

DEPARTMENT OF LICENSES AND INSPECTIONS CODE BULLETIN OF INFORMATION No. Z-1301		CODE OF GENERAL ORDINANCES OF THE CITY OF PHILADELPHIA
		TITLE 14 — Zoning Code
SUBJECT OF BULLETIN: REPAIR AND RECONSTRUCTION OF NONCONFORMING STRUCTURES		REFERENCE CODE SECTION(S): 14-305
ISSUED BY		
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BACKGROUND

A new Zoning Code became effective on August 22, 2012. It establishes when nonconforming structures can be reconstructed and also permits the repair of a nonconforming structure. Confusion can arise in differentiating between repair and reconstruction.

ISSUE

The Zoning Code authorizes the repair of non-conforming structures as follows:

“Repairs to or renovation of a nonconforming structure or site improvement that bring the structure or site improvement into greater compliance with the building code are permitted.”

The Zoning Code also authorizes reconstruction of non-conforming structures destroyed by fire, act of God or third party as follows:

“Following destruction,... a replacement structure that does not reduce the nonconforming setbacks or exceed the nonconforming area or height of the destroyed structure may be constructed, ...”

The Zoning Code does not define repair or reconstruction; therefore, it is unclear whether portions of a nonconforming structure may be reconstructed within its original footprint and height. Nor is it clear to what extent repair becomes reconstruction.

DISCUSSION

The purpose of the new Zoning Code includes the following new goals:

- To promote growth and economic development by encouraging revitalization of deteriorated and/or vacant properties.
- To remove barriers to enable responsible development to proceed “as of right.”

The reconstruction of structures and portions of structures improves the safety of the structure in that the newly constructed building or portion meets the requirements of a modern building code. This encourages the revitalization of deteriorated properties.

The prior Zoning Code was more restrictive on the reconstruction of nonconforming structures even when destroyed by fire, act of God or a third party. The current code allows for complete reconstruction of nonconforming structures when those structures are destroyed involuntarily, provided the reconstruction begins within three years of the date of destruction. The structure may be rebuilt to the original or lesser height and area. Portions of structures may be allowed to be reconstructed under these same criteria or as a repair.

The only time a nonconforming structure must be reconstructed in compliance with the current Zoning Code is when there is a voluntary destruction which would be anything other than fire, act of God or third party. In this case, the Department may have records which indicate non-compliance of violation notices to repair. This is particularly true for unsafe buildings and neglected historic properties. In those cases, a period of non-compliance indicates that the property owners have voluntarily allowed the structure to deteriorate.

The Zoning Code does not define the limits of a repair; therefore the Department must establish parameters. Work proposed under a building permit application which involves the replacement of more than two-thirds of the structural portions of roof and floor systems and the modification of the exterior walls has historically been classified as “new construction” (or complete reconstruction). The replacement of the interior structural framing members coupled with the modification of the exterior wall constitute a substantial renovation and potential change in hazard level which mandate compliance with the current Building Code. This same philosophy is applicable to Zoning Code requirements.

Lastly, the Zoning Code, like the Pennsylvania Municipalities Planning Code, requires that where the meaning of a restriction is ambiguous, the restriction shall be construed in favor of the landowner.

DIRECTION

Repair

A “repair” shall be considered any interior work which does not result in increased gross floor area or the replacement of up to two-thirds of the structural framing members when work also involves the replacement of any portion of the exterior wall. The building may be “repaired” to the original or lesser height and area. A repair does not require a zoning permit; however, if the existing height or area is being decreased, a zoning permit will be required to document the change.

Permit applications to replace portions of nonconforming structures (i.e. porches, shed kitchens, etc.) in their original footprint and height are considered repairs unless the portions exceed the threshold of a repair for the entire building.

Reconstruction

All work exceeding the threshold of a repair must comply with the requirements of the Code for complete reconstruction.

All permit applications for complete reconstruction of nonconforming structures will require a statement submitted by the applicant attesting to the damage caused by fire, act of God or third party with the date of destruction. If the applicant submits such a statement and there are no Department records indicating neglect, reconstruction of the nonconforming structure to its original or lesser height and area may be approved. If there are violations demonstrating neglect or destruction occurred more than three years prior to the date of application, a permit refusal will be issued for appeal to the Zoning Board of Adjustment if desired by the applicant.

All applications for reconstruction which exceeds the original height or area of the building must comply with the requirements of the current Zoning Code.