

Case Notes

Department of Community Affairs' insignificant deviations from Model Subdivision and Site Plan Ordinance to be adopted pursuant to Residential Site Improvement Standards Act were within its incidental powers. *New Jersey League of Municipalities v. Department of Community Affairs*, 158 N.J. 211, 729 A.2d 21 (N.J. 1999).

Storm water management regulation promulgated by Department of Community Affairs (DCA), which conflicted with storm water management regulation promulgated by the Department of Environmental Protection, was invalid. *New Jersey State League of Municipalities v. Department of Community Affairs*, 310 N.J.Super. 224, 708 A.2d 708 (A.D.1998).

5:21-1.6 Development over limestone geologic formations

(a) A number of areas in northern New Jersey are underlain by solution-prone carbonate rocks (limestone, dolomite, and marble) which pose unusual and complex problems in relation to development activities. As such, these areas are quite sensitive to development improvements and may require special investigative, design, and construction techniques to protect both the eventual property owner as well as those in the immediate surroundings. It is not the intention of these site improvement standards to address such unusual subsurface conditions or to attempt to supersede definitive local ordinances addressing such concerns.

(b) Any proposed revisions to the standards established by the Site Improvement Advisory Board may be submitted for Board consideration by any municipality shown on the list set forth in the Appendix to this subchapter, incorporated herein by reference, or by any municipality where those materials are found to be present. Proposed revisions to the within standards shall be reviewed by the technical committee and recommended to the Site Improvement Advisory Board for approval.

Amended by R.1999 d.374, effective November 1, 1999 (operative May 1, 2000).

See: 31 N.J.R. 477(a), 31 N.J.R. 3259(a).

In (b), substituted a reference to Board consideration for a reference to consideration, and substituted a reference to the Appendix for a reference to Appendix 1-A.

5:21-1.7 Administration and enforcement

(a) Wherever a municipality has enacted an ordinance which requires subdivision and/or site plan approval pursuant to N.J.S.A. 40:55D-37, then the planning board of such municipality shall ensure that the plans and plats for any residential development subject to review under such ordinance comply with the requirements of these rules before issuing a preliminary or final approval.

(b) Whenever a zoning board of adjustment created pursuant to N.J.S.A. 40:55D-69 grants subdivision or site plan approval pursuant to the provisions of N.J.S.A. 40:55D-76(b), then that board shall ensure that any plans and plats comply with the requirements of these rules before issuing a preliminary or final approval.

Administrative correction.
See: 29 N.J.R. 1296(a).

5:21-1.8 Approval

(a) All materials, equipment, and devices required to be approved by a board or official pursuant to N.J.A.C. 5:21-1.7 shall be constructed and installed in accordance with such approval.

(b) The standards referenced in these rules and listed in N.J.A.C. 5:21-8 shall be considered a part of the requirements of these rules to the prescribed extent of each reference. Where deficiencies occur between provisions of these rules and referenced standards, the provisions of these rules shall apply, except as provided in N.J.A.C. 5:21-1.5(e).

Administrative correction.
See: 29 N.J.R. 1296(a).

5:21-1.9 Violations

(a) Where any site improvement is required to meet any part of these rules pursuant to the requirements of any ordinance adopted pursuant to N.J.S.A. 40:55D-37, Subdivision and Site Plan Review and Approval, or N.J.S.A. 40:55D-62, Zoning, then any failure of any person to construct such site improvements in accordance with the requirements of these rules shall constitute a violation of the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.). Any person responsible for such failure shall be subject to such penalties and enforcement procedures as are provided by that law and by any valid ordinance adopted pursuant thereto which may be initiated by the administrative officer designated by the ordinance (N.J.S.A. 40:55D-18).

(b) In addition to any remedy provided by (a) above, any failure to comply with the requirements of these rules, where compliance is required, shall constitute a failure to meet the conditions of the construction permit and/or certificate of occupancy issued pursuant to the State Uniform Construction Code Act (N.J.S.A. 52:27D-119 et seq.). Notification from the approving authority or from the municipal engineer acting on behalf of the approving authority that any of the requirements of these rules that are conditions of the Construction Permit and/or Certificate of Occupancy have not been met shall subject any person responsible for such failure to the remedies provided under the State Uniform Construction Code Act.

Administrative correction.
See: 29 N.J.R. 1296(a).

5:21-1.10 Operative date

(a) These rules shall be operative on June 3, 1997. The requirements of any municipal ordinances or rules adopted by any instrumentality deriving authority therefrom in effect on that date which establish rules or requirements for any matter within the scope of these regulations shall be deemed to have been repealed and of no further force or effect.

(b) Any project for which preliminary subdivision or site plan approval has been given prior to June 3, 1997 shall

continue to be subject to the municipal development ordinance under which it was approved.

(c) Any project for which application is made after June 3, 1997 shall be governed by these rules.

(d) These rules shall not be construed as requiring the revision or amendment of any application for site plan or subdivision approval which is pending on June 3, 1997. Such pending applications may, however, be amended provided that any such amendments shall meet the requirements of these rules.

1. For any project for which a completed application has been submitted on or before the operative date of these rules, but which has not yet received preliminary approval, the applicant shall have the option of amending the application in its entirety to comply with these rules or of requesting that the municipality continue to review the application under the municipal ordinances in effect at the time of application.

5:21-1.11 Validity

If any provision of these rules or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the rules which can be given effect, and to this end the provisions of the rules are severable.

APPENDIX

**NEW JERSEY MUNICIPALITIES
LIMESTONE AREAS**

<u>County</u>		<u>Municipality</u>
Hunterdon	Alexandria Township Bethlehem Township Bloomsbury Borough Califon Borough Clinton Township Clinton Town	Hampton Borough Holland Township Lebanon Township Tewksbury Township Union Township
Morris	Chester Township Jefferson Township Mendham Township Mendham Borough Minehill Township Montville Township Morris Township	Mount Olive Township Mt. Arlington Borough Randolph Township Rockaway Township Roxbury Township Washington Township
Passaic	Bloomington Borough Ringwood Township	Wharton Borough Wanaque Borough West Milford Township
Somerset	Bedminster Township Far Hills Borough	Peapack/Gladstone Borough
Sussex	Andover Township Andover Borough Branchville Borough Byram Township Frankford Township Franklin Borough Fredon Township Green Township Hamburg Borough Hampton Township Hardyston Township	Lafayette Township Montague Township Newton Town Ogdensburg Borough Sandyston Township Sparta Township Stillwater Township Vernon Township Walpack Township Wantage Township
Warren	Allamuchy Township Alpha Borough Belvidere Township Blairstown Township Franklin Township Frelinghuysen Township Greenwich Township	Independence Township Knowlton Township Liberty Township Lopatcong Township Mansfield Township Oxford Township Phillipsburg Township

County

Hackettstown Town
Hardwick Township
Harmony Township
Hope Township

Municipality

Pohatcong Township
Washington Township
Washington Borough
White Township

† Listing established by the Department of Environmental Protection, Division of Science and Research (April 1995)

Administrative correction.
See: 29 N.J.R. 2816(a).

**SUBCHAPTER 2. APPLICATION AND REVIEW
PROCEDURES**

5:21-2.1 Application and review procedures

The procedure for municipal review and action on applications for residential subdivisions and/or site plans shall not be affected by anything contained in these rules, and shall continue to be as set forth in the Municipal Land Use Law (MLUL), N.J.S.A. 40:55D-1 et seq. and in municipal ordinances adopted pursuant to the MLUL. This review shall include a review for compliance with these rules.

5:21-2.2 Application form and checklist (Reserved)

**SUBCHAPTER 3. EXCEPTIONS, WAIVERS, AND
SPECIAL AREA STANDARDS**

5:21-3.1 Exceptions

(a) The municipal approving authority may grant such de minimis exceptions from the requirements of the site improvement standards as may be reasonable and within the general purpose and intent of the standards if the literal enforcement of one or more provisions of the standards is impracticable or will exact undue hardship because of peculiar conditions pertaining to the development in question.

(b) An application for an exception pursuant to this section shall be filed in writing with the municipal approving authority and shall include:

1. A statement of the requirements of the standards from which an exception is sought;
2. A statement of the manner by which strict compliance with said provisions would result in practical difficulties; and
3. A statement of the nature and extent of such practical difficulties.

(c) Exceptions shall become a part of the construction documents and shall be retained by the municipal approving authority.