

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

Amended by R.2003 d.201, effective May 19, 2003.  
See: 35 N.J.R. 303(a), 35 N.J.R. 2207(a).

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

Amended by R.2004 d.36, effective January 20, 2004.  
See: 35 N.J.R. 4632(a), 36 N.J.R. 467(a).

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

#### 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).

#### 5:23A-2.2 Hearing procedures

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

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

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

adjournment, the case may be heard by the board if a quorum is present.

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

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

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

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

2. A board member shall not visit a site for any reason having to do with a matter before the board without prior notice to the other members of the board and to the parties. No such visit shall be made in the company of a representative of one party unless a representative of the other party is present. Any member who has visited a site subsequent to the filing of the appeal shall disclose that fact on the record prior to a party's presentation and shall be subject to questions from either party or any board member pertaining to the visit.

3. Neither the board nor any individual member shall discuss any case with either party, including the representative of a party, without the other party, or the representative of the other party, being present; provided, however, that this prohibition shall not apply to statements

made on the record in a hearing of which the other party was given notice and the opportunity to participate.

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

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

See: 35 N.J.R. 4632(a), 36 N.J.R. 467(a).

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

#### 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).

#### 5:23A-2.3 Board decisions

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

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

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

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

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

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

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

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

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

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

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

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

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