

# Selected practical issues related to obtaining a replacement construction permit

**The decision to amend a construction permit (commonly referred to as a replacement construction permit) was introduced to the legal system in order to make the construction process more flexible and reduce the required time and costs.**

The mode of procedure and the substantive conditions for approving a replacement construction permit are set forth in Art. 36a of the Act of 7 July 1994 Building Law (Journal of Laws of 2016, item 290, as amended). The provisions allow the investor to have a previously approved construction permit design amended without having to launch a complicated and time-consuming procedure for obtaining a construction permit. It is beyond any doubt that reducing formalities required to amend the construction permit design makes investors' lives significantly easier as it is often the case that the need for modifications arises only after the design approval, during the performance of construction work.

The procedure for obtaining a replacement construction permit is of secondary nature with respect to the construction permit application procedure. A replacement construction permit only substitutes the provisions of the original building permit which are being amended. Therefore, the two decisions are used in legal transactions side by side with one another and they complement one another. Every subsequent alteration to the construction permit design requires the investor to apply for a new decision amending the construction permit. To establish the exact scope of the investor's rights in this respect, it is necessary to take account of the original decision authorising construction along with all amending decisions. If appropriate, the investor may commence and continue the work based on a valid construction permit also if the proceedings for issuing the decision amending the construction permit

are underway. Moreover, if the decision approving an amended construction permit design is appealed against and the appeal procedure is underway, the original decision on the construction permit remains in force, and the construction projects can be continued on that basis. Importantly, issuing a replacement construction permit does not extend the three-year period during which the investor is required to commence construction work. The three-year period begins on the date when the decision on the original construction permit becomes final.

The scope of the proceedings for issuing a replacement building permit is limited – in matters of merit – to the proposed changes. Therefore, it is assumed that only the owners, perpetual usufructuaries and managers of properties located within the impact zone of the proposed changes have capacity to bring proceedings, not all persons having a relevant legal interest. The provisions pertaining to the construction permit procedure (Art. 32-35 of the Building Law) apply accordingly to the proceedings for the modification of the construction permit. Therefore, the changes should be consistent with the planning assumptions. Accordingly, the application to amend the construction permit should be consistent with the provisions of the valid decision on land use and development if a given area has no valid local zoning plan in place. Solutions adopted in the amended construction permit design should also be in keeping with the environmental conditions decision.

It should be noted that the decision to amend the construction permit can only

apply to changes that are planned. A replacement construction permit is a decision allowing to commence and pursue construction work concerning the change in question. For this reason, it should not be used for approving changes that have already been made because that would constitute circumvention of the law (cf. the decision of the Regional Administrative Court of Warsaw of 20 September 2007, court docket VII SA/Wa 1140/07). Constructing a building with significant departures (from the building permit design) without prior obtaining a replacement construction permit will constitute an instance of unlawful construction activity with regard to the parts concerning the said departures (cf. the decision of the Regional Administrative Court of Warsaw of 9 September 2004, court docket IV SA 843/03). Importantly, the authority conducting the proceedings on amending the construction permit may not make changes that are not contained in the investor's application or check the validity of the original construction permit.

The obligation to secure a replacement construction permit only applies to significant departures from the approved construction permit design. The regulations do not directly state what departures should be considered significant. Case law provides that classifying a change as significant or negligible is decided on the basis of the specific attributes and nature of the planned project, the scope of the planned departure and the circumstances of the case. The designer decides if the intended departure is significant or not. Within the meaning of Art. 36a.1 of the Building Law, a significant departure may not allow the construction of a new structure, even if its use is similar or even the same. Since the building permit decision applies to a specific building structure, the departures may also only apply to the structure defined in the decision.

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