

**G E O R G E M E R L I N A S S O C I A T E S I N C**  
**A R C H I T E C T U R E • I N T E R I O R D E S I G N**

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Florida Building Commission  
Florida Dept. of community Affairs  
Building Codes and Standards  
2555 Shumard Oak Blvd.  
Tallahassee, FL 32399-2100

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Mr. Madani

I am a Florida licensed architect and frequently design single family homes on the gulf coast barrier islands that are in the area seaward of the FDEP/FBC coastal construction control line (CCCL).

Per our recent discussion, this letter is to request a declaratory statement from the Florida Building Commission further clarifying previous DCAA09-DEC-347. This is regarding FBC chpt. 3109.1.1 and its exemption, which pertains to construction overtop of and within the limits of an existing unmodified foundation in the CCCL. This current request does not address 3109.3 or 3109.4 pertaining to any proposed construction outside the limits of an existing foundation in the CCCL.

My case is for a future project. It consists of proposed renovations to an existing single story single family dwelling in the CCCL zone.

The existing structure is non compliant to FBC requirements for new and non-exempt structures, due to not having a pile supported foundation and not being elevated to the DEP required elevation. (The existing structure is however fully FEMA compliant meeting FEMA's foundation and elevation requirements, and the requirements of the local floodplain ordinance related to FEMA requirements noted in FBC 3110.)

The proposed renovations include a vertical second story addition; wherein all the existing roof and walls will be removed to the foundation level, but the foundation itself will remain unmodified. All proposed renovations including the construction of new walls and second story floor and roof, will be within the footprint/perimeter of the existing foundation and the existing foundation has been investigated and proven by engineering calculations to be adequate to support the proposed renovations per the requirements of the FBC for Existing Buildings (i.e. gravity and wind loads) without modifying or adding to the original existing foundation in any way.

The market value of the existing building is \$200k and the proposed renovation will cost over \$500k. Therefore, the cost of the proposed renovations will exceed 50% of the market value of the existing building and the proposed renovations would be considered a substantial improvement because of its cost.

I understand, per FBC 3109.3 and 3109.4, that **substantial improvements** which are **not within the limits of the foundation** or which involve modifications to the existing foundation clearly would **not be exempted and would** have to be designed to resist the predicted forces associated with a 100-year storm event. In this case that would require a new piling foundation and a higher floor elevation. However, the proposed work in this case is within the limits of the existing foundation and doesn't modify the existing foundation. Therefore it appears to be exempt from these standards.

I understand that if a proposed substantial improvement is not confined to occur within the limits of an unmodified foundation, or if it is so confined but the existing foundation is modified, then such construction does constitute rebuilding and is not exempt from FBC 3109.1.1 design standards for new construction.

I understand that if a proposed **substantial improvement** is confined to occur **within the limits of an unmodified foundation** it does not constitute rebuilding and/or **is exempted** from FBC 3109.1.1 design standards for new construction. This is the essence of this current request for further clarification.

DCA 09-DEC-347 Findings of Fact paragraph 3.(a) describes project renovations including a vertical second story addition and par.4.(a) notes the inquiring if such repairs and modifications have no limit on cost of work provided the work stays within the limits of the foundation, doesn't modify the foundation and meets the requirements of FBC existing buildings. Conclusion of law par. 6.(a) concludes the project is not required to be redesigned to resist the predicted forces associated with a 100-year storm event.

My earlier inquiry/request leading to DCA 09-DEC-347 did not specifically ask if a "substantial improvement" is exempt from FBC standards for construction seaward of the CCCL. It asked if the proposed renovations within the limits of an existing foundation and without modifying it are exempt without limit on cost. This appears to us to be essentially the same question, to which the Fl. Bldg. commission answered – yes. ~~However some persons disagree.~~

My earlier inquiry/request leading to DCA 09-DEC-347 also did not specifically ask if there was any limit on the extent of "modifications, maintenance or repair" allowed in the exemption. However, I did describe the proposed renovations as including a new second story addition. ~~Some persons believe the proposed renovations in my case are something more than "modifications", and/or that exempted modifications cannot be made to the extent of becoming a substantial improvement, and/or cannot involve removing all existing roof and/or walls and leaving only the existing foundation to build new walls, second story and roof upon. Some persons believe that, per FBC 201.3, the Webster's third new international unabridged dictionary definition of "modification" is all that is available to be used to define this term.~~ I understand, per FBC 201.3, that other Florida Building Codes, specifically the Florida Fire Prevention Code, which has a definition of modification, should take precedence over a dictionary definition, and that the dictionary definition should only be relied on in the absence of any definition from any of the Florida building Codes. The Florida Fire Prevention code definition of modification is: "the reconfiguration of any space; the addition, relocation, ore elimination of any door or window; the addition or elimination of load-bearing elements; the reconfiguration or extension of any system; or the installation of any additional equipment." I understand this is much broader in scope than Webster's dictionary definition and clearly could include substantial improvements.

This current request in my case therefore specifically asks for confirmation if the proposed substantial improvements, which occur over and within the limits of and do not modify an existing foundation are exempt from FBC requirements to design to resist the predicted forces associated with a 100-year storm event.

The current request also asks if the exemption applies regardless of the extent of modifications proposed, including total existing roof and wall removal, as long as such are within the limits of and do not modify the existing foundation.

Question Preface:

Prior to March 1, 2002, the Florida Department of Environmental Protection (FDEP), Bureau of beaches and Coastal Systems, enforced and interpreted the standards for construction seaward of the CCCL pursuant to the provisions of Florida Statutes Chapter 161 and the rules it established in Chapter 62B-33.

FS Chapter 161.053(12) contains an exemption to the design and construction standards it otherwise imposes on construction seaward of the CCCL, for “any modification, maintenance, or repair to any existing structure within the limits of the existing foundation which does not require, involve, or include any additions to, or repair or modification of, the existing foundation of that structure.”

The historic interpretation of this exemption language by the FDEP, Bureau of Beaches and Coastal Systems, has allowed modification, maintenance or repair to existing structures seaward of the CCCL with no limit on the cost or extent of the modification work provided the work stayed within the limits of the existing foundation and did not modify that foundation.

For confirmation of the above see FDEP Consultation File CNS-ST0478 letter dated January 27, 2003 signed by Tony McNeil, Administrator (attached).

After March 1, 2002, the enforcement and interpretation of the standards for construction seaward of the CCCL was transferred to local governments. The applicable standards are still those prescribed in FS Ch. 161 and Ch 62B-33, but also include the standards in FBC Ch 3109.

It is our understanding that the provisions and interpretation of FBC Ch 3109 are to be consistent with those in FS Ch 161.

FBC Ch 3109.1.1 contains an exception to the design and construction standards it otherwise imposes on construction seaward of the CCCL, for “any modification, maintenance, or repair to any existing structure within the limits of the existing foundation which does not require, involve, or include any additions to, or repair or modification of, the existing foundation of that structure.” This is identical to the exemption from construction standards provided in FS Ch 161.053(12)

**Question(s) for Declaratory Action:**

**Is the application of the exception in FBC Ch 3109.1.1 for construction within the limits of the existing foundation to be the same as the FDEP historical application and interpretation of the exemption in FS Ch 161.053(12)(a) as noted in DEP Consultation file CNS-ST0478 - i.e. The design standards for buildings seaward of the CCCL “do not apply to any modifications, maintenance, or repair to any existing structure within the limits of the existing foundation which does not require, involve, or include any additions to, or repair or modification of, the existing foundation of that structure, regardless of building height, number of floors or costs involved”.**

**Yes or No?**

**Is the exception in FBC 3109.1.1 applicable to all the items 3109.1.1.1., 3109.1.1.2, and 3109.1.1.3 that precede it; and more specifically to item 2., (see FBC 2004 edition and 2007 edition).**

**Yes or No?**

**Does this exemption in FBC 3109.1.1 apply regardless if the costs constitute a substantial improvement, provided all proposed construction remains within the limits of the existing foundation, doesn't modify that foundation and meets the requirements of the Florida building code for Existing Buildings?**

**Yes or No?**

**Does this exemption apply regardless of the extent of modifications above the unmodified foundation, provided all proposed construction remains within the limits of the existing foundation, doesn't modify that foundation and meets the requirements of the Florida Building Code for Existing Buildings?**

**Yes or No?**

Sincerely,

George Merlin  
President