

## CHAPTER 199

AN ACT concerning certain flood elevation standards and deed restrictions or agreements, and amending P.L.2013, c.107.

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

1. Section 1 of P.L.2013, c.107 (C.58:16A-103) is amended to read as follows:

C.58:16A-103 Definitions relative to certain flood elevation standards.

1. a. As used in this section:

"Existing structure" means any structure that existed on October 28, 2012.

"Highest applicable flood elevation standard" means the new FEMA base flood elevation plus an additional three feet, or any applicable flood elevation standard required pursuant to N.J.A.C. 7:13-1.1 et seq. and adopted by the Department of Environmental Protection pursuant to the "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.), whichever is higher.

"New and appropriate elevation" means any elevation to which a structure is raised, or is to be raised, that is equal to or higher than the applicable new FEMA base flood elevation, provided, however, in no case shall the new and appropriate elevation exceed the highest applicable flood elevation standard.

"New FEMA base flood elevation" means any base flood elevation proposed or adopted after October 28, 2012, by the Federal Emergency Management Agency.

"Original dimensions" means the exact vertical and horizontal dimensions of a structure as it existed on October 28, 2012.

"Sandy-damaged structure" means any structure that existed on October 28, 2012 and was damaged or destroyed by Hurricane Sandy.

"Structure" means any dwelling or building; however, in the case of attached townhouses or row houses for which title to each townhouse or row house building, including the roof and other structural elements, is held in fee simple, "structure" means a single townhouse or single row house. "Structure" shall not include a unit which is part of a condominium as defined in P.L.1969, c.257 (C.46:8B-1 et seq.).

b. (1) Notwithstanding the provisions of any other law to the contrary, except as otherwise provided pursuant to paragraph (2) of this subsection, a person shall be exempt from any development regulation, including any requirement to apply for a variance therefrom, that otherwise would be violated as a result of raising an existing structure to a new and appropriate elevation, or constructing a staircase or other attendant structure necessitated by such raising, provided, however, this exemption shall apply only to the minimum extent or degree necessary to allow the structure to meet the new and appropriate elevation with adequate means of ingress and egress.

(2) The exemption established pursuant to paragraph (1) of this subsection shall not be available to a person who has altered the original dimensions of a structure if, had the alteration not been made, the structure could have been raised to meet the new and appropriate elevation either without the exemption or with an exemption of lesser degree than is needed with the alteration.

c. (1) Notwithstanding the provisions of any other law to the contrary, except as otherwise provided pursuant to paragraph (2) of this subsection, a person shall be exempt from any development regulation, including any requirement to apply for a variance therefrom, that otherwise would be violated as a result of using a new and appropriate elevation when lawfully repairing or reconstructing a Sandy-damaged structure, or

constructing a staircase or other attendant structure necessitated by use of the new and appropriate elevation, provided, however, this exemption shall apply only to the minimum extent or degree necessary to allow the Sandy-damaged structure to meet the new and appropriate elevation with adequate means of ingress and egress.

(2) The exemption established pursuant to paragraph (1) of this subsection shall not be available to a person whose repair or reconstruction plan would alter the original dimensions of a structure when, if not for the alteration, the structure could otherwise be raised to meet the new and appropriate elevation either without the exemption or with an exemption of lesser degree than is needed with the alteration.

d. Notwithstanding the provisions of any other law to the contrary, any deed restriction or agreement, no matter when entered into or made, that prohibits or has the effect of prohibiting any otherwise lawful raising or constructing of a structure to a new and appropriate elevation is contrary to public policy and therefore shall be unenforceable, except that all other covenants, easements, and restrictions of a common interest community shall remain in force, and costs associated with the construction, repair, or other related improvements to neighboring properties and common elements shall be borne solely by the owner of the structure which will be raised or constructed to a new elevation.

2. This act shall take effect immediately.

Approved August 7, 2017.