

The Regulations Governing Beach Protection and the Use of Beaches

Public Workshop

DNREC

May 1 and 2, 2015



Start Action Notice approved by Secretary O'Mara

- April 30, 2014

May 2014 Regulatory Advisory Committee (RAC) formed

- Designer – Gregory Hastings
- Beachfront Homeowner – Chuck Coltman
- Ocean Beach Community Leader – Joe Healy, Town of Bethany Beach
- Builder (ocean coast) – Patty McDaniel, Boardwalk Builders
- Builder (bay coast) – Bryan Elliott, Integrity Homes
- Environmental Group – Brian Boutin, The Nature Conservancy
- Building Official – John Schulties, Kent County Inspections and Enforcement
- Municipal Official – Sharon Lynn, City Manager, Rehoboth Beach
- Realtor – William Lucks, Delaware Association of Realtors

RAC (cont.)

- Delaware Coastal Programs – Susan Love, Planner
- State Planning Coordinators Office – Connie Holland/Dorothy Morris
- Coastal Expert – Evelyn Maurmeyer, CER, Inc.
- Department of Justice – Ralph Durstein, Deputy Attorney General
- Alliance of Bay Communities - Jim Bailey, Broadkill Beach
- DNREC – Michael Powell, Program Manager
- DNREC – Tony Pratt, Administrator
- DNREC – Jennifer Luoma, Responsible Staff Member

Regulatory Advisory Committee Meetings

- May 14, 2014
- June 11, 2104
- July 9, 2014
- August 13, 2014
- September 10, 2014
- October 9, 2014
- December 10, 2014
- January 14, 2015
- March 11, 2015

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

Town Officials Workshop

- January 30, 2015

Presentation made to Realtors

- January 21, 2015

Draft Regulations

Workshops vs. Hearing

Changes Required to Add Language From Beach Preservation Act

Definitions

- Beach
- Beach Preservation
- Building Line
- Construction
- Emergency
- Person
- Private Beach
- Regulated Area
- Substantial Damage

- **“Beach”** ~~means that portion of the shore of any body of water which extends from the mean high water mark inland one thousand feet, or to a roadway for automobiles, whichever is closer~~ is that area from the Delaware/Maryland line at Fenwick Island to the Old Marina Canal immediately north of Pickering Beach, which extends from the mean high water line of the Atlantic Ocean and Delaware Bay landward 1,000 feet and seaward 2,500 feet, respectively



- **“Beach Preservation”** ~~means the process of maintaining the recreational and/or storm protection value of a beach~~ is the protection and control of the beach by the conduct and regulation of work and activities likely to affect the physical condition of the beach or shore, and includes, but is not limited to, erosion control, hurricane protection, coastal flood control, shoreline and offshore rehabilitation

- **“Building Line”** ~~means the line generally paralleling the coast, set forth of maps prepared by the Division with reference to the National Geodetic Vertical Datum (NGVD) and the Delaware State Plane Coordinate System, and based upon information provided by topographic survey~~ means a line generally paralleling the coast, seaward of which construction of any kind shall be prohibited without a permit or letter of approval from the Department. The Building Line shall be set forth on maps prepared by the Department with reference to a vertical datum commonly used by land surveyors, the Delaware State Plane Coordinate System and topographical surveys. The Building Line is located as follows:
 - a. Along beaches extending from the Delaware/Maryland line to the tip of Cape Henlopen – 100 feet landward of the adjusted seawardmost ~~10~~ 9 foot elevation contour above ~~NGVD~~ NAVD;
 - b. Along beaches extending from the tip of Cape Henlopen to the southernmost limit of Primehook Beach – 100 feet landward of the adjusted seawardmost ~~7~~ 6 foot elevation contour ~~NGVD~~ NAVD;
 - c. Along beach extending from the southernmost limit of Primehook Beach to the Old Marina Canal north of Pickering Beach – 75 feet landward of the adjusted seawardmost ~~7~~ 6 foot elevation contour above ~~NGVD~~ NAVD
 - d. Or at the landward limits of the Beach, as defined in these Regulations; whichever is most seaward
 - 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. 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 buildings on the more landward lot

- **“Construction”** ~~means any work or activity which is likely to have a substantial physical effect on existing coastal conditions or natural shore processes. Construction as used in these Regulations shall also include reconstruction, restoration, repair, alteration and placement if said terms are not otherwise included for clarification~~ includes any work or activity which is likely to have a material physical effect on existing coastal conditions or natural shore and inlet processes



- **“Emergency”** ~~means the existence of beach conditions unreasonably dangerous to persons or property~~ means any unusual incident which endangers the health safety or resources of the general public, including damages or erosion of any shoreline resulting from a hurricane, storm or any such natural disturbance



- **“Person”** ~~means any legal entity including individual, firm, association, organization, partnership, business trust, corporation, company, contractor, user, operator, owner, or any State or local governmental agency (except as noted in Section 2.3) or public district or any officer or employee thereof~~ means any individual, partnership, corporation, association, institution, cooperative enterprise, municipality, commission, political subdivision or duly established legal entity



- “Private Beach” means any beach which is not a public beach as defined in these regulations
- **“Public Beach”** means any beach owned in fee simple title by the Federal or State government or any county, city, town or municipality; or any beach for which the State has obtained an easement or agreement for public use

- “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



Regulated Area



Regulated Area



Regulated Area

- “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 2.6.1.1

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 footprint.

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.

Section 4.8

Construction Activities Landward of the Building Line and Within
the ~~Beach~~ Regulated Area

Section 8.2 Violations and Penalties

~~8.2.1 Any person who violates any provision of the Act, or Regulations, or violates a cease and desist order of the Secretary, shall be fined not less than \$100 nor more than \$5,000 or imprisoned for not more than two (2) years, or both, and, in addition, shall reimburse the Department for its reasonable expenditures in remedying damage created.~~ Whoever, without authority from the Department, alters, moves or carries away any substantial amount of beach material (including, but not limited to, sand or pebbles), or alters, damages or destroys any groin, jetty, bank, dike, dune, bulkhead, seawall, breakwater or any other facility, improvement or structure installed or maintained by the Department for the enhancement, preservation or protection of the beach, shall be liable for a civil penalty imposed by the Court of Common Pleas of not less than \$200 nor more than \$5,000 for each completed violation. If the violation has been completed and there is a substantial likelihood that it will recur or if it is a continuing violation, the Department may also seek a permanent or preliminary injunction or temporary restraining order in the Court of Chancery.

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Section 8.2.2

Any coastal structure erected, or excavation created, in violation of these regulations is hereby declared to be a public nuisance, and such structure shall be forthwith removed or such excavation refilled after written notice by the Department directing such removal or filling. In the event the structure is not removed or the excavation refilled as directed within a reasonable time, the Department may remove such structure or fill such excavation at its own expense. The person who erected the structure or created the excavation declared to be a public nuisance shall be liable for all expenses incurred by the Department in removing the structure or filling the excavation. The Secretary shall submit a detailed billing for the costs involved in abating the public nuisance to the person responsible. In the event that said billing is not paid by the person responsible within 30 days, the Department may file suit in the appropriate court seeking to compel payment.

Section 8.2.3

Any person who:

- 8.2.3.1 Violates any condition or limitation in a permit issued pursuant to this chapter;
- 8.2.3.2 Engages in any activity prohibited by this chapter; or
- 8.2.3.3 Violates any regulation duly promulgated according to this chapter,

Shall upon conviction be fined not less than \$200 nor more than \$5,000, or imprisoned for not more than 2 years, or both, and in addition shall reimburse the Department for its reasonable expenditures in remedying damage created.

Section 8.2.4

For the purposes of subsection (c) of this Section, each and every day that a permit condition or limitation is violated, an activity engaged in which is prohibited by this chapter or a regulation violated is deemed a separate offense.

Section 8.2.5

Any expenses or civil penalties collected by the Department under this Section are hereby appropriated to the Department to carry out the purposes of this chapter.

Additional Changes to Implement Amendments to the Beach Preservation Act

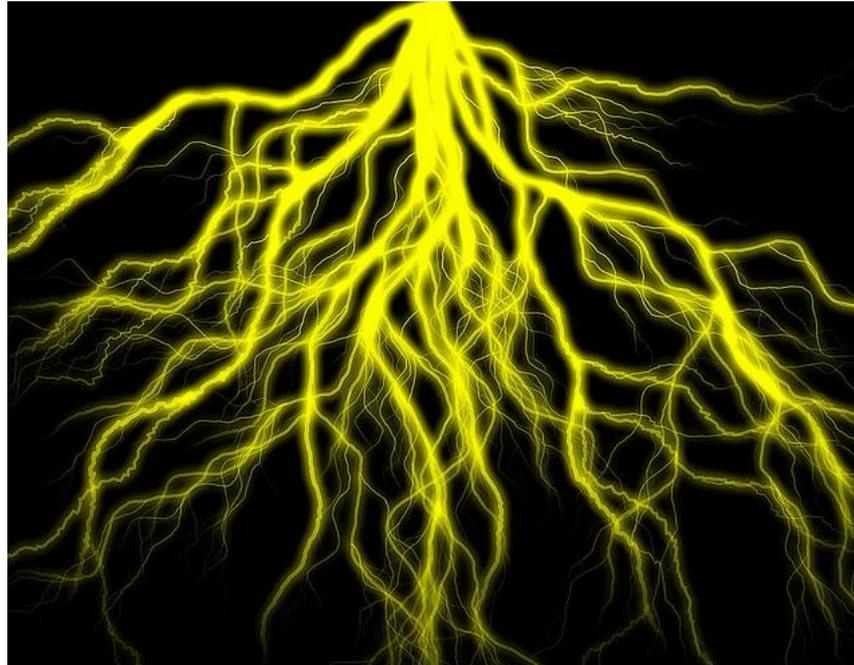
Definitions

- Accidental Event
- Act of God
- Buildable Lot
- Coastal Engineering Standards of Storm Protection
- Removal of Complete Destruction
- Improve
- Material Physical Effect
- Modernizing
- Smallest Subset of Lots
- Substantially Improved
- Update

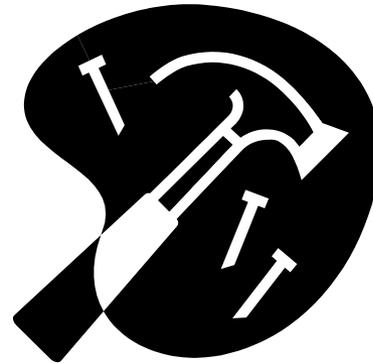
- “Accidental Event” means a sudden, unintended, and unexpected occurrence that results in damage or loss of property



- “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



- “Buildable Lot” a lot upon which construction of a structure is permissible by all State, Federal and local codes and regulations



- **“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 at the southernmost limit of Prime Hook Beach, and 75 feet landward of the seawardmost 6-foot elevation contour above NAVD from Rosemary Street at the southernmost limit of Primehook Beach to the Old Marina Canal north of Pickering Beach

G	DISTANCE
3'03" E	25.78'
7'00" E	24.52'

6' NAVD

N OR F TIMOTHY & PEGGY REISINGER
 TM SM-01-115.13-01-21.01
 D.R. T41 PG. 205

BENCHMARK= CHISELED X
 M OF MANHOLE ELEV. 4.37
 088

LOT AREA
 11725 Sq.Ft.
 3 Ac.

75'

DELAWARE

Reviewed by:
 Approved by:

LEGEND

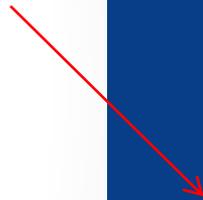
- FOUND
- ⊕ FOUND
- ⊙ SET C
- BSL — BUILD

N OR F BONNIE L. REISINGER
 TM SM-01-115.13-01-23.00
 D.R. H24 PG. 17



BOUNDARY

Property



- “**Improve**” means to change an existing structure in order to enhance its integrity or value

- “Material Physical Effect” means, including, but not limited to, any alteration to the existing characteristics of the beach and/or dune that could significantly, increase the danger of erosion, storm damage or flooding and includes the moving, digging, or removal of beach or the erection of any temporary or permanent structure

- “Modernizing” means the act of updating portions of a structure to give a new character or appearance

- “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 not exceed seven (7) lots



- **“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

- “Update” a change to an existing structure intended to improve its integrity or value

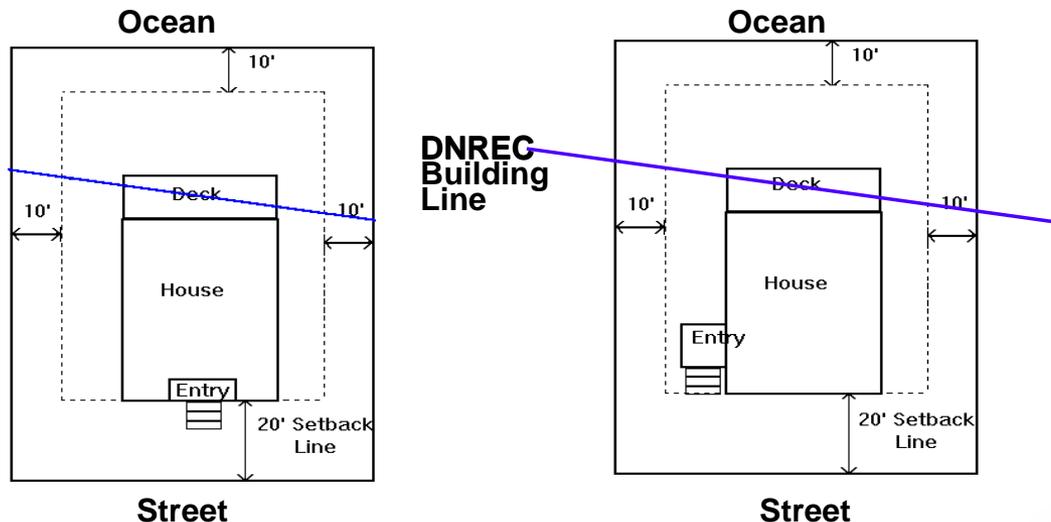
Section 3.1.1.2

That the dimensions and location of the structure, or portions thereof, as proposed and in other design aspects of the proposed construction project, including, but not limited to, parking lots and landscaping, cannot be modified or redesigned in order to have the final structure or portion thereof located either less seaward of completely landward of the Building Line in accordance with the four-step process outlined in Sections 3.1.1.2.1 through 3.1.1.2.4. (See 5.0 Section 5.3.2 for further explanation of what the Division will examine when a permit application is processed and whether or not the proposed structure, or portion thereof, may have to be modified or redesigned). However, the Division's determination as to the adequacy of the area of the parcel of land located landward of the Building Line, or as to any modification or redesign shall not conflict with any Federal, County or local laws, regulations or planning, zoning and building ordinances. (Note that this exception shall not apply if the provisions of 3.1.1 are applicable to the parcel of land in issue.) A person is not required to follow the requirements of the four-step process if they demonstrated thought he submission of a sealed survey of the lot that all construction will be located entirely landward of the Building Line. In this case, the applicant must apply for a letter of approval as required by Section 4.8.

4-Step Process (Sections 3.1.1.2.1-3.1.1.2.4)

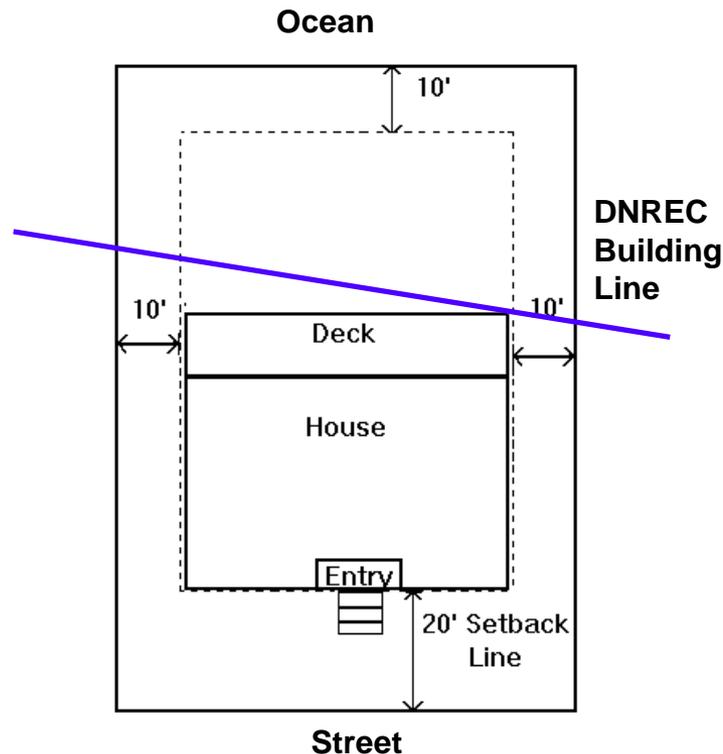
Step 1 (3.1.1.2.1)

- 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;



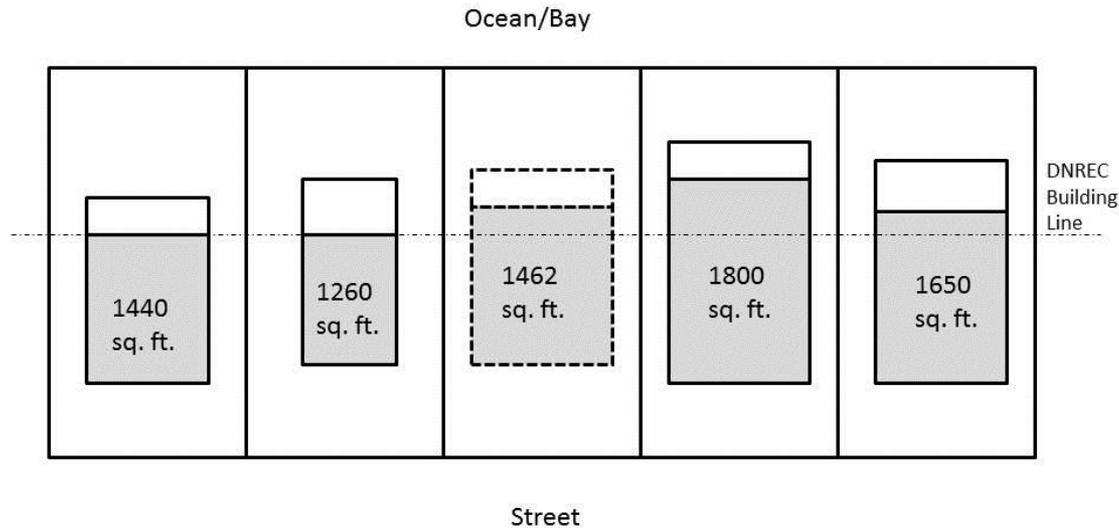
Step 2 (3.1.1.2.2)

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



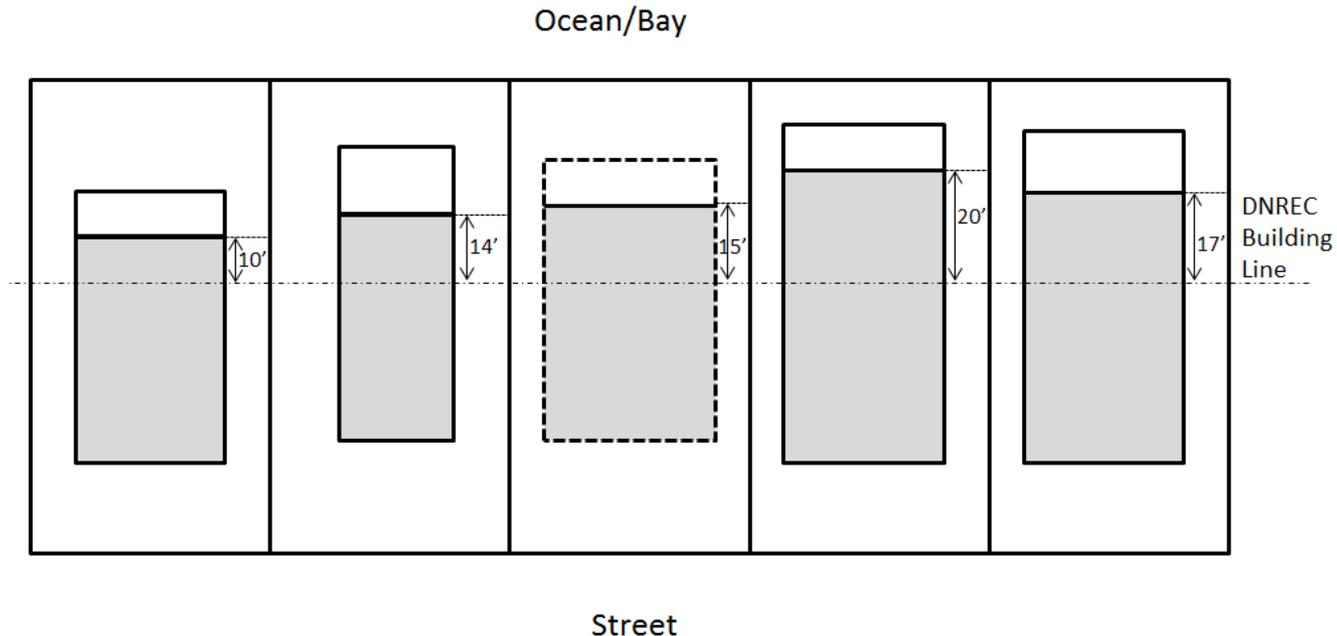
Step 3 (3.1.1.2.3)

- 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;



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 requirements of Section 3.1.1.3.



Section 3.3

Restoration or Reconstruction ~~After Damage~~ of Structures Seaward
of the Building Line

Section 3.3.1

If a structure located seaward of the Building Line is ~~completely destroyed~~ substantially damaged, no person shall undertake any restoration or reconstruction of the ~~destroyed~~ 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.

Section 3.4.1

If a structure is to be either ~~constructed~~ repaired or reconstructed following the ~~complete destruction~~ substantial damage or is to be substantially improved ~~of the original structure~~, 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 ~~construction~~ repair or reconstruction of a ~~completely destroyed~~ substantially damaged or substantially improved structure, said ~~constructed~~ 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)

Changes Made to Implement Current DNREC Policies

Section 2.4.2.1

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



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 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.

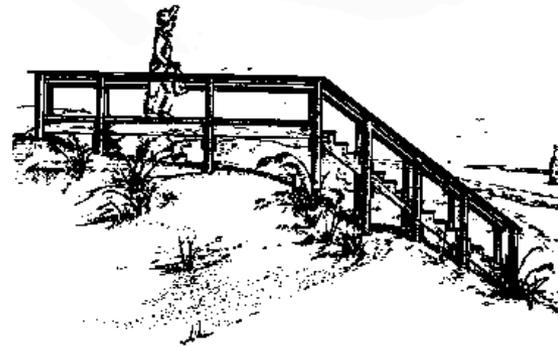
4.5.3.1.4 Community crossovers that serve ten (10) or more single family residences shall not be wider than six (6) feet.

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

Changes Made for Clarification

Definitions

- “**Beach Access Facility Structure**” means any structure, improvement or facility constructed, installed or maintained for the primary purpose of obtaining or facilitating access to and from the berm and the foreshore of the beach over, on or across the primary coastal dune



Within “Building Line”

- a. Along beaches extending from the Delaware/Maryland line to the tip of Cape Henlopen – 100 feet landward of the adjusted seawardmost ~~10~~ 9 foot elevation contour above ~~NGVD~~ NAVD;
- b. Along beaches extending from the tip of Cape Henlopen to the southernmost limit of Primehook Beach – 100 feet landward of the adjusted seawardmost ~~7~~ 6 foot elevation contour ~~NGVD~~ NAVD;
- c. Along beach extending from the southernmost limit of Primehook Beach to the Old Marina Canal north of Pickering Beach – 75 feet landward of the adjusted seawardmost ~~7~~ 6 foot elevation contour above ~~NGVD~~ NAVD
- d. Or at the landward limits of the Beach, as defined in these Regulations; whichever is most seaward

ATLANTIC

OCEAN

M H W L



- “Deck ” an open platform extending from a house or other building
- “Littoral” pertaining to the shore of a sea
- “Littoral drift” material such as sand and stones moved near the shore in the littoral zone under the influence of waves and currents
- **“National ~~Geodetic~~-American Vertical Datum (NGAVD)”**
means a fixed reference adopted by the U. S. Government as a standard geodetic datum for vertical elevations
- “Porch ” a roofed open or screened area adjoining an entrance to a building

- “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 2.0

~~Administrative Principles~~ Permits and Letters of Approval

Section 2.6.2.2

The maintenance consists solely of non-structural work such as repainting, replacement of shingles or siding or replacement of windows and doors and any cleaning necessary to maintain the structure.



Section 2.11 Building Line Re-establishment

When, in the opinion of the Secretary, storms or other natural phenomena cause a substantial ~~permanent~~ long term change in the seaward contour used to establish the Building Line, the Division may, following public hearing, re-establish the Building Line in its entirety or for the portions of the coast where the natural phenomena have caused substantial long term changes from information provided by topographic survey.

Section 3.1.1.3

Whenever a deck or porch is being constructed along with a new building, and said deck or porch is located at or above the lowest living floor of the building, said deck or porch is also making use of the foundation of said building (i.e. cantilevering) and said deck or porch shall not extend beyond the most seaward point that is the average distance seaward of the Building Line of any lawfully constructed building, ~~or~~ deck or porch of a similar nature that is already existing on ~~any~~ immediately adjacent parcels of real property located within the smallest subset of lots, within the same subdivision as the parcel of real property on which the building, ~~or~~ deck or porch is proposed. 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 3.2.1.2

The modification or expansion consists only of a deck or porch located at or above the lowest living floor of a building, and the modification or expansion makes use of the foundation of said building (i.e. cantilevering) that existed prior to said modification or expansion. However, any deck or porch or portion thereof, that is modified or expanded pursuant to any provision of this Section shall not extend beyond the most average distance seaward point of the Building Line of any existing lawfully constructed buildings or decks or porches of a similar nature that is already existing on any immediately adjacent parcels of real property that is located within the smallest subset of lots, within the same subdivision as the parcel of real property on which the modification or expansion is proposed. A letter of approval shall be required for work under the Section. See 4.0 of these Regulations.

Section 3.6 Other Prohibited Activities

3.6.1 The following activities are prohibited:

3.6.1.1 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);

3.6.1.2 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;

3.6.1.3 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;

3.6.1.4 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

3.6.1.5 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.

Section 3.7 Temporary Structures

3.7.1 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.

3.7.1.1 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 may be waived. However, the provisions of Section 3.3.1.5 still apply.

Comments/Questions?

For more information contact:

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(302) 739-9921

Jennifer.Luoma@state.de.us

www.dnrec.delaware.gov