

ISSUES WITH CURRENT REGULATIONS AND ACT CHANGES AND PROPOSED SOLUTIONS



4-STEP PROCESS

- Its purpose is to achieve a requirement in Act that states: *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.*

4-STEP PROCESS

- **Step 1:** Construction must begin at setbacks established by the County or Town. Porches, decks and entranceways are not permitted along that wall of the building unless recessed into the exterior wall or alongside the structure.
 - **Step 2:** The structure must occupy all available area between the side yard setbacks.
 - **Step 3:** The square footage of the footprint of the structure (living area only, not including open porches and decks) shall not exceed the average square footage that exists among adjacent structures within the smallest subset of lots (smallest identifiable group of lawfully subdivided, contiguous lots that exist within a subdivision, development or community separated by either dedicated public walkways, roads or subdivision boundaries. If there are no roads or walkways separating groups of lots, the the smallest set of lots shall be limited to seven (7) lots.)
 - **Step 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 requirements of Section 3.2.2.2.
- 

4-STEP PROCESS

Comments:

- Given the CHARGE of the agency for protecting the beach/dune, there really isn't another way to offer fair and reasonable method of determining what you can build on that ocean front OTHER than the current formula

CANTILEVERED DECKS

Allow extension to immediately adjacent property's building or deck
vs. Allow extension to the average encroachment of buildings or
decks within the smallest subset of lots seaward of the DNREC
Building Line?



CANTILEVERED DECKS

Possible Solutions:

- Define cantilevered deck: an open, unroofed porch or platform extending from a house or other building that also is making use of the foundation of said building
- Define porch: an exterior appendage to a building, forming a covered approach or vestibule to a doorway
- Insert language that prohibits enclosure: Future enclosure of the cantilevered deck to create conditioned living space is prohibited

INCORPORATE THE FOLLOWING PROVISION FROM THE ACT:

Notwithstanding any provision of this section or regulations adopted by the Department, no property owner shall be prevented within the regulated area from repairing, modifying, modernizing, updating, or improving their existing structure, or, by performing such actions, be required to relocate or reduce in size so long as these repairs, modifications, or improvements are within the existing structure's foot print. Amendments to Chapter 68, Title 7 of the Delaware Code Relating to Beach Erosion Control on, via House Bill 178



THINGS TO CONSIDER

- **Would this allow enclosure of an existing cantilevered deck?**
- **Would the current section 2.6 of the Regulations suffice to achieve the purpose of the Act?**
 - 2.6.2 The provisions of Section 2.6.1 shall not apply where maintenance or repair work on a structure located in part or entirely seaward of the Building Line is undertaken pursuant to the following limitations or causes:
 - 2.6.2.1 Where a building is involved, and the location of the finished maintenance or repair work is at or above the lowest living floor.
 - 2.6.2.2 The maintenance or repair work is to a structure, and is necessary because of damage being caused to the structure by some means other than wave action, a flood or erosion.

DEFINITIONS

The following definitions have been changed in the Act since the last revision of the Regulations (1983) and will be incorporated into proposed Regulations:

- Beach
 - Beach Preservation
 - Construction
 - Emergency
 - Erosion
 - Person
 - Private Beach
 - Public Beach
 - Regulated Area
- 

DEFINITIONS

Act of God: a direct, sudden, and irresistible action of natural forces such as could not reasonably have been foreseen or prevented, as a flood, hurricane, earthquake, or other natural catastrophe

Or

Act of God: a sudden and inevitable occurrence caused by natural forces and not by the agency of man, such as a flood, earthquake, or a similar catastrophe

Comments:

- Preference for the 2nd definition
- Preference for the 1st definition
- Preference for the 2nd definition as it incorporates “natural forces and not by the agency of man.” The 1st definition states that the action could not “reasonably have been foreseen” and one could argue that flooding or a hurricane could have been “reasonably foreseen” (although extent of damage usually cannot be foreseen).

DEFINITIONS

- Other accidental events: an undesirable or unfortunate happening that occurs unintentionally and usually results in damage, or loss of property that is in no way the fault of the property owner
- Buildable Lot (from Regulated Area): a lot upon which construction of a structure is permissible by all State, Federal and local codes and regulations.

DEFINITIONS

- Coastal Engineering Standards of Storm Protection: means the design template for any engineered storm damage reduction beach nourishment project, or a dune that consists of at least 100 feet of vegetated dune landward of the seaward most 9-foot elevation contour above NAVD from the Delaware/Maryland line to the tip of Cape Henlopen, 100 feet landward of the seaward most 6-foot elevation contour above NAVD from the tip of Cape Henlopen to the Rosemary Street at the southern most limit of Prime Hook Beach, and 75 feet landward of the seaward most 6-foot contour above NAVD from Rosemary Street at the southernmost limit of Primehook Beach to the Old Marina Canal north of Pickering Beach .

DEFINITIONS

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

DEFINITIONS

Substantial Improvement: means the demolition, damage or destruction of any structure by an act of man 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

Comments:

- should “alteration” be included? As it reads now, it reads like demolition of the structure is the only thing covered and not additions.

DEFINITIONS

Temporary Structure: means any portable and easily removable non-habitable structure, building, shed, ramp, steps or walkway that can be easily removed from the site within a short time frame using minimal equipment and/or man power

Comments:

- Define which temporary structures would require a permit or letter of approval or define those that would not
- **Comment – might be difficult to list all temp. structures that would require approval and which wouldn't. Better to have flexibility in the regulation.**
- Stating that temporary structures such as tents, alters, decking etc., for specific events that would be in place for (maybe) 48 hours or less should be exempted. The 48 hours would allow for set up and tear down.

TEMPORARY STRUCTURES

Suggested Language:

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 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 Permit or Letter of Approval and in the case of the threat of a coastal storm.

TEMPORARY STRUCTURES

Comments:

- Should we differentiate what types of temporary structures need a Letter of Approval vs. a Permit or approval from our office at all?
 - The last sentence mentions a Permit but the first sentence says that a Letter of Approval is necessary. If the word Permit is to be included, you must differentiate between what requires a Permit versus Letter of Approval.
- 

BOATS IN DUNES

Suggested Language:

No person shall:

Transport or store 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

Comments:

- Expand descriptions of what should not be stored on or transported across the dune beyond boats. This is especially pertinent to unincorporated areas. Paddle boards, wind surf boards, kayaks (could be included in **boat** definition). Floatation devices etc. should be disallowed as well
- Boats should not be treated differently than other activities which have the potential to harm dunes or vegetation. The regulation should be outcome-based (if it harms dune vegetation it is prohibited).