

(f) Each regular, alternate or special member shall be qualified by experience or training to perform the duties of a member of the board. In the case of regular and alternate members, regardless of whether they are in one of the qualification categories set forth in (b)1 through 5 above, such qualification shall be no less than that which is re-

quired of a construction or subcode official under subsection 8b of the State Uniform Construction Code Act (N.J.S.A. 52:27D-126, subsection b); provided, however, that board members shall not be required to hold construction code licensure.

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(g) Whenever a change to this chapter is made that affects the composition of construction boards of appeals, the appointing authority shall only implement the change when the term of any affected member(s) expires. This provision shall also apply in any case in which the adoption of this chapter affects the composition of a construction board of appeals.

(h) The board chairperson shall annually provide the Bureau of Regulatory Affairs of the Division of Codes and Standards with a list of the names and addresses of the regular, alternate and special members of the board and of the board secretary and any other contact person. Such information shall be updated whenever a change occurs.

#### 5:23A-1.4 Post-appointment educational requirements for board members

(a) Except as otherwise provided in (b) below, each **regular or alternate** member of a construction board of appeals, other than an alternate special member, shall be required to attend a general course for members of construction boards of appeals within 12 months of appointment or within 12 months of the announcement by the Department of Community Affairs of the availability of the course, whichever is later. At least two months' prior notice of any announcement of the availability of a course shall be given to all construction boards of appeals by the Department.

(b) As an alternative to attending the general course for members of construction boards of appeals, a regular or alternate board member (other than an alternate special board member) may complete both the subcode official course and the fire official course offered by the Department of Community Affairs.

(c) The Department of Community Affairs may require that board members satisfactorily complete more specialized training consistent with their duties as board members including, without limitation, training concerning P.L. 1995, c.54. Special members and alternate special members shall be required to attend training concerning P.L. 1995, c.54 within 12 months of appointment or within 12 months of the announcement by the Department of Community Affairs of the availability of the course, whichever is later.

(d) Failure to comply with the requirements of this section shall be deemed good cause for removal by the appointing authority.

#### 5:23A-1.5 Board meetings

(a) Board meetings shall be held as often as may be necessary in order to comply with time limits for board action established by statute or by this chapter, but in no case shall a board schedule meetings less frequently than once a month.

1. Special meetings shall be scheduled when necessary by the chairperson of the board. Notice of any special meeting shall be given to all board members by telephone or fax transmission at least 48 hours prior to the time of the special meeting; provided, however, that notice of special meetings shall not be required to be given to special members of the board when the special meeting does not involve any cases arising under P.L. 1995, c.54.

2. Public notice of all scheduled and special meetings shall be given, and meetings shall be open to the public, as required by the Open Public Meetings Act (N.J.S.A. 10:4-6 et seq.). Additionally, copies of all notices of meetings shall be provided by each board to the Bureau of Regulatory Affairs.

3. All hearings shall be recorded and tapes or transcripts shall be made available upon request at the expense of the requesting party.

(b) If there is no business pending before a board, the chairperson may cancel a scheduled meeting. Notice of any such cancellation shall, if time permits, be given to all members, by telephone or by fax transmission, at least 48 hours prior to the scheduled meeting time.

(c) If there is no business pending before a board involving an appeal under P.L. 1995, c.54, notice to that effect shall be given to the special members and any alternate special members, if time permits, by telephone or by fax transmission, at least 48 hours prior to the scheduled meeting time.

(d) The following apply to conflict situations:

1. No person serving in any local enforcing agency shall participate as a board member in any case arising out of, or otherwise involving, that enforcing agency.

2. No employee of a public entity shall participate as a board member in any case involving any property owned or leased by that public entity.

3. No person shall participate as a board member in any case in which he or she has been involved as a supplier of services or materials, or has been involved in the preparation of plans or specifications, or has any other personal or financial interest.

(e) Except as otherwise provided in (e)1 below, failure of a regular or special member to be present at 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 any meeting during which the member would be disqualified from participating in all scheduled matters, pursuant to (d) above, or any meeting for which arrangements were made in advance, with the consent of the chairperson, for the substitution of an alternate, shall not be considered in computing attendance for purposes of this subsection.

1. The attendance of special members shall not be required at any meeting at which no appeals under P.L. 1995, c.54 are scheduled to be heard, and any such meeting shall not be considered in computing the attendance of the special members.

## SUBCHAPTER 2. BOARD PROCEDURES

### 5:23A-2.1 Hearing applications

(a) A person who is aggrieved by any ruling, action, order or notice, order or decision of a local enforcing agency that enforces either the State Uniform Construction Code or the Uniform Fire Code, including, without limitation, any refusal to grant an application or any failure or refusal to act upon an application, may file an application for a hearing with the secretary of the construction board of appeals having jurisdiction.

1. Any such application shall be filed by the 15th day after receipt by the person of written notice of the ruling, action, order or notice complained of, or, in the case of inaction by a local enforcing agency, by the 15th day after the expiration of the period allowed for action by the local enforcing agency.

(b) In cases arising under P.L. 1995, c.54, an applicant for approval who is aggrieved by any charge to an escrow account or a deposit by any municipal professional or consultant, or the cost of the installation of improvements estimated by the municipal engineer, may file an appeal with the county construction board of appeals.

1. Any such appeal shall be filed within 45 days from receipt of the informational copy of the professional's voucher or the notice from the municipal engineer, as the case may be; provided, however, that if the professional has not supplied an applicant with an informational copy of the voucher, any appeal shall be filed within 60 days of receipt of the municipal statement of activity against the deposit or escrow account.

2. An applicant may file an appeal regarding an ongoing series of charges by a professional during a period not exceeding six months to demonstrate that they represent a pattern of excessive or inaccurate charges; such charges need not be appealed individually.

(c) The appeal shall be in writing and shall briefly set forth the appellant's position. It shall include the name and address of the applicant, the address of the building or site in question, the permit number (if applicable), and shall reference the specific provision(s) of a statute or rule upon which the applicant is relying and set forth the extent and nature of the applicant's reliance upon such provision(s). The applicant may append to the written application any data or information that he or she may deem appropriate.

1. Upon receipt of a copy of the application for a hearing, the enforcing agency (or, in the case of an appeal under P.L. 1995, c.54, the municipality, approving authority and/or professional) shall provide the construction board of appeals with a copy of the full record of the application below, including a detailed explanation of the reasons for denial of the applicant's request.

(d) Simultaneously with the filing of any application for a hearing, the person filing the application shall provide a copy thereof to the local enforcing agency or, in the case of an appeal under P.L. 1995, c.54, to the municipality, the approving authority and any professional whose charge is the subject of the appeal. Proof of compliance with this requirement shall be filed with the board secretary. Such proof may be in the form of a certified mail receipt, a signed receipt for personal delivery or a sworn statement.

(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.

#### 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 shall consist of four regular and/or alternate and/or special members.