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10.27.09

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

Attn. Mr. Mo Madani
Email: mo.madani@dca.state.fl.us
Ph: 850-921-2247

DCA09-DEC-347

FILED [illegible] DEPARTMENT
[illegible] assigned
[illegible] is hereby
[illegible]
10/28/09
Date
[illegible] CLERK

Mr. Madani

Per our telephone discussion this letter is to request a declaratory statement from the Florida Building Commission. I am a Florida licensed architect and frequently design single family homes on the gulfcoast barrier islands that are in the area seaward of the FDEP/FBC coastal construction control line. My request relates to two scenarios for two future projects in the CCCL zone.

The first case consists of a single story single family dwelling and proposed renovations to such, including a vertical second story addition; wherein all renovations, including the new second story, are all within the footprint/perimeter of the existing foundation and wherein 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 second case is similar, except the proposed renovations involve horizontal additions outside the existing foundation footprint/perimeter.

Third and lastly I'm requesting clarification regarding the priority of FBC or local government

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 repairs and modifications to existing structures seaward of the CCCL to have no limit on the cost of the work provided the work stayed within the limits of the existing foundation and did not modify that foundation.

Similarly, the FDEP, Bureau of Beaches and Coastal Systems has provided for another exemption to the elevation and piling foundation standards it otherwise imposes on construction seaward of the CCCL in Chapter 62B-33.007(4) (c), in which it states , "the Department shall authorize the construction of additions, repairs, or modifications to existing nonconforming habitable structures that do not meet the elevation or foundation standards of this paragraph, provided that the addition, repair, or modification does not advance the seaward limits of the habitable construction at the site, does not constitute rebuilding of the existing structure, or does not otherwise comply with the requirements of this rule chapter."

The historic interpretation of this exemption language by the FDEP, Bureau of Beaches and Coastal Systems has been that if the work on an existing habitable structure involves an addition outside the existing foundation and/or a repair or modification of the existing foundation the work is still exempt from the otherwise imposed standards unless it constitute a "substantial improvement as defined by FS 161.54(12).

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 of FBC Ch 3109 are 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)
Similarly, FBC Ch 3109.3 and FBC Ch 3109.4 contain exceptions to elevation and pile foundation requirements, respectively, for "additions, repairs, or modifications to existing nonconforming habitable structures that do not advance the seaward limits of the existing structure and do not constitute rebuilding of the existing structure."

This is identical to the exemption from construction standards provided in FDEP Ch 62B-33.007(4)(c).

Questions for Declaratory Action:

1. **Is the application of the exception in FBC Ch 3109.1.1 the same as the historical application and interpretation of the exemption in FS Ch 161.053(12) i.e., repairs and modifications to existing structures seaward of the CCCL have no limit on the cost of the work provided that the work stays within the limits of the existing foundation and does not modify that foundation and also meets the requirements of the Florida Building Code for Existing Buildings?**

2a. **Is the application and interpretation of the exceptions in FBC Ch 3109.3 and 3109.4 to be the same as the historical application and interpretation of the exemption in FDEP Ch 62B-33.007(4)(c), i.e., if the work on an existing habitable structure involves an**

addition outside the existing foundation, the work is still exempt from the otherwise imposed elevation and pile foundation standards unless the addition outside the existing foundation constitutes a "substantial improvement" to the existing structure, as defined by FS 161.54(12)?

2b. Is the application and interpretation of the exceptions in FBC Ch 3109.3 and 3109.4 to be the same as the historical application and interpretation of the exemption in FDEP Ch62B-33.007(4)(c), i.e., if the work on an existing habitable structure involves an addition outside the existing foundation or a repair or modification to the existing foundation, the work is still exempt from the otherwise imposed elevation and pile foundation standards, unless the addition outside the existing foundation and modifications above and within the existing foundation together constitute a "substantial improvement" to the existing structure, as defined by FS 161.54(12)?

3. The FBC code within section 3110.1.2 defines that the FBC defers to local governments floodplain management for FEMA codes and local floodplain. The FBC code as stated says "the FBC defers to local governments for all floodplain management construction regulations for all structures that are NOT seaward of the CCCL". (Emphasis added to the word NOT). Does this mean that when local codes are in conflict with FBC relating to requirements for projects that ARE seaward of the CCCL, that the state code takes priority over local codes?

Sincerely,

George Merlin
President

Department of
Environmental Protection

Jeb Bush
Governor

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

David B. Struhs
Secretary

January 27, 2003

George Merlin, President
George Merlin Associates, Inc.
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Dear Mr. Merlin:

SUBJECT: DEP Consultation File CNS-ST0478

This letter is in response to your letter of November 15, 2002, regarding exemptions, design standards, and permitting requirements for improvements to an existing residential dwelling (i.e. habitable major structure) located seaward of the coastal construction control line (CCCL). Please be advised that the building design standards enforced by the Department of Environmental Protection (DEP) under Rule 62B-33.007, Florida Administrative Code, only apply to those projects received prior to the effective date of the Florida Building Code. Following are responses to the questions raised in your letter:

1

Q. If an existing building's roof and walls are removed to the foundation level, but the foundation itself is unmodified, the construction of new walls, floors and roof over that unmodified foundation is exempt from DEP permitting requirements and elevation requirements. This is correct or not?

A. Exemption Determination - According to Paragraph 161.053(12)(a), Florida Statutes, the coastal construction control line permitting requirements, including the requirements of the thirty-year erosion projection pursuant to Subsection 161.053(6), Florida Statutes, do not apply to 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. Therefore, the proposed construction described above would not require a permit from this agency if it met this criteria, regardless of building height, number of floors or costs involved. The design standards of Rule 62B-33.007, Florida Administrative Code, cannot be enforced by DEP on proposed projects which are exempted from permitting.

Conversely, proposed improvements to an existing structure would not be exempted from the DEP permitting requirements if the improvements extended outside the limits of the existing foundation or involved modification of the foundation. Additions that are attached to an existing foundation constitute an extension and modification of the foundation, and therefore, would not be exempt from the DEP permitting requirements.

Detached additions obviously require a permit as they would clearly be outside the limits of the existing foundation. However, in this case, the existing building structure and improvements inside the existing structure will remain exempt from permitting provided they met the exemption criteria aforementioned, therefore, and would not have to comply with the design standards of the rule.

In the above cases both attached (whether they are structurally attached or not) and detached additions require permits from DEP for the same reasons.

2.

Q. Additions to an existing structure are exempt from piling and elevation requirements if they are non-substantial improvements to the existing structure. This is correct or not?

A. Design Standards - The elevation and pile foundation standards (along with all other standards) of Rule 62B-33.007(5)(c), F.A.C., apply only to all proposed habitable major structures and all proposed non-exempt improvements to existing habitable structures, except improvements to an existing structure which do not advance farther seaward than the existing building and improvements which do not constitute rebuilding of the structure. Rebuilding is defined as a substantial improvement to the building as defined under S. 161.54(12), F.S.

Please note that these standards apply to dwellings (i.e. habitable major structures as defined by rule) only and not other buildings or structures.

Non-exempt improvements have to meet the appropriate design standards of the rule, including pile foundation and elevation standards, if required. The elevation and pile foundation standards would apply only if the improvements, including additions, were considered rebuilding (i.e. a substantial improvement) or extend farther seaward than the existing dwelling. Otherwise, the additions would not be required to meet the elevation and pile foundation requirements.

Detached additions which extend farther seaward or constitute rebuilding of the existing structure also have to meet pile foundation and elevation standards.

The pile foundation and elevation requirements for habitable major structures do not apply to garages or porches, or other non-habitable major structures which are separated structurally from the main dwelling if the structural separation is clearly demonstrated from the foundation up to and including the roof system.

3.

Q. DEP permits as well as local permits are required for any construction outside the limits of an existing foundation. This is correct or not?

A. Permitting Requirements - An proposed activity seaward of the CCCL requires a permit from this Department unless it is exempted by law or rule. Moreover, the FBC also requires an applicant to obtain an environmental permit from the Department in addition to a local building permit for structures seaward of the CCCL.

If you have any additional questions concerning this matter, please call Dr. Muthuswamy Subbuswamy (aka Dr. Swamy) or me at (850) 487-4475, extensions 143 and 147, respectively, or you may write to us at the letterhead address. Moreover, we are available to assist the local building department in interpreting the design standards of Rule 62B-33.007, F.A.C., that were transferred to and are specified under Section 3107 of the Florida Building Code.

Sincerely,

Tony D. McNeal, P.E. Administrator
Bureau of Beaches and Wetland Resources

TDM/jg
cc: Dr. Swamy, Engineer

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October 28, 2008

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RE: Substantial Improvements and 2nd Story Additions Over Existing Foundations Pursuant to Florida Building Code Section 3109 and Floodplain Management Section 3110

Dear George:

This letter provides the requested research regarding coastal properties in FEMA and CCCL zones where substantial improvements and 2nd story additions over existing unmodified foundations are proposed:

1. **FBC General Rule: Substantial Improvements Must Be Elevated to Meet FDEP & FEMA Requirements.**

   FBC Section 3109.1.1 requires that structures located seaward of the Coastal Construction Control Line (CCCL) be designed to resist the predicted forces associated with a 100-year storm event. This section is applicable to "substantial improvement of or additions to existing habitable structures" pursuant to Section 3109.1.1.2.

2. **FBC Exception: Substantial Improvements Within the Limits of Existing Foundation Are Exempt from FDEP Requirements.**

   However, the FBC also provides an exception to this general rule as part of FBC Section 3109.1.1. The exception states "the standards for building seaward of a CCCL area do not apply to any modification, maintenance or repair to an 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." Based on the plain and simple language of this exception, the provisions of Section 3109 do not apply to modifications of an existing structure within the limits of the existing foundations which does not require, involve or include any additions to, or repair or modification of, the existing foundation of that structure. All subsequent requirements of Section 3109.1.2 through 3109.8 therefore should not apply in such a case.

3. **The FBC Commentary Supports the Exception.**

Nonetheless, the FBC commentary to this exception provides:

> This exception allows modifications contained within the existing and unmodified foundation of a legally nonconforming structure an exemption from the provisions of Section 3109. Care and attention must be given to consideration of total improvement costs since they may trigger substantial improvement regulations, mandating that the entire structure be brought into compliance with current floodplain management regulations.

Floodplain management regulations are covered in Section 3110 and clearly refer to FEMA regulations as differentiated from CCCL regulations pursuant to section 3110.1.2.

a. Inconsistency of Some Agencies with the FBC Exception.

Clearly, the first sentence of the commentary confirms the position that this type of structure is exempt from Section 3109 based on the exception. Some agencies have suggested that the second sentence of the FBC commentary takes away the exception when the proposed work "may trigger substantial improvement regulations". They argue that "such proposed work exceeds the substantial improvement threshold as defined in Section 3109 of Building Code, and as such doesn't qualify for exemption."

This position, if implemented, would make the FBC exception meaningless. The exception allows all or part of the existing structure to be modified, provided the existing foundation is retained as described in the exception. The exception expressly applies to, among other things, subsection 2 of 3109.1.1, which specifically and expressly deals with "substantial improvement of or additions to existing habitable structures." Therefore, the exception clearly provides in plain language that the standards for buildings seaward of a CCCL area do not apply to any modification, maintenance, or repair to any existing structure, including substantial improvement of or vertical additions to existing habitable structures, within the limits of the existing foundation as provided in the exception. A contrary interpretation makes no sense and is not reasonable because it takes away precisely what the exception in the FBC provides. That is, the FBC allows substantial improvements to existing structures provided the existing foundation of that structure is not modified or added to.