancy, not to exceed 50, is set by the construction official based on egress capacity and travel distance using the following parameters:

(1) For buildings with a single means of egress, occupancy shall be limited to the first and second floors, and the travel distance shall not exceed 75 feet;

(2) Two means of egress shall be required from all floors above the second floor where occupancy is permitted.

ii. There is supervision by a guide or other employee or volunteer knowledgeable in the emergency exiting procedures during all times that the building is occupied by visitors. (Plan review—Building, Fire. Inspection—Building)

(b) Special provisions: Historic buildings undergoing repair, renovation, alteration, restoration or reconstruction consistent with the U.S. Secretary of the Interior Standards for the Treatment of Historic Properties may comply with the following in lieu of compliance with the corresponding requirements of this subcode.

1. Materials and methods: Original or replica materials and original methods of construction may be used, subject to the provisions of this section.

i. Exception: Components of building systems hidden from public view, including but not limited to electrical equipment and wiring, plumbing equipment and piping and heating equipment, shall comply with N.J.A.C. 5:23-6.8, Materials and methods. (Plan review—Building, Fire. Inspection—Building)

2. Exterior Walls: Exterior walls shall not be required to be modified to meet the requirements for fireresistive wall construction. (Plan review—Building, Fire. Inspection—Building)

3. One hour fireresistive assemblies: Where one hour fireresistive construction is required by this subcode, it need not be provided regardless of construction or occupancy where the existing wall and ceiling finish is lath and plaster. (Plan review—Building, Fire. Inspection—Building)

4. Roof covering: Historic buildings shall meet the intent of Section 1505.0 of the building subcode, but shall not be required to meet Section 1507.0. The existing type of roof covering may be continued or replaced with the same materials or the preexisting materials may be replaced or restored if the materials are documented to be historic. (Building)

5. Means of Egress: Existing door openings and corridor and stairway widths of less than that specified in N.J.A.C. 5:23-6.10 through 6.30 may be approved, provid-

ed that, in the opinion of the subcode official, there is sufficient width and height for a person to pass through the opening or traverse the exit. (Plan review—Building, Fire. Inspection—Building)

6. Doors: The existing front or main exit doors need not swing in the direction of exit travel when serving fewer than 50 people or when other approved exits having sufficient capacity to serve the total occupant load are provided.

i. Existing or replica hardware shall be permitted provided that no life safety hazard is created and that the hardware meets the intent of the barrier free subcode if applicable (that is, operable without pinching, grasping or twisting.) Existing or replica hardware may be fixed in place or modified to meet the intent of the barrier free subcode. (Plan review—Building, Fire. Inspection—Building)

7. Transoms: Existing transoms in corridors and other fire rated walls may be retained in accordance with this subcode. (Plan review—Building, Fire. Inspection—Building)

8. Interior Finishes: The existing finishes or replacement finishes on corridor walls and ceilings may be accepted where it is demonstrated that it is the historic finish.

i. In buildings other than Use Group R-3, finishes in exitways shall have a flame-spread classification of Class III or better. Existing nonconforming materials shall be surfaced with an approved fire-retardant paint or finish unless the building is equipped throughout with an automatic fire suppression system installed in accordance with the building subcode. (Plan review—Building, Fire. Inspection—Building)

9. Stairways: Stairways shall comply with the following:

i. Enclosure: Stairway enclosures may be omitted in a historic building for that portion of the stair serving the first and second floor. This provision shall be applied to only one stair per building.

(1) In buildings of three stories or less, exit enclosure construction shall limit the spread of smoke by the use of tight fitting doors and solid elements. Such elements shall not require a fireresistance rating.

ii. Riser height and tread width: When stairs are replaced or repaired, the existing or original riser height and tread width shall be permitted to remain. (Plan review—Building, Fire. Inspection—Building)

10. Railings: Railings shall comply with the following:

i. Handrails: Existing handrails may remain or may be replaced with handrails matching the original handrails.

ii. Guardrails—For vertical drops of between 30 inches and 48 inches, a rail height of at least 30 inches shall be accepted and the existing or original baluster spacing shall be permitted to remain.

(1) Exception: Replacement guardrails in buildings of Use Group E or R-1 shall comply with Section 1021.0 of the building subcode. (Plan review—Building, Fire. Inspection—Building)

11. Exit Signs: The fire protection subcode official may accept alternate exit sign design and/or location where strict compliance would damage the historic character of the building. Alternative signs shall identify the exits and exit path. (Plan review—Building, Fire. Inspection—Building)

12. Ceiling height: Existing ceiling heights shall be permitted to remain.

i. Exception: Buildings of Use Group R-1 or R-2 shall comply with the applicable requirements of the Hotel and Multiple Dwelling Regulations (N.J.A.C. 5:10) or shall obtain an exception under those rules. (Building)

(c) Relocated historic buildings: The following apply to relocated historic buildings:

1. Foundations of relocated historic buildings and structures shall comply with the building subcode. (Building)

2. Relocated historic buildings shall be so sited that exterior walls and openings comply with the requirements of the building subcode. (Plan review—Building, Fire. Inspection—Building)

(d) Special change of use provisions: Compliance with the following and with the provisions of (b) above shall be permitted for any change of use of a historic building provided that the restoration of the building is being performed consistent with the U.S. Secretary of the Interior Standards for the Treatment of Historic Properties.

1. Building Area: The floor area for historic buildings undergoing a change of use to a higher hazard category as per Table E of N.J.A.C. 5:23-6.30 may exceed the allowable areas specified in the building subcode for the proposed use group by 50 percent. (Plan review—Building, Fire. Inspection—Building)

SUBCHAPTER 7. BARRIER FREE SUBCODE

Law Review and Journal Commentaries

Disability Law: Public Accommodations and the ADA. David J. Poppel, 170 N.J.Law. 16 (Mag.) (July 1995).

Disability Law: Housing Discrimination and the Disabled. David P. Lazarus, Susan DiMaria, 170 N.J.Law. 20 (Mag.) (July 1995).

5:23-7.1 Accessibility standards

(a) Chapter 11 of the building subcode, entitled "Accessibility," is adopted with the modifications set forth in this subchapter.

1. Copies of the building subcode, which is the BOCA National Building Code/1993, including all subsequent revisions and amendments thereto, may be obtained from the sponsor at: BOCA, International, 4051 West Flossmoor Road, Country Club Hills, Illinois 60478-5795.

2. Copies of CABO/ANSI A117.1, referenced in the BOCA National Building Code, may be obtained from the secretariat at: Council of American Building Officials, 5203 Leesburg Pike, Suite 708, Falls Church, Virginia 22041.

(b) The following sections of chapter 11 of the building subcode are modified as follows:

1. Section 1103.1, Exception 3 is modified to read as follows: "Buildings of Use Group R-2, R-3 or R-4 with three or fewer dwelling units are not required to comply with the provisions of this Chapter. For purposes of applying this Chapter, dwelling units within a single structure separated by fire walls do not constitute separate buildings.

3.1. Multistory dwelling units in buildings without elevators are not required to comply with the provisions of this Chapter.

3.2. Accessory structures for individual exempt dwelling units are not required to comply with the provisions of this Chapter.

3.3 Facilities and their associated sites available to the general public or available for the common use of the building's residents are required to comply with the provisions of this Chapter.

3.4 When any dwelling unit, regardless of whether it is exempt from the provisions of this Chapter, includes a B use or an M use, the portion of the dwelling unit used exclusively for the B use or M use and that portion used both for the B use or M use and for residential purposes shall comply with all applicable provisions of this subchapter. This shall include the sidewalk, if any, the door or entryway and hallways, and those portions of the dwelling unit, interior or exterior, available to or used by customers or clients, including toilet facilities."

2. In Section 1104.2, Exception 2, is modified to read as follows: "Buildings of less than 10,000 square feet total gross enclosed floor area and less than three stories in height shall not be required to have elevators unless they house the offices of health care providers (Use Group B), passenger transportation facilities and airports (Use Group A-3), multitenant facilities of Use Group M, or are owned and occupied by public entities. Additionally, floors with less than 3,000 square feet are not required to be served by an elevator unless they contain the offices of health care providers (Use Group B) or are within passenger transportation facilities and airports (Use Group A-3), multitenant facilities of Use Group M, or buildings owned and occupied by public entities."

3. In Section 1104.2, add the following exceptions:

"3. In buildings of Use Group R-2, R-3 or R-4 elevators are required to provide an accessible route of travel with the following exceptions:

3.1 Buildings which are less than four stories and which have four or fewer dwelling units per floor;

3.2 Buildings less than three stories.

3.3 Floors that contain less than 3,000 square feet and are at other than the entry level."

4. Section 1105.1 is modified to read as follows: "Where parking is provided at sites required to be accessible or adaptable, accessible parking spaces complying with CABO/ANSI A117.1 listed in Chapter 35 shall be provided in compliance with Table 1105.1 except as required by Sections 1105.2 and 1105.3." At Table 1105.1, delete the title and text of "Note a."

5. In Section 1107.2.3, Table 1107.2.3 is modified to provide that, in assembly spaces with a capacity of over 500 seats, the number of required wheelchair spaces shall be "6 plus 1 for each 100 over 500."

6. Section 1107.3.3 is modified to read as follows: "Buildings or portions thereof of Use Group I-3 shall have at least one accessible inmate confinement area or room per institution, and at least one accessible inmate toilet and bathing facility per institution. All public or common areas and employee areas, including toilet or bathing facilities, shall be accessible."

7. Section 1107.4.1 is modified to read as follows: "In occupancies in Use Group R-1 containing six or more guestrooms, accessible guestrooms shall be provided in accordance with the following table:

Number of Rooms	Accessible Rooms
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	2% of Total
1001 and up	20 plus 1 for each 100 over 1000

Add the following note at the end of the Table: "Note: Owner-occupied residences with 1-5 lodgers are Use Group R-3 and are exempt."

In hotels with more than 50 guestrooms, roll-in type showers shall be provided in one-half, but not less than one, of the required accessible guestrooms."

8. The main paragraph of Section 1107.4.2 is modified to read as follows: "Unless exempted under Section 1103.1, as modified, all dwelling units in buildings served by elevators and all ground floor units in buildings with-

out elevators shall be made adaptable in accordance with CABO/ANSI A117.1 listed in Chapter 35. For purposes of applying this requirement, the ground floor shall mean the first floor of a building containing dwelling units, regardless of whether that floor is at grade."

9. Section 1107.4.2, Exceptions are modified to read as follows:

"1. In buildings without elevators, multistory dwelling units are not required to comply with the provisions of this Chapter. In multistory dwelling units in buildings with elevators, all rooms or spaces on the entry level must be accessible or adaptable and an adaptable bathroom or powder room must be provided on the entry level; however, an interior accessible route to the other levels of living space is not required.

2. Recreational facilities must be accessible in accordance with N.J.A.C. 5:23-7.2 through 7.18."

10. The main paragraph of Section 1107.4.3 is modified to read as follows: "In buildings of Use Group R-2 and R-3 not otherwise exempted from the provisions of this Chapter by Section 1103.1, as modified, at least one accessible route shall connect accessible building or facility entrances with all accessible and adaptable dwelling units within the building or facility and with those exterior and interior spaces and facilities that serve the accessible or adaptable dwelling unit."

11. Delete the title and text of the Exception to Section 1107.4.3.

12. In Section 1108.3, modify the Exception as follows:

"Exceptions

1. Elevators within a dwelling unit.

2. Platform lifts may be part of an accessible route when necessary to provide:

2.1 a line of sight while complying with dispersal requirements in A use buildings;

2.2 access to a performing area;

2.3 access to incidental occupiable spaces, such as, but not limited to, projection booths and equipment control rooms, that are not open to the general public and that have not more than 5 occupants."

13. In Section 1108.7, add the following additional subsections:

"1108.7.4 Telephones: When public use telephones are provided, one telephone per floor or one telephone in each bank of public telephones shall comply with CABO/ANSI A117.1, Section 4.29. Each accessible public telephone and 25 percent of other public telephones in each bank shall be equipped with volume control that complies with CABO/ANSI A117.1, Section 4.29.5. At each accessible telephone, either a forward or a parallel approach

shall be provided that complies with CABO/ANSI A117.1, Section 4.2.4.

1108.7.5 Automatic Teller Machines (ATM's): At each ATM, clear floor space shall be provided for either a parallel or forward approach pursuant to CABO/ANSI A117.1, Section 4.2.4. If only a forward approach is provided, all operating controls shall comply with the reach ranges in CABO/ANSI A117.1, Section 4.2.5. If only a parallel approach is provided, reach ranges shall be provided as follows: Where the reach depth to the controls is 10" or less, the maximum height for the controls shall be 54". For each increase in reach depth of 1", the maximum height for the controls shall be reduced by 1/2". The reach depth shall not exceed 24" with a corresponding maximum height of 46". If both a parallel and a forward approach are provided, the reach ranges shall comply with CABO/ANSI A117.1, Section 4.2.5 or with the parallel reach range requirements described above."

14. Section 1108.7.3 is modified to read as follows:

"Where check-out aisles are provided, accessible check-out aisles shall be installed in accordance with Table 1108.7.3. Where checkout aisles of different types are provided (express lanes, for example), at least one of each type shall be accessible. Traffic control devices, security devices and turnstiles located in accessible check-out aisles or lanes shall be accessible."

15. Section 1109.2, number 1, is modified to read as follows:

"1. Accessible parking spaces required by Section 1105.1. Each accessible parking space shall be marked with an R7-8 sign from the Manual of Uniform Traffic Control Devices displaying the international symbol of accessibility. Beneath the R7-8 sign, each accessible parking space shall also be marked with an R7-8P sign, as required by N.J.S.A. 39:4-197.3.c., containing the following language:

"PENALTY
\$100 FIRST OFFENSE
SUBSEQUENT OFFENSES
\$100 MINIMUM AND/OR
UP TO 90 DAYS
COMMUNITY SERVICE
TOW-AWAY ZONE"

The bottom of the R7-8 sign shall be mounted approximately 60 inches above the parking lot surface."

16. Section 1109.2, number 4, is modified to read as follows:

"4. Accessible toilet and bathing units."

17. Section 1110.4 is modified to read as follows: "These provisions shall apply to buildings and facilities designated as historic structures that undergo alterations or a change of occupancy, unless technically infeasible. If the historic character of the building is adversely affected, the application of Section 3406.0 shall be permitted. At a minimum, at least one accessible route from an accessible parking space, public transportation stop or passenger loading zone to an accessible entrance shall be provided; at least one accessible entrance shall be provided; an accessible route from the accessible entrance to all publicly-used spaces on the level of the accessible entrance shall be provided; when toilet facilities are provided, at least one accessible toilet facility shall be provided."

(c) The provisions of this Chapter shall not apply to a change of use of a building of less than 10,000 square feet total gross enclosed floor area where there is no attendant construction or renovation work being performed.

(d) When alteration or renovation work is performed on a building, the following shall apply:

1. No alteration work shall decrease the accessibility of the building;
2. No alteration shall be required to provide greater accessibility than is required by the standards for new construction;
3. If compliance with the new construction standards in (b) above is technically infeasible, accessibility shall be provided to the maximum extent feasible.
4. Accessibility shall be included as part of alteration work to the extent that the cost of providing accessible building features, such as, but not limited to, an accessible building entrance, an accessible route to the altered area, accessible restrooms, accessible telephones, or accessible drinking fountains is not disproportionate to the cost of the overall alteration work. A cost is considered disproportionate if it exceeds 20 percent of the cost of the alteration work.

(e) Variations and exceptions are as follows:

1. Where it can be demonstrated that one or more of the provisions of this subchapter are technically infeasible, variations or exceptions to those specific provisions may be granted if:
 - i. The spirit and intent of the law are observed;
 - ii. Public welfare and safety are assured; and
 - iii. Equivalent facilitation and protection for people with disabilities are secured.
2. In no case shall a complete waiver of these requirements be granted.

3. Procedures for granting variations and exceptions shall be in accordance with N.J.A.C. 5:23-2.9 through 2.13.

(f) Enforcement of this subchapter shall be the primary responsibility of the building subcode official except as otherwise designated below:

1. Plan review with regard to compliance with BOCA, Chapter 11, Section 1108; CABO/ANSI A117.1, Sections 4.15 (drinking fountains); 4.17 through 4.22 (bathroom facilities); 4.33.3.2 (dwelling units—water closets); 4.33.3.4.4 (bathtub—faucets); 4.33.3.4.5 (shower spray unit); and 4.33.4.5.1 through 4.33.4.5.4 (dwelling units—counters and sinks) shall be the joint responsibility of the building and plumbing subcode officials.

2. Plan review and inspection with regard to compliance with CABO/ANSI A117.1, Section 4.25 of the controls and operating mechanisms regulated by the electrical, fire protection, or plumbing subcodes shall be the responsibility of the corresponding subcode official. Controls of all other mechanisms shall be inspected by the building subcode official.

3. Inspection with regard to compliance with CABO/ANSI A117.1, Sections 4.15.2 (drinking fountains—spouts); 4.15.3 (drinking fountains—operable parts); 4.17.1 (water closets—general); 4.17.3 (water closets—height); 4.17.5 (water closets—flush controls); 4.18.2 (toilet stalls); 4.19.2 (urinals—height); 4.19.4 (urinals—flush controls); 4.20.2 (lavatories—height); 4.20.4 (lavatories—exposed pipes); 4.20.5 (lavatories—controls); 4.21.5 through 4.21.8 (bathtubs—controls, shower unit, enclosure, rim); 4.22.2.1 (transfer showers); 4.22.2.2 (showers—size and clearance); 4.22.3 (showers—seat); 4.22.5 through 4.22.8 (showers—controls, shower unit, threshold, enclosure); 4.33.3.2.1 and 4.33.3.2.2 (dwelling units, water closets—placement and height); 4.33.3.3.1

(lavatories); 4.33.3.4.4 (faucets); 4.33.3.4.5 (shower spray); 4.33.4.5.1 through 4.33.4.5.4 and 4.33.4.5.8 (dwelling units—sinks); shall be the responsibility of the plumbing subcode official.

4. Enforcement of the technical requirements for elevators shall be the responsibility of the elevator subcode official. The building subcode official shall be responsible to ensure that the elevator is on an accessible route.

New Rule, 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.1997 d.304, effective July 21, 1997.

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

Substantially amended (f).

Case Notes

Department has duty to promulgate regulations prescribing kinds, types and quality of public facilities for physically handicapped. *D.I.A.L., Inc. v. New Jersey Dept. of Community Affairs*, 254 N.J.Super. 426, 603 A.2d 967 (A.D.1992).

Uniform Construction Code Act requires Commissioner to adopt State Uniform Construction Code. *D.I.A.L., Inc. v. New Jersey Dept. of Community Affairs*, 254 N.J.Super. 426, 603 A.2d 967 (A.D.1992).

City could pursue its claim against debtor alleging violation of certificate of occupancy without impediment from automatic stay and city's dispute with debtor did not need to be resolved in bankruptcy forum. *Matter of 560 Ocean Club, L.P.*, Bkrcty.D.N.J.1991, 133 B.R. 310.

5:23-7.2 Recreation

(a) All facilities, equipment, and sites or portions thereof, intended for outdoor active or passive recreation shall meet all applicable requirements of this subchapter in addition to the provisions of N.J.A.C. 5:23-7.3 through 18. All support facilities and site access points required to be on an accessible route of travel shall be made accessible in accordance with the applicable provisions of this subchapter.