



## **Memorandum**

**To: Planning Commission**  
**From: Niall Connolly**  
**Date: 2.27.26**  
**Re: Noncomplying Buildings**

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### **Introduction**

Over the last number of months, the Planning Commission has discussed various ways to address the Town Council's instruction to clarify the definition of repair and refurbishment of noncomplying buildings. The Commission has also grappled with defining what constitutes the removal of a building. At the February 4th meeting, the Planning Commission instructed staff to focus on these definitions, rather than adjusting zoning standards from neighbourhood to neighborhood. In particular, the definitions of "removal", "regular maintenance and repair", "voluntary" and "involuntary removal" of a home.

### **Existing Definitions**

Involuntary removal of a building is not specifically defined in the Code. Ordinary maintenance and repair, and removal due to a catastrophic event, however, are described.

Ordinary Maintenance and Repair (section 10-21-8 of the Code):

*"Ordinary maintenance and repair: Ordinary maintenance and repair of noncomplying buildings and structures is allowed so long as such maintenance or repair will not result in expansion of any existing nonconformities or creation of new nonconformities. "Ordinary maintenance and repair" means improvements made to a building for the purpose of keeping the structure in a state of repair and protecting the structure from failure or decline. The term shall also apply to the rehabilitation of a building or structure which is in disrepair for the purpose of making the structure safe and sanitary, in accordance with local building code. Further, interior improvements within existing walls, not resulting in additional habitable space, shall be permitted."*

Section 10-21-7 addresses scenarios where a legally noncomplying building is removed or damaged by a catastrophic event. This section reads as follows:

*Any noncomplying building or structure that is damaged or destroyed by fire, explosion, earthquake or other catastrophic event may be rebuilt to the configuration of the structure which existed immediately prior to the damage having occurred; provided, however, that in rebuilding the noncomplying structure the noncomplying aspects may not be expanded and, to the extent possible without eliminating any of the preexisting noncomplying aspects, the rebuilding shall be*

*consistent with the current building code. Notwithstanding this, a rebuilt structure shall be consistent with the Town's current flood hazard reduction provisions, as set out in section 10-13A-8 of this title.*

The Commission expressed interest in catering for circumstances that do not fit clearly into either scenario. Some sample ordinance language is suggested below, for the Commission's consideration. The key intent of this clarification would be:

- To retain the overall principle that all new buildings and additions should comply with the Code. Also, if a property owner voluntarily chooses to redevelop their parcel, the new development must comply with the Code.
- The definition of catastrophic events should continue to only apply to sudden, unexpected events such as fire, flood, earthquakes etc. It should not be expanded to include wear and tear, water damage or rot that occurs over an extended period, and other similar situations.
- There should be some leniency in situations where an existing non-conforming building has deteriorated over time to an extent that fairly extensive remodelling is required, that would exceed the usual definition of maintenance and repair.
- Existing nonconformities should not be expanded.

The Planning Commission may wish to consider whether this should apply to all noncomplying buildings, or just to residences. Or, if it would be appropriate to require additional justification for commercial properties.

### **Sample Ordinance Language**

Proposed additional text (shown in red) to Section 10-21-8(A):

*"Ordinary maintenance and repair: Ordinary maintenance and repair of noncomplying buildings and structures is allowed so long as such maintenance or repair will not result in expansion of any existing nonconformities or creation of new nonconformities. "Ordinary maintenance and repair" means improvements made to a building for the purpose of keeping the structure in a state of repair and protecting the structure from failure or decline. The term shall also apply to the rehabilitation of a building or structure which is in disrepair for the purpose of making the structure safe and sanitary, in accordance with local building code. Further, interior improvements within existing walls, not resulting in additional habitable space, shall be permitted. **Ordinary maintenance and repair does not include extensive construction or reconstruction, such as entirely replacing exterior walls or completely replacing the roof trusses.**"*

Proposed new paragraph inserted between 10-21-8 and 10-21-9:

### **10-21-9: Involuntary Removal of a Noncomplying Building or Structure**

*If a nonconforming building or structure has declined over an extended period, due to circumstances other than a catastrophic event, and extensive improvements are required which exceed the definition of “ordinary maintenance and repair”, this may be permitted in the following circumstances:*

- *Planning Commission approval is required for any such improvements. Approval must be received prior to the demolition of the building or structure.*
- *A written opinion from an engineer or other suitably qualified individual must be provided, stating that the proposed refurbishments are necessary in order to make the structure safe and sanitary, in accordance with local building code. The Town Building Inspector will review this and provide advice to the Planning Commission on the merits of the written opinion.*
- *The Planning Commission finds that there is ample justification for allowing the proposed improvements and the existing nonconformities to be retained.*
- *Building elements above the floorslab or foundation (such as exterior walls or roof trusses) may be entirely reconstructed, as long as the structure with the newly reconstructed building elements does not exceed the size or height of the original structure, the design of the building with the reconstructed building elements is consistent with the design of the original structure, and the setbacks of the structure with the reconstructed building elements matches the setbacks of the original structure. Any such improvements shall not result in expansion of any existing nonconformities or creation of new nonconformities.*
- *Removal of the floor slab or footings will constitute redevelopment of the property, and in such circumstances the noncomplying elements of the building or structure shall not be rebuilt.*

### **Next Steps**

The Planning Commission should consider the suggested ordinance language above and determine if it presents an appropriate solution to this question relating to nonconforming buildings.