

CHAPTER 23
UNIFORM CONSTRUCTION CODE

Authority

N.J.S.A. 52:27D-123.

Source and Effective Date

R.1993 d.106, effective February 3, 1993.
See: 24 N.J.R. 1420(b), 25 N.J.R. 920(a).

Executive Order No. 66(1978) Expiration Date

Chapter 23, Uniform Construction Code, expires on February 3, 1998.

Chapter Historical Note

Chapter 23, Uniform Construction Code, was adopted pursuant to N.J.S.A. 52:27D-119 et seq. as R.1976 d.344, d.345, d.346 and d.347, effective January 1, 1977 and codified as Subchapter 1, General Provisions; Subchapter 2, Administration and Enforcement Process; Subchapter 3, Subcodes, and Subchapter 4, Enforcing Agencies: Duties, Powers, Procedures. See: 8 N.J.R. 216(b), 319(a), 370(d), 414(a); 8 N.J.R. 546(a). The Uniform Construction Code superseded N.J.A.C. 5:16 (Chapter 16, Standard Building Code) and N.J.A.C. 5:20 (Chapter 20, Safety Glazing Materials), which were repealed by R.1978 d.360, effective October 6, 1978. See: 10 N.J.R. 377(a), 10 N.J.R. 470(a). The UCC also superseded N.J.A.C. 5:21 (Chapter 21, Uniform Standards Code for Mobile Homes), which was repealed by R.1982 d.7, effective February 1, 1982. See: 13 N.J.R. 717(a), 14 N.J.R. 142(a). See, also, respective Chapter Historical Notes.

Subchapter 4A, Industrialized/Modular Buildings and Building Components, was adopted as R.1990 d.313, effective June 18, 1990, (operative July 1, 1990). See: 22 N.J.R. 691(a), 22 N.J.R. 1915(b).

Subchapter 5, Licensing of Code Enforcement Officials, was adopted as R.1977 d.304, effective October 1, 1977. See: 9 N.J.R. 257(b), 9 N.J.R. 413(b).

Subchapter 6, Tax Exemption for Solar Facilities, was adopted as R.1978 d.334, effective September 18, 1978. See: 10 N.J.R. 222(b), 10 N.J.R. 418(a). Pursuant to Executive Order No. 66(1978), Subchapter 6 was readopted as R.1980 d.303, effective July 1, 1980. See: 12 N.J.R. 249(c), 12 N.J.R. 452(c).

Pursuant to Executive Order No. 66(1978), Chapter 23 was readopted as R.1983 d.144, effective April 26, 1983. See: 14 N.J.R. 1247(a), 15 N.J.R. 803(c).

Subchapter 7, Barrier Free Subcode, was adopted as R.1986 d.448, effective November 3, 1986. See: 18 N.J.R. 757(a), 18 N.J.R. 2194(a).

Subchapter 8, Asbestos Hazard Abatement Subcode, was adopted as Emergency New Rule R.1985 d.362, effective June 18, 1985 (to expire August 17, 1985). See: 17 N.J.R. 1782(a). The provisions of R.1985 d.362 were readopted as R.1985 d.472, effective August 16, 1985. See: 17 N.J.R. 2249(a).

Pursuant to Executive Order No. 66(1978), Chapter 23 was readopted as R.1988 d.168, effective March 22, 1988. N.J.A.C. 5:23-6.1, 6.2 and 6.3, concerning tax exemption for solar facilities, were not readopted and expired on April 1, 1988. See: 20 N.J.R. 223(a), 20 N.J.R. 893(a).

Subchapter 9, Code Interpretations, was adopted as R.1988 d.195, effective May 2, 1988. See: 20 N.J.R. 224(a), 20 N.J.R. 977(a).

Subchapter 10, Radon Hazard Subcode, was adopted as R.1990 d.226, effective May 7, 1990. See: 21 N.J.R. 3696(a), 22 N.J.R. 1356(a).

Subchapter 11, Indoor Air Quality Standards and Procedures for Buildings Occupied by Public Employees, was adopted as R.1992 d.33, effective January 21, 1992. See: 23 N.J.R. 1730(b), 24 N.J.R. 229(c).

Subchapter 12, Elevator Safety Subcode, was adopted as R.1991 d.325, effective July 1, 1991. See: 23 N.J.R. 805(a), 23 N.J.R. 2046(a).

Pursuant to Executive Order No. 66(1978), Chapter 23 was readopted as R.1993 d.106. See: Source and Effective Date. See, also, section annotations.

Cross References

Child care center physical facility requirements, see N.J.A.C. 10:122-5.1 et seq.

Children's group home physical facility requirements, see N.J.A.C. 10:128-4.1 et seq.

Children's shelter physical facility requirements, see N.J.A.C. 10:124-5.1 et seq.

Residential child care facility maintenance and sanitation requirements, see N.J.A.C. 10:127-4.4.

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SUBCHAPTER 1. GENERAL PROVISIONS**5:23-1.1 Title; division into subchapters**

(a) These regulations shall be known as the "Regulations for the New Jersey Uniform Construction Code" and are referred to herein as "the regulations".

(b) The chapter consists of the following subchapters:

1. "General provisions" which may be cited throughout the regulations as N.J.A.C. 5:23-1 and when referred to in subchapter 1 of this chapter may be cited as this subchapter.

2. "Administration and enforcement; process" which 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.

3. "Subcodes" which may be cited throughout the regulations as N.J.A.C. 5:23-3 and when referred to in subchapter 3 of this chapter may be cited as this subchapter.

i. N.J.A.C. 5:23-3.11B contains references to the Department of Environmental Protection's rules concerning underground storage tanks, codified at N.J.A.C. 7:14B, which are jointly enforced by this Department and local enforcing agencies pursuant to this chapter.

4. "Enforcing agencies: duties, powers, and procedures" which may be cited throughout the regulations as N.J.A.C. 5:23-4 of this chapter and when referred to in subchapter 4 of this chapter may be cited as this subchapter.

5. "Industrialized/Modular Buildings and Building Components" which may be cited throughout the regulations as N.J.A.C. 5:23-4A and when referred to N.J.A.C. 5:23-4A may be cited as this subchapter.

6. "Manufactured Homes and Manufactured Home Add-On Units Not Subject to Federal Regulations" which may be cited throughout the regulations as

N.J.A.C. 5:23-4B and when referred to in subchapter 4B may be cited as this subchapter.

7. "Enforcement of Federal Manufactured Home Standards" which may be cited throughout the regulations as N.J.A.C. 5:23-4C and when referred to in subchapter 4C may be cited as this subchapter.

8. "Licensing of Code Enforcement Officials" which may be cited throughout the regulations as N.J.A.C. 5:23-5 and when referred to in subchapter 5 of this chapter may be cited as this subchapter.

9. "Tax Exemptions" which may be cited throughout the regulations as N.J.A.C. 5:23-6 and when referred to in subchapter 6 of this chapter may be cited as this subchapter.

10. "Barrier Free Subcode" which may be cited throughout the regulations as N.J.A.C. 5:23-7 and when referred to in subchapter 7 of this chapter may be cited as this subchapter.

11. "Asbestos Hazard Abatement Subcode" which may be cited throughout the regulations as N.J.A.C. 5:23-8 and when referred to in subchapter 8 of this chapter may be cited as this subchapter.

12. "Code Interpretations" which may be cited throughout the regulations as N.J.A.C. 5:23-9 and when referred to in subchapter 9 of this chapter may be cited as this subchapter.

13. "Radon Hazard Subcode" which may be cited throughout the regulations as N.J.A.C. 5:23-10 and when referred to in subchapter 10 of this chapter may be cited as this subchapter.

14. "Indoor Air Quality Standards and Procedures for Buildings Occupied by Public Employees" which may be cited throughout the rules as N.J.A.C. 5:23-11 and, when referred to in subchapter 11 of this chapter, may be cited as this subchapter.

15. "Elevator Safety Subcode" which may be cited throughout the rules as N.J.A.C. 5:23-12 and when referred to in subchapter 12 of this chapter may be cited as this subchapter.

Amended by R.1978 d.350, eff. October 1, 1978.

See: 10 N.J.R. 378(a), 10 N.J.R. 469(f).

Amended by R.1987 d.509, effective December 7, 1987.

See: 19 N.J.R. 1264(a), 19 N.J.R. 2270(a).

(b) substantially amended.

Amended by R.1990 d.226, effective May 7, 1990.

See: 21 N.J.R. 3696(a), 22 N.J.R. 1356(a).

Added 9 and 10 to (b).

Amended by R.1990 d.313, effective June 18, 1990.

See: 22 N.J.R. 691(a), 22 N.J.R. 1915(b).

Text added at (b)5.

Amended by R.1990 d.562, effective November 19, 1990.

See: 22 N.J.R. 2629(c), 22 N.J.R. 3482(d).

Added reference to N.J.A.C. 7:14B.

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

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

Text on elevators added at (b).

Amended by R.1992 d.183, effective April 20, 1992.

See: 24 N.J.R. 167(a), 24 N.J.R. 1475(b).

Reference to Indoor Air Quality Subcode added at (b)12.

Amended by R.1994 d.96, effective February 22, 1994.

See: 26 N.J.R. 1073(a).

5:23-1.2 Authority

These regulations are promulgated by the Commissioner of the Department of Community Affairs pursuant to the authority of the "State Uniform Construction Code Act" (P.L. 1975, c.217, as amended).

5:23-1.3 Intent and purpose

(a) It is the intent and purpose of the regulations:

1. To encourage innovation and economy in construction and to provide requirements for construction and construction materials consistent with nationally recognized standards.

2. To formulate such requirements, to the extent practicable, in terms of performance objectives, so as to make adequate performance for the use intended as the test of acceptability.

3. To permit to the fullest extent feasible the use of modern technical methods, devices and improvements, including premanufactured systems, consistent with reasonable requirements for the health, safety and welfare of occupants or users of buildings and structures.

4. To eliminate restrictive, obsolete, conflicting and unnecessary construction regulations that tend to unnecessarily increase construction costs or retard the use of new materials, products or methods of construction, or provide preferential treatment to types or classes of materials or products or methods of construction.

5. To insure adequate maintenance of buildings and structures throughout the State and to adequately protect the health, safety and welfare of the people.

6. To eliminate unnecessary duplication of effort and fees in the review of construction plans and the inspection of construction.

Case Notes

Intent is elimination of construction regulations by local government units. Home Builders League of South Jersey, Inc. v. Evesham Twp., 174 N.J.Super. 252, 416 A.2d 81 (Law Div.1980).

Uniform Construction Code codified in regulations. Bureau of Construction Code Enforcement v. Hasbrouck Heights, 4 N.J.A.R. 282 (1983).

5:23-1.4 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

“Building” means a structure enclosed with exterior walls or fire walls, built, erected and framed of component structural parts, designed for the housing shelter, enclosure and support of individuals, animals or property of any kind. When used herein, building and structure shall be interchangeable except where the context clearly indicates otherwise.

“Building subcode official” means a qualified person appointed by the municipal appointing authority or the commissioner pursuant to the act and the regulations to enforce the provisions of the building subcode within the jurisdiction of the enforcing agency.

“Business day” means any day of the year, exclusive of Saturdays, Sundays, and legal holidays.

“Certificate of approval” means a certificate issued pursuant to N.J.A.C. 5:23-2 upon completion of work that requires a construction permit but not a certificate of occupancy.

“Certificate of compliance” means the certificate provided for in N.J.A.C. 5:23-2, indicating that potentially hazardous equipment is being maintained in accordance with the Act and this chapter.

“Certificate of continued occupancy” means the certificate provided for in N.J.A.C. 5:23-2, indicating that as a result of a general inspection of the visible parts of the building, 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 have been found, and that the existing use of the building has heretofore lawfully existed.

“Certificate of occupancy” means the certificate provided for in N.J.A.C. 5:23-2, indicating that the construction authorized by the construction permit has been completed in accordance with the construction permit, the act and the regulations.

“Class I structure” means a structure not listed in N.J.A.C. 5:23-4.3A(d)1i through v or 2ii through xx.

“Class II structure” means a structure listed in N.J.A.C. 5:23-4.3A(d)2ii through xx.

“Class III structure” means a structure listed in N.J.A.C. 5:23-4.3A(d)1i through v.

“Commissioner” means the Commissioner of the Department of Community Affairs.

“Construction Board of Appeals” means the board provided for in subchapters 2 and 5 of this chapter.

“Construction documents” means and includes all of the written, graphic and pictorial documents prepared or assembled for describing the design, location and physical characteristics of the elements of the project necessary for obtaining a permit. The construction documents shall be drawn to an appropriate scale. When used herein or in the adopted subcodes, the terms “construction documents” and “plans” and/or “specifications” shall be interchangeable, except where the context clearly indicate otherwise.

“Construction official” means a qualified person appointed by the municipal appointing authority or the commissioner pursuant to the act and the regulations to enforce and administer the regulations within the jurisdiction of the enforcing agency.

“Construction permit” means an authorization to begin work subject to the conditions established in subchapter 2 of this chapter.

“Department” means the Department of Community Affairs.

“Effective date” means, in the case of a new rule, amendment or repeal, the date of promulgation in the New Jersey Register. The effective date of a readoption is the date of filing with the Office of Administrative Law.

“Electrical subcode official” means a qualified person appointed by the municipal appointing authority or the commissioner pursuant to the act and the regulations to enforce and provisions of the electrical subcode within the jurisdiction of the enforcing agency.

“Elevator” or “elevator device” means a hoisting and lowering device equipped with a car or platform which moves in guides for the transportation of individuals or freight in a substantially vertical direction through successive floors or levels of a building or structure; or a power driven, inclined, continuous stairway used for raising or lowering passengers; or a type of passenger carrying device on which passengers stand or walk, and in which the passenger carrying surface remains parallel to its direction of motion and is uninterrupted. This includes, but it is not limited to, elevators, escalators, moving walks, dumbwaiters, wheelchair lifts, manlifts, stairway chairlifts and any device within the scope of ASME A17.1 (Safety Code for Elevators and Escalators) or ASME A90.1 (Safety Standards for Belt Manlifts).

“Elevator subcode official” means a qualified person appointed by the municipal appointing authority or the Commissioner, pursuant to the Act and this chapter, to enforce the provisions of any subcode specifically designated for such enforcement in N.J.A.C. 5:23-3, within the jurisdiction of the enforcing agency.

“Enforcing agency” means the municipal or State administrative entity charged with the administration and enforcement of the regulations consisting of the construction official, subcode officials and assistants thereto appointed in accordance with N.J.S.A. 52:27D-126 of the act and the regulations.

“Equipment” means plumbing, heating, electrical, ventilating, air conditioning, refrigerating and fire prevention equipment, and elevators, dumb waiters, escalators, boilers, pressure vessels and other mechanical facilities or installations, which are related to building services and shall not include manufacturing, production or process equipment, but which shall include connections from building service to process equipment.

“Facility” for the purpose of applying for an annual permit means exclusive of a hotel/casino, a building or group of buildings under common ownership or control and whose maintenance work is performed under the direct supervision of a maintenance supervisor.

“Fire protection subcode official” means a qualified person appointed by the appropriate appointing authority or the commissioner pursuant to the act and the regulations to enforce those portions of any subcode, specifically designated for such enforcement in N.J.A.C. 5:23-3, within the jurisdiction of the enforcing agency.

“Health care facility” means the facility or institution, whether public or private, engaged principally in providing services for health maintenance organizations, diagnosis or treatment of human disease, pain, injury, deformity or physical condition, including but not limited to a general hospital, special hospital, mental hospital, public health center, diagnostic center, treatment center, rehabilitation center, extended care facility, skilled nursing home, nursing home, intermediate care facility, tuberculosis hospital, chronic disease hospital, maternity hospital, outpatient clinic, dispensary, home health care agency, home for the sheltered care of adult persons, and bioanalytical laboratory or central services facility serving one or more such institutions, but excluding institutions that provide healing solely by prayer.

1. This definition shall not be deemed to include nurses, doctors, or other staff housing not attached in accordance with minimum fire separation standards in the building subcode; administrative offices not attached in accordance with minimum fire separation standards in the building subcode; parking garages, or other such facilities for which the Federal government does not impose standards as a condition of funding.

“Hearing examiner” means a person appointed by the commissioner to conduct hearings, summarize evidence and make findings of fact.

“Lead abatement” means a process designed either to mitigate or to eliminate permanently lead-based paint hazards on a premises and includes, but is not limited to: the removal of lead-based paint and lead-contaminated dust; the containment or encapsulation of lead-based paint; the replacement of lead-painted surfaces or fixtures; the removal or covering of lead-contaminated soil; and all preparation, cleanup, disposal and post-abatement clearance testing activities associated with such measures. “Lead abatement” shall not include painting, woodworking, structural renovation or other indoor or outdoor contracting services that may result in the disturbance of paint, unless it is evident from the statements and/or actions of a person or persons authorizing or performing such services that an objective of the work is the mitigation or permanent elimination of a lead-based paint hazard.

“Lead evaluation” means a surface-by-surface investigation to determine the presence and condition of lead-based paint and the provision of a report explaining the results of the investigation, including, but not limited to, hazards and recommendations for abatement.

“Maintenance” means the replacement or mending of existing work with equivalent materials or the provision of additional work or material for the purpose of the safety, healthfulness and upkeep of the structure and the adherence to such other standards of upkeep as are required in the interest of public safety, health and welfare.

“Major work” means any construction work for which any prior approvals are required, any construction of a new structure not previously occupied and any construction work other than ordinary repairs otherwise not qualifying as “minor work” or a “small job”.

“Manufactured home” means a structure, transportable in one or more sections, which in the traveling mode, is eight body feet or more in width, or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained therein; except that such term shall also include any structure which meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer has voluntarily filed a certification required by the Secretary of the United States Department of Housing and Urban Development and complies with the standards established under 42 U.S.C. Section 5401 et seq.

“Minor work” means construction work undertaken in existing structures, requiring no prior approvals and no plan review, not altering in any way the structural members of a building and meeting the definition set forth in N.J.A.C. 5:23-2.17A.

“Municipality” means any city, borough, town, township or village.

“Municipal Procedures Manual” means the book established by the Commissioner, effective January 1, 1984, and any subsequent revisions, detailing the steps to be followed in completing, processing and filing the standards forms, logs and reports required for administration and enforcement of the State Uniform Construction Code.

“Operative date” means the date upon which the Department and local enforcing agencies shall enforce, and all parties shall comply with, an effective rule. Unless otherwise provided in the notice of adoption published in the New Jersey Register, the effective date is the operative date.

“Ordinary repair” means restoration or improvement of a routine or usual nature which is done by replacing a part of, or putting together, something that is worn or broken in a building, electrical, plumbing, heating, ventilation or air conditioning system and meeting the definition set forth in N.J.A.C. 5:23-2.7.

“Owner” means the owner or owners in fee of the property or a lesser estate therein, a mortgagee or vendee in possession, an assignee of rents, receiver, executor, trustee, lessee or any other person, firm or corporation, directly or indirectly in control of a building, structure or real property and shall include any subdivision thereof of the State.

“Plumbing subcode official” means a qualified person appointed by the municipal appointing authority or the commissioner pursuant to the act and the regulations to enforce the provisions of the plumbing subcode within the jurisdiction of the enforcing agency.

“Premanufactured system” or “premanufactured construction” means an assembly of materials or products that is intended to comprise all or part of a building or structure and that is assembled off-site by a repetitive process under circumstances intended to insure uniformity of quality and material content. The term shall include, but not be limited to, manufactured homes and industrialized/modular buildings.

“Prior approvals” means the necessary certifications or approvals issued or authorized by any Federal or State agency, or any political subdivision of the State, which are not inconsistent with this chapter and which are conditions precedent to the issuance of a construction permit or a certificate of occupancy or approval, as the case may be, which shall include, but not be limited to, the following:

1. Zoning;
2. Soil erosion and sediment control;
3. Highway curb cuts;
4. Water and sewer treatment works approvals;
5. Coastal areas facilities review;

6. Compliance of underground storage tank systems with N.J.A.C. 7:14B;

i. An approval granted by either the Department of Environmental Protection and Energy or the construction official by authority of N.J.A.C. 7:14B shall be deemed to be a prior approval;

7. Pinelands review; and

8. Compliance of abandoned wells with N.J.A.C. 7:9-9.

i. Compliance with N.J.A.C. 7:9-9.1 shall be evidenced by a certification issued by a well driller licensed by the Department of Environmental Protection and Energy.

“Private inplant inspection agency”, or “evaluation and inspection agency”, means a business entity authorized pursuant to N.J.A.C. 5:23-4 or 4A to approve premanufactured construction.

“Private on-site inspection and plan review agencies” means a business entity authorized pursuant to N.J.A.C. 5:23-4 to act in lieu of a subcode official.

“Public school facility” means any building or any part thereof where the plans and specifications are submitted to, and approved by, the State Board of Education pursuant to N.J.S.A. 18A:18-2.

“Small job” means construction work requiring no prior approvals and the total cost of which is under \$5,000. A “small job” may involve more than one trade and may require plan review.

“State sponsored code change proposal” means any proposed amendment or code change adopted by the commissioner in accordance with subsection c. of section 6 of the act as amended for the purpose of presenting such proposed amendment or code change at any of the periodic code change hearings held by the National Model Code adoption agencies, the codes of which have been adopted as subcodes under the Act. For purposes of this definition a State sponsored code change proposal may also oppose any code change under consideration by a model code agency.

“Stop construction order” means the order provided for in N.J.S.A. 52:27D-132 of the act and N.J.A.C. 5:23-2.

“Structure” means a combination of materials to form a construction for occupancy, use or ornamentation, whether installed on, above, or below the surface of a parcel of land; provided, the word “structure” shall be construed when used herein as though followed by the words “or part or parts thereof and all equipment therein” unless the context clearly requires a different meaning.

"Subcode" means any of the national model codes, parts thereof or other codes as adopted by reference in N.J.A.C. 5:23-3.

As amended, R.1977 d.256, effective August 1, 1977.

See: 9 N.J.R. 164(a), 9 N.J.R. 358(a).

As amended, R.1978 d.162, effective June 1, 1978.

See: 10 N.J.R. 141(a), 10 N.J.R. 225(a).

As amended, R.1981 d.133, effective May 7, 1981.

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

"Certificate of continued occupancy" and "prior approvals" recodified.

As amended, R.1982 d.7, effective February 1, 1982.

See: 13 N.J.R. 717(a), 14 N.J.R. 142(a).

"Manufactured home" was "mobile home", and definition substantially amended. Added "or premanufactured construction" to "pre-manufactured system", and added "The terms . . . homes".

As amended, R.1983 d.611, eff. January 3, 1984.

See: 15 N.J.R. 1789(a), 16 N.J.R. 45(b).

Added definitions of "major work", "minor work", "municipal procedures manual", "ordinary repair" and "small job".

As amended, R.1984 d.120, effective April 16, 1984.

See: 16 N.J.R. 179(a), 16 N.J.R. 873(a).

"Certificate of occupancy" added "N.J.A.C. 5:23-1.4 have . . . been found" to definitions.

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

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

Definition for "Facility" added.

Amended by R.1990 d.57, effective February 5, 1990.

See: 21 N.J.R. 3345(b), 22 N.J.R. 350(b).

Reference to compliance with N.J. Underground Storage of Hazardous Substances Act, and deletion of language excluding "public school buildings" from definitions of "building" and "structure".

Amended by R.1990 d.313, effective June 18, 1990.

See: 22 N.J.R. 691(a), 22 N.J.R. 1915(b).

Industrialized/modular buildings added to definition of premanufactured system.

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

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

Definitions of certificate of approval, elevator and elevator subcode official added.

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

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

Definitions added for Class I, II and III structures.

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.1993 d.580, effective November 15, 1993.

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

Administrative Correction.

See: 26 N.J.R. 2779(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.1995 d.544, effective October 16, 1995.

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

Amended by R.1996 d.190, effective April 15, 1996.

See: 28 N.J.R. 320(a), 28 N.J.R. 1981(a).

Added "construction documents".

Case Notes

Citation to definitions of construction permit and certificate of occupancy. *Home Builders League of South Jersey, Inc. v. Evesham Twp.*, 174 N.J.Super. 252, 416 A.2d 81 (Law Div.1980).

Citation to mobile home definition in former regulation (similar to present manufactured home definition); mobile homes acceptable form of moderate cost housing. *Southern Burlington County N.A.A.C.P. v. Twp. of Mt. Laurel*, 161 N.J.Super. 317, 391 A.2d 935 (Law Div.1978) affirmed in part, reversed in part 92 N.J. 158, 456 A.2d 390, on remand 207 N.J.Super 169, 504 A.2d 66.

Applicant for construction permit must provide assurances that necessary prior approvals obtained. *Riggins v. Pinelands Commission*, 8 N.J.A.R. 441 (1985).

5:23-1.5 Effective date

(a) The provisions of the regulations shall take effect on January 1, 1977. All construction regulations incorporated in any act of the State of New Jersey, or of any municipality presently in effect, or validly promulgated or enacted by any board, department, commission or agency thereof, shall continue in effect until January 1, 1977, and shall thereafter be superseded and of no further force and effect. Any law or regulation addressing areas for which the commissioner shall not have promulgated a subcode may continue in effect until such time as a subcode therefor is adopted.

(b) Exceptions include:

1. This section shall not apply to those aspects of the act which were capable of taking effect on the effective date of the act.

2. This section shall not apply to those parts of N.J.A.C. 5:23-4 which require the adoption of a resolution or other action prior to the effective date. Such section shall take effect upon adoption.

3. This section shall not apply to laws or regulations specifically saved by the act or the regulations.

5:23-1.6 Prior permits; extensions

(a) A building, plumbing or electrical permit issued under valid construction regulations prior to the effective date of the regulations shall remain valid, and the construction of any building or structure may be completed pursuant to and in accordance with said permit. The construction of any building or structure started before the promulgation of the regulations that did not, as of the date of the beginning of the construction, require a construction permit may be completed without a construction permit.

(b) In the case of a project for which a permit has not been issued on the operative date of any code revision, and for which plans are submitted based upon drawings and specifications prepared in conformance to the code in force immediately prior to the operative date of the code revision, the construction official shall, upon request of the applicant, for a period of six months after the operative date of the code revision, issue a permit to construct such project pursuant to the code in force immediately prior to the operative date of the code revision.

As amended, R. 1978 d.350, eff. October 1, 1978.

See: 10 N.J.R. 378(a), 10 N.J.R. 469(f).

As amended, R.1984 d.267, eff. June 14, 1984 to expire August 13, 1984.

See: 16 N.J.R. 1812(a).

New (c) added.

Readoption: R.1984 d.382, eff. August 13, 1984, to expire April 1, 1988.

See: 16 N.J.R. 1812(a), 16 N.J.R. 2356(d).

Administrative Correction to (b): Changed "receive" to "received".

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

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.544, effective October 16, 1995.

5. Mezzanines and penthouses shall not be included in the gross floor area of the building.

(c) In any event, any new work undertaken in connection with an increase in size shall comply with the requirements of this chapter.

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).

Case Notes

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).

5:23-2.6 Change in use group

(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 in use: It shall be unlawful to make any change in the use group of any structure which would subject it to any special provision of the rules without the prior application for and issuance of a certificate of occupancy as herein provided.

1. A certificate of occupancy shall be issued provided such structure will meet the intent of the rules for the proposed new use group, and such change does not result in any greater hazard to public safety or welfare.

i. When the proposed new use group for an existing single family dwelling of use group R-3 or R-4 is as a bed and breakfast guest house, the intent of the provisions of the rules shall be met if the requirements of N.J.A.C. 5:23-9.8 are followed.

2. The provisions of N.J.A.C. 5:23-7 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.

(c) Part change in use: If a portion of the structure is changed to a new use group, and that portion is separated from the remainder of the structure with the required vertical and horizontal fire separation assemblies complying with the fire resistance rating in the building subcode, then only the construction involved in the change shall be made to conform fully to the requirements for the new use group, while the existing portion shall be made to comply only with the means of egress requirements of the regulations.

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).

Case Notes

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.

5:23-2.7 Ordinary repairs

(a) Ordinary repairs to structures may be made without application or notice to the construction official.

(b) Such repairs 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, other than wiring for a low voltage communication system in a one- or two-family dwelling; or

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

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

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).

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).

5:23-2.8 Installation of equipment

When the installation, extension, alteration or repair of an elevator, moving stairway, mechanical equipment, refrigeration, air conditioning or ventilating apparatus, plumbing, gas piping, electric wiring, heating system or any other equipment is specifically controlled by the provisions of this chapter, it shall be unlawful to use such equipment until a certificate of occupancy, certificate of approval or certificate of compliance, as the case may be, has been issued therefor by the construction official having jurisdiction.

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.

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.

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.

Administrative Correction to (a): Changed "set" to "state".
See: 22 N.J.R. 2503(b).

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.

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.

5:23-2.13 Authority to grant variations

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

5:23-2.14 Construction permits—when required

(a) It shall be unlawful to construct, enlarge, alter or demolish a structure, or change the occupancy of a building or structure requiring greater strength, exitway or sanitary provisions, or to change to a different use group, or to install or alter any equipment for which provision is made or the installation of which is regulated by this chapter, or to undertake a project involving lead abatement in accordance with N.J.A.C. 5:17, without first filing an application with the construction official, or the appropriate subcode official where the construction involves only one trade or subcode, in writing and obtaining the required permit therefor.

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

1. Ordinary repairs as defined by 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 a permit shall be applied for or notice given as soon thereafter as is practicable, but not later than 72 hours thereafter.

(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.

Administrative Correction to (b): Changed "than" to "that".
See: 22 N.J.R. 2503(b).

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 of a detailed statement or plan approved thereunder, or where there exists a violation of a permit or certificate issued under the regulations, the construction 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 and the construction official.

2. Unless an immediate hazard to health and safety is posed, the construction 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.

Case Notes

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.

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 of not more than \$500.00 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)liii 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)li 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)lii 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)liv 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, whenever he shall not have done so in the original notice and orders.

6. The penalties pursuant to this section may be collected in a summary proceeding pursuant to the "Penalty Enforcement Law" (N.J.S.A. 2A:58-1 et seq.). Jurisdiction to enforce such penalties is conferred upon judges of the municipal court in addition to the courts specified by N.J.S.A. 2A:58-2. 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: 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 upon 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. 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. 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 the regulations, law or ordinance.

Case Notes

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.

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 acceptance or rejection of the terms of the order. Such person may seek review before the Construction Board of Appeals within 10 business days of receipt of the notice.

3. Restoration of unsafe structure: A building or structure condemned by the construction official may be restored to safe condition provided change of use or occupancy is not contemplated or compelled by reason of such reconstruction or restoration; except that if the damage or cost of reconstruction or restoration is in excess of 50 percent of its physical value, as defined and computed in accordance with this subchapter, exclusive of foundations, such structure shall be made to comply in all respects with the requirements for new construction. A certificate of occupancy 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 order and require the occupants to vacate the same forthwith. He 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 struc-

ture except for the purpose of making the required repairs or of demolishing the same.

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, he 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 described has been instituted.

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: For the purposes 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.

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.

Law Review and Journal Commentaries

Tort Claims Act—Landlords. P.R. Chenoweth, 138 N.J.L.J. No. 2, 77 (1994).

Case Notes

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.

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).

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.

5:23-2.34 Construction board of appeals

There shall be established in each county of the State, a construction board of appeals to hear appeals from the decisions of enforcing agencies in that county; provided that a municipality may establish its own construction board of appeals; and provided further, that where two or more municipalities have combined to appoint a joint enforcing agency for all subcodes, they may combine to establish a joint construction board of appeals. Such municipal or joint board of appeals shall hear appeals from municipal or joint enforcing agencies, as the case may be, instead of the county board.

5:23-2.35 Applicant's right of appeal; procedure

(a) Whenever an enforcing agency shall deny an application for a construction permit, fail to act upon an application for a construction permit, fail to act upon an application for a certificate of occupancy, refuse to grant a variation pursuant to this subchapter, or make any other decision pursuant or related to the act or the regulations, including the assessment of any monetary penalties, an owner or his authorized agent may appeal to the construction board of appeals.

(b) The application for appeal shall be taken within 20 business days of the receipt of written notice of the denial or other decision of the enforcing agency.

(c) The application for appeal shall be in writing, filed with the board, briefly setting forth the appellant's position. Such application shall state the name and address of the appellant, the address of the building or site in question, the permit number, and shall reference the specific sections of the regulations in question, and the extent and nature of the appellant's reliance on them. The appellant may append to his written application any data or information that he may deem appropriate to his cause.

1. The enforcing agency shall make available to the board the full record of the application below, which shall include a detailed explanation of the reasons for the denial of the appellant's request.

(d) The application shall be accompanied by a fee in the sum of \$50.00 unless established otherwise by the local or county governing body. An application shall not be considered complete unless accompanied by the appeal fee. In the case of appeal based on the failure of the enforcing agency to act within any time frame specified, the fee shall be waived.

(e) The time for appeal may be extended prior to a meeting upon application to the secretary of the board, or may be extended at any regular or special meeting of the board, by the affirmative vote of a majority of the board present.

Case Notes

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

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

5:23-2.36 Procedure of the board

(a) The board shall meet upon notice of the chairman or at stated periodic meetings, if warranted by the volume of work. The hearing shall be recorded and copies made available upon request at the expense of the requesting party.

(b) All hearings shall be open to the public. The appellant, his representatives or legal counsel and the enforcing agency through the construction official or the appropriate subcode official shall be granted an opportunity to address the board, present testimony, examine and cross-examine witnesses consistent with reasonable rules of procedure and due process.

(c) Membership:

1. When five members are not present to consider a specific appeal, either the appellant or the enforcing agency shall upon request be entitled to a postponement of the hearing. If there is no such request for a postponement, any decision made by the members present shall be binding and shall be considered as a decision of the full board. No meetings shall be conducted unless there are at least three members of the board present.

2. No specific combination of business or profession represented on the board need be present when less than the full board is convened, or when the board is convened with alternate members, unless an affirmative vote of the regular members present determines that because of the nature of a particular matter before it, a certain specific trade or profession not present, is required. Further, the appellant or the enforcing agency shall upon request, and upon a concurring vote of a majority of the regular members present, be entitled to a postponement of the hearing upon the grounds that a certain specific trade or profession not present, is required.

Case Notes

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

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

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

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

5:23-2.37 Decision of the board

(a) Procedure:

1. The board shall hear the appeal, render a decision thereon, and file its decision with a statement of the reasons therefore with the enforcing agency from which the appeal has been taken not later than 10 business days following the submission of the appeal, unless such period of time has been extended with the consent of the appellant. Such decision shall also be filed with the Construction Code Element, Bureau of Regulatory Affairs, CN816, Trenton, NJ 08625. Decisions of the board shall be available for public inspection at both the offices of the bureau and the enforcing agency during normal business hours.

2. Such decision may affirm, reverse, or modify the decision of the enforcing agency or remand the matter to the enforcing agency for further action. Whenever the board shall reverse or modify the decision of the enforcing agency, its statement of reasons therefor shall explain in specific detail the nature and extent of its disagreement with the enforcing agency.

3. Decisions of the board shall be by a concurring vote of three members. Failure to secure three concurring votes shall be deemed a confirmation of the decision of the enforcing agency; except that when less than five members are present, a majority of those present shall be required for concurrence. Any dissenting member may attach a statement of reasons in opposition to the decision of the board.

4. Every action of the board shall be by resolution and copies shall be forwarded by certified or registered mail to the appellant or his representatives.

5. Failure by the board to hear an appeal and render and file a decision thereon, within the time limits prescribed in this section, shall be deemed a denial of the appeal for purposes of a complaint, application or appeal to a court of competent jurisdiction.

6. The enforcing agency shall take immediate action in accordance with the decision of the board, unless otherwise stayed by a court of competent jurisdiction.

7. Any party, including the enforcing agency, may within 30 days, appeal from the decision of the board to a court of competent jurisdiction.

(b) Criteria: Decisions of the board shall be in accordance with the following:

1. Where an enforcing agency has failed to act on an application for a construction permit, the board may order the enforcing agency to act or may grant such permit if the applicant is otherwise entitled thereto, or may deny the permit.

2. Where an enforcing agency has denied an application for a construction permit, the board may reverse or modify such decision upon a finding that such was arbitrary, or based upon an erroneous interpretation of the regulations.

3. Where an enforcing agency has, pursuant to this subchapter, denied in whole or in part an application for a variation, or placed conditions upon the granting of a variation, the board may, upon making the same findings as are required by this subchapter, grant such variation, and establish any conditions of the variation. Except as is otherwise specified, no variations may be granted from any of the requirements of N.J.A.C. 5:23-2, 4 and 5.

4. Where the appeal is from an order to pay a monetary penalty, the board may reduce such penalty if it determines that the assessment was excessive; it may void such penalty if it determines that its assessment was unnecessary to bring about compliance, or that it was an inappropriate remedy under the circumstances of the case; or it may hold such penalty in abeyance until the issuance of a certificate of occupancy or some earlier event or period in anticipation or reducing or voiding such penalty where no further violation of the regulations are uncovered.

5. Where the appeal is based on any other action of the enforcing agency, the decision of the board shall give effect to the intent and purpose of the act and shall be consistent with the interests of the general health, safety and welfare.

Administrative Correction to (a)1: Name and address change.
See: 22 N.J.R. 2503(b).

Case Notes

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

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

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

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

5:23-2.38 Departmental appeal

(a) Whenever the department shall act as the enforcing agency under section 10 of the State Uniform Construction Code Act, an appeal in lieu of the appeal to the county, municipal or joint construction board of appeals may be made to the Division of Housing. The case shall be adjudicated before the Office of Administrative Law and the final decision shall be issued by the Commissioner. Such hearings shall be governed by the provisions of the Administrative Procedure Act (See N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq. as implemented by N.J.A.C. 1:1), and the time provisions applicable to county or municipal boards.

(b) Any party in interest aggrieved by any decision made by a facility manager with respect to compliance with the Barrier Free Recreational Standards (N.J.A.C. 5:23-7.100 through 7.116) 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.

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".

SUBCHAPTER 3. SUBCODES

5:23-3.1 Title; scope; intent

(a) This section of the regulations, adopted pursuant to authority of the State Uniform Construction Code Act and entitled "Subcodes," shall be known and may be cited throughout the regulations as "N.J.A.C. 5:23-3," and when referred to in this subchapter may be cited as "this subchapter."

(b) When used alone, the term "subchapter," "section," and so forth, refers to that portion of the regulations. When used in conjunction with the term "building subcode," "plumbing subcode" or "electrical subcode," and so forth, the term "article" or "section," and so forth, refers to that subcode.

(c) This subchapter shall control matters relating to:

1. The adoption of subcodes of the Uniform Construction Code.
2. Modifications to the subcodes adopted.
3. The organization of enforcement responsibilities.
4. The use of standards of accepted practice.
5. Approvals and interrelations.
6. The division of plan review responsibilities and State reserved activities; and
7. Procedures for adoption of future subcode amendments.

(d) This subchapter provides a uniform system of construction standards throughout the State through the adoption of model codes applicable throughout the State. Modifications made to the subcodes are for the purpose of providing a uniform, harmonious system of construction code interface and administration, and to resolve conflicts with preempting Federal and State legislation.

(e) Provisions concerning underground storage tanks, jointly enforced by the Department of Environmental Protection (DEP), are in N.J.A.C. 5:23-3.11B and in the DEP's rules at N.J.A.C. 7:14B.

11. Parts VI and VII pertaining to Electrical and Energy Conservation are deleted. Requirements for electrical and energy conservation shall be provided in accordance with the respective subcodes, Electrical per N.J.A.C. 5:23-3.16, and Energy per N.J.A.C. 5:23-3.18.

New Rule, R.1985 d.324, effective July 1, 1985.
See: 17 N.J.R. 861(c), 17 N.J.R. 1646(a).
Amended by R.1987 d.374, effective September 21, 1987.
See: 19 N.J.R. 1024(a), 19 N.J.R. 1720(b).

Model subcode revisions.
Amended by R.1988 d.388, effective August 1, 1988.
See: 20 N.J.R. 1130(a), 20 N.J.R. 2073(b).

Added (c).
Amended by R.1990 d.253, effective May 21, 1990.
See: 22 N.J.R. 909(b), 22 N.J.R. 1554(a).

References to 1989 Supplement added; (b)lii(5), 2, 4, 8 and 9 amended; (b)5, 6 and 7 added; (c) deleted; Table R-201.2 added.
Amended by R.1991 d.571, effective November 18, 1991.
See: 23 N.J.R. 2619(a), 23 N.J.R. 3444(b).

Added new (c).
Amended by R.1992 d.208, effective May 18, 1992.
See: 24 N.J.R. 680(a), 24 N.J.R. 1879(a).
Code provisions applicable to flood hazard zones clarified.
Amended by R.1993 d.662, effective December 20, 1993.
See: 25 N.J.R. 3891(a), 25 N.J.R. 5918(a).

SUBCHAPTER 4. ENFORCING AGENCIES; DUTIES; POWERS; PROCEDURES

5:23-4.1 Title; scope; intent

(a) This subchapter, adopted pursuant to authority of the State Uniform Construction Code Act and entitled "Enforcing agencies; duties; powers; procedures", shall be known and may be cited through the regulation as N.J.A.C. 5:23-4," and when referred to in this part of the regulations, 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) This subchapter and N.J.A.C. 5:23-4A, 4B, 4C shall control matters related to: the structure, organization, and procedures of municipal, State, and interlocal enforcing agencies; their interrelationships; the structure, organization, and procedures of boards of appeal; the approval of premanufactured construction; private enforcing agencies; and the establishment of fees.

(d) This subchapter seeks to provide an efficient administrative structure for enforcing agencies and boards of appeal, through which delay in the construction process can be reduced, uniformity of systems and procedures encouraged, and the public health and safety protected. Such intent shall be given full effect in the construction of any specific provision of this subchapter.

Amended by R.1990 d.313, effective June 18, 1990.

See: 22 N.J.R. 691(a), 22 N.J.R. 1915(b).
Reference to subchapter 4A added to (c).
Amended by R.1994 d.96, effective February 22, 1994.
See: 26 N.J.R. 1073(a).

Law Review and Journal Commentaries

Municipal employees—Construction Code Officials. Judith Nallin, 135 N.J.L.J. No. 14, 50 (1993).

Case Notes

Citation to former N.J.A.C. 5:23-2.9 on enforcement. Newark Health Welfare Dept. v. Rogers, 179 N.J.Super. 389, 432 A.2d 135 (Ch.Div.1981).

City must proceed against property through its own ordinances rather than seek common law public nuisance injunction where no local board of health established and nuisance not proven. Newark Health & Welfare Dept. v. Rogers, 179 N.J.Super. 389, 432 A.2d 135 (Ch.Div.1981).

5:23-4.2 Matter covered; exceptions

(a) Except as otherwise provided in subsection (b) below, the provisions of this subchapter shall apply to all agencies with an enforcement responsibility under the act and regulations.

(b) Rules concerning exceptions are:

1. Interstate agencies: This subchapter shall not apply to agencies created by Interstate Compact. Such agencies shall administer and enforce the subcodes, under such rules and regulations as they may develop, pursuant to authority of the State Uniform Construction Code Act, and any other applicable law of this State.

2. Department of Education:

i. When final plans for the construction or alteration of a public school facility have been submitted to the Department of Education, and approved under the standards for facility adequacy set forth at N.J.A.C. 6:22, and have been submitted for review to, and released by, a construction official of an enforcing agency, such plans shall also be filed with the enforcing agency of the municipality in which the public school is located.

ii. The enforcing agency shall have the right to inspect any construction or alteration of a public school facility for the purpose of advising the board of education of the school district in which the public school facility is being constructed and the Commissioner of Education of any violations of the standards for facility adequacy set forth at N.J.A.C. 6:22; the educational enhancements requirements set forth at N.J.A.C. 5:23-3.11A(d); or any other provision of the State Uniform Construction Code. The advice of the enforcing agency shall be binding upon the district board of education, except that an appeal to the Department of Education shall be available to the district board of education.

(c) Rules concerning matters not specifically provided for are:

1. Any type or class of enforcing agency or board of appeals, the procedures of which are developed in this subchapter, may individually adopt further rules for their internal governance, not inconsistent with any specific provision of this subchapter, or with its stated intent.

Amended by R.1991 d.309, effective June 17, 1991.

See: 23 N.J.R. 1084(a), 23 N.J.R. 1922(a).

Rule conformed to P.L. 1990 c.23; reference to N.J.A.C. 6:22 added.

5:23-4.3 Municipal enforcing agencies—establishment

(a) Notice of intention to establish:

1. Any municipality seeking to establish and operate an enforcing agency, pursuant to the act and the regulations, shall first notify the department of its intent to establish such an agency by registered and certified mail, return receipt requested, not later than one month prior to the effective date of the regulations. Such notice, in the form of a resolution of the governing body, shall state that enforcement will be carried out either by the municipal enforcing agency or by interlocal agreement. The resolution shall also state the extent to which the municipality anticipates that private on-site agencies will be utilized. The resolution shall state the address of the enforcing agency and the board of appeals, if different. Such resolution shall additionally state whether a board of appeals will be appointed within the municipality, whether an intermunicipal joint board of appeals will be established or whether appeals will be left to the jurisdiction of the county.

2. Any municipality which shall not choose to establish and operate an enforcing agency pursuant to the act and the regulations shall notify the department of this intent by registered or certified mail, return receipt requested, not later than one month prior to the effective date of the regulations. Such notice, in the form of a resolution of the governing body, shall state that the governing body requests that the department assume the task of administration and enforcement.

3. A municipality may, by resolution, provide for the employment of an elevator subcode official, licensed in accordance with N.J.A.C. 5:23-5, to perform inspections and witness tests within its jurisdiction. If a municipality fails to employ such an official by July 1, 1992, the Department shall have exclusive jurisdiction to review plans and witness tests for, and inspect elevators within, the municipality. Thereafter, a municipality may acquire such jurisdiction by enacting the necessary resolution and employing an elevator subcode official, but the transfer of jurisdiction to the municipality shall not be effective until 120 calendar days after a certified copy of the resolution is received by the Department.

(b) Remedies:

1. Whenever the department shall not have received the notice as described in (a)1 of this section, at least one month prior to the effective date of the regulations, it shall forward by certified or registered mail, return receipt requested, to the governing body of any such municipality, a notice of failure to comply with these regulations, a statement detailing the implications of such failure, and a statement of intention to seek the order of a court of competent jurisdiction requiring that the municipality declare its intention with respect to enforcement pursuant to (a)1 of this section or in the alternative that the department be established as the enforcing agency in such municipality.

2. The department may seek an order pursuant to this subsection after the expiration of 10 days from the mailing of such notice.

(c) Term; transfer:

1. Whenever a municipality pursuant to (c)2 below, having relinquished its jurisdiction for the administration and enforcement of the code to the department, shall seek to reestablish such jurisdiction, it may do so upon the passage of an ordinance establishing an enforcement agency in accordance with the regulations; provided however, that such ordinance shall not take effect until the expiration of 120 calendar days from the date of certified copy of the ordinance is received by the department in order to give the department sufficient time to reallocate staff assignments.

2. Whenever a municipality having accepted responsibility for administration and enforcement of the regulations shall seek to relinquish such authority to the department, it may do so upon the passage of an ordinance repealing the functions and duties of the enforcing agency and transferring same to the department; provided however, that such ordinance shall not take effect until the expiration of 120 calendar days from the date a certified copy of the ordinance is received by the department, in order to give the department sufficient time to hire any necessary staff and to integrate the municipality's enforcing agency functions within its overall inspection program; provided further that whenever the commissioner shall determine that the interest of public health, safety and welfare cannot be accommodated within this period, the commissioner may notify the municipality that the department will not accept jurisdiction for an additional period to be specified. During this period the municipality shall continue to enforce the regulations.

i. Whenever the commissioner shall seek to delay acceptance of jurisdiction pursuant to this section beyond 120 days, such shall be upon notice and opportunity to be heard pursuant to the Administrative Procedures Act, N.J.S.A. 52:14.B-1 et seq.;

ii. In any transfer of authority, the department shall succeed to any and all records and files of the enforcing agency, or copies of such records and files, if the municipal enforcing agency so provides, which the department may transport to a location of its choice after the effective date of the repealing ordinance;

iii. The department shall be free to phase its procedures and operation in during the interim between the adoption of any repealing ordinance and its effective date;

iv. The department's fee schedules, hearing provisions, and any other requirements which pertain when the department acts in its capacity as the enforcing agency, shall come into operation on the effective date of the repealing ordinance. To the extent feasible, the department shall treat the holder of an outstanding construction permit in the same manner as he would have been treated under the municipal enforcing agency;

v. Whenever a county board of appeals shall have acted for such municipality, the commissioner shall notify the county board of the transfer and the termination of its jurisdiction.

3. Except as otherwise provided in (a)3 above with regard to enforcement of the elevator safety subcode, the Department shall not assume partial responsibility for the enforcement of the regulations pursuant to this section. Whenever the Department is constituted as the local enforcing agency by the municipality, it shall act as the exclusive enforcing agency with respect to all subcodes and all areas of the regulations within the limits of such municipality.

(d) Establishment by ordinance:

1. Any municipality which shall have complied with (a)1 above shall thereafter, but prior to the effective date of the regulations, adopt an ordinance constituting its enforcing agency.

2. Such ordinance shall establish the construction official as the chief administrator of the enforcing agency. It shall establish as many subcode official positions as the Commissioner shall issue types of licenses for subcode officials. Any person who holds more than one subcode official position shall be qualified for each position pursuant to N.J.A.C. 5:23-5. Staffing procedures shall not result in an inadequate municipal inspection force.

3. Such ordinance need not require that the construction official or each of the subcode officials, or any of their assistant and staff, work exclusively for the enforcing agency, or that they be located in one office or building within the municipality. But such ordinance shall specify that for purposes of the regulations and its enforcement,

any such dispersed personnel are subject to the procedures and policies of the enforcing agency and are primarily responsible to the construction official. Further, such ordinance shall indicate that irrespective of any dispersal of personnel, the public shall have the right, unless in the case of emergency, unforeseen or unavoidable circumstance, to do business at one enforcing agency center. Any reorganization necessary to provide for the coordination of dispersed personnel so as to enable the enforcing agency to act within the various time limits established by the act and the regulations shall be provided in such ordinance or may be delegated to the appointing authority.

4. Such ordinance shall, if the municipality has so chosen, establish a board of appeals in accordance with N.J.A.C. 5:23-4.40. The municipality may permit the board to hire new staff or to utilize existing municipal staff in addition to such staff as is provided for in section 26 of this subchapter as it may deem appropriate.

5. Such ordinance shall establish a system of fees in accordance with N.J.A.C. 5:23-4.17.

6. Such ordinance, including any amendments thereto whenever made, shall be forwarded to the department upon adoption.

(e) Personnel:

1. Personnel hired or transferred on a full or part-time basis, for purposes of the administration of the act and the regulations, may be hired or transferred by resolution of the governing body, or by such other procedure as is provided by law in the municipality for such purposes.

2. Not later than 30 days after the effective date of the regulations and whenever changed thereafter, the municipality shall file with the department a list containing the names and certification numbers of the construction official and each subcode official.

(f) Departmental intervention:

1. Except as otherwise provided in (f)2 below, whenever the Department shall have reasonable cause to believe that a local enforcing agency is not carrying out its functions as intended by the Act and regulations, it shall forward by certified or registered mail, return receipt requested, to the governing body, to the construction official, and to the municipal manager or administrator, if any, having jurisdiction over the local enforcing agency, a notice stating the nature of the alleged failure of the local enforcing agency to perform, the implications of such failure, and a statement setting forth the corrective action required to be taken by the local enforcing agency.

i. In the case of a local enforcing agency which the Department finds to have repeatedly or habitually failed to enforce the provisions of the State Uniform Construction Code Act, the Department shall issue an order, in the manner, and subject to the requirements, set forth in (f)1 above, to dissolve the local enforcing agency and replace it by the Department.

ii. No local enforcing agency shall be dissolved and replaced by the Department for repeated or habitual failure to enforce the regulations except upon its failure, or the failure of the governing body or official having jurisdiction over it, to comply with a notice issued by the Department setting forth corrective action required to be taken in order to ensure proper administration of the local enforcing agency and enforcement of the Code.

iii. Prior to the issuance of an order for the dissolution of any local enforcing agency and its replacement by the Department, or as an alternative to any such order, the Department shall place the local enforcing agency under the temporary supervision of an administrator employed by the Department. For the first 60 days of any period in which a local enforcing agency is under the temporary supervision of a Department administrator, the local enforcing agency shall retain fee revenue and be responsible for the payment of employee salaries and other expenses, other than the expenses of the administrator, in the same manner as if the local enforcing agency were not under the supervision of a Department administrator. In the event the period of temporary supervision extends beyond 60 days and the Department has assigned its own personnel to serve as officials and/or inspectors, fee revenue after the sixtieth day shall be paid to the Department and used by the Department to pay the costs of the local enforcing agency.

iv. In the event that any municipality having jurisdiction over a local enforcing agency subject to any notice or order issued pursuant to this paragraph is aggrieved by such notice or order, the municipality shall be entitled to an administrative hearing conducted in accordance with 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. A request for any such hearing must be mailed, within 15 days after receipt of the notice or order being appealed, to the Hearing Coordinator, Division of Housing and Development, CN 802, Trenton, NJ 08625-0802. The right to a hearing under this paragraph shall also extend to any licensed code enforcement official or inspector who would be adversely affected by any Departmental order.

2. In any case in which it may find it necessary to do so, the Department may supplant or replace a local enforcing agency for a specific project.

(g) The commissioner may, upon written application by the governing body of a municipality, temporarily waive any administrative requirement of the regulations which because of special circumstances impedes a municipality in the enforcement of the code. Any municipality seeking such a temporary waiver, shall in its written request state the nature of the problem, the relief sought and alternative measures, if any, which might meet the intent of the requirement for which such temporary waiver is sought. The commissioner may grant a hearing pursuant to the Administrative Procedures Act, if a more complete record of the case is deemed necessary.

Amended by R.1989 d.435, effective August 21, 1989.
See: 20 N.J.R. 1764(a), 21 N.J.R. 2474(a).

Deleted (e), which was "Interim Procedures" and recodified (f) "Personnel" as new (e), with no change in text. Deleted (g) "Failure to perform" and reserved subsection as (f). Recodified old (h) as (g).
Amended by R.1989 d.551, effective November 6, 1989.

See: 21 N.J.R. 2436(a), 21 N.J.R. 3460(b).

New subsection (f) added regarding departmental intervention.
Administrative Correction to (d)4.

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

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

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

Elevator plan review provisions added at (a)3.

Amended by R.1992 d.245, effective June 15, 1992.

See: 24 N.J.R. 1148(a), 24 N.J.R. 2244(a).

Exception for elevator safety subcode added to (a)3.

Administrative Change.

See: 26 N.J.R. 5007(a).

Case Notes

Township of Edison v. Coleman, 239 N.J.Super. 301, 571 A.2d 312 (A.D.1990).

Citation to former N.J.A.C. 5:23-4.3 for construction official's duties; Township manager without authority over matters of code enforcement and official discipline due to State legislative preemption. J.P. Properties, Inc. v. Macy, 183 N.J.Super. 572, 444 A.2d 1131 (Law Div.1982).

Regulation required for Commissioner to order refund by municipal enforcement agencies of charges in excess of operating costs; no refund without regulation adoption. Bureau of Construction Code Enforcement v. Hasbrouck Heights, 4 N.J.A.R. 282 (1983).

Regulations govern municipal enforcement agencies. Bureau of Construction Code Enforcement v. Hasbrouck Heights, 4 N.J.A.R. 282 (1983).

5:23-4.3A Enforcing agency classification

(a) Local enforcing agencies shall be classified as RCS (specialty in residential and small commercial structures), ICS (specialty in industrial and commercial structures) or HHS (specialty in high-rise/hazardous structures). The classification of the enforcing agency shall be determined by the highest class of structures for which the construction official and each subcode official in a municipality is licensed to do plan review.

(b) The classification of an enforcing agency is determined by the lowest level of inspector license held by any of the subcode officials appointed to establish such agency and by the highest level of inspector license held by the appointed construction official. In the case of subcode officials, the inspector license used to determine the classification of the agency must be in the subcode area for which that individual is appointed. Enforcing agencies shall be classified as follows:

See: 25 N.J.R. 5388(a), 26 N.J.R. 1073(a).

Section was "Enforcement of Federal manufactured home standards".

5:23-4.40 Construction boards of appeal

(a) Rules concerning establishment are:

1. Counties; adoption of resolution:

i. Prior to the effective date of the regulations, the governing body of the county shall by resolution, establish a county board of appeals in accordance with this section. Such resolution shall be filed with the department.

ii. In any case where a municipality has not established a board of appeals with five qualified members at the time it receives an application for appeal, the applicant shall have an immediate right to have his appeal heard before the county board. The county board shall thereafter hear appeals from said municipality until such times as the municipality shall establish a board with five qualified members and notify the county of same.

(b) Rules concerning organization are:

1. Membership; term; qualifications of members:

i. Every construction board of appeals shall consist of five members;

ii. Board members shall be appointed for a term of four years by the appointing authority of the county or municipality in question or, in the case of a joint municipal board, by means mutually determined by the governing bodies of such municipalities. For the members first appointed, the appointing authority shall designate the appointees' terms so that one shall be appointed for a term of one year, one for a term of two years, one for a term of three years, and two for a term of four years. Vacancies on the board shall be filled for the unexpired term. Members may be removed by the authority appointing them for cause. A person may serve on more than one construction board of appeals;

iii. No more than two members of the board shall be selected from the same profession or business. At least one member of the board shall be as qualified as a plumbing subcode official, one as qualified as an electrical subcode official, one a registered architect, licensed professional engineer with building construction experience or other person as qualified as a building subcode official and one as qualified as a fire protection subcode official;

(1) Whenever a change to the regulations governing the composition of the construction board of appeals is made, the appointing authority shall implement the change when the term of any affected member(s) expires.

iv. No employee of any local enforcing agency may serve on the board of appeals exercising appeals jurisdiction over such enforcing agency. Other municipal and county employees may serve on such board, provided they be disqualified from consideration of matters affecting municipal or county-owned or leased structures;

v. Each member shall be qualified by experience or training to perform his duties as a member of the board, which shall be no less than that which is required of a construction or subcode official, under section 8b of the act. Members of the board need not be certified. No member shall receive an appointment unless he shall meet at least these minimum requirements.

(1) Each member shall be required to attend a course offered by the Department for members of construction boards of appeals within 12 months of appointment if he or she has not already done so. Members currently serving on a construction board of appeals will have 12 months from the date on which the Department announces the availability of the course in which to complete this course. The Department will notify each Board on the Department roster at least two months prior to this date in order to provide adequate notice. Members who have completed the subcode official course offered by the Department pursuant to the Uniform Construction Code Act will not be required to fulfill any additional educational requirement.

(2) The commissioner may further require that members of the board satisfactorily undertake more specialized training consistent with the duties of members of a board of appeals.

(3) Failure to satisfactorily undertake such a program shall be deemed good cause for removal by the appointing authority. Failure to be present at one more than 50 percent of all meetings of the board during any calendar year shall be considered good cause for removal by the appointing authority; provided, however, that disqualification pursuant to (b)3 below shall not be considered in computing attendance;

vi. The appointing authority shall designate one of the members to serve as chairman;

2. The appointing authority may appoint such number of qualified alternates as it may deem appropriate to serve during the absence or disqualification of any member. Such appointment may be for a specified term not to exceed four years, or on a case-by-case basis. Such alternates shall not be members of the enforcing agency, the decisions of which are subject to the review of the board;

3. Exemption of members: A member of the board shall not pass on any question in which he is engaged as

contractor or material dealer, or in which he has been involved in the preparation of plans or specifications, or in which he has any personal or professional interest;

4. Compensation of board members: The appointing authority shall determine the compensation, if any, of members of the board, but they shall in any event be reimbursed for all necessary expenses incurred by them in the performance of their duties;

5. Secretary of the board: Whenever the municipal appointing authority shall designate a municipal board of appeals, within its jurisdiction, the construction official shall designate a clerk from the enforcing agency to serve as secretary to the board, and to maintain its records. In the case of county boards such secretary shall be designated by the appointing authority of the county. In the case of a joint board, the secretary shall be determined by agreement of the parties;

6. Departmental appeal: Whenever the department shall act as the enforcing agency under Section 10 of the State Uniform Construction Code Act, the commissioner shall provide an appeal in lieu of the appeal to the county, municipal or joint construction board of appeals. Such hearings shall be governed by the provisions of the Administrative Procedure Act, and the time provisions applicable to county or municipal boards. Any such case shall be adjudicated before the Office of Administrative Law and the final decision shall be issued by the Commissioner.

(c) Rules concerning administration and enforcement are:

1. Appeals shall be in accordance with N.J.A.C. 5:23-2.35;

2. Procedures shall be as stipulated in N.J.A.C. 5:23-2.36;

3. Decisions of the board shall be as provided in N.J.A.C. 5:23-2.37.

(d) Rules concerning prospective interpretations are:

1. The board of appeals shall be bound to the prospective interpretation of the regulations by the commissioner;

2. Whenever the commissioner shall make a prospective interpretation of, or issue a departmental interpretation pursuant to N.J.A.C. 5:23-3.9, such shall be forwarded by regular mail to each board of appeals and to each enforcing agency.

As amended, R.1982 d.436, eff. December 20, 1982.
See: 14 N.J.R. 734(a), 14 N.J.R. 1449(a).

Added to (b)6, that cases to be heard by the OAL with final decision by the Commissioner.

As amended, R.1984 d.54, eff. March 5, 1984.
See: 15 N.J.R. 2088(a), 16 N.J.R. 424(a).

(b)liii added: "and one as qualified as a fire protection subcode official;"

Amended by R.1986 d.142, effective May 5, 1986.

See: 17 N.J.R. 1169(a), 18 N.J.R. 945(a).

Recodified from 4.26.

Amended by R.1987 d.509, effective December 7, 1987.

See: 19 N.J.R. 1264(a), 19 N.J.R. 2270(a).

Added (b)liii(1) and (b)lv(1).

SUBCHAPTER 4A. INDUSTRIALIZED/MODULAR BUILDINGS AND BUILDING COMPONENTS

5:23-4A.1 Purpose

(a) The purpose of this subchapter is to implement P.L. 1991, c.457, which made New Jersey a party to the Interstate Compact on Industrialized/Modular Buildings. The adoption of this subchapter, which is identical in content to implementing rules adopted by the other states participating in the compact, will result in uniformity in state compliance requirements, thereby promoting the use of new technologies, techniques, and materials and increasing the availability of safe, decent and affordable construction, both for housing and non-housing uses.

(b) No approval, ruling, action, order or notice issued in accordance with rules in effect prior to the effective date of the adoption of this subchapter shall be rendered invalid or unenforceable by reason of the adoption of this subchapter or the repeal of rules superseded by this subchapter. Any approval issued in accordance with rules in effect prior to the effective date of the adoption of this subchapter shall continue in effect for the period for which it was granted, but any subsequent approval shall be in accordance with this subchapter.

Amended by R.1994 d.96, effective February 22, 1994.
See: 25 N.J.R. 5388(a), 26 N.J.R. 1073(a).

5:23-4A.2 Findings; functions of the Commission

(a) The Department, as the administrative agency for the State of New Jersey under the Interstate Compact on Industrialized/Modular Buildings, finds that:

1. Industrialized/modular buildings are constructed in factories in various states and are a growing segment of the nation's affordable housing and commercial building stock.

2. The regulation of industrialized/modular buildings varies from state to state and from locality to locality. This creates confusion and burdens state and local building officials and the industrialized/modular buildings industry.

3. Regulation by multiple jurisdictions imposes additional costs, which are ultimately borne by the owners and users of industrialized/modular buildings and which restrict market access and discourage the development and incorporation of new technologies.

5:23-6.2 (Reserved)

New Rule, R.1987 d.387, effective October 5, 1987.
See: 19 N.J.R. 433(b), 19 N.J.R. 1793(a).

"Technical standards for solar energy systems; general provisions" expired April 1, 1988 pursuant to Executive Order No. 66(1978).
See: 20 N.J.R. 893(a).

5:23-6.3 (Reserved)

New Rule, R.1987 d.387, effective October 5, 1987.
See: 19 N.J.R. 433(b), 19 N.J.R. 1793(a).

"Eligibility criteria for solar energy systems" expired April 1, 1988 pursuant to Executive Order No. 66(1978).
See: 20 N.J.R. 893(a).

5:23-6.4 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.

(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, in accordance with N.J.A.C. 5:23-2.34.

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).

5:23-6.5 (Reserved)

Recodified as 5:23-6.1(e) by R.1984 d.121, effective April 16, 1984.
See: 16 N.J.R. 180(a), 16 N.J.R. 874(a).

SUBCHAPTER 7. BARRIER FREE SUBCODE**Subchapter Historical Note**

Subchapter 7, Barrier Free Subcode, sections 7.1 through 7.99 were repealed by R.1995 d.144 and existing sections 7.100 through 7.116 were recodified as sections 7.2 through 7.18, 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).

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 without 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: