

STATE OF FLORIDA
BUILDING COMMISSION

In the Matter of

GEORGE MERLIN ASSOCIATES INC.,

Case #: DCA09-DEC-347

Petitioner.

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DECLARATORY STATEMENT

The foregoing proceeding came before the Florida Building Commission (the Commission) by a Petition from George Merlin, President of George Merlin Associates Inc., the Petitioner, which was received on October 28, 2009. Based on the statements in the petition and the information subsequently submitted, it is hereby ORDERED:

Findings of Fact

1. The petition is filed pursuant to, and must conform to the requirements of Rule 28-105.002, Florida Administrative Code.
2. The Petitioner is a Florida licensed architect who frequently designs single-family homes on barrier islands in the State that are seaward of the coastal construction control line and subject to the Florida Building Code.
3. The Petitioner is currently working on two such projects that involve renovation of single-family homes with additions as follows:
 - (a). A single story, single-family dwelling and proposed renovations to such building including a vertical second story addition wherein all renovations, including the new second story are within the footprint perimeter of the existing foundation and the existing foundation is adequate to support the proposed renovations per the requirements

of the Florida Building Code, Existing Building Volume (2007), without modifying or adding to the original existing foundation in any way.

(b). A home similar to that described above, except the proposed renovations involve horizontal additions outside the existing foundation footprint perimeter.

4. The petitioner inquires:

(a). With regard to the project with an addition within the existing footprint of the home, whether the exception in Section 3109.1.1, Florida Building Code, Building Volume (2007), should be applied as had the exemption in Section 161.053(12), Florida Statutes, specifically that repairs and modifications to existing structures seaward of the coastal construction control line have no limit on the cost of the work provided if the work stays within the limits of the existing foundation; does not modify that foundation; and meets the requirements of the Florida Building Code, Existing Buildings Volume (2007)?

(b). With regard to the project with an addition that includes addition outside of the footprint of the existing home, whether Sections 3109.3 and 3109.4, Florida Building Code, Building Volume (2007), including the exceptions thereto, should be applied consistently with the exemption in Rule 62B-33.007(4)(c), Florida Administrative Code, and specifically, if the work on an existing habitable structure involves an addition outside the existing foundation or repair or modification the existing foundation, the work is still exempt from the elevation and pile foundation standards otherwise required by the Code, unless the addition outside the existing foundation constitutes a “substantial improvement” to the existing structure, as defined by Section 161.54(12), Florida Statutes?

(c). With regard to both projects, when local floodplain management standards conflict with provisions of the Code, whether the state code takes priority over local codes when pertaining to construction projects located seaward of the seaward of the coastal construction control line?

Conclusions of Law

1. The Florida Building Commission has the specific statutory authority to interpret the provisions of the Florida Building Code by entering a declaratory statement.

2. The Florida Building Commission does not have jurisdiction to interpret local floodplain management ordinances nor determine issues of supremacy between the Code and such ordinances in the event conflict, that compliance with one necessarily prevents compliance with the other. This Order relates only to the minimum standards contained in the Florida Building Code and must not be interpreted to interfere in any manner with enforcement or application of duly adopted floodplain management ordinances as the Code explicitly authorizes and anticipates those ordinances. Section 3110.1.2, Florida Building Code, Building Volume (2007).

3. Section 3109.1.1, Florida Building Code, Building Volume (2007) provides:

The provisions of Section 3109 shall ensure that structures located seaward of the coastal construction control line are designed to resist the predicted forces associated with a 100-year storm event and shall apply to the following:

1. All habitable structures which extend wholly or partially seaward of a coastal construction control line (CCCL) or 50-foot (15.3 m) setback line.
2. Substantial improvement of or additions to existing habitable structures.
3. Swimming pools that are located in close proximity to a habitable structure or armoring. An environmental permit

from the Florida Department of Environmental Protection, requiring special siting considerations to protect the beach-dune system or proposed or existing structures and public beach access, is required prior to the start of construction. The environmental permit may condition the nature, timing and sequence of construction of permitted activities to provide protection to nesting sea turtles and hatchlings and their habitat, including review, submittal and approval of lighting plans.

Exception: The standards for buildings seaward of a CCCL area 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.

4. Section 3109.3, Florida Building Code, Building Volume (2007) states:

All habitable structures shall be elevated at or above an elevation which places the lowest horizontal structural member above the 100-year storm elevation as determined by the Florida Department of Environmental Protection in the report titled "One-Hundred-Year Storm Elevation Requirements for Habitable Structures Located Seaward of a Coastal Construction Control Line." An applicant may request the Department of Environmental Protection to determine a site-specific 100-year storm elevation for the applicant's proposed habitable structure as part of the environmental permit application process. The elevation will be provided as part of the applicant's environmental permit and shall be subject to review under the provisions of Chapter 120, Florida Statutes.

Exceptions:

1. Additions, repairs or modifications to existing nonconforming habitable structures that do not advance the seaward limits of the existing habitable structure and do not constitute rebuilding of the existing structure.

5. Section 3109.4.1, Florida Building Code, Building Volume (2007), requires:

All habitable structures shall be elevated on, and securely anchored to, an adequate pile foundation. Pile foundations for habitable structures shall be designed to withstand all

reasonable anticipated erosion, scour and loads resulting from a 100-year storm including wind, wave, hydrostatic and hydrodynamic forces acting simultaneously with typical structural (live and dead) loads. All habitable structures should be anchored to their pile foundation in such a manner as to prevent flotation, collapse or lateral displacement. The elevation of the soil surface to be used in the calculation of pile reactions and bearing capacities for habitable structures shall not be greater than that which would result from erosion caused by a 100-year storm event. Calculation of the design grade shall account for localized scour resulting from the presence of structural components. Design ratio or pile spacing to pile diameter should not be less than 8:1 for individual piles located above the design grade. Pile caps shall be set below the design grade unless designed to resist increased flood loads associated with setting the cap above the design grade, but at or below the natural grade. Pile penetration shall take into consideration the anticipated loss of soil above the design grade.

Exceptions:

1. Additions, repairs or modifications to existing nonconforming habitable structures that do not advance the seaward limits of the existing habitable structure and do not constitute rebuilding of the existing structure.

6. As alluded to by the Petitioner, the above-quoted provisions were transferred into the Code from a regulatory scheme within the jurisdiction of the Department of Environmental Protection and its successors. The interpretation offered by the Petitioner as an appropriate interpretation of the Florida Building Code is consistent with the historical interpretation and application of those DEP regulations.

7. Based on the foregoing, the Commission concludes that:

- (a). Regarding the single story single family dwelling and proposed renovations to such building 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 project is not required to be redesigned to resist the predicted forces associated with a 100-year storm event; and

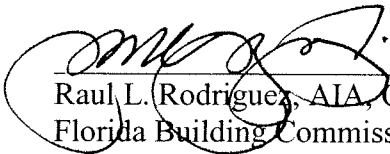
(b). With regard to the single story single family dwelling and proposed renovations to such building including a vertical second story addition and horizontal additions outside of the footprint of the existing foundation and wherein the existing foundation has been investigated and proven by engineering 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 project is not required to be redesigned to resist the predicted forces associated with a 100-year storm event as long as the level of work does not advance the seaward limits and does not constitute rebuilding of the existing structure.

8. As set forth above, the Florida Building Commission does not have jurisdiction to interpret local floodplain management ordinances nor determine issues of supremacy between the Code and such ordinances in the event that compliance with one necessarily prevents compliance with the other, and the Petitioner's request is denied to the extent that it seeks a declaratory statement relating to those topics. This Order relates only to the minimum standards contained in the Florida Building Code and must not be interpreted to interfere in any manner with enforcement or application of duly adopted

floodplain management ordinances as explicitly authorized by Section 3110.1.2, Florida Building Code, Building Volume (2007).

Petitioner and all other interested parties are hereby advised of their right to seek judicial review of this Order in accordance with Section 120.68(2)(a), Florida Statutes, and with Fla. R. App. 9.030(b)(1)(C) and 9.110(a). To initiate an appeal, a Notice of Appeal must be filed with Paula P. Ford, Clerk of the Commission, Sadowski Building, 2555 Shumard Oak Boulevard, Tallahassee, FL 32399-2100, and with the appropriate District Court of Appeal no later than thirty days after this Order is filed with the Clerk of the Commission. A Notice of Appeal filed with the District Court of Appeal shall be accompanied by the filing fee specified by section 35.22(3), Florida Statutes.

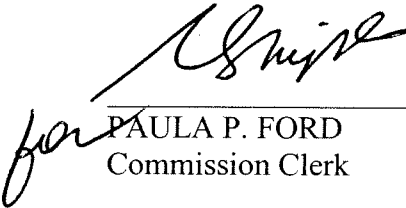
DONE AND ORDERED this 11 of March, 2010, in Coral Gables, Miami-Dade County, State of Florida.



Raul L. Rodriguez, AIA, Chair
Florida Building Commission
Department of Community Affairs
Sadowski Building
2555 Shumard Oak Blvd.
Tallahassee, FL 32399-2100

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent to the following by the method indicated on this 19th day of March, 2010.



PAULA P. FORD
Commission Clerk

Via U.S. Mail

George Merlin
George Merlin Associates, Inc.
7729 Holiday Drive
Snug Harbor Village
Sarasota, Florida 34231

Via Hand Delivery

Mo Madani, C.B.O. Manager
Codes and Standards Section
Department of Community Affairs
2555 Shumard Oak Blvd.
Tallahassee, FL 32399-2100