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Construction officials are responsible to ensure that all required prior approvals have been met before a permit is issued. Fire departments are concerned that the site planning of development projects provides for adequate fire safety and that construction of developments is staged in such a way as to ensure fire safety during the construction process. Questions have arisen as to whether requirements established by fire departments are "prior approvals," which must be met before a permit may be issued.

Planning and Zoning Boards

All subdivisions and virtually every site improvement or building construction project larger than an individual one- or two-family home need approval by the municipal planning board or zoning board of adjustment. The specifics of when a project must be submitted to one of these boards is determined by local ordinances. These ordinances do vary in minor detail from town to town, but whenever local ordinances require planning or zoning board approval, then it is always a required prior approval.

These boards are the local agencies with the primary authority to ensure that land development proposals adequately address fire-safety issues other than those involving the buildings themselves. The fire safety of any building associated with the development is, of course, covered by the Uniform Construction Code, and is the responsibility of the construction and subcode officials of the municipality. Most boards make it a regular practice to consult with the affected fire department in order to have the benefit of their expertise when reviewing applications, but it is the board which establishes the actual requirements for a project by applying governing ordinances and standards, as well as their own good judgment. What is required of a particular project is set forth in the approved subdivision and/or site plans and the resolution of the board which approves it; the municipal engineer is the responsible authority to ensure compliance with the plans and/or resolutions. These are the governing requirements for the site development of the project.

Site Layouts

The arrangement of streets, parking areas, and fire lanes -- as well as the size and location of water mains, and the number and locations of fire hydrants -- are determined by the approved site plans. No other prior approval is required in connection with these issues. This is why the boards consult with the fire department.

It should be noted that the New Jersey Uniform Fire Code (UFC) authorizes the fire official to designate fire lanes for existing installations. Fire lanes for new construction, if required, should be designated on the plans approved by the planning or zoning board. All provisions of the UFC apply to existing properties and are not applicable to projects under development. Many fire protection infrastructure matters are now subject to the Residential Site Improvement Standards.

Phasing of Construction

Larger developments may require coordination of the construction of certain site improvements with actual building construction. There may be a need to specify that adequate water for firefighting purposes, or some form of road surface to provide site access for firefighting equipment, exists before actual building construction begins or progresses too far.

The primary authority to specify such requirements again rests with planning and zoning boards. These requirements do constitute a necessary prior approval if they are specified by the board in its resolution of approval, or shown on the approved plans. If such requirements have not been specified by the board, then they are not a required prior approval.

Delegation by Planning and Zoning Boards

Sometimes, a board will attempt to “delegate” its authority to the fire department or a fire official by saying that fire lanes, fire hydrant location, or phasing of construction shall be “as required by the fire authorities.” This language may be found on the board-approved plans or in the board’s resolution of approval. The board may delegate review authority for an application, but it cannot delegate its right to prior approval. When a board requires review of a preliminary application by the fire official, that review and report should be treated in the same manner as the review and report of the board engineer and planner. The report of the fire official must be submitted to the board as part of the public hearing record on the application. There are some very good reasons for this. The laws and procedures which govern the functioning of the boards ensure a fair hearing for the applicant, establish time elements for board action, and provide clear appeal rights. None of these is present if a board delegates its responsibility rather than exercising it.

Conclusion

In conclusion, then, the requirements made applicable to a project by the planning or zoning boards are a required prior approval, but requirements specified by fire departments independently of those boards are not. This does not mean that the fire concerns are not legitimate and appropriate. It only means that they must be brought up and addressed in the procedurally correct manner, which is through the required planning or zoning board prior approvals.