

Reconstruction after Harvey

Flood Development Permits & Grandfathered Structures in Houston

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In the aftermath of Hurricane Harvey, I've been receiving questions about how to reconstruct damaged structures, both those in flood zones and not, especially those that don't meet current codes. Some development regulations and policies that affect reconstruction are pretty simple and straightforward, while others are complicated, vague, and sometimes not even written down anywhere. While Houston may not have a formal zoning code that covers the entire city, it does have quite a few development regulations, all of which would normally be found in a zoning code. Noncompliance can result in denial of building permits, stop-work orders, even revocation of certificates of occupancy. Fortunately, there is a path forward for most projects. It's important for property owners to know what to expect and what their options are in different situations.

Can I rebuild my old, grandfathered building the same way?

Many commercial structures in Houston were built before current regulations, and as a result are considered by the City of Houston's permit and planning offices to be grandfathered against those current regulations they don't meet. Understandably, property owners are reluctant to make any changes that would require their structures to be brought up to code, especially when it comes to complying with building setback lines and parking requirements. In the case of building setback lines, losing grandfathered status can result in actually having to tear down the part of the building that encroaches into the building setback area. In the case of parking rules, grandfathered structures can often be used only for their current use or other less intensive uses. Changing the footprint or the use of the building can result in the city forcing the property owner to provide many more parking spaces. In many parts of town, that is extremely difficult, to impossible.

Generally speaking, after a casualty such as a flood or a hurricane, Houston's development ordinances allow you to reconstruct your grandfathered building and not provide additional parking spaces as long as the damage to the improvement does not exceed 75% of

the value of the improvement itself, minus the cost of the foundation and the land. You will also be required to maintain the same footprint, dimensions, and use of the improvement. If the damage exceeds 75% of the value of the improvement, then your reconstruction is considered to be like a new construction for purposes of complying with current rules and regulations. For old grandfathered buildings, that often means the building has to be taken in from any portions that encroach into the building setback area as well as providing sufficient parking to support the current use.

Do I need a flood development permit for construction in a floodplain? Do I need to raise my foundation?

If you're in the floodway or the 100-year floodplain, there's a different rule that applies to floodplain development regulations. For buildings that are not in compliance with the current rules for development in the floodplain, the damage to your improvement cannot exceed 50% of the value of the improvement minus the foundation and the land, or what the city calls a substantial improvement. If your damage exceeds that amount you'll have to comply with current development regulations that apply to improvements made in the floodplain which include raising the elevation of the lowest floor a foot or more in many cases depending on your flood zone designation.

What if my valuation is inaccurate?

If a flood development permit or other building permit is denied due to your damage exceeding the allowable amount, it may help to conduct an independent appraisal of your improvement. Don't rely entirely on the Appraisal District's valuation of your improvement. A private, independent appraisal can often produce a much more accurate valuation. Similarly, a damage estimate made by insurance or FEMA that is too high can be fine-tuned by a private contractor's estimate. Obtaining most permits can be pretty straightforward. For those more complicated situations, it helps to seek professional assistance. ■