

22. Amend section 1002.3.1, entitled "Location," as follows:

i. In the Exception, delete the word "unfinished" in two places.

23. In Section 1002.9, entitled "Operable Parts," delete Exception 2 in its entirety.

24. Delete section 1002.13 entitled "Windows," in its entirety.

25. Amend section 1003.3.1, entitled "Location," in the Exception, delete "unfinished" in two places.

26. In section 1003.9, entitled "Operable Parts," delete exception 2 in its entirety.

27. In section 1003.11.1, entitled "Toilet Facilities: General," delete the first sentence.

28. In section 1003.11.6, entitled "Mirrors," add the following text: "Exception: The mirror height may be adaptable as long as adjusting the mirror can be accomplished with minimal expense and effort."

29. Section 1003.11.9, entitled "Shower," shall be amended as follows:

i. In the first line, after the word "Exception," insert the number "1."

ii. Add the following text at the end of the Exception: "2. The threshold for a shower compartment may be adaptable provided the shower threshold can be made accessible with minimal expense and effort."

30. In section 1003.12.3.1, entitled "Clear Floor Space", delete Exception (a) in its entirety and insert in its place: "(a) the cabinetry can be removed or replaced as a unit,"

31. In section 1003.12.3.2, entitled "Height", delete the exception in its entirety and insert the following in its place: "Exception: A counter that is adjustable or replaceable as a unit to provide a work surface at heights between 29 inches minimum and 36 inches maximum shall be permitted."

32. In section 1003.12.4.1, entitled "Clear Floor Space", delete Exception (a) in its entirety and insert in its place: "(a) the cabinetry can be removed or replaced as a unit,"

33. In section 1003.12.4.2, entitled "Height", delete the exception in its entirety and insert the following in its place: "Exception: A sink and counter that is adjustable or replaceable as a unit at heights between 29 inches minimum and 36 inches maximum, provided rough-in plumbing permits connections of supply and drain piping for sinks mounted at heights of 29 inches, shall be permitted."

34. At Figure 1003.12.4 entitled "Kitchen Sink for Type A Units", delete the text "6 1/2 max/165" from the right side of the figure.

35. At section 1003.12.5 entitled "Kitchen Storage", add the following text: "Exception: Kitchen cabinets mounted

above the kitchen counters may be mounted at a standard height as long as remounting the kitchen cabinets can be accomplished with minimal expense and effort."

36. In section 1003.12.6, entitled "Appliances," delete the following sections: section 1003.12.6.1, entitled "Operable parts;" section 1003.12.6.3, entitled "Dishwasher;" section 1003.12.6.4, entitled "Range or cooktop;" section 1003.6.5, entitled "Oven;" section 1003.12.6.6, entitled "Refrigerator/Freezer;" and section 1003.12.6.7, entitled "Trash compactor."

37. Delete section 1003.13, entitled "Windows," in its entirety.

38. Delete section 1004, entitled "Type B Units," in its entirety.

New Rule, R.1999 d.105, effective April 5, 1999.

See: 30 N.J.R. 2972(a), 31 N.J.R. 852(a).

Former N.J.A.C. 5:32-7.2, Recreation, recodified to N.J.A.C. 5:23-7.15.

Amended by R.2002 d.350, effective November 4, 2002.

See: 34 N.J.R. 626(a), 34 N.J.R. 3772(a).

Rewrote the section.

Amended by R.2004 d.59, effective February 2, 2004.

See: 35 N.J.R. 4631(a), 36 N.J.R. 649(a).

Rewrote (b).

Amended by R.2007 d.144, effective May 7, 2007.

See: 38 N.J.R. 4962(a), 39 N.J.R. 1683(a).

Rewrote the section.

Administrative correction.

See: 39 N.J.R. 3296(a).

Case Notes

Condominium association's violation of N.J.A.C. 5:23-7.2, by not providing parking spaces designated for physically handicapped people and accessible passenger loading zones on the shortest possible circulation route to an accessible entrance of the building, supported plaintiff's claim that the association violated N.J.S.A. 10:5-4.1 and 10:5-12(g) of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 through 10:5-49. *Estate of Nicolas v. Ocean Plaza Condo. Ass'n, Inc.*, 388 N.J. Super. 571, 909 A.2d 1144, 2006 N.J. Super. LEXIS 304 (App.Div. 2006).

5:23-7.3 Exceptions

(a) The following nonresidential buildings or structures or portions thereof shall not be required to comply with the provisions of this subchapter.

1. Temporary structures, sites and equipment directly associated with the construction process, such as construction site trailers, bridging, or material hoists shall be exempt from the provisions of this subchapter;

i. Exception: Construction site trailers used as sales offices shall be accessible;

2. Areas of buildings or structures where work cannot reasonably be performed by persons having a severe impairment (sight, mobility or hearing) shall not be required to comply with the specific provisions of this subchapter that provide accessibility to such persons;

i. Such areas include, but are not limited to, observation galleries used primarily for security purposes, non-occupiable spaces accessed only by ladders, catwalks, crawl spaces, or very narrow passageways, including elevator pits, elevator penthouses, piping, or equipment catwalks; and

3. Unclassified accessory buildings or structures of Use Group U shall be exempt from the provisions of this subchapter, except as follows:

i. In agricultural buildings, areas used for employment, such as, but not limited to, offices or areas used for packing, sorting, or grading products, as well as areas open to the general public shall be accessible.

(b) The following residential buildings or structures shall not be required to comply with the provisions of this subchapter:

1. Townhouses, except townhouses for which credit is sought for low and moderate income housing through the Council on Affordable Housing (COAH), as provided at N.J.A.C. 5:23-7.5;

i. For the purposes of applying this exemption, a townhouse shall be a single dwelling unit with two or more stories of dwelling space, exclusive of basement or attic, where each dwelling unit extends from foundation to roof. The dwelling unit shall have an independent entrance that shall serve one dwelling unit only at or near grade; most or all of the sleeping rooms shall be on one story; and most or all of the remaining habitable space, such as kitchen, living, and dining areas, shall be on another story; or

2. Buildings of Group R-2, R-3, R-4, or R-5 with one, two, or three dwelling units in a single structure;

i. For the purposes of determining the number of dwelling units in a single structure, firewalls or partywalls shall not constitute separate buildings.

ii. Exception: Townhouses or multistory dwelling units for which credit is sought for low or moderate income housing through the Council on Affordable Housing (COAH) and that are attached to at least one other dwelling unit shall comply with the applicable provision of N.J.A.C. 5:23-7.5.

(c) Regardless of whether individual residential structures or dwelling units on a site are required to be accessible, all common use facilities, including, but not limited to, recreational facilities, laundry areas, mail boxes, meeting rooms, and club houses, provided within the building or on the site must comply with the provisions of this subchapter.

New Rule, R.1999 d.105, effective April 5, 1999.
See: 30 N.J.R. 2972(a), 31 N.J.R. 852(a).

Former N.J.A.C. 5:32-7.3, Recreation: definitions, recodified to N.J.A.C. 5:23-7.16.

Amended by R.2002 d.350, effective November 4, 2002.
See: 34 N.J.R. 626(a), 34 N.J.R. 3772(a).

In (a), rewrote the introductory paragraph, deleted (3), and recodified former (4) as (3); in (b), inserted "not" following "shall" and substituted "required to comply with" for "exempt from" in the introductory paragraph; added (c).

Amended by R.2004 d.67, effective February 17, 2004.

See: 35 N.J.R. 4627(a), 36 N.J.R. 949(b).

In (b)2, added R-5 to the list of groups.

Amended by R.2005 d.184, effective June 20, 2005.

See: 36 N.J.R. 5283(a), 37 N.J.R. 2201(b).

In (b), rewrote 1i and inserted "or partywalls" following "firewalls" in 2i.

Amended by R.2007 d.144, effective May 7, 2007.

See: 38 N.J.R. 4962(a), 39 N.J.R. 1683(a).

Rewrote (b)1; and added (b)2ii.

5:23-7.4 Nonresidential buildings and buildings of Use Group R-1

(a) Nonresidential buildings, and buildings of Use Group R-1, shall provide accessibility as follows:

1. Small buildings, defined as those with a total gross enclosed floor area of less than 10,000 square feet, shall be required to have at least one accessible entrance on the ground (or first) floor and accessible interior building features on all floors. Except as provided in (a)1i through iv below, small buildings that are not more than two stories shall not be required to have an elevator(s) to provide a vertical accessible route between floors. Small buildings that are three or more stories shall be required to have an elevator(s) to provide a vertical accessible route between floors; however, in such buildings, floors that are less than 3,000 square feet or floors with only mechanical equipment shall not be required to be served by an elevator.

i. Regardless of the square footage of the buildings or floors, buildings of two or more stories that are owned and occupied by public entities shall provide a vertical accessible route between floors;

ii. Regardless of the square footage of the buildings or floors, buildings of two or more stories that house public transit stations or airport passenger terminals shall provide a vertical accessible route between floors;

iii. Regardless of the square footage of the buildings or floors, buildings of two or more stories that house the professional offices of health care providers shall provide a vertical accessible route between floors; and

iv. Regardless of the square footage of the buildings or floors, buildings of two or more stories that house shopping centers or shopping malls shall provide a vertical accessible route between floors.

(1) For the purposes of applying this requirement, a shopping center or shopping mall shall mean a building or a series of buildings on a common site, under common ownership or control, or developed as one project or as a series of related projects housing five or more sales or rental establishments.

2. Large buildings, defined as those with a total gross enclosed floor area of 10,000 square feet or more, shall

provide the accessible building features required of small buildings in (a)1 above. In addition, large buildings shall be required to have an elevator(s) to provide a vertical accessible route between floors; however, in such buildings, floors that are less than 3,000 square feet or floors with

only mechanical equipment shall not be required to be served by an elevator.

i. Where facilities for employees, including rest rooms, lunch rooms, and lockers, and public facilities, including rest rooms and drinking fountains, are provided on a floor or mezzanine that is not required to be

served by an elevator and where no vertical accessible route is provided, the facilities provided on the floor or mezzanine must also be provided on the accessible level.

ii. A limited use limited application elevator that complies with ANSI/ASME A17.1b-1995, Part 25 may be used to provide a vertical accessible route to the floor or mezzanine provided that the travel distance does not exceed 25 feet.

3. For the purposes of applying these provisions, buildings separated by firewalls with penetrations intended for human passage shall not constitute separate buildings.

4. The following provisions shall apply to a nonresidential building required to be accessible, whether a large building or a small building:

i. An accessible route available to the general public shall not pass through kitchens, storage rooms, or similar spaces.

ii. In buildings, facilities, or portions thereof that primarily serve children, accessible facilities that comply with the provisions of this subchapter for use by adults shall be provided.

New Rule, R.1999 d.105, effective April 5, 1999.

See: 30 N.J.R. 2972(a), 31 N.J.R. 852(a).

Former N.J.A.C. 5:23-7.4, Recreation: exceptions, recodified to N.J.A.C. 5:23-7.17.

Amended by R.2002 d.350, effective November 4, 2002.

See: 34 N.J.R. 626(a), 34 N.J.R. 3772(a).

Rewrote the section.

Amended by R.2007 d.144, effective May 7, 2007.

See: 38 N.J.R. 4962(a), 39 N.J.R. 1683(a).

Rewrote the section.

Administrative correction.

See: 39 N.J.R. 3296(a).

5:23-7.5 Residential buildings other than buildings of Group R-1

(a) Buildings of Group R-2, R-3 or R-5 with four or more dwelling units in a single structure shall comply with the provisions of this subchapter.

1. Exception: Multistory dwelling units, which are ground floor dwelling units and for which credit is sought for low or moderate income housing through the Council on Affordable Housing (COAH) and that are attached to at least one other dwelling unit shall comply with the applicable provision of this section.

2. For the purposes of applying this subsection, firewall separations shall not designate separate buildings within a single structure.

3. When being applied to a dwelling unit, the term "adaptable" shall mean a Type A Dwelling Unit as per the ICC/ANSI A117.1-03 standard and shall mean that the dwelling unit has an accessible entrance; an accessible interior route into and throughout the dwelling unit, including maneuvering space at doors; and required clear

floor spaces and reach ranges in all rooms. The dwelling unit shall have either the adaptable features in the kitchen and bathroom as per Section 1003 of ICC/ANSI A117.1-03 or a fully accessible kitchen and bathroom as per Section 1002 of ICC/ANSI A117.1-03.

4. When being applied to dwelling units, dormitories or assisted living facilities, the term "accessible" shall mean a unit that complies with Section 1002 of the ICC/ANSI A117.1-03.

5. All common use facilities, including, but not limited to, recreational facilities, laundry areas, mail boxes, meeting rooms, and club houses, provided within the building or on the site must comply with the provisions of this subchapter.

6. The exemption for townhouses in N.J.A.C. 5:23-7.3(b) above notwithstanding, multistory or multifloor townhouses for which credit is sought for low or moderate income housing through the Council on Affordable Housing (COAH) shall have the following features, which shall comply with the standards for Type A dwelling units per ICC/ANSI A117.1-03:

i. An adaptable entrance, with the plans for the adaptation to provide an accessible entrance;

(1) For the purposes of fulfilling this requirement, the use of a platform lift or a limited use limited application elevator shall be acceptable;

ii. An adaptable toilet and bathing facility on the first floor;

iii. An adaptable kitchen on the first floor;

iv. An accessible interior route of travel;

(1) An interior accessible route of travel shall not be required between stories; and

v. An adaptable room that can be used as a bedroom, with a door or the casing for the installation of a door, on the first floor.

(b) Except as provided at N.J.A.C. 5:23-7.3(b), all dwelling units in elevator-serviced buildings shall comply with the provisions of this subchapter.

1. In an elevator-serviced building, whether a dwelling unit is single story or multi-story, the entry level of each dwelling unit shall have an accessible entrance, an accessible route into and throughout the entry level of the dwelling unit, an adaptable kitchen, and one adaptable toilet and bathing facility on the accessible route.

i. An interior vertical accessible route shall not be required within a multi-story dwelling unit.

(c) Except as provided at N.J.A.C. 5:23-7.6, in a building without elevator service, each ground floor dwelling unit shall be required to have an accessible entrance, accessible route into and throughout the entry level of the dwelling unit,

an adaptable kitchen, and one adaptable toilet and bathing facility on the accessible route.

1. For the purpose of applying this requirement, the ground floor shall mean, in a building containing dwelling units, the first floor with a dwelling unit or portion of a dwelling unit, regardless of whether that floor is at grade. A building may have more than one ground floor.

2. In a building without elevator service and with a building entrance that serves more than one dwelling unit or that does not meet any of the exemptions provided at N.J.A.C. 5:23-7.3(b), all multistory dwelling units with a ground floor entrance shall be accessible as provided in (b) above.

i. Exception: The requirement for an accessible entrance for multistory dwelling units notwithstanding, multistory dwelling units for which credit is sought for low or moderate income housing through the Council on Affordable Housing (COAH) shall have the following features, which shall comply with the standards for Type A dwelling units per ICC/ANSI A117.1-03:

(1) An adaptable entrance, with the plans for the adaptation to provide an accessible entrance;

(A) For the purposes of fulfilling this requirement, the use of a platform lift or a limited use limited application elevator shall be acceptable;

(2) An adaptable toilet and bathing facility on the first floor;

(3) An adaptable kitchen on the first floor;

(4) An accessible interior route of travel;

(A) An interior accessible route of travel shall not be required between stories; and

(5) An adaptable room that can be used as a bedroom, with a door or the casing for the installation of a door, on the first floor.

(d) In an accessible or adaptable dwelling unit, an accessible route shall be permitted to pass through the kitchen.

(e) Assisted living facilities that are licensed by the Department of Health and Senior Services shall be Group I-2 for the purposes of compliance with the building subcode, fire protection subcode and compliance with the other subcodes of the Uniform Construction Code shall be Group R-2 for the purposes of accessibility as provided at N.J.A.C. 5:23-7.10.

(f) In each dormitory that is owned and operated by an educational facility, five percent or fraction thereof (rounded to the next higher whole number) of the sleeping rooms or suites shall be accessible. Accessible rooms or suites shall be dispersed and shall be provided throughout all types of rooms. When determining the dispersal of accessible dormitory rooms or suites, factors to be considered shall include location, dwelling unit type, room size, amenities provided,

and number of beds provided. The remainder of the sleeping rooms or suites shall be adaptable as provided at N.J.A.C. 5:23-7.5(b) for elevator serviced buildings and at N.J.A.C. 5:23-7.5(c) for buildings without an elevator.

1. All common use facilities, including, but not limited to, toilet facilities, bathing facilities, laundry areas, mailboxes, meeting rooms, and recreation rooms, shall be accessible.

(g) When any dwelling unit, regardless of whether it is exempt from the provisions of this subchapter, includes a B use or an M use, any portion used for the B use or M use shall comply with the provisions of this subchapter.

1. This shall include, but not be limited to, parking, sidewalk, entrance, hallway, and those portions of the dwelling unit, interior or exterior, available to or used by customers or clients, including toilet facilities.

New Rule, R.1999 d.105, effective April 5, 1999.

See: 30 N.J.R. 2972(a), 31 N.J.R. 852(a).

Former N.J.A.C. 5:32-7.5, Recreation: route of travel, recodified to N.J.A.C. 5:23-7.18.

Amended by R.2002 d.256, effective August 5, 2002.

See: 33 N.J.R. 4184(a), 34 N.J.R. 2787(a).

Rewrote the section.

Amended by R.2002 d.350, effective November 4, 2002.

See: 34 N.J.R. 626(a), 34 N.J.R. 3772(a).

Rewrote the section.

Administrative correction.

See: 34 N.J.R. 4195(a).

Amended by R.2003 d.402, effective October 20, 2003.

See: 35 N.J.R. 2797(b), 35 N.J.R. 4861(b).

Rewrote the section.

Amended by R.2004 d.67, effective February 17, 2004.

See: 35 N.J.R. 4627(a), 36 N.J.R. 949(b).

In (a), added R-5 to the list of groups.

Amended by R.2005 d.184, effective June 20, 2005.

See: 36 N.J.R. 5283(a), 37 N.J.R. 2201(b).

In (c), inserted "or that does not meet any of the exemptions provided at N.J.A.C. 5:23-7.3(b)" preceding "all multistory dwelling" in 2; rewrote (f); added a new (g); recodified former (g) as (h).

Amended by R.2007 d.144, effective May 7, 2007.

See: 38 N.J.R. 4962(a), 39 N.J.R. 1683(a).

Section was "Residential buildings other than Group R-1". Rewrote the section.

Administrative correction.

See: 39 N.J.R. 3296(a).

5:23-7.6 Exception for accessible entrance due to site impracticality

(a) Terrain: Site impracticality due to terrain shall mean the following:

1. Single building with common entrance: A site with a single non-elevator-serviced building with a common building entrance for all units shall not be required to provide an accessible building entrance when the following conditions have been met:

i. The slopes of the undisturbed site measured between the planned building entrance and all vehicular or pedestrian arrival points within 50 feet of the planned entrance exceed 10 percent; and