COMMUNITY AFFAIRS

DIVISION OF CODES AND STANDARDS

Uniform Construction Code

Proposed Amendments: N.J.A.C. 5:23-2.7 and 2.16

Reproposed Amendment: N.J.A.C. 5:23-2.17A

Authorized By: Richard E. Constable, III, Acting Commissioner, Department of Community Affairs.


Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2012-083.

Submit written comments by August 17, 2012 to:

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The agency proposal follows:

Summary
The proposed amendments are being made in direct response to comments received on a rule proposal that would have amended the minor work provisions of the Uniform Construction Code (N.J.A.C. 5:23-2.17A), which proposal was published in the New Jersey Register on September 19, 2011 at 43 N.J.R. 2409(a). In this Summary, that published rule proposal will be referred to as the “minor work rule proposal.” The amendments proposed herein, which replace the minor work rule proposal, will be referred to as “plan release with conditions.”

The Department received a great many comments on the minor work rule proposal. Comments were received from code enforcement officials, including construction officials, building subcode officials, fire subcode officials, electrical subcode officials, plumbing subcode officials, and technical assistants; code enforcement associations, including the Building Officials Association of New Jersey (BOANJ), New Jersey Fire Prevention and Protection Association (NJFPPA), Essex County Code Enforcement Officials Association, International Association of Electrical Inspectors (IAEI), and Plumbing Inspectors Association; design professionals, both licensed professional engineers and architects, including the New Jersey Society of Architects, which is the New Jersey Chapter of the American Institute of Architects (AIA); the New Jersey State Board of Architects; property managers, business owners, and their professional associations, including NAIOP and the New Jersey Chamber of Commerce; Boston Properties, Atlantic Development and Management Corporation, Mountain Development Corporation, and The Morris Companies; and the League of Municipalities. This is a representative, not a comprehensive, list; a comprehensive list of commenters may be obtained by contacting the Department of Community Affairs, Division of Codes and Standards, as provided above.
The commenters expressed several concerns: that the advice of the Uniform Construction Code Advisory Board should have been sought in advance of publishing the minor work proposal in the New Jersey Register; that requiring inspections only at the end of the project could result in costly corrections; and that the proposed amendment should specify that the minor work designation would not apply to a change of use or a change in the character of use of a building. Some commenters also asked for the opportunity to present their perspectives in a public hearing. Many commenters recommended that the Department consider forming a small working group, comprised of stakeholders in the Uniform Construction Code process and charged with reviewing this issue and making recommendations aimed at resolving the elements of the code enforcement process that had become burdensome for businesses. Several commenters commended the Department for making renovation projects (as defined in the Rehabilitation Subcode, N.J.A.C. 5:23-6) minor work, so that a change of tenancy renovation project would be able to begin by providing notice, but in advance of obtaining a permit.

The Department thanks the commenters for their expressions of support for more clearly categorizing change of tenancy renovation projects as minor work. That amendment to N.J.A.C. 5:23-2.17A(c)8 is part of this rule proposal. In addition, at N.J.A.C. 5:23-2.7, Ordinary maintenance, the proposed amendment would make the replacement of carpeting ordinary maintenance. This would mean that the most common projects undertaken upon a change of tenancy, painting and re-carpeting, could be undertaken without a construction permit at all.

In response to the concerns that were expressed, the Department formed a small working group. Serving on it were representatives of the business community, property managers, design professionals, and code enforcement officials. The focus of the small working group was to devise a process to provide predictability in the plan review process for changes of tenancy.
Upon discussion, it was found that the plan review process is extended by multiple revisions of the plans to ensure that the released drawings demonstrate code compliance. The initial plan review period, by statute, is 20 business days. The period for re-review is seven business days. The business professionals in the group asserted that they want the protection afforded by the plan review, but they are repeatedly frustrated in their efforts to give their clients accurate move-in dates because they could neither predict nor control the number of re-reviews of the plans that might be required.

The solution that gained the consensus of the small working group was to develop a process that would allow for “plan release with conditions.” It is that process that is herein proposed as an amendment to the Uniform Construction Code at N.J.A.C. 5:23-2.16.

This rule amendment, plan release with conditions, would provide that, at the end of the 20-day plan review period, the plans for alteration or reconstruction projects in Groups B (Business), F (Factory), M (Mercantile), or S (Storage) would be released with a list of conditions specifying code deficiencies, enumerating deferred submittals, and listing pending prior approvals; the list of conditions would include a timeframe for their submittal. If revised drawings are required in order to perform the inspection, a timeframe for their submittal would also be included in the list of conditions. Substantially deficient plans (plans that could not be used to determine code compliance upon inspection) would not be eligible for release with conditions. Upon written acceptance of the conditions by the permit applicant and once all prior approvals have been submitted, the permit would be issued. The enforcing agency would be required to send a copy of the list of conditions to the design professional of record. Code compliance would be determined at inspection. To facilitate inspections, the list of conditions
would be required to be attached both to the plans that are retained on site and to the plans that are retained by the enforcing agency.

This “plan release with conditions” process would not apply to a project involving a change of use or change in the character of a use. In the Uniform Construction Code, buildings are categorized by their use and that categorization is called a “group designation.” A “change of use” is a change in the group designation of the building. For example, a change of space in a building being used as an office (Group B, Business) into a small restaurant (Group A, Assembly) would constitute a change of use. A “change in the character of use” is a change in the intensity of the use. For example, a real estate office and a dentist’s office have the same group designation (Group B, Business), so there would be no change of use; however, it would be a change in the character of use because there are specific code requirements in the plumbing subcode for the dentist’s office due to the need for medical gas piping and protected space for the storage of the containers of medical gas.

The rehabilitation subcode addresses a change of use through a hierarchy of hazards in which the increase in hazard associated with the proposed change is evaluated on an item-by-item basis and specific code requirements result. Such a project could not be reasonably addressed through plan release with conditions. For the same reason, a change of character of use, in which the use designation of the building does not change, but the intensity of the use does change, could not be reasonably addressed through plan release with conditions. So, change of use and change of character of use were omitted from this amendment.

Although prior approvals were not within the scope of the minor work rule proposal, many of the commenters complained about problems obtaining prior approvals in a timely
manner. The construction permit is not allowed to be issued until all prior approvals have been met. Prior approvals are conditions for construction that are set by a municipality through its municipal land use authority, by a county government, by a regional agency, or by a State agency through its statutory authority. The Uniform Construction Code Act (N.J.S.A. 52:27D-131.a) specifies that “the requirements of other applicable laws and ordinances” must have been met before a construction permit may be issued. In the Uniform Construction Code rules (N.J.A.C. 5:23-2.15(a)5), these “other applicable laws and ordinances” are called “prior approvals.” An example of a State prior approval is the soil conservation requirement for the control of soil erosion. An example of a municipal prior approval is the review and approval by the local planning board or zoning board of adjustment.

The Department received multiple comments expressing frustration with the delays that attach to obtaining prior approvals. Because the construction official may not issue the construction permit until the prior approvals have been met, some individuals seem to believe that the delay in issuing the permit is a Uniform Construction Code delay. That is not the case. To address the confusion about the jurisdiction for prior approvals, included in this proposed amendment, at N.J.A.C. 5:23-2.16(a)3iv(1), is a reference to the section of the Uniform Construction Code that addresses prior approvals and a restatement of the requirement that the conditions attached to all prior approvals must have been met before the construction permit is allowed to be issued. Questions or concerns about prior approvals should be directed to the authorizing State agency or local government.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.
Social Impact

The social impact of the proposed amendments is expected to be positive. Establishing a standard by which the time required for determining the code compliance of plans for alteration or reconstruction projects in Groups B (Business), F (Factory), M (Mercantile), or S (Storage) may be reduced should make a change of tenancy more predictable and more efficient. Eliminating delays in the release of plans should result in reduced vacancies of tenant spaces, which has a clear social and economic benefit to the municipality.

Economic Impact

The economic impact of the proposed amendments is expected to be positive. By eliminating delays caused by multiple reviews of submitted plans for alteration and reconstruction projects in Groups B (Business), F (Factory), M (Mercantile), or S (Storage), business owners and project managers will be able to predict the date of occupancy with greater accuracy, which will control the costs attendant in delay. Being able to create and adhere to a construction schedule is expected to result in an increase in construction projects attached to changes of tenancies.

Federal Standards Statement

A Federal standards analysis is not required because the amendments are not being proposed under the authority of, or in order to implement, comply with or participate in, any program established under Federal law or under a State statute that incorporates or refers to Federal law, standards or requirements.
**Jobs Impact**

The proposed amendments are expected to have a positive impact on the generation of jobs. By eliminating unnecessary delays and by thus increasing the predictability for alteration and reconstruction projects in Groups B (Business), F (Factory), M (Mercantile), or S (Storage), it is expected that there will be an increase in these construction projects. If the work increases, the need for skilled workers would also increase. In addition, it is possible that the business occupying the rehabilitated and upgraded tenant space could hire additional employees.

**Agricultural Industry Impact**

Because the proposed amendments address alteration and reconstruction projects in Groups B (Business), F (Factory), M (Mercantile), or S (Storage), it is not expected to have an impact on the agriculture industry.

**Regulatory Flexibility Statement**

The proposed amendments provide for plan release with conditions for plans for alteration and reconstruction projects in Groups B (Business), F (Factory), M (Mercantile), or S (Storage) when those plans are substantially compliant, so that the “plan release with conditions” may be used by the code enforcement official when performing inspections. As such, the proposed amendments do not impose any new reporting, recordkeeping, or compliance requirements on “small businesses” as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., nor do they require small businesses to engage any professional services which they would not have needed to engage under the current rules. It is possible that the proposed amendments would benefit small businesses in their roles as landlords or tenants as described above.
Housing Affordability Impact Analysis

Because the proposed amendments address alteration and reconstruction projects in Groups B (Business), F (Factory), M (Mercantile), or S (Storage), they are not expected to have an impact on housing affordability or the production of affordable housing.

Smart Growth Development Impact Analysis

Because the proposed amendments address alteration and reconstruction projects in existing buildings of Groups B (Business), F (Factory), M (Mercantile), or S (Storage), it is extremely unlikely that the amendments would evoke a change in housing production within Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan.

**Full text** of the proposal follows (additions indicated in boldface *thus*; deletions indicated in brackets [thus]):

5:23-2.7 Ordinary maintenance

(a) – (b) (No change.)

(c) The following items are ordinary maintenance and shall be treated as such by every enforcing agency. No permit for, inspections of, or notice to the enforcing agency of ordinary maintenance shall be required. This is not an all-inclusive list of ordinary maintenance.

1. Ordinary building maintenance shall include:

   i. – vii. (No change.)
viii. The replacement or installation of any flooring material[, except carpeting,] with a new material[, However, installation of carpeting in one and two family dwellings shall be permitted under ordinary maintenance];

ix. – xiv. (No change.)

2. – 6. (No change.)

5:23-2.16 Construction permits—procedure

(a) Action on application: The construction official or the appropriate subcode official in the case of construction involving only one trade or subcode, shall examine or cause to be examined all applications for permits and amendments thereto, and approve or deny in whole or in part the application, within 20 business days. If the application is denied in whole or in part, the enforcing agency shall set forth the reasons [therefore] therefor in writing. If an enforcing agency fails to grant, in whole or in part, or deny an application within 20 business days, such failure shall be deemed a denial of the application for purposes of an appeal to the Construction Board of Appeals, unless such period of time has been extended with the consent of the applicant. Whenever plans have been rejected and are thereafter revised and resubmitted, the revised plans shall be released if the deficiencies that were stated as grounds for rejection have been corrected and code compliance has been demonstrated. In that case, a written notice of release shall be given to the applicant not later than seven business days after the resubmission of the revised plans. When the grounds for rejection have not been corrected or when code compliance has not been demonstrated, a written notice of rejection stating the grounds for
rejection shall be given to the applicant not later than seven business days after the resubmission of the revised plans.

1. - 2. (No change.)

3. Exception -- Plan Release with Conditions and Permit Issuance: In buildings of Group B, F, M, or S, for alteration or reconstruction projects performed in accordance with N.J.A.C. 5:23-6, unless the code official finds that the plans are so deficient that they cannot be used as a means of determining code compliance upon inspection, the construction official shall act on the permit application by identifying and providing to the permit applicant a list of those conditions that require correction for code compliance, as follows:

   i. A plan release with conditions shall mean that a list of code deficiencies identified through plan review shall be attached to the plans with the condition that the deficiencies so identified will have been corrected and will be code compliant upon inspection.

   ii. The plan release with conditions shall identify any deferred submittals necessary to perform an inspection.

   iii. A timeframe for the receipt by the enforcing agency of the deferred submittals and for the correction of code deficiencies shall be specified in the plan release with conditions. If revised drawings are determined to be necessary, a timeframe for submitting revised drawings shall be specified in the plan release with conditions.
iv. The plans shall be released with conditions and the permit application shall be acted upon following the written acceptance by the permit applicant of the conditions attached to the plan release. When the list of conditions attached to the plan release is provided to the permit applicant, the enforcing agency shall provide a copy of the conditions attached to the plan release to the design professional of record.

(1) The issuance of a plan release with conditions notwithstanding, the construction permit shall not be issued until the conditions of all prior approvals, as defined at N.J.A.C. 5:23-1.4, have been met in accordance with N.J.A.C. 5:23-2.15(a)5.

v. Plan release with conditions shall not apply to a change of use or to a change in the character of use in accordance with N.J.A.C. 5:23-6.

(b) – (d) (No change.)

(e) Released plans: The construction official shall stamp or endorse in writing both sets of plans released, and one set of such released plans shall be retained and the other set shall be kept at the building site, open to inspection of the construction official or the construction official’s authorized representative at all reasonable times.

1. For plans released pursuant to (a)3 above, the conditions shall be attached to the plans that are retained on site and the plans that are retained by the enforcing agency and shall be available for use in performing inspections.

(f) – (k) (No change.)

5:23-2.17A Minor work

(a) – (b) (No change.)
(c) Minor work:

1. – 7. (No change.)

8. Minor work shall mean and include repair and/or renovation work in a Group B, Group F, Group M, or Group S occupancy performed in accordance with N.J.A.C. 5:23-6.

(d) (No change.)