

DIMENSIONS

REBUILDING STRUCTURES IN THE WAKE OF HURRICANE SANDY

By **Clint B. Allen, Esq., Archer & Greiner P.C.**

Following Hurricane 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 the 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 Hurricane Sandy may not require a NJDEP Permit for reconstruction within its existing footprint.

There are three NJDEP permit programs that may apply to the 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 the 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. The rebuilt structure must be within its same footprint that existed prior to the storm, and the structure may not be 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 its record, the homeowner or business owner should apply to the NJDEP for a written Exemption Determination, consistent with the NJDEP land use regulations, confirming that the reconstruction requires no CAFRA or Waterfront Development Permit Approvals. Receipt of a NJDEP Exemption Determination allows rebuilding to proceed without concern of potential NJDEP enforcement liability.

If the damaged structure cannot be rebuilt in the existing footprint or must be enlarged, then a 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 compliance with certain conditions. The structure must be constructed within either 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 of the residence cannot be used for habitation, remaining open to flood waters. Absent compliance with this conditions, a NJDEP Flood Hazard Area Individual Permit could be required.

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Archer & Greiner, along with Marathon Engineering and Environmental Services Inc. and South Jersey Engineers LLC Present:

WEATHERING THE STORM: LAND USE APPROVAL PROCESS FOR REBUILDING WATERFRONT HOMES AND BUSINESSES

**Free Seminar
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