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12/22/09

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

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DCA09-DEC-001  
FILING AND ACKNOWLEDGMENT  
FILED  
Clerk of the Florida Building Commission  
acknowledged  
Paul P. Ford 1/4/10  
Commission Clerk Date

Mr. Madani

Per our recent discussion, this letter is to request a declaratory statement from the Florida Building Commission. This request further relates to previous DCA09-DEC-347.

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. 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 the existing roof and walls are removed to the foundation level, but the foundation itself is unmodified. All proposed renovations including the construction of new walls and second story floor and roof, are all 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 cost of the proposed renovations will exceed 50% of the market value of the existing building. (Note: The existing building is not elevated or pile supported to meet FDEP/FBC chpt. 3109 non-exempt standards, but the proposed work appears to be exempt from these standards, which is the essence of this request for clarification. It should be further noted that the existing as well as proposed construction fully meets all FEMA requirements referred to in FBC chpt. 3110. The existing and proposed floor elevation and foundation, although not meeting FBC non-exempt requirements, do exceed FEMA's requirements for the FEMA flood zone it is in.)

The second case is similar, except the proposed renovations involve horizontal additions outside the perimeter of 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 repairs and modifications to existing structures seaward of the CCCL with 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 a horizontal addition outside the existing foundation and/or a repair or modification to the existing foundation the work is still exempt from the otherwise imposed standards unless such work constitutes a “substantial improvement” to the existing structure as defined by FS 161.54(12).

For confirmation of the above see FDEP 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 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 for construction within the limits of the existing foundation the same as the historical application and interpretation of the exemption in FS Ch 161.053(12)?, 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, and provided all construction meets the requirements of the Florida Building Code for Existing Buildings? Yes or No?**

**2. Is the application and interpretation of the exceptions in FBC Ch 3109.3 and 3109.4 for additions outside the limits of the existing foundation, or for repairs and modifications to the existing foundation, the same as the historical application and interpretation of the exemption in FDEP Ch 62B-33.007(4)(c)?, i.e. The construction of additions, repairs, or modifications to existing nonconforming habitable structures that do not meet the elevation or foundation standards is authorized, provided that the addition, repair, or modification does not advance the seaward limits of the habitable construction at the site, and does not constitute rebuilding of the existing structure?; i.e. The design standards for buildings seaward of the CCCL 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 a substantial improvement to the existing structure, as defined by FS 161.54(12).. Yes or No?**

Sincerely,

George Merlin  
President