MEMORANDUM

To: Development Services staff
From: Tina Axelrad, Zoning Administrator
Date: May 18, 2018
Re: Denver Zoning Code Clarification — Alterations to Compliant or Nonconforming Structures

Summary

This clarification provides an explanation and examples of how and when a compliant or nonconforming structure may be altered and enlarged, when the alteration or enlargement includes demolition of the specific building element(s) in violation of the zoning code.

Discussion – Code Analysis

The definition of Structure, Compliant in Article 13 includes parameters by which a legally established structure may be considered compliant even if it does not conform with Building Form Standards for:

a. height, b. siting, c. design elements, and/or d. use. A second route for a legally established structure to be considered compliant is if it was conforming under Former Chapter 59 (FC59) prior to adoption of the Denver Zoning Code (DZC) in 2010 but does not currently comply with DZC standards for building height, siting form, or design element form.

Please note that neither of these provisions allow a structure to be considered compliant if it does not conform to standards for bulk (except for 3rd Avenue CCN bulk plane) or lot coverage. A legally established structure that does not conform with DZC form standards for bulk plane or lot coverage would not be considered compliant, although it might still be considered legally nonconforming.

Section 12.8.3.1 allows nonconforming structures to be altered or enlarged so long as no existing nonconformity is increased and no new nonconformity is created.

The DZC establishes both a right to continue a compliant structure as well as limited rights for expansion, alteration, and enlargement.

• The right to continue compliant structure is established in 12.6.3.1:
  
  Compliant structures are legal structures for all purposes under this Code, and may continue to be occupied, operated, and maintained as is, subject to any limitations in this Division 12.6 or unless terminated as provided in this Division 12.6.

• 12.6.3.2.B explains that Expansions, Alterations, Enlargements to Compliant Structures are allowed:
  
  1. Subject to all limitations of this Division 12.6, any compliant structure may be occupied, operated, and maintained in a good state of repair.
  
  2. Subject to all limitations of this Code, compliant structure may be altered or enlarged if either of the following conditions exist:
    
    a. No existing compliant element of the structure is increased and no new compliant element or nonconformity is created; or
    
    b. An allowance under Sections 12.6.3.2.D through F. applies.
Demolishing a part(s) of a compliant structure is considered altering the structure. See definition of “alter” in DZC, Article 13. Voluntary demolition, on the other hand, completely terminates the compliant status of the structure per DZC, Section 12.6.3.3. See definition of “Voluntary Demolition” in DZC, Article 13.

EXAMPLES

NOTE: In all the examples below, assume the proposed changes to the structure do not trigger Voluntary Demolition.

Example #1:
- Existing structure has a covered rear porch. The structure, including the rear porch, exceeds allowed building coverage standard by 200 square feet. The structure is a Compliant Structure.
- Customer wishes to tear down the covered rear porch, and replace it with a new enclosed addition. With the proposed addition, the structure will exceed building coverage by 100 square feet – 100 feet less than the structure did before the alteration/enlargement.
- Is the addition/enlargement allowed?
  - Yes, because the addition does not increase the amount/degree of the original zoning violation. In fact, the proposed addition reduces the amount of the previous 200 square-foot coverage violation by 100 feet.
  - Because of the reduction in the nonconformity, no Variance is required. The structure retains its compliant status after the change.

Example #2:
- Existing structure has a covered rear porch. The structure, including the rear porch, exceeds the allowed building coverage standard by 200 square feet. The structure is a Compliant Structure.
- Customer wishes to tear down the covered rear porch, and replace it with a new covered rear porch. The new rear porch will be constructed in the same exact footprint as the old rear porch. Therefore, after the proposed alteration, the structure will still exceed building coverage by 200 square feet, and will neither increase or reduce the amount/degree of zoning violation.
- Is the alteration allowed?
  - Yes, because the alteration does not increase the amount/degree of the original zoning violation. No variance is required. The structure retains its compliant status after the change.

Example #3
- Existing structure has a second-story deck located in the rear 35% of the zone lot, in violation of the zoning code. There are no other zoning violations. The structure is a Nonconforming Structure.
- Customer wishes to tear down the deck and replace it with a brand-new deck in the exact same location. This is not an alteration because it does not change the supporting or load-bearing members of the home. See definition of “alter” in DZC, Article 13.
- Is the change allowed?
  - Yes. The change does not increase the amount/degree of the violation, nor does it create a new nonconformity. The change is allowed under the provision that allows a compliant or nonconforming structure to be “maintained in a state of good repair.” See DZC, Sections 12.6.3.2.B and 12.8.3.1.A.
Example #4:

- Existing structure has a covered rear porch. The structure, including the rear porch, exceeds allowed building coverage standard by 200 square feet. The structure is a Compliant Structure.
- Customer wishes to tear down the covered rear porch, and replace it with a new enclosed addition. With the proposed addition, the structure will exceed building coverage by 300 square feet – 100 feet more than the structure did before the alteration/enlargement.
- Is the addition/enlargement allowed?
  - No, because it enlarges the amount/degree of noncompliance. It increased the building coverage violation by 100 feet.
- What are the customer’s options?
  - Modify plans so that building coverage does not exceed 200 square feet more than the standard (maintain the compliant condition).
  - Seek a variance to allow the increase in the amount/degree of noncompliance.
- If the customer wants to ask for variance, how much variance from the building coverage standard should be sought? 100, 200, or 300 square feet over the maximum coverage allowed?
  - Answer: 100 square feet.
  - The “status quo” zoning violation the customer may maintain and continue under DZC, 12.6.3.2.B, is 200 square feet over the standard. Therefore, the customer can take “credit” for the original 200 square feet violation, and then seek a variance for the additional (new) 100 square feet. The structure retains its compliant status after the change and Variance.

Please see below for suggested step-by-step process for consideration of a change in the non-compliant elements of a Compliant or Nonconforming Structure:

1. See definitions 13.3 for Structure, Conforming; Structure, Compliant; Structure, Nonconforming
2. Right to continue: Refer to 12.6.3.1
3. No new compliant element is created, not increasing compliant element per 12.6
4. May be altered or enlarged: Look at definition of “alter” in Article 13: tearing down/demolishing could equal “alter” if a load-bearing wall is removed, etc.
5. Does not trigger ‘voluntary demolition’ per 12.6.3.3, see definition 13.3
6. Must meet all other siting and form requirements
7. Subject to all other requirements of the Code
8. Change is in same footprint, or no additional square footage. Otherwise, may need an administrative adjustment or variance (but, remember, may be able to take “credit” for existing violation extent).

If you have any questions, please ask your supervisor or Zoning Administration staff.