

# Rebuilding in the Wake of Super Storm Sandy

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Following Super Storm Sandy, commercial businesses and homeowners are left to rebuild their damaged waterfront homes and businesses. The rebuilding process will be filled with hardship and uncertainty. What is certain is that New Jersey Department of Environmental Protection ("NJDEP") land use regulations will play a major role in the reconstruction process. Homeowners and businesses can take some relief knowing that a structure that legally existed prior to Super Storm Sandy may not require an NJDEP Permit for reconstruction within its existing footprint.

Three NJDEP permit programs may apply to reconstruction of waterfront structures. NJDEP's Coastal Area Facilities Review Act ("CAFRA") permit regulations apply to structures located within NJDEP's CAFRA zone. NJDEP's Waterfront Development Permits apply to construction of bulkheads, docks, piers and homes within 500 feet of the mean high water line. NJDEP's Flood Hazard Area Control Act Rules apply to development and reconstruction of properties located within a Flood Zone.

NJDEP will not require a CAFRA or Waterfront Development Permit to reconstruct structures that legally existed prior to the storm, as long as the rebuilt structure is within its same footprint as prior to the storm and the structure is not enlarged.

Also, CAFRA and Waterfront Development Permits are not required to replace damaged siding, doors, roofs or windows, but local building permits could be required. Debris removal does not require a Waterfront Development Permit.

A record should be compiled documenting the legal existence of the structure and its exact footprint. Site plans, survey photographs, NJDEP Bureau of Tidelands instruments, and NJDEP permits can be used, collectively, to document the legal existence of the damaged or destroyed structure.

After compiling this record, the homeowner or business owner should apply

to the NJDEP for a written Exemption Determination, consistent with NJDEP land use regulations, confirming that the reconstruction requires no CAFRA or Waterfront Development Permit Approvals. Receipt of an NJDEP Exemption Determination allows rebuilding to proceed without concern of potential NJDEP enforcement liability.

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comply with local zoning criteria, can be rebuilt if partially destroyed by the storm. However, total destruction, by design or accident, will terminate the nonconforming use. The general rule is that if the foundation and at least two walls remain in a residential structure, it would not be considered "total destruction" and could be reconstructed. However, the decision on



If the damaged structure cannot be rebuilt within the existing footprint or must be enlarged, then an NJDEP CAFRA or Waterfront Development Permit is required prior to construction.

For structures located within a Flood Zone, reconstruction is subject to New Jersey's Flood Hazard Area Control Act Rules. NJDEP can issue Flood Hazard Area General Permits for reconstruction of storm-damaged structures, subject to certain conditions. The structure must be constructed either within its prior footprint or moved to higher ground. The structure cannot be enlarged, nor located within a floodway. Also, the lowest finished floor of a residence must be constructed at least one foot above the flood elevation, and the area below the lowest finished floor cannot be used for habitation. Absent compliance with these conditions, an NJDEP Flood Hazard Area Individual Permit could be required.

Homeowners and businesses must also be mindful of municipal zoning ordinances that will come into play in the reconstruction process. Consistent with New Jersey's Municipal Land Use Law, a nonconforming structure, that is, a structure that does not

"total destruction" is often the responsibility of the local construction code official in consultation with the local zoning officer.

Also, when reconstructing a home, the local zoning ordinance may require elevating the structure to comply with New Jersey's Flood Hazard Area Control Act rules as well as National Flood Insurance rebuilding requirements. One should be mindful that a municipal zoning ordinance may impose height limitations for raised structures. Absent compliance with the ordinance's height limitations, a height variance could be required.

Lastly, homeowners and businesses should be mindful of the notice requirements and notice provisions within their insurance policies and make sure they provide appropriate notice within the time limitations within that policy. Failure to make the appropriate, timely notice to the insurance company, or to cooperate with the insurance company and its adjusters, could result in the loss of coverage and, therefore, a loss of funding for the rebuilding process. ♻️