

# Welcome!

## Agenda

- Introductions – Michael Powell
- Presentations:
  - Beach Regulations: Why, How and What? – Jennifer Luoma
  - New and Revised Applications – David Warga
- Questions/Open Discussion



# BEACH REGULATIONS: WHY, HOW AND WHAT?

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DNREC

Division of Watershed Stewardship

Shoreline and Waterway Management Section



# Beaches and Dunes are Important Natural Resources

# Beaches and Dunes are areas used for recreation.



# Beaches and Dunes are important habitats.



Dunes also act as natural barriers and supply sand to the beaches during coastal storms.



# The History of the Beach Preservation Act and the Regulations Governing Beach Protection and the Use of Beaches

**March  
1962**



# Beach Preservation Act in 1972

## Title 7, Chapter 68

General Assembly recognized that Delaware's beaches were rapidly deteriorating due to a combination of both natural processes and continual encroachment of man.

Declared the beaches to be “valuable natural features which provides recreational opportunities and storm protection for persons and property” ...

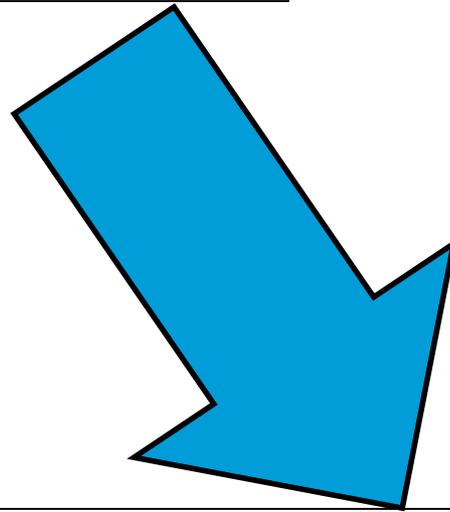
“Development and habitation of the beaches must be done with due consideration given to the natural forces impacting upon them and the dynamic nature of those natural features”

## Our Charge

To enhance, preserve and protect the public and private beaches of the State.

To mitigate beach erosion and minimize storm damage

Changes to the  
Beach  
Preservation Act



Updates to the Regulations  
Governing Beach Protection  
and the Use of Beaches

- **July 26, 1973** - Adopted interim regulations
- **May 6, 1974** -Regulations Governing Beach Protection and the Use of Beaches
- **August 13, 1981**-Regulations were revised, which incorporated the mapped building line
- **December 27, 1983** – Revised Regulations Adopted

Between 1983 and 2016  
there were several changes to the  
Beach Preservation Act

## July 17, 1984

Amendment to the Beach Preservation Act :

- redefined “Beach”
- added definitions
- incorporated the building line concept of regulating
- defined the power to enhance, preserve, and protect private beaches to include the prevention and repair of damage from erosion in an emergency
- revised the penalty provisions

**April 30, 1996**

Amendment to the Beach Preservation Act:

Amendment made clear that in commercialized areas of Rehoboth Beach and Bethany Beach which contain no natural dune system, the building line shall be consistent with the line of construction established by existing structures i.e. the boardwalk.

**June 27, 1996**

Amendment to the Beach Preservation Act:

Subsection 6805(d)

“If any structure proposed to be built in whole or in part seaward of the building line could reasonably be reduced in size or otherwise altered in order to eliminate or diminish the amount of encroachment over the building line, the Department shall require such reduction or alteration as a condition of granting the permit or letter of approval.”

This led to the 4-step process.

In 2005 DNREC made efforts to incorporate all changes from Beach Preservation Act as well as other changes into the Regulations.

## June 15, 2006

An Amendment to the Beach Preservation Act:

- Removed the perimeter of the Rehoboth, Indian River and Assawoman Bays from the law
- Modified the definition of Building Line (NGVD to vertical datum commonly used by land surveyors)
- Allows for rebuilding within old footprint where State and Federal agencies are constructing and maintaining dunes
- Defines “regulated area” and “substantial damage”
- “repairs” as a trigger to DNREC oversight is removed and property owners’ right to repair is clarified.

Due to need to incorporate the  
2006 changes to the Beach  
Preservation Act into the  
Regulations DNREC withdrew  
the proposed regulations on  
October 12, 2006

# Steps Leading to Adoption of Current Regulations

- Start Action Notice approved by then Secretary Colin O'Mara on April 30, 2014
- Regulatory Advisory Committee (RAC) formed in May 2014
- Monthly RAC meetings held from May 2014 until October 2015
- Workshop for Town Officials held on January 30, 2015
- Presentation made to Realtors January 21, 2015

# Steps Leading to Adoption of Current Regulations (cont.)

- Public Workshops:
  - October 31, 2014, 2 PM to 4 PM – Slaughter Beach Fire Hall
  - November 1, 2014, 10 AM to Noon – Rehoboth Beach Commissioner's Room
  - May 1, 2015, 2 PM to 4 PM – Carlisle Fire Hall, Milford
  - May 2, 2015, 10 AM to Noon- Bethany Beach Town Hall
  - September 25, 2015, 2 PM to 4 PM – Milton Pubic Library
  - September 26, 2015, 10 AM to Noon – Bethany Beach Town Hall
- Proposed Regulations published by the State Register of Regulations on October 1, 2015

# Steps Leading to Adoption of Current Regulations (cont.)

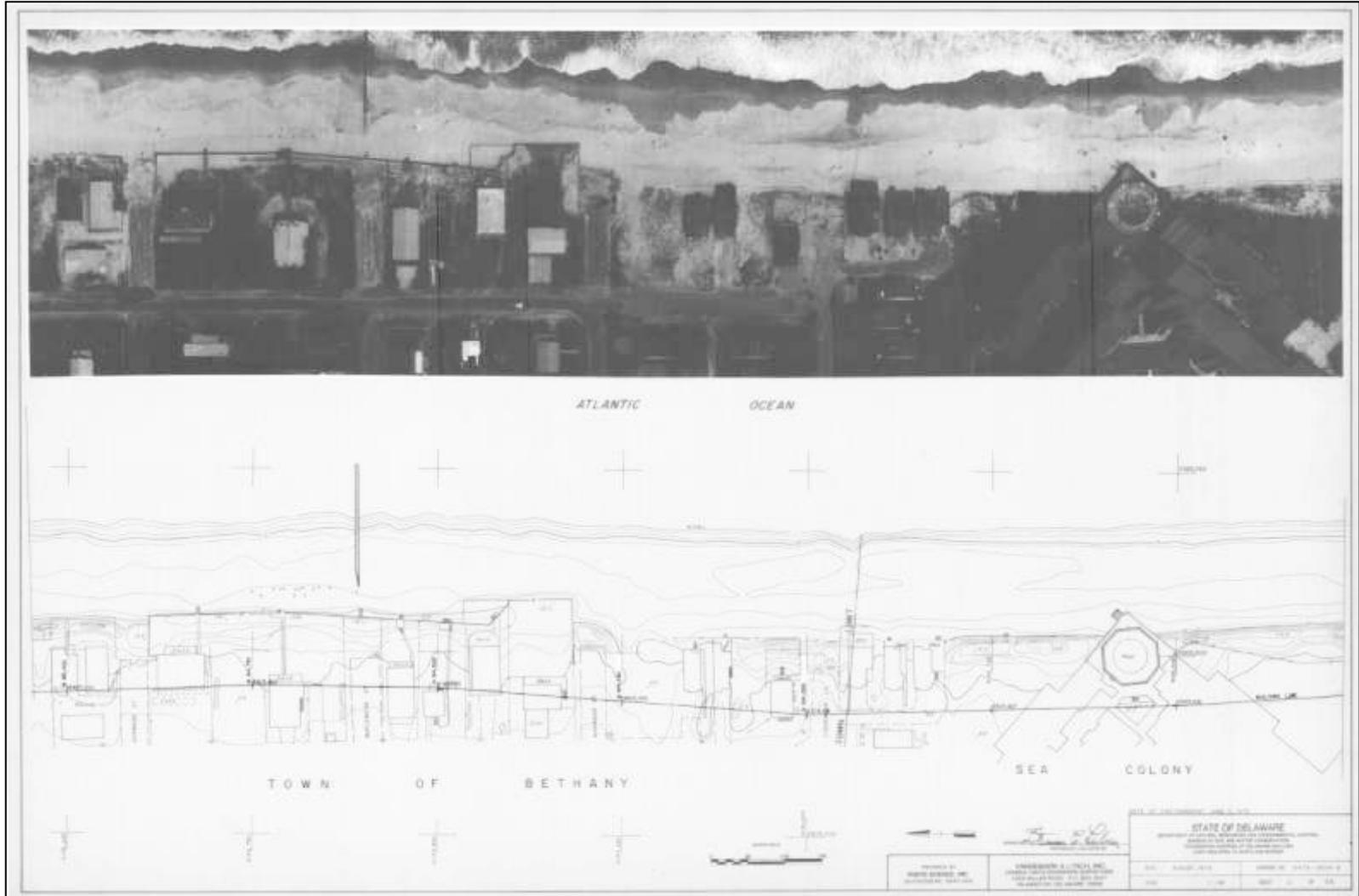
- Public Hearing held on November 7, 2015
- Revised Regulations adopted by Secretary David Small on July 15, 2016
- Regulations published by State Register of Regulations on August 1, 2016
- Revised Regulations go into effect on August 11, 2016

# Notable Changes to the Regulations

The definition of Building Line was changed to reference a vertical datum commonly used by land surveyors (changed from NGVD to NAVD) and to add the following language:

Within the corporate limits of Rehoboth Beach and Bethany Beach, in commercial areas containing boardwalks and where no natural dune exists, the Building Line shall be along the westerly edge of the boardwalk.

# The Building Line





## Regulated Area specified:

“Regulated Area ” is the specific area within the defined beach that the Department is directed to regulate construction to preserve dunes and to reduce property damage. The regulated area shall be from the seaward edge of the beach as defined above to the landward edge of the third buildable lot in from the mean high water line







Regulated Area



## Section 3.3.1

If a structure located seaward of the Building Line is substantially damaged, no person shall undertake any restoration or reconstruction of the damaged structure before the Division issues the person a permit or letter of approval pursuant to the procedures set forth in 4.0 of these Regulations.

## The definition of Substantial Damage was added:

**“Substantial Damage ”** means the damage or destruction of any structure by an act of God to the extent that, in the judgment of the Department, 75% or more of the original structure, or if a building, more than 50% of the original foundation pilings, are unsuitable for incorporation into reconstruction of the structure



## Section 3.4.1

If a structure is to be either repaired or reconstructed following the substantial damage or is to be substantially improved, and such a structure does not have to be located seaward of the Building Line in order to achieve its intended purpose pursuant to Section 3.1.1.4 of these Regulations, then such a structure shall be required to be located entirely landward of the Building Line. However, if the Division determines that there is inadequate space available entirely landward of the Building Line for the repair or reconstruction of a substantially damaged or substantially improved structure, said repaired or reconstructed structure shall be physically located as far landward as possible on the parcel of real property in question, taking in to consideration all Federal, State and local laws, rules, regulations and zoning and building ordinance. (See Section 3.1.1)

The definition Substantially Improved was added to address destruction not caused by an Act of God:

**“Substantially Improved”** means any reconstruction, rehabilitation, addition or other improvement to a structure, the total cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement



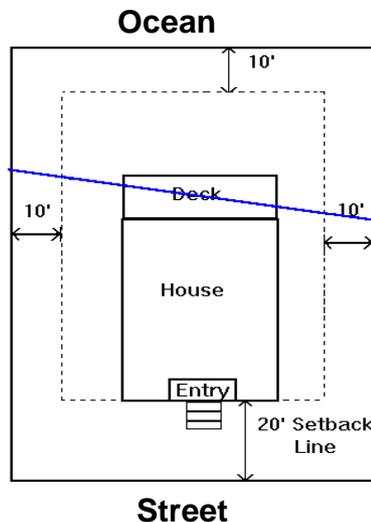
## Section 3.1.1.2

# The 4-step Process

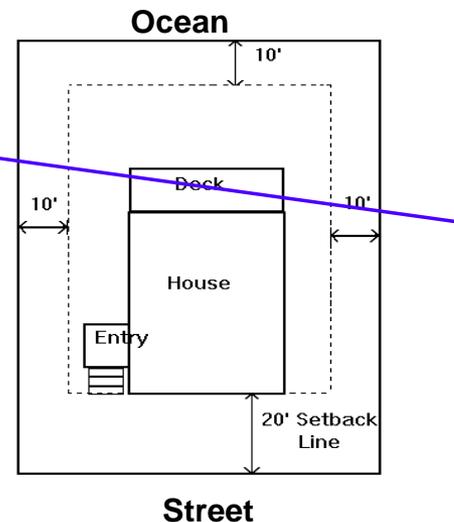
To “eliminate or diminish the amount of encroachment seaward of the Building Line” as required by Section 6805 (d) of the Beach Preservation Act

# Step 1 (3.1.1.2.1)

- All construction must begin at the setback line established for the landward property boundary by the county and/or local municipality in which the property is located. Porches, decks and entrance ways are not permitted along this wall of the building, except those which are recessed into the exterior wall of the structure or alongside the structure. Steps may extend into the setbacks as long as permissible by county and local regulations, and;

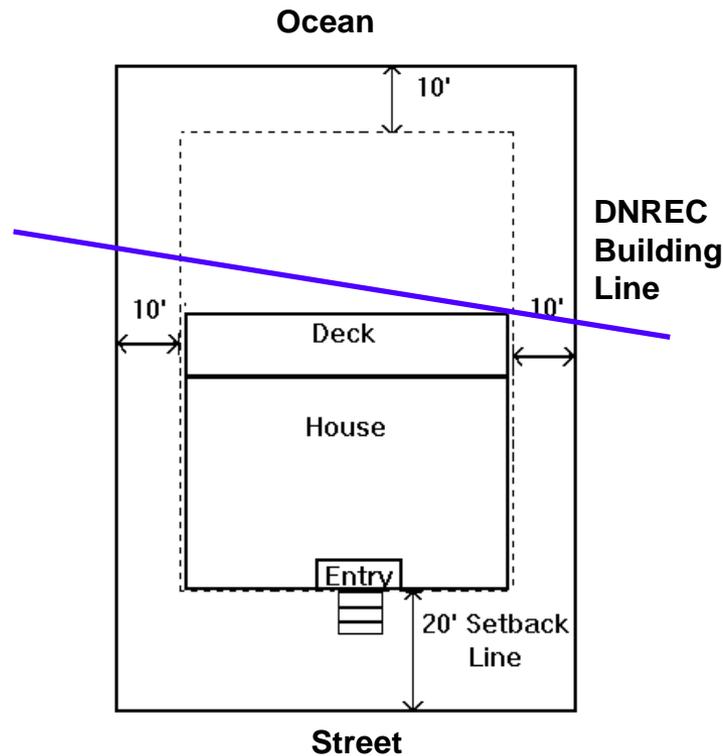


**DNREC  
Building  
Line**



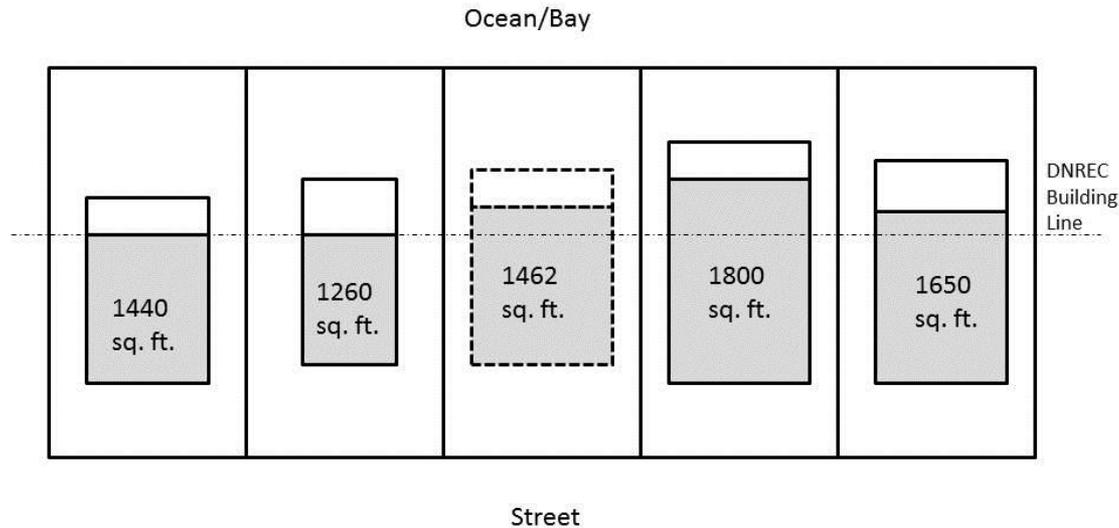
# Step 2 (3.1.1.2.2)

- The structure must occupy all of the area available between the side yard setbacks, and;



# Step 3 (3.1.1.2.3)

- The square footage of the footprint of the structure (living area only, not including porches or decks) shall not exceed the average square footage that exists among adjacent structures within the smallest subsets of lots, and;



# Smallest Subset of Lots

Smallest identifiable group of lawfully subdivided, contiguous lots that exist within a subdivision, development or community separated by either roads or subdivision boundaries. If there are no roads or subdivision boundaries separating groups of lots, the smallest set of lots shall be seven (7) lots.



Broadkill Beach

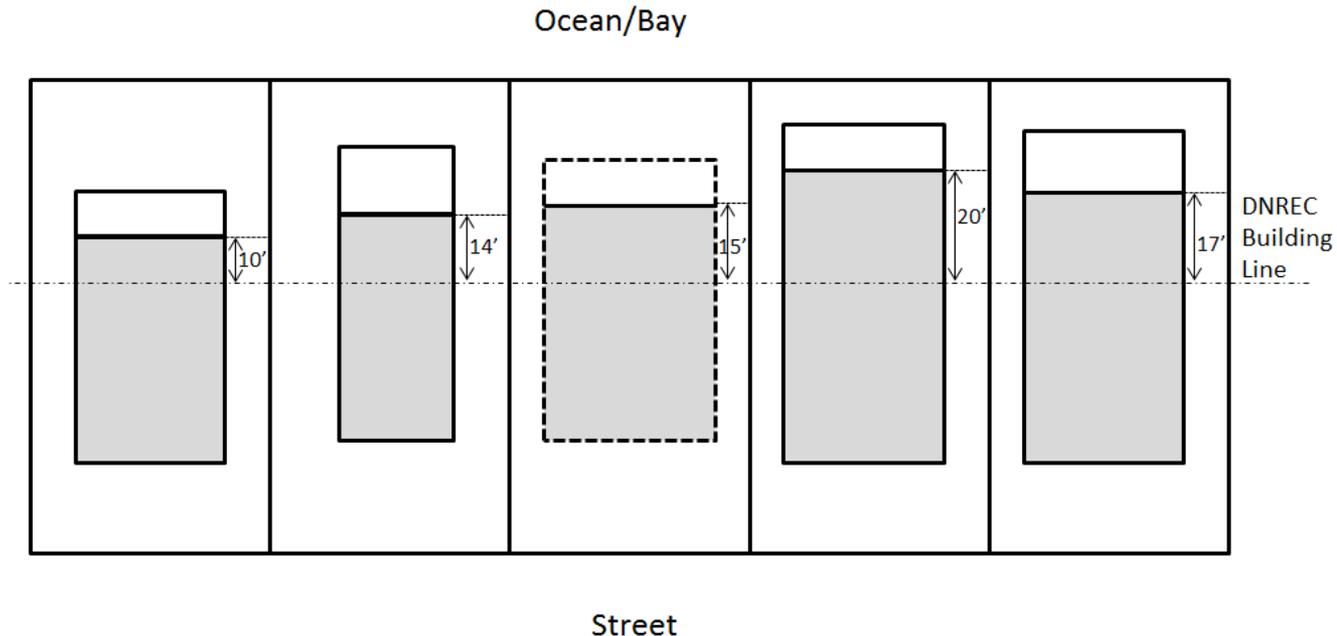
Broadkill Sound

Seaside Dr

Feet  
Copyright

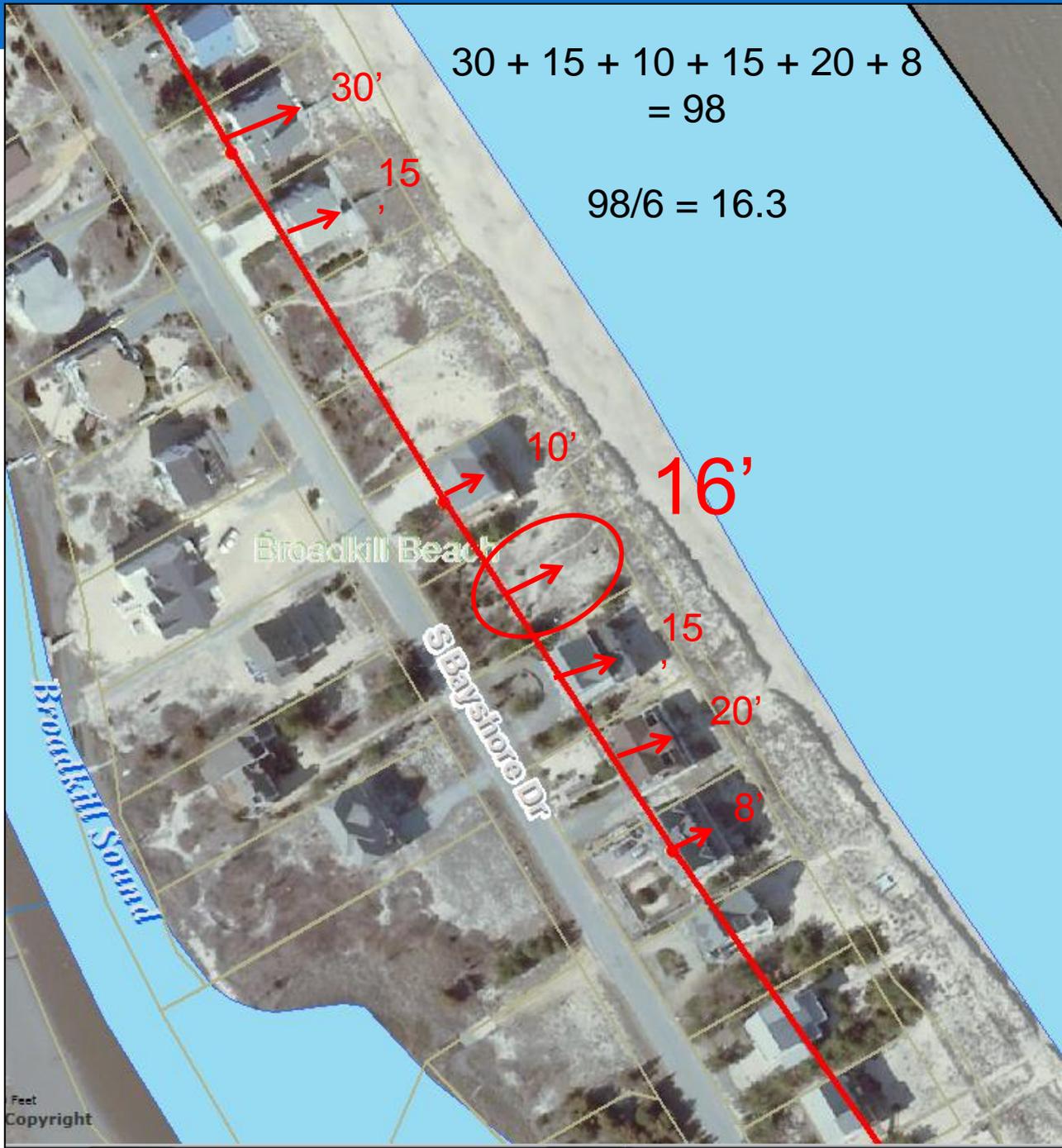
# Step 4 (3.1.1.2.4)

- Seaward penetration over the Building Line shall not exceed the average encroachment that exists among adjacent structures within the smallest subset of lots. Any decks constructed along with the structure must meet the req



## Section 3.1.1.3

A deck or porch may be constructed seaward of the Building Line, but may only extend seaward the average distance that any lawfully constructed building or deck extends seaward of the building line within the smallest subset of lots.



## Section 3.1.1.3

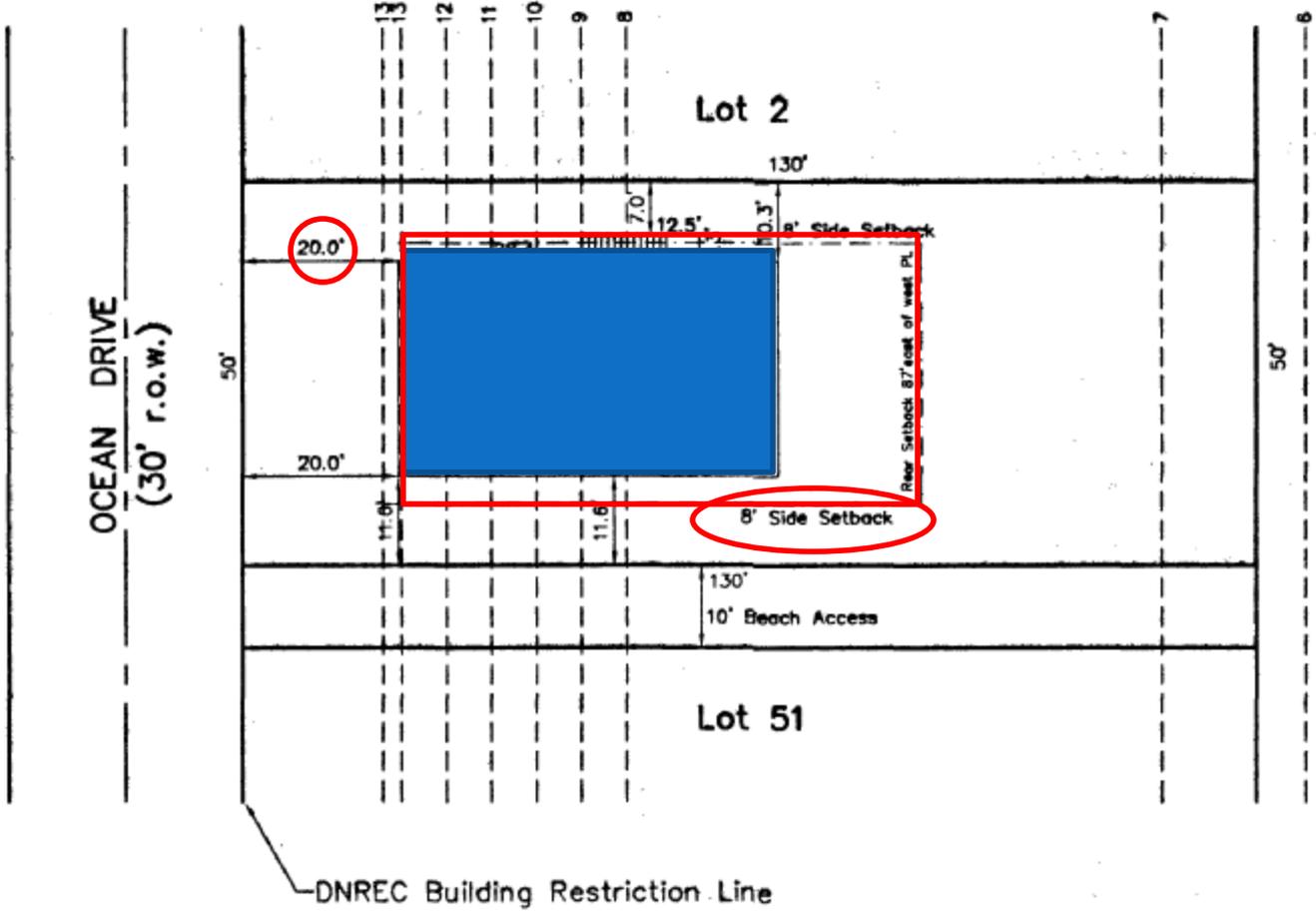
Future enclosure of the cantilevered deck or porch is prohibited and the area underneath the deck shall remain open and free of all obstructions.



# Section 3.1.1.5

If a structure is completely removed from its foundation for replacement of said foundation, and 75% or more of the original structure remains intact, and such a structure does not have to be located seaward of the Building Line in order to achieve its intended purpose pursuant to Section 3.1.1.4 of these Regulations, then such a structure shall be required to be located entirely landward of the Building Line or shall be located as far landward as possible on the parcel of real property in question, taking into consideration all Federal, State and local laws, rules, regulations and zoning and building ordinance. Under these circumstances Section 3.1.1.2 (the 4-step process) would not apply.





OCEAN DRIVE  
(30' r.o.w.)

Lot 2

Lot 51

ATLANTIC OCEAN

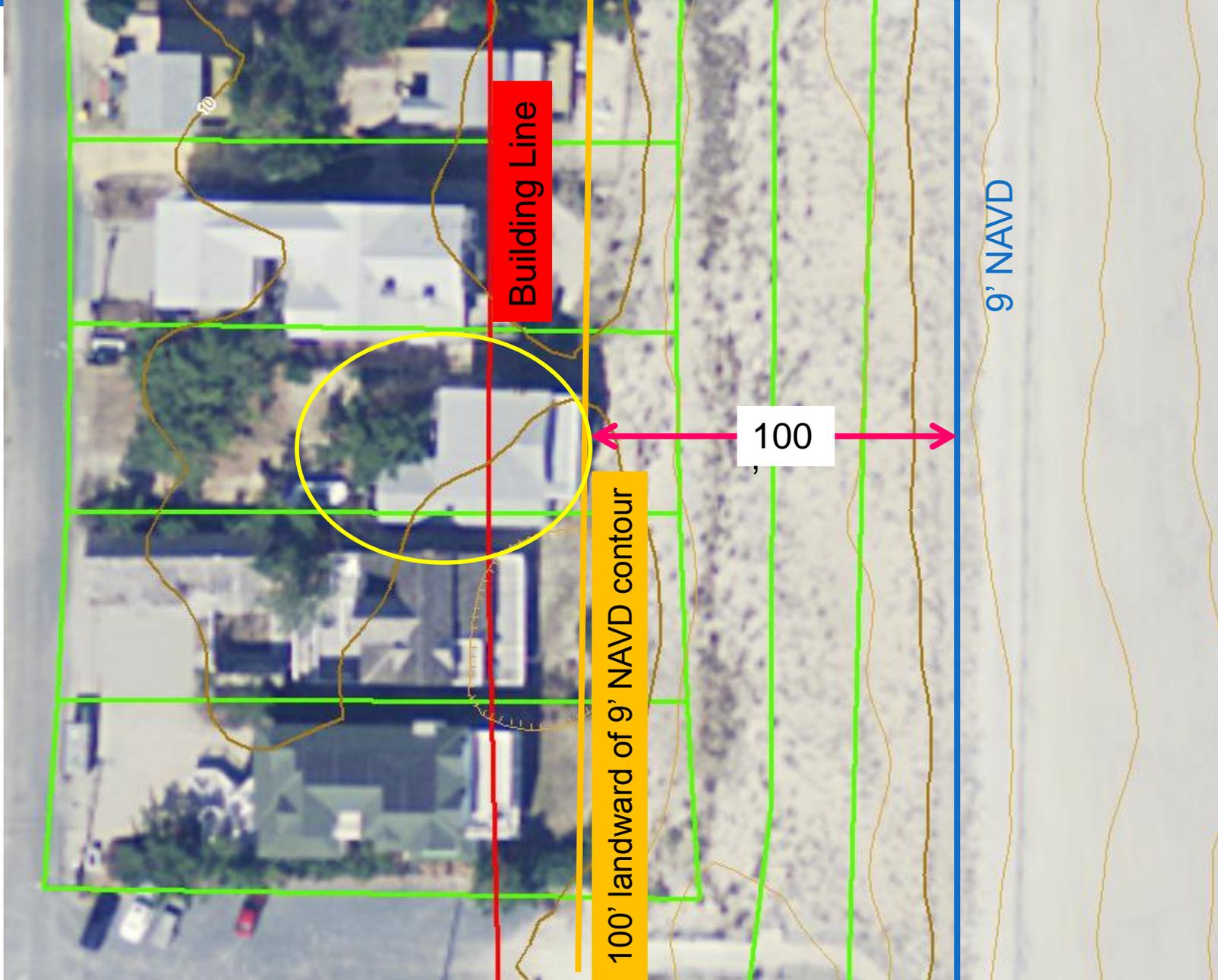
DNREC Building Restriction Line

## Section 3.5 Effect of Beach Nourishment

3.5.1 When considering the reconstruction of buildings on lots fronting the Ocean or Delaware Bay that are either partially or completely seaward of the Building Line that have sustained substantial damage through acts of God or other accidental events, the Division will consider the effect of beach nourishment work that has enhanced the beach and dune in such areas. Furthermore, in any such case, where Federal or State agencies have constructed and continue to maintain a beach and dune that conforms to coastal engineering standards of storm protection (as defined in these regulations) property owners shall be permitted to rebuild in the same footprint.

## Coastal Engineering Standards of Storm Protection

means a dune that consists of at least 100 feet of vegetated dune landward of the seawardmost 9-foot elevation contour above NAVD from the Delaware/Maryland line to the tip of Cape Henlopen, 100 feet landward of the seawardmost 6-foot elevation contour above NAVD from the tip of Cape Henlopen to the Rosemary Street in Prime Hook Beach, and 75 feet landward of the seawardmost 6-foot elevation contour above NAVD from Rosemary Street in Primehook Beach to the Old Marina Canal north of Pickering Beach



Building Line

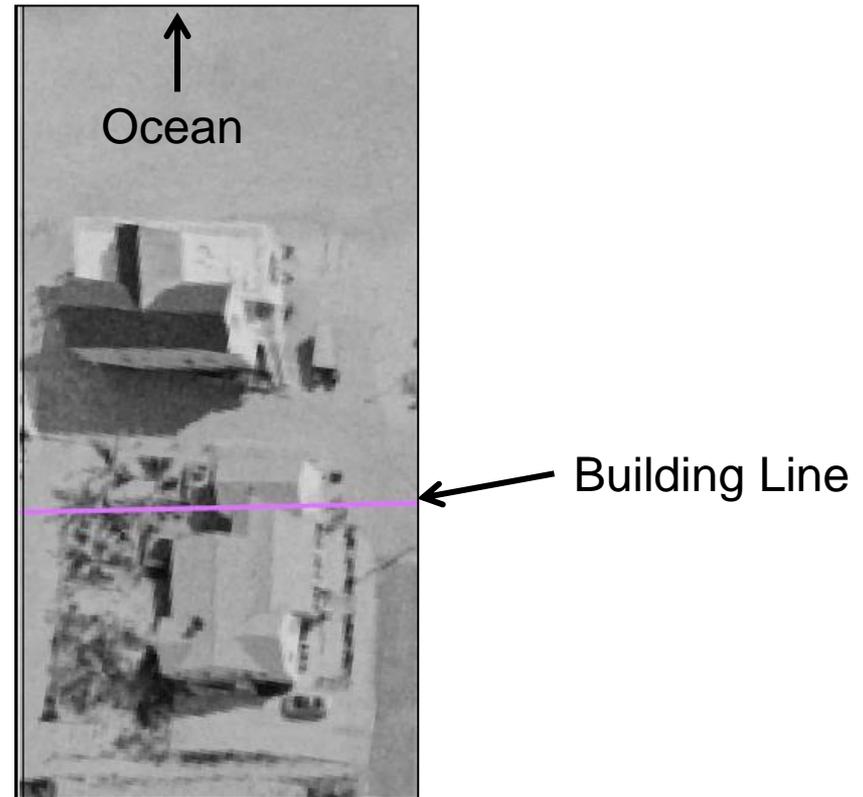
100' landward of 9' NAVD contour

100

9' NAVD

## Section 3.1.1.6

In those cases where the mapped Building Line either transects or is landward of lots that, in turn, are landward of lots with existing habitable structures, the Building Line will not be used to modify either location or dimension of proposed buildings on the more landward lot



The definition of Temporary Structure was added:

**“Temporary Structure”** means any not permanent non-habitable structure that can be easily removed from the site within a short time frame using minimal equipment and/or man power. Examples include, but are not limited to, signs, benches, sheds, ramps, steps or walkways



# Section 3.8 Temporary Structures

3.8.1 The placement of seasonal or otherwise temporary structures seaward of the Building Line and seaward of the dune on the dry beach may be allowed for a period of up to a year or such lesser period as specified with a Letter of Approval from the Department. It must be demonstrated by the applicant that the design and deployment of the temporary structure can be done so that the structure can be easily removed or otherwise relocated landward of the Building Line in a short time frame. Temporary structures must be removed from the site during the time frame established in the letter of approval and in the case of the threat of a coastal storm.

3.8.1.1 If the temporary structure such as, but not limited to, tents, wedding alters, chairs, tables, are being placed on the beach for an event that will last only 72 hours or less, the requirement to obtain a letter of approval is waived. However, the provisions of Section 3.7.1.5 still apply.

## Section 2.4.2.1

An extension to a letter of approval or permit shall not be granted more than three (3) times



For currently active approvals, no extension shall be granted for a letter of approval or permit issued prior to August 11, 2016.

# Section 4.5.3.1

4.5.3.1 For the purposes of best protection of the dunes, and to meet the needs of larger beach communities, pedestrian dune crossovers may be constructed to certain widths. The total number of residences that are served by each crossover will be determined by the Division by dividing the number of possible single family dwellings within a subdivision on non-ocean front or bay front lots by the number of community pedestrian dune crossovers within that subdivision.

4.5.3.1.1 Crossovers serving one or two single family residences shall not be wider than four (4) feet

4.5.3.1.2 Community crossovers that serve anywhere between three (3) 4.5.3.1.3 to nine (9) single family residences shall not be wider than five (5) feet.

4.5.3.1.4 Community crossovers that serve ten (10) or more single family residences shall not be wider than six (6) feet.

4.5.3.1.5 Crossover serving persons with special needs will be evaluated on a case by case basis

# Section 3.7 Other Prohibited Activities

3.7.1 The following activities are prohibited:

3.7.1.1 The operation of any motorized vehicle or machine on, over or across the primary dune on any State-owned or maintained beach except at those locations specified by the Department for such use (see current State Parks Rules and Regulations for additional rules);

3.7.1.2 Transportation or storage of any type of boat across or on the primary dune on any State-owned or maintained beach except at locations approved or permitted by the Department;

3.7.1.3 Pedestrian traffic on, over or across the primary dune on any State-owned or maintained beach except at those locations specified by the Department for such use;

3.7.1.4 The alteration, moving or removal of any facility, improvement or structure installed or maintained by the Department for enhancement, preservation or protection of any beach; and

3.7.1.5 The damaging, destruction or removal of any trees, shrubbery, beach grass or other vegetation growing on any State-owned or maintained beach seaward of the Building Line.





Questions?

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[http://www.dnrec.delaware.gov/swc/services/  
Pages/PermitsLicensesApprovals.aspx](http://www.dnrec.delaware.gov/swc/services/Pages/PermitsLicensesApprovals.aspx)

