

## CHAPTER 23A

## CONSTRUCTION BOARDS OF APPEALS

## Authority

N.J.S.A. 52:27D-124, 52:27D-198 and 40:55D-53.2a.

## Source and Effective Date

R.2001 d.195, effective May 16, 2001.  
See: 32 N.J.R. 2521(a), 33 N.J.R. 2097(b).

## Executive Order No. 66(1978) Expiration Date

Chapter 23A, Construction Boards of Appeals, expires on May 16, 2006.

## Chapter Historical Note

Chapter 23A, Construction Boards of Appeals, was adopted as R.1996 d.236, effective May 20, 1996 (operative January 1, 1997). See: 27 N.J.R. 4050(a), 28 N.J.R. 2586(a).

Pursuant to Executive Order No. 66(1978), Chapter 23A, Construction Boards of Appeals, was readopted as R.2001 d.195, effective May 16, 2001. See: Source and Effective Date.

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## SUBCHAPTER 1. GENERAL PROVISIONS

## 5:23A-1.1 Title; authority; scope; intent

(a) This chapter, which is promulgated under authority of N.J.S.A. 52:27D-124, 52:17D-198, 40A:14A-43, 40A:14B-76 and 40:55D-53.2a, shall be known as, and may be cited as, the "Rules Governing Construction Boards of Appeals."

(b) This chapter shall govern all aspects of the administration and implementation by construction boards of appeals of the provisions of the State Uniform Construction Code Act (N.J.S.A. 52:27D-119 et seq.), the Uniform Construction Code rules (N.J.A.C. 5:23) and the subcodes incorporated herein by reference, the Uniform Fire Safety Act (N.J.S.A. 52:27D-192 et seq., the Uniform Fire Code (N.J.A.C. 5:70) and associated rules, P.L. 1995, c.54, and P.L. 1999, c.11.

(c) It is the intention of the Department of Community Affairs that these rules facilitate uniformity in procedure and a high level of quality in performance so as to allow construction boards of appeals to properly discharge the duties and functions that have been assigned to them by the Legislature under the State Uniform Construction Code Act, the Uniform Fire Safety Act, P.L. 1995, c.54, and P.L. 1999, c.11.

(d) Unless otherwise specified, all provisions of this chapter are equally applicable to matters arising under any of the statutes or rules listed in (b) above.

(e) Each construction board of appeals shall have authority to adopt and enforce local rules that are not inconsistent with this chapter or with any of the statutes or rules listed in (b) above.

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

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

In (a), inserted "40A:14A-43, 40A:14B-76" following "52:17D-198,"; in (b), substituted "N.J.A.C. 5:70" for "N.J.A.C. 5:18" and inserted "and P.L. 1999, c.11" following "c.54"; in (c), inserted "and P.L. 1999, c.11" following "c.54".

## 5:23A-1.2 Establishment of construction boards of appeals

(a) The governing body of each county shall, by resolution, establish a construction board of appeals that shall exercise its functions in accordance with this chapter.

(b) The governing body of any municipality that has its own local enforcing agency may, by ordinance, establish a construction board of appeals. Any such board shall exercise its functions in accordance with this chapter.

(c) The governing bodies of two or more municipalities that have established a joint enforcing agency may, pursuant to an interlocal agreement approved by ordinances of all participating municipalities, establish a joint construction board of appeals. Any such board shall exercise its functions in accordance with this chapter.

(d) Copies of all such resolutions, ordinances and interlocal agreements shall be filed by the governing bodies with the Office of Regulatory Affairs of the Division of Codes and Standards.

(e) In any municipality in which a municipal or joint construction board of appeals has been established, the county board of appeals shall only exercise jurisdiction in cases arising under P.L. 1995, c.54 or P.L. 1999, c.11.

(f) A municipality that either establishes or discontinues a municipal construction board of appeals, or either joins or discontinues participation in a joint municipal board, shall give prompt notice of such action to the county governing body, the county construction board of appeals and the Office of Regulatory Affairs of the Division of Codes and

Standards. In the absence of a municipal or joint municipal board having jurisdiction, all appeals from a municipality shall be heard by the county board.

(g) The appointing authority shall annually designate one regular member of the board to serve as chairperson and another regular member of the board to serve as vice-chairperson. The vice-chairperson shall serve as chairperson in the event of the absence or disqualification of the chairperson.

(h) The appointing authority of a county shall appoint a secretary, who need not be a member of the board. In the case of a municipal board, the secretary shall be appointed by the appointing authority of the municipality. In the case of a joint board, the secretary shall be appointed in a manner determined by agreement of the participating municipalities.

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

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

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

### 5:23A-1.3 Membership of construction boards of appeals

(a) Every construction board of appeals shall include five regular members.

1. Regular 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.

2. 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.

3. Vacancies on the board shall be filled for the unexpired term.

4. Members may be removed by the authority appointing them for cause.

5. A person may serve on more than one construction board of appeals.

6. Unless otherwise provided by county or municipal resolution or ordinance, as the case may be, a board member shall not be required to be a resident of the county or municipality in which the board exercises jurisdiction.

7. No more than two regular members of any board shall be members of the same profession or occupation.

(b) Qualifications for regular members shall be as follows:

1. At least one regular member shall be as qualified as a plumbing subcode official;

2. At least one regular member shall be as qualified as an electrical subcode official;

3. At least one regular member shall be a registered architect, or a licensed professional engineer with building construction experience, or other person as qualified as a building subcode official;

4. At least one regular member shall be as qualified as a fire protection subcode official; and

5. At least one regular member shall be certified as a fire official.

(c) The requirements of (b) above shall not be construed as requiring that there be a separate regular member in each of the qualification categories set forth in (b)1 through 5. One regular member may satisfy these requirements with regard to more than one such qualification category.

(d) A construction board of appeals shall also include at least five alternate members.

1. Alternate members shall be appointed to staggered terms, in the same manner as the initial appointment of regular members.

2. Alternate members shall be so chosen so that there will be at least one alternate member in each qualification category set forth in (b)1 through 5 above.

3. When a regular member of the board is absent, the alternate member in the same qualification category shall serve in that regular member's place; provided, however, that any alternate member who is as qualified as an elevator subcode official shall serve in the place of any absent regular member in any case involving the elevator safety subcode, if there is no other regular member of the board present who is as qualified as an elevator subcode official.

4. If a regular member who is not in one of the qualification categories set forth in (b)1 through 5 above is absent, or if a regular member and an alternate member who are both in the same qualification category are absent and the appeal does not involve that qualification category, or if another regular member is present who meets the requirements of the same qualification category as does the regular member who is absent, the chairperson of the board shall determine which alternate member shall vote in the place of the absent regular member.

5. Alternate members shall have the right to participate in all board deliberations, but shall not vote unless serving in the place of a regular member.

(e) Each county construction board of appeals shall also include two special members, one of whom shall be a licensed professional engineer with municipal site improvement construction experience and one of whom shall be a builder. The special members shall be appointed for four-year terms and shall serve as additional members of the board only in cases involving appeals of municipal or municipal utilities authority or sewerage authority fees pursuant to P.L. 1995, c.54 or P.L. 1999, c.11.