

# **Basic Building, Planning and Zoning Rules in the State of New Jersey**

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## **Basic Building, Planning and Zoning Rules in the State of New Jersey**

### ***Introduction***

The process of obtaining local zoning approvals and construction permits in the State of New Jersey can be daunting to new applicants. The process may be lengthy. The rules seem to differ from one municipality to the next. You may need to hire different professionals to help in the process. Sometimes, the rules seem to change for no apparent reason. Your costs may rise and it may feel like you are getting nowhere.

The goal of this document is to give the uninitiated a brief overview of the steps necessary to bring a construction or development project from an idea to completion. The scope is limited to local planning and zoning processes and the Uniform Construction Code of the State of New Jersey. No attempt is made to cover the myriad of regulations established by the New Jersey Department of Environmental Protection (NJDEP), the New Jersey Department of Transportation (NJDOT), the Pinelands Commission, the Hackensack Meadowlands Commission, etc.

Hopefully, after perusing this guide, the reader will be able to get some sense of the process necessary to: construct a new building, renovate an existing building, change the use of an existing building, create or consolidate lots or move a lot line. He/she should also get a better understanding of which professionals are necessary to complete the process and why. It is strongly recommended that you find the appropriate experts to assist you for all but the most basic of projects.

## **Getting Started**

Generally, you start the process with one of a few basic ideas:

- I want to build something new.
- I want to renovate an existing building.
- I want to change the use of an existing building or property.

You probably also have an idea of how much money you have to spend and an approximate idea of where you want to perform the work. Maybe you already own the property on which you wish to build. Maybe you need to find one.

One other essential question that must be answered right away is “What will this project be used for?”

Is it a residence? (generally, in building codes, a residence is where someone might sleep), If so:

- Is it a single family detached dwelling?
- Is it a two family dwelling?
- Is it a townhouse?
- Is it an apartment building?
- Is it a hotel/motel?
- Is it another type of building where people will sleep?

The answer to this question starts to define the process.

Is it another use? If so:

- Is it an office?
- Is it a restaurant?
- Is it a warehouse?
- Is it a factory?
- Is it a shopping center?

Surprisingly, although the specific requirements for each of these types of uses are different, the process to be followed to get an approval is very similar.

Whatever the use, once you have an idea of where you wish to build your project, you must find out what the local zoning regulations permit at that site.

## ***Planning and Zoning***

Planning and zoning in the State of New Jersey is regulated on a local level. Currently there are 566 separate municipalities in the state. Most of these have their own, locally adopted zoning regulations. The New Jersey Municipal Land Use Law, [N.J.S.A. 40:55D-1 et seq.](#), is the legislation that enables municipalities to establish their own development rules through the adoption of a Zoning Ordinance and a Zoning Map.

The ordinance and map are companion documents that determine what can be built within a municipality. The map shows the limits of each of the zones that have been established by action of the local governing body. The zoning ordinance provides the specifics of what may be built in each zone, such as:

- Permitted uses (including conditional uses – such as a place of worship in a residential zone)
- Permitted lot size and dimensions
- Allowable building area
- Allowable building height
- Required yard setbacks (the distances that a building must be situated away from a lot line)
- Parking requirements
- And often much more

The land use ordinance provides the procedural requirements for preparation of site plan and subdivision applications.

A site plan application is required for the construction of one or more buildings and their related site improvements on a piece of property. One- and two-family dwellings are currently exempt from the requirements for site plan approval.

A subdivision application is required if one wishes to divide one lot into two or more lots. It may also be required to change the location of a boundary line between existing lots.

The local ordinance will also establish a Planning Board and a Zoning Board of Adjustment to review development applications. In a limited number of municipalities, a combined Planning/Zoning Board is permitted by the Municipal Land Use Law; however this document is written based upon the municipality having separate boards.

The authority for review of development applications is split between the planning and zoning boards. The type of application and the nature of the approvals required will determine which board will hear your application. **You should never need to get approval from more than one of these bodies for a given application.**

## ***Obtaining Zoning Information & Guidance***

The first point of contact with the municipality is generally the Zoning Officer (Development Enforcement Officer). He or she should be able to offer preliminary guidance about the potential of your project's meeting the local zoning code. The first and possible most important question is: "Is your proposed use permitted in the zoning district in which your lot is situated?"

Many municipalities have their zoning maps and ordinances available on the municipal website. Links to most municipal websites are available through the New Jersey League of Municipalities website – [njslom.org](http://njslom.org). If these are unavailable online, one can generally view or purchase them at the office of the Municipal Clerk.

Gaining approval for a project whose use is not permitted is one of the most difficult hurdles to cross. You will need to obtain a "use variance." To do so you must be able to prove that your project will not cause any detriment to its neighborhood and that it fits within the general purposes of planning as set forth by the State of NJ and the approved Master Plan of the Municipality.

If your development will require a use variance, you may wish to look for a new site. If you don't need a use variance--or have the resources to pursue a high-risk venture--you may proceed to preliminary design. At this time it is advisable to consult with an experienced attorney who specializes in land use matters. If you believe that you need a use variance, you should not proceed any further unless you are represented by competent legal counsel.

## ***Concept Design***

At this point in the process, you will have selected the proposed site for your project. It may be a vacant lot or it may be a property with some improvements already constructed on it. Whichever is the case, you will need to know more about the size and shape of the lot and the type and location of the improvements on it. At this time, it will also be necessary to know the way the lot is graded and the utilities that are available to service the property.

You will also need to know if there are any other restrictions on the lot – for example, “Is there a sewer, water or other utility line that runs underground through the lot, which you may not build over?” or “Does someone else have a right to cross the lot in perpetuity?” To get the answer to all of these questions, you will need to have a survey performed by a Licensed Professional Land Surveyor. You may, however, begin the process before going to the expense of contracting a land surveyor.

It's likely that the municipal tax map will give you some information about the size and shape of your lot. However, the purpose of the tax map is not to help you with the planning of your project - it is to guide the tax assessor in determining how much your property will be valued for local property tax assessment. That said, many people use the tax map for initial planning purposes anyway. You may generally obtain a copy of this map through the Municipal Engineer's office for a small fee (usually no more than \$20). Some municipalities engage full-time engineers while others engage consulting engineers. If this information is not available from the phone book or municipal web site, call the Municipal Clerk.

If you are lucky, the municipality or county in which your property is situated may have topographic maps that are relatively current. These will show the general location of surface features, such as buildings, roads, sidewalks, etc. and will also provide information about how the property is sloped. Armed with this information, you may wish to look for a Registered Architect to assist you with the design of your building and site improvements.

NJ State Law requires you to have an architect design your building, unless your project happens to be a single-family, detached home. Then, you may design the project yourself.

Your architect will help you to develop a concept plan of your project, including its general size, shape and estimated cost. If it appears that your lot will accommodate the project, it's time to engage a Professional Land Surveyor.

If you don't already own the property, you might ask your attorney about constructing a contract to purchase the land subject to receiving all necessary development approvals.

## ***Property Survey***

When you contact licensed professional land surveyors to obtain proposals for performing the work, you need to know all of the tasks that are to be performed. The surveyor should be able to assist you in developing a scope of work, but it is helpful to know a bit about the process before you get started. Not all surveys are created equal. Don't be seduced into immediately engaging the surveyor that offers the cheapest price.

The New Jersey Board of Professional Engineers and Land Surveyors (PE/PLS Board) has established the minimum standards for performing a land survey. They are codified in [N.J.A.C. 13:40-5.1](#). Additionally, the municipality will have created a checklist of requirements for site plans and subdivisions that are to be submitted for Planning or Zoning Board review. These are generally more extensive than the requirements established by the PE/PLS Board. If you are building something other than a one- or two-family dwelling it is likely that you will need to meet these checklist requirements.

The Professional Land Surveyor is charged with the review of historical documents such as deeds, filed maps, surveys, and more, prior to embarking on a field survey. After obtaining as much background information as possible, the surveyor will go to the site to locate evidence of ownership. This evidence is included but not limited to: monuments (both natural and man-made), buildings, fences, hedges, utilities, streets, curbs and sidewalks. Upon review of both the legal documents and the measurements made in the field, the surveyor will prepare a plan of survey. This plan will show the surveyor's opinion about the size, shape and location of your property. It will also depict the site features that were included in the scope of work.

Once you have received and reviewed the finished survey documents, you are ready to proceed to preliminary design.

### ***Preliminary Design***

If you haven't already hired an architect, it's time to do so now. There is one exception to this rule. If you are planning to build a single-family detached dwelling for your own use you are permitted to prepare the building drawings. Unless you have some background in building design and construction it's generally advisable to engage the services of a registered architect. You may also wish to get help from an engineer, a planner and/or a landscape architect.

The Building Design Services Act, [NJSA 45:4B-1, et seq.](#) specifies which portions of building design may be performed by an architect and which may be performed by an engineer. NJAC 13:40-7.1, et seq. identifies the delineation of responsibilities among engineers, land surveyors, architects, planners and landscape architects during preparation of site plans and major subdivision plats.

The next step is for the designer to refine your concept plan to fit within the constraints of the existing conditions on the lot, the zoning ordinance and your budget.

If the refined plan fits within the requirements of the zoning ordinance and the project is for a one- or two-family dwelling, you may proceed to final design. If not, you need to prepare for some sort of board review.



## ***Governing Body, Planning Board, Zoning Board – Who are Those Guys?***

### **Governing Body**

The governing body is the chief legislative body of the municipality comprised of members who have been elected by the citizens of the municipality. There are a variety of forms of municipal government in NJ. You can find a description of the various types of municipal governments at [www.njslom.org](http://www.njslom.org).

The Mayor is the chief executive officer of the municipality, but may be elected from the membership of the governing body in some forms of government.

### **Planning Board**

The governing body may, by ordinance, appoint a planning board of seven members or nine members as follows:

Class I: The mayor or mayor's designee. (1)

Class II: A municipal official, other than a member of the governing body, appointed by the mayor.  
(1)

Class III: A member of the governing body, appointed by it. (1)

Class IV: Other citizens of the municipality, appointed by the mayor. Class IV members may not hold any other municipal office or position. (4 or 6)

### **Zoning Board**

Upon adoption of a zoning ordinance, the governing body shall create, by ordinance, a zoning board of adjustment.

The zoning board of adjustment consists of seven members who must be municipal residents and who may not hold any other elected or appointed position in the municipality.

## ***Governing Body Responsibilities***

### **Board Appointments**

The governing body appoints one of its members to be the Class II planning board member. The governing body may, at times, confirm other mayoral appointments.

### **Land Use Ordinances**

The governing body must introduce and approve all land use and zoning ordinances and the official map.

### **Enforcement**

The governing body shall enforce the Municipal Land Use Law and any ordinance or regulation adopted there under.

### **Fees**

The governing body must establish fees for land use applications and construction permits. The governing body, by ordinance, may establish standards for exemptions for some tax-exempt organizations.

### **Appeals**

If permitted by ordinance, the governing body may hear the appeal of the Zoning Board's approval of a type "d" variance. (see responsibilities of the Zoning Board of Adjustment in N.J.S.A. 40:55D-70 d.)

## ***Planning Board Responsibilities***

### **Prepare the Master Plan**

The planning board may prepare and, after public hearing, adopt or amend a master plan to guide the use of lands within the municipality in a manner which protects public health and safety and promotes the general welfare. The land use element of the master plan will become the basis for the local zoning ordinance.

### **Subdivision Control and Site Plan Review**

The governing body may, by ordinance, require the approval of subdivision plats and site plans by resolution of the planning board. One- and two-family dwellings are exempt from the requirement for site plan approval. In cases where a type "d" variance is required, the zoning board will have jurisdiction over site plan and subdivision approval.

The standards for subdivision and site plan approval must be established in the land use or zoning ordinance. The State of New Jersey has established Residential Site Improvement Standards that supersede local ordinances for residential development projects.

### **Zoning Ordinance**

Whenever the governing body wishes to adopt or change any provision of the land use ordinance, it must seek comments from the planning board. Prior to adoption the governing body must review the planning board's recommendations. The governing body may vote to override the planning board's recommendations, but a larger number of votes may be required.

### **Variances and Conditional Use Approval**

When the planning board is reviewing an application for subdivision or site plan approval, it may also grant relief from the zoning ordinance requirements, such as:

- Variances pursuant to NJSA 40:55D-70 c., generally known as bulk variances.
- Permission to build on a lot without street frontage.
- Conditional use authorization, when specifically required by the zoning ordinance.

They may not hear applications requiring relief from NJSA 40:55D-70 d. These responsibilities are reserved for the board of adjustment.

## ***Zoning Board Responsibilities***

### **Hear Appeals of Decisions Made by the Administrative Officer**

Whenever a party believes that the administrative officer has made a mistake in enforcing the zoning ordinance, they may appeal the issue to the zoning board of adjustment.

### **Interpret the Zoning Ordinance and Zoning Map**

The zoning board is empowered to hear and decide requests for interpretation of the zoning ordinance or map.

### **Hear Requests for “c” Variances**

The zoning board may approve c (1) variances, which are related to the unusual shape, topography or physical features on a lot and are often referred to as hardship variances. The zoning board may also grant c (2) variances, when it believes that the purposes of the Municipal Land Use Law would be advanced by the proposed deviation from the strict standards of the zoning ordinance.

Generally, the zoning board of adjustment will be reviewing these types of variance with regard to one- and two-family dwellings. The zoning board only hears site plan and subdivision applications when a “d” variance is required. Such an application may include requests for both “c” and “d” variances.

### **Hear Requests for “d” Variances**

The zoning board of adjustment is the body that is authorized to grant variances for:

- The use or principal structure in a district regulated against such use or building.
- An expansion of a nonconforming use.
- Deviation from the standards for a conditional use.
- An increase in the permitted floor area.
- An increase in permitted density.
- The height of a principal structure that exceeds by 10 feet or 10% the height permitted in the district for a principal structure.

Approval of a “d” variance requires five “yes” votes.

### **Hear Applications for Site Plan or Subdivision Approval When “d” Variances Are Required.**

In most cases, the planning board hears applications for site plan and subdivision approval. If the application requires a “d” variance, the zoning board of adjustment will hear the entire application.

### **Prepare an Annual Report**

At least once a year the zoning board must review its decisions and prepare a report to the governing body. In this report, the board should make recommendations for changes to the zoning ordinance.

## ***State of NJ – Department of Community Affairs***

### **Uniform Construction Code**

The Department of Community Affairs is responsible for the adoption of the Uniform Construction Code of the State of New Jersey (UCC). The UCC is the standard that is to be followed for the issuance of construction permits in every municipality in the state.

The UCC, N.J.A.C. 5:23-1 et seq. provides administrative rules to be followed, adopts and amends other model codes for technical standards for building, electrical, plumbing and other types of permits. It also establishes the criteria for licensing of code officials and inspectors, as well as rules for creating local enforcing agencies (often thought of as building departments).

### **Residential Site Improvement Standards**

The Residential Site Improvement Standards provide requirements for the construction of municipal improvements--such as streets, sidewalks, sewers, water mains and drainage systems--when one applies for a subdivision of land for residential purposes.

The standards are based upon recommendations made by the Site Improvement Advisory Board. They are to be used in every municipality in the state

## ***Architects, Engineers, Surveyors and Planners***

During the process of getting a development approval or a construction permit, you will most likely need to obtain the services of a design professional, licensed by the State of New Jersey, such as a:

### **Registered Architect**

The practice of architecture is the rendering of services in connection with the design, construction, enlargement, or alteration of a building or a group of buildings, and the space within or surrounding those buildings, which have as their principal purpose, human use or habitation. These services include: site planning; preliminary studies; creation of architectural designs, drawings, specifications, or other technical documentation, and; administration of construction for the purpose of determining compliance with drawings and specifications.

### **Professional Engineer**

A Professional Engineer is an individual who has special knowledge of the mathematical and physical sciences, and the methods of analysis and design used to prepare plans and specifications for engineering works, building systems, utilities, roadways, etc. A more comprehensive definition of the practice of Professional Engineering may be found in [NJSA 45:8-28](#).

### **Professional Land Surveyor**

A Professional Land Surveyor is an individual who has special knowledge of mathematics and the relevant requirements of law to measure the land both horizontally and vertically, locate physical features and prepare maps, render opinions about the location of boundary lines, prepare deed descriptions and prepare subdivision plats. A more comprehensive definition of the practice of Land Surveying may be found in NJSA 45:8-28.

### **Professional Planner**

The term "practice of professional planning" shall mean the administration, advising, consultation or performance of professional work in the development of master plans in accordance with the provisions of chapters 27 and 55 of Title 40 of the Revised Statutes, as amended and supplemented; and other professional planning services related thereto, intended primarily to guide governmental policy for the assurance of the orderly and coordinated development of municipal, county, regional, and metropolitan land areas, and the State or portions thereof. The work of the professional planner shall not include or supersede any of the duties of an attorney at law, a licensed professional engineer, land surveyor or registered architect of the State of New Jersey.

## ***Subdivision of Land***

### **What is a Land Subdivision?**

Generally, any division of a parcel of land into two or more lots is a land subdivision. Moving a lot line between two existing lots may also be considered a subdivision. There are a few exceptions to this rule, such as:

- Division of lands for agricultural purposes when the lots are five acres or larger.
- Divisions of land by testamentary or intestate provisions.
- Divisions of property by court order.
- Consolidation of existing lots by deed or other recorded instrument.

### **What is a Minor Subdivision?**

A minor subdivision is limited by the number of lots specified in the local ordinance. It may not, however, involve a planned development, any new street or the extension of any off-tract improvement.

The local ordinance may permit approval of a minor subdivision without full board review.

### **What is a Major Subdivision?**

A Major Subdivision is any subdivision that is not classified as a minor subdivision.

## **Site Plans**

### **What is a Site Plan?**

"Site plan" means a development plan of one or more lots, on which is shown:

- (1) the existing and proposed conditions of the lot, including but not necessarily limited to topography, vegetation, drainage, flood plains, marshes and waterways,
- (2) the location of all existing and proposed buildings, drives, parking spaces, walkways, means of ingress and egress, drainage facilities, utility services, landscaping, structures and signs, lighting, screening devices, and
- (3) any other information that may be reasonably required in order to make an informed determination pursuant to an ordinance requiring review and approval of site plans by the planning board.

### **What is a Minor Site Plan?**

"Minor site plan" means a development plan of one or more lots which:

- (1) proposes new development within the scope of development specifically permitted by ordinance as a minor site plan;
- (2) does not involve planned development, any new street or extension of any off-tract improvement;
- (3) contains the information reasonably required in order to make an informed determination as to whether the requirements established by ordinance for approval of a minor site plan have been met.

### **When is a Site Plan Required?**

A site plan is required whenever one wishes to develop a property for a use other than a one- or two-family dwelling. The term "develop" could mean to build something new, to renovate an existing building or site, or change the use of a building or lot.

Local ordinances establish the criteria for plan submittal and the procedures to be followed in preparing an application to the planning or zoning board. For smaller developments or minor changes to existing facilities, the local ordinance may provide exemptions to full board review.



## **Site Plan Review**

### **Completeness Review**

An application for site plan or subdivision review must be determined to be complete before the clock starts on the allowable period for review of the application. The board or its designee has 45 days to compare the application documents submitted to see if they meet all of the requirements included in a municipal checklist for the type of approval requested. If the town does not take action within 45 days, the review clock starts.

If the municipality finds that there is information missing, they must identify the data that remains to be provided. When you resubmit the application they have another 45 days to determine if the revised application is complete.

### **Technical Review**

The board and its professional staff will generally perform a detailed technical review of your site plan documents after it has been determined that they are complete. You may be asked to provide additional information, but the review clock will not be stopped while you are preparing the additional information. The board secretary will schedule the date of the meeting for the review of your application and advise you if you must provide notice of the meeting.

### **Notices of Application**

For many types of application, you will be required to provide public notice of the meeting at which your application will be heard by the planning or zoning board. The noticing requirements are quite extensive and are generally handled by your attorney. Among those to be provided with service are all property owners whose lots, or any portion thereof, are located within 200 feet of your property. Most service is made by certified mail. If the notice is defective, the board may not hear the application.

You may request a list of property owners within 200 feet from the municipality's administrative officer for a nominal fee.

### **Minor Site Plan Review**

The ordinance may allow for the waiver of a public hearing if the board or its designated site plan review committee finds that the project conforms to the definition of a minor site plan. The board has 45 days to take action on a minor site plan application.

### **Preliminary Site Plan Review**

An application for a development containing 10 acres or less, or 10 dwelling units or less, has a review period of 45 days. For larger applications the review period is 95 days.

### **Final Site Plan Review**

A final site plan application must be acted upon within 45 days of submittal of a complete application.

### **Simultaneous Review**

The board may act on both preliminary and final site plan applications simultaneously. They may also act upon conditional uses and subdivision applications simultaneously with site plan applications. The longest time period for any individual action will govern.

**Findings of Fact and Conditions of Approval**

The board must render a written decision on every application. A memorializing resolution must be adopted at a meeting not later than 45 days after the date when the board voted to grant or deny approval.

**Performance Guarantees**

The board may require the posting of performance guarantees to insure the installation and maintenance of on-tract improvements. A performance guarantee in the amount of 120% of the estimated cost of the improvements will be required before the deed or subdivision plat may be filed.

## ***Subdivision Review***

### **Completeness Review**

An application for site plan or subdivision review must be determined to be complete before the clock starts on the allowable period for review of the application. The board or its designee have 45 days to compare the application documents submitted to see if they meet all of the requirements included in a municipal checklist for the type of approval requested. If the town does not take action within 45 days the review clock starts.

If the municipality finds that there is information missing, they must identify the data that remains to be provided. When you resubmit the application they have another 45 days to determine if the revised application is complete.

### **Minor Subdivision Review**

The ordinance may authorize the planning board to waive the notice and public hearing requirements when the board or its subdivision committee finds that the application conforms to the definition of a minor subdivision. The board has 45 days to take action on a minor subdivision application.

### **Preliminary Major Subdivision Review**

An application for preliminary subdivision approval containing 10 or fewer lots must be acted upon with 45 days from the receipt of a complete application. For more than 10 lots the period is 95 days.

### **Final Subdivision Review**

A final major subdivision application must be acted upon within 45 days of submittal of a complete application.

### **Simultaneous Review**

The board may act on both preliminary and final site plan applications simultaneously. They may also act upon conditional uses and subdivision applications simultaneously with site plan applications. The longest time period for any individual action will govern.

### **Findings of Fact and Conditions of Approval**

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### **Performance Guarantees**

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### **Filing of Plats or Deeds**

The approval of a minor subdivision expires 190 days from the date of the resolution of approval unless a plat conforming to the requirements of the [Map Filing Law](#) or a deed accurately describing the subdivision is recorded with the county recording officer, the municipal engineer and the municipal tax assessor.

A final major subdivision plat conforming to the requirements of the Map Filing Law must be filed with the county recording officer within 95 days of the signing of the plat.

***Application and Escrow Fees***

When you file your application, it is likely that you will be asked for several payments. One is the application fee. The other is an escrow deposit for professional review expenses.

The application fee should remain fixed unless it turns out that you have categorized the application incorrectly or it turns out that a variance is required. The escrow fee is an initial estimate of professional charges. If this deposit is exceeded, you will be asked to add more money to the account. If you fail to do so, action on your application may be suspended.

The municipality gets to charge you for their cost in reviewing your application. They are required to send itemized bills identified by the board's professionals who may be municipal employees or private consultants.

If you wish to dispute these charges you must first contact the chief financial officer of the municipality. If you are not satisfied with his/her decision, you may file an appeal with the County Construction Board of Appeals.

### ***Final Project Design***

You have now either found that you do not need subdivision or site plan approval or you have received the approvals that were necessary. Now you can get started with your final project plans and specifications that are required to obtain a construction permit.

Okay, it's not strictly true that you needed to wait until this point to start preparation of your final construction documents. I state it this way because it can be very costly to get started on final design any earlier in the process. If you start preparation of your final construction documents early, and then the board decides to make changes to your site plan drawings, you will find yourself making costly revisions to those construction documents that were underway.

You may be thinking "Why do I have to do more drawings? Aren't the ones that I used for site plan approval adequate to get a construction permit?" Well, some of them may be. The plans of the building façade, the floor plans and many of the exterior plans may be adequate with a little bit of updating.

However, there are many elements of the building that are not required to be designed for the planning or zoning board to review your project. Examples of things that you will still need to have designed are: electrical systems, HVAC systems, plumbing systems, structural calculations, construction details and more.

Your architect, in collaboration with other design professionals, will help you create the plans and specifications that are required to obtain a construction permit. For some small buildings you may have the electrical and plumbing drawings prepared by a Licensed Electrician and Master Plumber, respectively.

It's important to work closely with your architect to make sure that the project meets your design requirements and budget. It's also important to make sure that the architect is following the appropriate codes that have been adopted by the State of New Jersey. If you are renovating an existing building, make sure that you have considered the requirements of New Jersey's Rehabilitation Subcode.

### **Construction Permitting**

Now you think that you're ready to apply for a construction permit. You are armed with your site plan approval and your final construction documents. You've also selected a contractor, or decided that you are going to undertake the work yourself. There still may be some things that you have forgotten.

### **Prior Approvals**

Have you received a connection permit from the local water purveyor or sewage collection agency? If you are not on public water or sewer, you will require well and septic system approval.

You may have required a county approval for your site plan or subdivision – or a road opening permit – or an NJDEP permit or a Soil Conservation District permit. The Construction Code office will not consider your application complete for filing unless all of your prior approvals have been met.

Possibly, the municipal engineer or zoning officer will advise you about the other approvals that may be required before you apply for the construction permit.

### **Types of Enforcing Agency**

The Uniform Construction Code of New Jersey (UCC) designates the Department of Community Affairs (DCA) as the body to oversee the requirements for issuance of construction permits throughout the State of New Jersey. DCA has delegated some of these responsibilities to Local Enforcing Agencies. Some of these are run by a single municipality, some are run through inter-local agreements between municipalities, some are run by county agencies, and some towns have opted to have DCA issue permits within their borders.

DCA has set up a system in which municipal enforcing agencies are classified as Class 1, Class 2 or Class 3. Class 1 agencies can review plans for most uses and size of construction – except things such as amusement rides and casinos, over which DCA has retained full control. Class 2 and Class 3 agencies are limited to the size and type of building for which they are allowed to review the plans. This system is based upon the level of education and experience of the local officials. Every class of municipal agency may inspect all types of buildings.

If your town does not have a Class 1 agency, you may be required to bring your plans to DCA for review.

### **Enforcing Agency Personnel**

Each local enforcing agency may have about four general classifications of employee. These are:

#### **Construction Official:**

The Construction Official is the department head for the enforcing agency.

#### **Subcode Officials:**

The Subcode Official is the individual responsible for making the technical decisions about a given subcode (Building, Electrical, Fire Protection, Plumbing, Elevator), and for supervising all plan review activities within his/her subcode.

#### **Inspectors:**

Inspectors may perform plan review under the supervision of the Subcode official and will perform field inspections of construction within the scope of the Subcode(s) in which they are licensed.

#### **Technical Assistant:**

The technical assistant generally runs the office and will process the permit applications, calculate the permit fees, schedule inspections, answer the phone, prepare the monthly reports

and more. It is extremely important to develop a good working relationship with the technical assistant.

### **Subcodes**

The major subcodes under the UCC are Building, Electrical, Fire Protection, Plumbing and Elevator. The UCC defines the technical requirements for each Subcode in NJAC 5:23-3.1 et seq. For each of these subcodes the UCC adopts large portions of model codes that are enforced in many parts of the United States. They do not adopt any one of these in its entirety. To find out the technical requirements of any of the subcodes, one must annotate the model code to reflect the modifications enumerated in NJAC 5:23-3.1, et seq. The [DCA Division of Codes and Standards](#) Web Site contains the currently adopted model codes.

It is important for the designer to also be conversant with the Barrier-Free Subcode, which addresses accessibility for the disabled, and the Rehabilitation Subcode, which is for use in existing buildings. These are not enforced by a single Subcode Official. The duties are allocated in accordance with the UCC.



### ***Permit Applications***

Each local enforcing agency is required to use standardized application forms that include technical cards for each Subcode and a buff-colored file jacket. These are also available at the [DCA](#) website. Depending on the nature of the work you are performing you may need only one technical card, or you may need four or more technical cards. For example, a roofing permit may only require a “building” technical section, but renovation of a bathroom may need “building,” “plumbing,” and “electrical.” Note that plumbing and electrical permit applications must bear the embossed seal of the individual who will be performing the work.

The permit application is generally accompanied by two sets of plans. If the nature of the work is minor, the subcode official may waive the requirement for plans. Note that the architectural or engineering plans must be sealed by the licensed design professional. If you have prepared the plans for your single-family, detached dwelling, you must sign a certification that you prepared the drawings.

After submittal of a complete application, the agency has 20 business days to act on your application. If they fail to act, the application is considered to have been denied. You have the right to file an appeal with the Construction Board of Appeals to require the agency to act upon your application. At that point the Construction Official should be able to advise you why your application is deficient. Possibly, the review has just been delayed due to the work load in the office. If that is the case, it may be worth waiting a few days until the permit can be issued, since it will take several weeks to schedule a hearing.

Once each of the Subcode officials has released your drawings, the Construction Official has signed the permit, and you have paid your fees, you may start construction.

## ***Inspections During Construction***

### **Uniform Construction Code Inspections**

The UCC specifies the inspections for which the work must cease. You may not continue work unless you have passed these inspections. It is the contractor's responsibility to call for the inspections when the work is ready to be inspected. The enforcing agency has three business days to respond to your request.

I advise not calling for inspection unless you are sure that the work will be *ready* for inspection when the inspector arrives. Too many false alarms may cause inspectors to place you lower on their list of priorities.

### **Other Inspections**

You may also need to schedule inspections from other arms of municipal government. The municipal engineer is often responsible for the inspection of improvements identified in your site plan or subdivision approval. If your project lies on a state or county road, any road openings may need to be inspected by them. It's likely that you may need to obtain inspections by the Soil Conservation District. If you are building a food-handling establishment, the health department will need to approve the work.

### ***Changes of Use***

Changes in the use of a building or property may necessitate zoning and/or construction code approvals.

### **Zoning Requirements**

You must determine that the proposed use is permitted in the zone. If it is permitted, the new use may trigger a need for modified site improvements. For example: the parking requirement for the new use may be different, the waste disposal requirements may be different or the traffic generation may be different. If the site needs to be modified to meet the zoning requirements a new site plan approval is required. If the use is not permitted, a "d" variance is also required.

### **Construction Code Requirements**

The Rehabilitation Subcode, N.J.A.C. 5:23-6.1, et seq., establishes the construction code requirements for proposed changes of use in existing buildings. In some cases, additional construction work will be required. In some cases, it won't. In some cases, there may be no work required in the building, but a change will be necessary to the required parking area. An example of this would be the change of office space to medical offices, which would require a larger number of handicapped parking spaces. The modification of the parking would likely trigger new site plan approval even if the zoning requirements didn't.

## ***Existing Buildings***

### **Rehabilitation Subcode**

The Rehabilitation Subcode, N.J.A.C. 5:23-6.1, et seq. establishes the construction code requirements for proposed construction in existing buildings. This Subcode only specifies the requirements for work within an existing building. Additions to existing buildings must comply with current code requirements. The Rehabilitation Subcodes categorizes work in the following manner:

#### **Repair**

Repair work may or may not require a permit. Those requirements are established elsewhere in the code. Generally, repair work is replacement of existing materials or components in kind, but certain materials are prohibited.

#### **Renovation**

Renovation means the removal and replacement of existing interior or exterior finish, trim, doors, windows or other materials with new materials that serve the same purpose but do not change the configuration of the space.

#### **Alteration**

Alteration means the rearrangement of any space by the construction of walls or partitions, a change in ceiling height, the addition or removal of doors or windows, the extension or rearrangement of any system, the installation of any additional equipment or fixtures or any work that reduces the load-bearing capacity of a structural member.

#### **Reconstruction**

Reconstruction means any project where the extent and nature of the work is such that the work area cannot be occupied while the work is in progress and where a new certificate of occupancy is required before the work area can be reoccupied. A reconstruction project may include repair, renovation and alteration components.

#### **Accessibility**

Work in an existing structure may require that an effort be made to bring the building into compliance with the Barrier-Free Subcode. Improvements that increase accessibility for the disabled may be required. Generally the value of the required expenditure for these improvements is capped at 20% of the value of the other work proposed.

***Barrier-Free Requirements***

The Barrier-Free Subcode, N.J.A.C. 5:23 – 7.1, et seq. establishes the requirements for handicapped accessibility for all buildings, sites and facilities in the State of NJ. It is interpreted to require access for all people with disabilities, including: occupants, employees, customers, students, spectators, participants or visitors.

Many people confuse the Barrier-Free Subcode with the federal Americans with Disabilities Act (ADA). The barrier-free subcode is a state building code requirement enforced through the ICC. The ADA is federal civil rights legislation.

The barrier-free subcode establishes the scope of accessibility improvements for new buildings and changes to existing buildings. It also sets accessibility requirements for building sites and recreation facilities that may not require issuance of a construction permit.

Currently, the Barrier-Free Subcode references ICC/ANSI A117.1-2003, titled “Accessible and Usable Buildings and Facilities” for many of the technical design standards.

### ***Violations and Penalties***

If you violate the provisions of the Uniform Construction Code, it is likely that the Construction Official will issue a Notice of Violation. If it is a severe infraction, you may be issued a Stop Construction Order or Notice of Unsafe Structure. The notice will generally cite the code provision that has been violated and the procedure to be followed to correct the problem.

If you fail to comply with the terms of the Notice of Violation, you may be issued a penalty.

If you are found to have:

- started construction without a permit;
- occupied a building without a certificate of occupancy;
- made a fraudulent or misleading statement.

You will receive a penalty. Penalties currently may be assessed at up to \$2,000 per violation. If you fail to correct the problem the penalties may escalate rapidly.

## ***Certificates of Occupancy***

### **What is a Certificate of Occupancy?**

It is a certificate that must be requested by the owner and issued by the construction official that indicated that a new building is ready for occupancy. In renovated buildings, a certificate of occupancy may be required by the construction official depending upon the scope of the work that was undertaken.

The certificate of occupancy generally indicates that you have completed the work in accordance with the applicable codes and have satisfied the requirements for issuance of a permit. A certificate of occupancy may be revoked if the property owner does not continue to meet the conditions of the permit.

If you occupy a building prior to obtaining a certificate of occupancy, you will most likely receive a substantial fine.

### **Temporary Certificate of Occupancy**

A temporary certificate of occupancy may be issued before all of the requirements of the construction permit or prior approvals have been satisfied. These will be issued for a specific period of time and will likely contain conditions for completion of the work.

***Congratulations! You're Done – Well Almost***

The Uniform Construction Code does not always require completion of all of the prior approvals as a condition of issuance of a certificate of occupancy. It's quite possible that you have been required to post a security deposit for the construction site improvements. This security must be released by a formal action of the governing body. Usually, they will not release the security without a recommendation from the municipal engineer stating that the work has been completed acceptably. If you wish to have the funds released, you will need to schedule one last inspection with the municipal engineer.

Now, if you have followed through all of these many pages, I hope that you have a basic introduction to planning, zoning and building rules in the State of New Jersey. Good luck with your project – and one last recommendation to engage the assistance of qualified design and legal professionals.



## ***Frequently Asked Questions***

### **Is there any construction work that I may perform without obtaining a Construction Permit?**

The Uniform Construction Code identifies an extremely short list of work that may be done without a construction permit. This is enumerated in N.J.A.C. 5:23-2.7, titled *Ordinary Maintenance*. Examples of the types of repair that may be done without a construction permit are:

- Installation and replacement of a window or door in its existing opening;
- Repair or replacement of kitchen cabinets;
- Replacement of not more than 25% of roofing or siding within a 12-month period;
- Replacement of a toilet or sink at the same location in a single-family dwelling; however the toilet must use 1.6 gallons of water or less per flush.

### **May I ever begin work before I receive my construction permit?**

There are some tasks that are recognized by the Uniform Construction Code, in N.J.A.C. 5:23-2.17A, as "minor work." In these cases the owner or his authorized representative must notify the enforcing agency before the work begins. A written application must be filed within five days of the date of the notice. Examples of minor work include:

- Replacement of a hot water heater;
- Replacement of more than 25% of the exterior siding on a one- or two-family dwelling.

### **Can I certify that I prepared the plans for renovations to my single family home if the contractor drew the plans after we discussed what I wanted?**

No, even if you have participated in the planning process, you may only certify to plans that you drew yourself. Certifying to plans that were prepared by someone else would be considered a false or fraudulent statement. If you make a false statement such as this and are discovered you may be fined and your permit may be revoked. The fines may be over \$1,000 for each fraudulent statement.

### **Is there anything that I can do if an element of my project cannot meet the precise requirements of the code?**

You may request a variation of the code, specifying the code section from which you need relief, as well as a description of the practical difficulty that you are having in meeting the regulations. You must show that the exception would not create any health or safety problems. This request must be reviewed and approved by the Subcode Official authorized to review the technical merits of the code section in question and the construction official. If they do not grant the request for a variation, you may continue the appeal at the Construction Board of Appeals. There is a Construction Board of Appeals for each county and many municipalities have local boards.

### **Can my local building department inspect the construction of a project for which the plans were reviewed by DCA?**

Local Enforcing Agencies may inspect all types of projects except the few that have been explicitly reserved for DCA. If, however, there is a need to change the plans during construction, the proposed change must be authorized by the plan review agency.

**Why did the inspection pass when the contractor didn't perform the work in accordance with my plans?**

The enforcing agency is required to determine if the work conforms to the requirements of the code, not your plans. The code is both the minimum and maximum standard that the agency may apply when determining whether the work passes an inspection. If you have included items of work that are superior to what the code requires it is a contractual matter not a code compliance matter. I recommend that you engage an individual to monitor the progress of the work to make sure that the finished product meets your expectations.

**What suggestions can you offer for having the best working relationship with the local building department?**

- Be polite.
- Fill out your applications neatly and completely.
- Understand that it is your responsibility to show that the prior approvals have been satisfied.
- Make sure that the electrician and plumber have sealed their portion of the application.
- Make sure that the design plans are complete, legible and include the name, license number, address, phone number and seal of the designer.
- Don't expect that your project should go to the top of the review list just because you're in a hurry. Most of the other applicants are, as well.
- Understand that your plans may need to be reviewed by three or more different individuals. If the information they need to approve the applications is missing, your project is stalled, each time, until it has been provided.
- Don't fabricate stories – we have pretty much heard them all and know when you're lying.
- Make sure that you are ready for inspection when you call to request one.
- Keep copies of the approved plans and specifications on the job.