

CHAPTER 62
AIR SAFETY AND ZONING

Authority

N.J.S.A. 6:1-32, 27:1A-5, 27:1A-6, and the Air Safety and Zoning Act of 1983, P.L. 1983 c.260, as amended.

Source and Effective Date

R.2000 d.8, effective December 7, 1999.
See: 31 N.J.R. 2707(a), 32 N.J.R. 115(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 62, Air Safety and Zoning, expires on June 5, 2005. See: 37 N.J.R. 37(a).

Chapter Historical Note

Chapter 62, Special Aircraft Operating Restrictions, was adopted as Emergency R.1973 d.29, effective January 23, 1973. See: 5 N.J.R. 58(a).

Chapter 62, Special Aircraft Operating Restrictions, was repealed by R.1983 d.476, effective November 7, 1983. See: 15 N.J.R. 1453(a), 15 N.J.R. 1870(b).

Chapter 62, Air Safety and Hazardous Zoning, was adopted as new rules by R.1985 d.173, effective April 15, 1985. See: 16 N.J.R. 860(b), 17 N.J.R. 977(b).

Subchapter 8, Permits for Developments Immune to Local Ordinance, Subchapter 9, Existing Land Uses Not Conforming to the Standards of this Chapter, and Subchapter 10, Implementation Deadlines, were adopted as new rules and existing Subchapter 8, Liability, was recodified as Subchapter 11, by R.1985 d.537, effective November 4, 1985. See: 17 N.J.R. 1869(a), 17 N.J.R. 2673(b).

Pursuant to Executive Order No. 66(1978), Chapter 62, Air Safety and Hazardous Zoning, was readopted as R.1990 d.178, effective February 26, 1990. See: 22 N.J.R. 158(a), 22 N.J.R. 981(a).

Pursuant to Executive Order No.66 (1978), Chapter 62, Air Safety and Zoning, was readopted as R.1995. d.76, effective January 12, 1995. See: 26 N.J.R. 4502(a), 27 N.J.R. 525(a).

Pursuant to Executive Order No. 66(1978), Chapter 62, Air Safety and Zoning, was readopted as R.2000 d.8, effective December 7, 1999. See: Source and Effective Date. See, also, section annotations.

Law Review and Journal Commentaries

Airports—Condemnation—Municipal Land Use—State Constitution. Judith Nallin, 136 N.J.L.J. 63 (1994).

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SUBCHAPTER 1. AIR SAFETY AND ZONING

16:62-1.1 Definitions

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

“Airpark” means any area of land, adjacent to a public use airport, to be utilized as a combined single family residence and aircraft storage facility.

“Airport” means any area of land or water, or both, designed and set aside for the landing and taking-off of fixed wing aircraft, utilized or to be utilized by the general public for such purposes, publicly or privately owned, and licensed by the Commissioner as a public use airport or landing strip, or a proposed facility for which an application for a license has been submitted in complete form pursuant to N.J.A.C. 16:54 and which has been determined by the Commissioner as likely to be so licensed within one year of the determination.

“Airport hazard” means:

1. Any use of land or water, or both, which creates a dangerous condition for persons or property in or about an airport or aircraft during landing or taking-off at an airport; or
2. Any structure or tree which obstructs the airspace required for the flight of aircraft in landing or taking-off at an airport.

“Airport safety zone” means any area of land or water, or both, upon which an airport hazard might be created or established, if not prevented by this chapter.

“Commissioner” means the Commissioner of the Department of Transportation.

“Department” means the Department of Transportation.

“Development” means the construction, reconstruction, creation, or establishment of any structure or planting of a tree.

“Director” means the Director of the Division of Aeronautics.

“Division” means the Division of Aeronautics.

“Person” means any corporation, company, association, society, firm, partnership, joint stock company, individual, the State, and all political subdivisions of the State or any agencies or instrumentalities thereof.

“Structure” means any object constructed or installed by man, including, but not limited to, buildings, towers, smokestacks, chimneys, and overhead transmission lines.

“Tree” means an object of natural vegetative growth.

Amended by R.1989 d.242, effective May 15, 1989.

See: 20 N.J.R. 3007(a), 21 N.J.R. 1376(c).

Added new definition for “Airpark.”

Amended by R.1995 d.76, effective February 6, 1995.

See: 26 N.J.R. 4502(a), 27 N.J.R. 525(a).

16:62-1.2 General requirements and provisions

(a) Under the Air Safety and Zoning Act of 1983, as amended, this chapter establishes minimum standards for the control of airport and aeronautical hazards, and standards for land use adjacent to airports, which the municipalities of this State shall implement. These standards are minimum State standards, and municipalities may adopt more rigorous standards for control of the areas and condition under the provisions of the Municipal Land Use Law. The Commissioner may adopt under N.J.A.C. 16:62-7 a special or amended standard for an airport when it is determined that local conditions require it.

(b) No person shall build, rebuild, create or cause to be built, rebuilt or created any object or structure, or plant, or cause to be planted or permit to grow any tree or vegetation, which will interfere with, diminish, change or obstruct the airspace or landing and take-off area available for the landing and take-off of aircraft at airports covered under this chapter.

(c) Nothing in this chapter shall be construed as limiting the power of the Commissioner regarding the design, placement, location, or operation of airports or other aeronautical facilities.

(d) Municipalities of this State are required to implement and maintain land use ordinances in accordance with the provisions of this chapter. These ordinances are subject to review by the Commissioner.

(e) No ordinance adopted under this chapter shall require the removal or lowering of, or other change or alteration of any structure or tree not conforming to the rules when this chapter was adopted, or otherwise interfere with the continuance of any nonconforming use.

(f) Airport safety zones adjacent to airports not licensed by the State of New Jersey or airports which are located within the Port of New York District as defined in N.J.S.A. 32:1-3 are not subject to the specific provisions of this chapter. Although the specific provisions of this chapter apply to areas surrounding only those airports open to the public, this in no way limits the power of municipalities to enact substantially similar ordinances governing the areas in accordance with the purpose of the Municipal Land Use Law.

(g) All persons are hereby put on notice that the standards of this chapter are minimum Statewide standards. Implementations of these standards does not necessarily guarantee a prudent and comprehensive land use and safety program suitable for all airports.

(h) The mechanisms provided for control of aeronautical hazards within the "Air Safety and Zoning Act" rely substantially upon local zoning regulations. The powers to enact traditional zoning ordinances upon navigable waters are constrained; and the operational characteristics and jurisdictions of water facilities may differ substantially from many land facilities; the provisions of this chapter do not apply to seaplane or water facilities unless otherwise provid-

ed for by the Commissioner in N.J.A.C. 16:62-7.1. Any interested person may petition the Commissioner for review of Air Safety and Zoning issues under the operation of any Public Use Seaplane Facility.

(i) The Director may provide for informal reviews of permit applications prior to their formal submission to the Department.

Case Notes

Denial of permit to construct building in airport clear zone upheld since such building unsafe due to its proximity to runway. *Traffic Lines Inc. v. Department of Transportation*, 97 N.J.A.R.2d (TRP) 18.

16:62-6.2 Municipal approval

(a) A developer of a project requiring creation or establishment of a prohibited land use or vertical height development shall first apply for development approval from the appropriate municipal agency. If the municipal agency approves of the development, that approval shall be conditioned on the developer applying for and receiving a permit from the Commissioner in accordance with this section. Construction, development or creation of any prohibited land use shall not commence until a permit has been issued by the Commissioner.

(b) An application for a permit will only be considered by the Department if accompanied by a letter from the municipality requesting the permit.

(c) Any person proposing to create or establish a prohibited land use or vertical height development in a designated airport safety zone not subject to municipal ordinances established in accordance with the Municipal Land Use Law (N.J.S.A. 40:55D), shall present the proposed development to the municipal governing body, which shall be considered the municipal agency for purposes of these rules.

Amended by R.1995 d.76, effective February 6, 1995.
See: 26 N.J.R. 4502(a), 27 N.J.R. 525(a).

16:62-6.3 Permit application requirements

(a) To be considered complete, an application for a permit for creation of a prohibited land use or vertical height development within an airport safety zone must include the following:

1. A completed permit application form;
2. A letter requesting issuance of a permit by the Department from the municipal agency having jurisdiction over the development, together with a copy of the conditional approval for development granted by the municipal agency, if required;
3. A detailed statement of the hardship condition necessitating the application for variance or relief, and a showing that the public health, safety and welfare will not be harmed by the creation of the prohibited land use or vertical height development;
4. Certification that the applicable airport owner(s) or authority were notified of the permit application by registered mail;
5. Submission of a non-refundable \$75.00 permit application fee;
6. Submission of site plans, specifications and construction drawings detailing the substance of the proposed development for which a permit is sought. Site plans

shall bear the raised seal of a New Jersey licensed Professional Engineer, Professional Planner, Land Surveyor, or Architect, as appropriate, and shall show the location of property lines, the location of runways, the boundaries of the airport safety zone, and elevations of proposed development showing where and by what amount the development exceeds the minimum standards for vertical development adopted under this chapter; and

7. Any other material deemed necessary to the permit application by the Director.

(b) Applications for permits issued under the provisions of this chapter and correspondence to the Department relating to the provisions of this chapter should be forwarded to the following address:

New Jersey Department of Transportation
Division of Aeronautics
Air Safety and Zoning Permits
1035 Parkway Avenue
PO Box 610
Trenton, New Jersey 08625-0610

Amended by R.1995 d.76, effective February 6, 1995.
See: 26 N.J.R. 4502(a), 27 N.J.R. 525(a).

16:62-6.4 Permit review procedures

(a) For routine applications, review of an application shall be completed by the Division within 90 days of the date on which an application is accepted as complete.

(b) Non-routine cases, requiring the review or approval of a Federal agency or another State agency prior to issuance of a permit, shall be conducted in as timely a fashion as possible. The Director shall notify the applicant of a delay in the review process necessitated by another agency's involvement. The notification shall be provided prior to 80 days following the date of acceptance of a complete application, and shall include an estimate of the date by which a completion of the review process can be anticipated.

(c) For routine cases not requiring review by other agencies, the Division may, at its discretion, extend the 90-day review period by 30 days if determined necessary to complete the review process. The applicant and affected municipality shall be notified of this extension by the Department at least 15 days prior to the expiration of the 90-day period.

(d) Following review of an application by the Division, the Director shall determine whether to recommend to the Commissioner that the permit be granted or denied.

(e) If the Director recommends denial, the applicant and municipal agency will be notified within five working days of the date of decision. An applicant who has been so notified by the Director may request an appeal before the Office of Administrative Law pursuant to N.J.S.A. 52:14B-1 et seq.

and N.J.A.C. 1:1. The applicant shall notify the Division by certified mail within 14 calendar days of notification of denial that an appeal will be forwarded to the Office of Administrative Law.

(f) Pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 1:1, a final determination to either deny or grant the permit application will be made by the Commissioner subsequent to the filing of an Initial Decision by the Administrative Law Judge who conducted the hearing.

16:62-6.5 Permit application decisions

(a) The Commissioner may take one of the following actions:

1. Approve the application as submitted. The applicant will receive a permit which shall be effective during the same period as the development approval granted by the municipal agency. The Department will mail a copy of the permit to the applicant and municipal agency within five working days of the date of approval.

2. Deny the application. The Department will mail a copy of the permit denial to the applicant and municipal agency within five working days of the date of decision.

3. Phased or partial approval. Where conditions warrant, the Commissioner may provide for a phased approval of an application. The Commissioner may also approve part of an application and deny the remainder. The nature of approvals granted, and of the denials, shall be transmitted to the applicant and municipal agency within five working days.

SUBCHAPTER 7. PROVISIONS FOR AMENDED AND SPECIAL AIRPORT STANDARDS

16:62-7.1 General provisions

(a) Under Section 5 of the Air Safety and Zoning Act of 1983, the Commissioner may, notwithstanding any other provisions of this chapter, adopt an amended or special standard for an airport when he determines that local conditions require it. Those standards shall be adopted under the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

Amended by R.1995 d.76, effective February 6, 1995.
See: 26 N.J.R. 4502(a), 27 N.J.R. 525(a).

16:62-7.2 Amended and special standards

(a) The runway end subzone for Runway 30 of Somerset Airport shall end at the western border of Bridgewater Township, Somerset County, subject to the following conditions:

1. The lots which fall within the safety zone of Bridgewater Township, Somerset County, delineated pursuant to N.J.A.C. 16:62-3, shall not be further subdivided.

2. Within the safety zone of Bridgewater Township, Somerset County, delineated pursuant to N.J.A.C. 16:62-3, no person shall build, rebuild, create or cause to be built or rebuilt or created any structure which will exceed a height of 35 feet nor shall any person plant, or cause to be planted, or permit to grow any tree or vegetation which will exceed height of 50 feet.

New Rule, R.1990 d.441, effective September 4, 1990.
See: 22 N.J.R. 1899(a), 22 N.J.R. 2751(b).

SUBCHAPTER 8. PERMITS FOR DEVELOPMENTS IMMUNE TO LOCAL ORDINANCE

16:62-8.1 General provisions

(a) In the event of a proposed development within an Airport Safety Zone which is immune to local ordinance, the standards of this chapter still apply to such proposed development.

(b) Any persons proposing a development immune to local ordinance within an Airport Safety Zone shall make application to the Department in accordance with N.J.A.C. 16:62-6.1 and 16:62-6.3. The requirement for local approval under N.J.A.C. 16:62-6.2 and 63(a)2 is waived, and the permit application fee under N.J.A.C. 16:62-6.3(a)5 is waived.

(c) The Department shall review application for permits for developments immune to local ordinance in a manner with other application provisions of this chapter.

Amended by R.1995 d.76, effective February 6, 1995.
See: 26 N.J.R. 4502(a), 27 N.J.R. 525(a).

SUBCHAPTER 9. EXISTING LAND USES NOT CONFORMING TO THE STANDARDS OF THIS CHAPTER

16:62-9.1 General provisions

(a) No ordinance adopted under this chapter shall require the removal or lowering of, or other change or alteration of any structure or tree not conforming to the rules when this chapter was adopted.

(b) Within the context of an ordinance adopted to conform with the standards of this chapter, a preexisting land use which is located within a CLEAR ZONE as delineated in N.J.A.C. 16:62-3.5 and not in conformance with the rules may at the discretion of the municipality, be classified within such an ordinance as either "nonconforming" or "conditional."

Amended by R.1989 d.242, effective May 15, 1989.
See: 20 N.J.R. 3007(a), 21 N.J.R. 1376(c).

In (b): Added language about "CLEAR ZONE" and deleted language regarding nonconforming or conditional land use waivers. Deleted (c), which elaborated on provisions in old (b).

Case Notes

Air Safety and Zoning Act of 1983 was not unconstitutional. *Patzau v. New Jersey Dept. of Transp.*, 271 N.J.Super. 294, 638 A.2d 866 (A.D.1994), certification denied 138 N.J. 268, 649 A.2d 1288.

SUBCHAPTER 10. IMPLEMENTATION DEADLINES

16:62-10.1 General provisions

(a) Municipalities affected by the provisions of this chapter shall implement the standards of this chapter as of April 15, 1985, or in the case of clear zones, May 15, 1989.

(b) No municipal body may grant variances or subdivisions in an Airport Safety Zone under their existing ordinances whose purpose would be contrary to the standards of this chapter.

Amended by R.1989 d.242, effective May 15, 1989.
See: 20 N.J.R. 3007(a), 21 N.J.R. 1376(c).

Deleted old (a) and added new (a) language specifying implementation deadlines for municipalities affected by chapter provisions.
Amended by R.1995 d.76, effective February 6, 1995.
See: 26 N.J.R. 4502(a), 27 N.J.R. 525(a).

SUBCHAPTER 11. LIABILITY

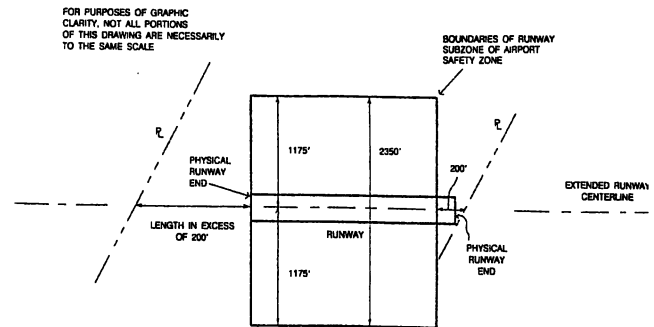
16:62-11.1 Liability

(a) Violation of any provision of this chapter may be grounds for fine, modification, suspension or revocation of any license issued under Title 6 of the New Jersey Statutes Annotated.

(b) The Commissioner may institute, in any court of competent jurisdiction, an action in the name of the State to prevent, restrain, correct, or abate any violation of any provision of this chapter and by way of injunction or otherwise, relief from the court.

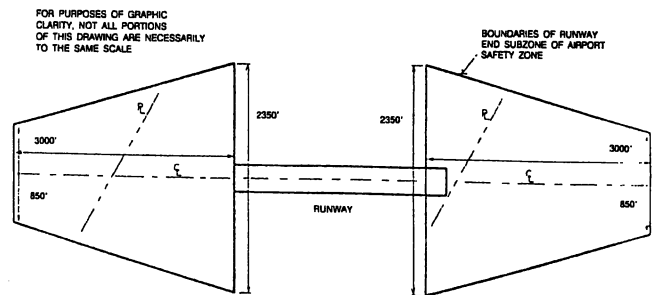
APPENDIX

FIGURE 1.



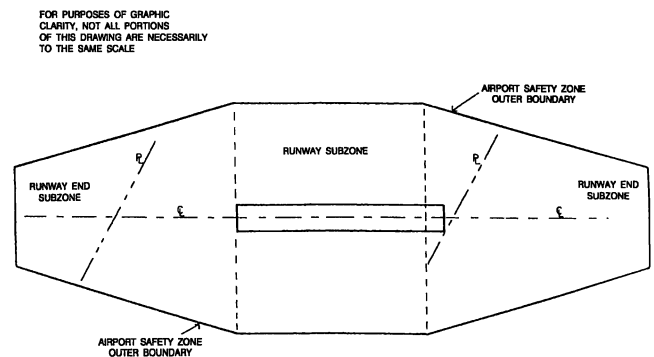
GRAPHIC DEPICTION OF THE GENERAL CONSTRUCTION OF THE RUNWAY SUBZONE OF AN AIRPORT SAFETY ZONE

FIGURE 2.



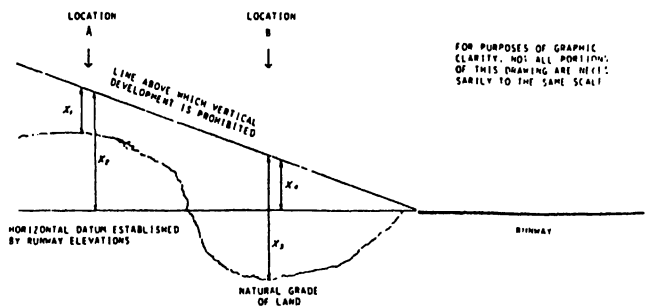
GRAPHIC DEPICTION OF THE GENERAL CONSTRUCTION OF THE RUNWAY END SUBZONE(S) OF AN AIRPORT SAFETY ZONE

FIGURE 3.



GRAPHIC DEPICTION OF THE GENERAL OVERALL CONSTRUCTION AND OUTERMOST BOUNDARIES OF AN AIRPORT SAFETY ZONE

FIGURE 4. (No change.)

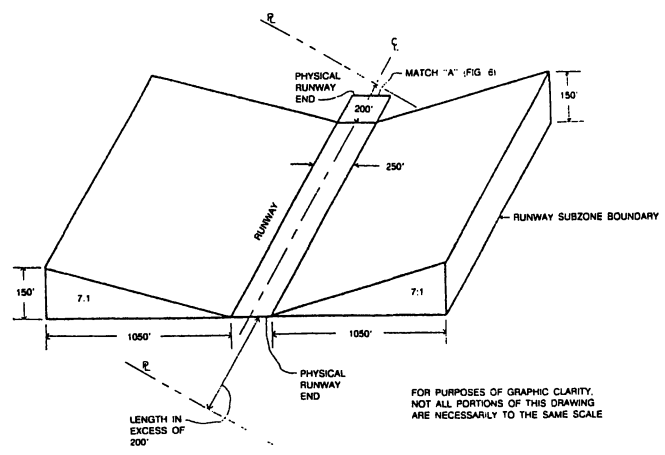


FOR PURPOSES OF GRAPHIC CLARITY, NOT ALL PORTIONS OF THIS DRAWING ARE NECESSARILY TO THE SAME SCALE

THE MINIMUM OBSTRUCTION ORDINANCE STANDARDS RELATE DIRECTLY TO THE HORIZONTAL DATUM ESTABLISHED BY RUNWAY ELEVATIONS AND NOT THE HEIGHT ABOVE THE NATURAL GRADE OF THE LAND. FOR EXAMPLE, AT LOCATION A AN ORDINANCE MAY REFERENCE A HEIGHT RESTRICTION x_1 FEET, BUT AT THAT LOCATION THE DEVELOPABLE HEIGHT RESTRICTION ABOVE THE NATURAL GRADE OF THE LAND IS ACTUALLY x_2 FEET. AT LOCATION B THE ORDINANCE HEIGHT RESTRICTION MAY BE x_3 FEET BUT THE DEVELOPABLE HEIGHT RESTRICTION MAY BE x_2 FEET.

FIGURE 5.

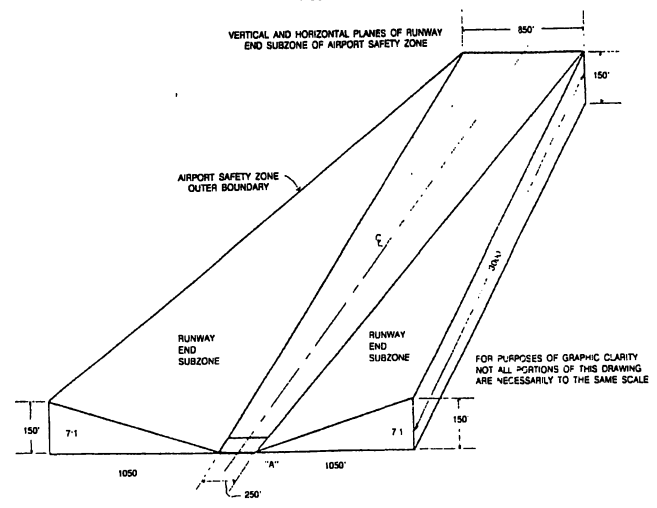
VERTICAL AND HORIZONTAL PLANES OF RUNWAY SUBZONE OF AIRPORT SAFETY ZONE



FOR PURPOSES OF GRAPHIC CLARITY, NOT ALL PORTIONS OF THIS DRAWING ARE NECESSARILY TO THE SAME SCALE

FIGURE 6.

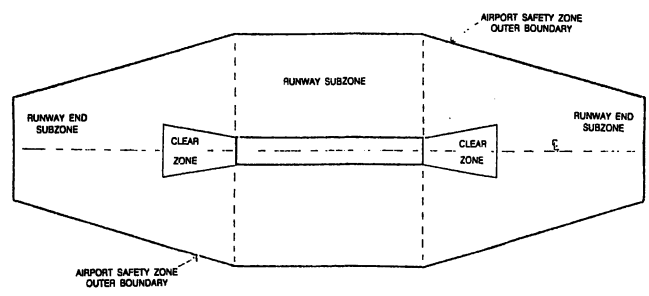
VERTICAL AND HORIZONTAL PLANES OF RUNWAY END SUBZONE OF AIRPORT SAFETY ZONE



FOR PURPOSES OF GRAPHIC CLARITY, NOT ALL PORTIONS OF THIS DRAWING ARE NECESSARILY TO THE SAME SCALE

FIGURE 7.

FOR PURPOSES OF GRAPHIC CLARITY, NOT ALL PORTIONS OF THIS DRAWING ARE NECESSARILY TO THE SAME SCALE



GRAPHIC DEPICTION OF THE CLEAR ZONE DIMENSIONS:

INNER WIDTH	250 FEET
OUTER WIDTH	450 FEET
LENGTH	1,000 FEET

Amended by R.1995 d.76, effective February 6, 1995
See: 26 N.J.R. 4502(a), 27 N.J.R. 525(a).