Rehabilitation Subcode

Rehabilitation and conversions of existing building should be able to play an important role in state, local, for-profit, and non-profit efforts to expand the supply of affordable housing. Existing buildings throughout Florida and the country that were built to comply with an earlier building code, or possibly with no code, are often still safe and sound. Most existing buildings are in this category. With a few exceptions, these buildings continue to be occupied, used, and maintained. When an owner of such a functioning building considers making specific improvements, it is not logical that the building must also be upgraded in numerous other respects, many of which provide very little safety improvement. This approach often deters any improvement.

Presented in this newsletter is an introduction to the nationally acclaimed solution to this dilemma that has been implemented in New Jersey. At some point the state of Florida may wish to consider such a Rehabilitation Subcode as a means of stimulating production of affordable housing.

In 1998, New Jersey became the first state in the nation with separate building regulations for work on existing structures. This separate set of regulations is called the Rehabilitation Subcode and has two purposes: 1) to remove regulatory barriers that posed unreasonably high costs, and 2) to maintain health and safety standards found in the existing code for new buildings.

Prior to the adoption of the Rehabilitation Subcode, the process for dealing with rehabilitation was the 25/50 Percent Rule. The 25 and 50 percentages refer to the cost of the alterations in relation to the value of the building. There were three ratios or thresholds in the 25/50 percent rule which were relevant: (1) under 25%, (2) 25-50% and (3) over 50% of the building's value. These were applied as follows:

- Where the cost of the work was under 25 percent of the value of the structure, the code provided that the subcode official determine the degree to which the alteration work should meet the code requirements for new construction. This gave the subcode official a great deal of discretion and the building owner very little predictability.
- Where the cost of the work was between 25 and 50 percent of the structure's value, the code required that the altered or repaired portions meet the requirements for new structures. The configuration of the existing building generally made this difficult to achieve, so that a project often involved one or more variation requests and, again, very little predictability.
- When the cost of the work exceeded 50 percent of the structure's value, the code mandated that the requirements for new structures be applied to the entire building, including portions not planned for alteration or repair. This meant that not only rehabilitated areas, but also the entire building had to be upgraded to the standards for new construction. Again, variation requests were common in this kind of project because of the limitations of the existing building.
Development of the Rehabilitation Subcode

The Rehabilitation Subcode was developed by the New Jersey Department of Community Affairs with guidance from a 30-member committee under the coordination of the Center for Urban Policy Research at Rutgers University. A Committee composed of code officials, fire officials, architects, historic preservationists, advocates for people with disabilities, and government representatives met over a two-year period and approved the draft document in January 1997. The adoption of the Rehabilitation Subcode was published in the New Jersey Register on January 5, 1998.

The Rehabilitation Subcode is the first comprehensive set of code requirements for existing buildings. It is a stand-alone subchapter and, therefore, it contains all the technical requirements that apply to a rehabilitation project.

Parts of the Rehabilitation Subcode

The Rehab Subcode is divided into parts that are quite different from the codes for new construction. There are three major sections that define the types of projects: Rehabilitation, Change of Use, and Additions. Within the Rehabilitation section there are four Categories: repair, renovation, alteration, and reconstruction. These categories relate to the extent of the work undertaken. Finally, within each category there are five Sets of Requirements: products and practices; materials and methods; new building elements; basic requirements; and supplemental requirements.

The Rehab Subcode also includes an introductory section than is usually included in regulations. The introduction sets the stage for the requirements and is designed as a user-friendly summary. It is not in strict code language and cannot be cited as a code requirement.

Terms and Concepts

The following terms and concepts are used in the Rehab Subcode in a new way and are central to its understanding.

The work area is defined in the regulations as "any entire use, primary function space, or tenancy comprising all or part of a reconstruction project as delineated on the approved permit application and for plans." Work area means what it says literally; that is, it is where the work is being done. The only time the concept of work area is applied is in a reconstruction project.

The term de minimis is used only in connection with supplemental requirements. It may cause concern because it does not specify a black and white "hard" number. The supplemental requirements are applicable when the work area is an entire floor or a specified percentage of the entire building. In order to prevent arguments based on what proportion of a floor or building could remain "untouched" in order to circumvent the supplemental requirements, the concept of de minimis, or insignificant, amount of excluded area was incorporated into this subcode. Admittedly, this requires judgment by the code official. It is a move toward invoking common sense and is a move away from invoking the "letter of the law" without also applying common sense.

A tenancy is an entire building, or a portion of a building, or a story, or a portion of a story that is under the ownership or control of one owner or tenant. This term is used in determining whether a project is a reconstruction project, which involves an entire building or tenancy. Within the context of dwelling units, tenancy means the entire dwelling unit.

The primary function space is the use for which a building, or portion of a multi-use building, is intended. The easiest way to define primary function space is by use group. Just as there can be more than one use group designation within a building, so can there be more than one primary function space. The term is applied to accessibility requirements and is also used in the definition of work area. Where a reconstruction is performed on primary function space, an accessible path of travel to the reconstructed
space must be provided, except that the cost of providing the path of travel must be proportionate to the
cost of the project. A cost is disproportionate when it exceeds 20% of the cost of the project. A project
may be a reconstruction project if it includes all of a primary function space and meets the other provisions
of the definition of reconstruction.

The term path of travel refers to the route that is taken to reach a primary function space. There are six
elements of a path of travel: parking, building entrance, interior route, bathrooms, drinking fountains, and
telephones. When work is undertaken in a primary function space, the accessibility of the path of travel to
the primary function space must be improved. The improvement must be made to one or more of the six
elements of the path of travel given above, but the cost of the improvement is not required to be
disproportionate to the overall cost of the planned alteration project. A cost is considered disproportionate
if it exceeds 20% of the project.

The term technically infeasible applies only to accessibility requirements. It means that when
reconfiguring space in an existing building, if it is not possible to meet the full or exact dimension required
by the accessibility standard, the space should comply to as great an extent as is possible. Meeting an
accessibility standard measurement may be impossible because of structural problems or it may not be
possible without expanding the planned scope of work. Whichever the reason, the differing dimension
should be recorded by issuing a variation. The easiest way to think of this provision is to "do what you
can" given the building and the scope of work.

The hazard index is used throughout the change of use requirements to determine whether a change from
one specific use group to another increases the life safety hazard of the building. The hazard index is
applied through a series of tables in the change of use section. There are hazard index tables for means of
gress, height and area, exposure of exterior walls, exterior wall fire resistance rating, fire suppression, and
structural loads, as well as a general, relative hazard index table.

Sets of Requirements

The five sets of requirements are: products and practices, materials and methods, new building elements,
basic requirements, and supplemental requirements.

Products and Practices are lists of items that are required and those that are prohibited. These
requirements apply to all categories of work including such provisions as the installation of a low flow
toilet when an existing toilet is replaced.

Materials and Methods contains requirements that tell what materials to use and how to use them. It does
not contain requirements on how much fixing you have to do. Materials and methods applies to all
categories of rehabilitation except repair.

This section lists those items that are considered New Building Elements when they are created as part of
a rehabilitation project. Each item listed in this section must conform to specific sections of the other
technical subcodes. Some examples of new building elements are newly created atriums, newly created
malls in existing buildings, and newly created floor openings.

Basic Requirements apply only in a reconstruction project and to the work area. The basic requirements
are the most fundamental scoping requirements. They cover such topics as capacity of means of egress,
dead-end corridors, and exit signs.

Supplemental requirements are additional work requirements. They are imposed only when the work is a
reconstruction project, and only when the work area exceeds a certain size. Each supplemental
requirement has its own threshold of applicability. The supplemental requirements replace the 50% part of
the 25/50 rule and are intended to improve the safety of the building in direct relationship with the planned
scope of work.
Categories of Rehabilitation

There are four categories of work that are used in rehabilitation projects: repair, renovation, alteration, and reconstruction.

The **Repair** category is the most minimal type of rehabilitation work. The definition of *repair* contained in the regulations is “the restoration to a good or sound condition of materials, systems and/or components that are worn, deteriorated or broken using materials or components identical to or closely similar to the existing.” Under this category, materials and assemblies may be replaced with like materials and assemblies. There is no limit to how much *repair* may be undertaken in connection with a project. There are only a few specific exceptions to this rule including requiring certain products and practices, such as putting in a low flow toilet when a toilet is being replaced, and prohibiting other items, such as certain electrical materials or supplies.

The **Renovation** category is for work that is generally restorative in nature such as the replacement of interior finish, trim, doors, or equipment, but *renovation* involves the use of different materials. There is no reconfiguration of space. In general, the materials used and the methods of installation must conform to the requirements of the *materials and methods* section.

The **Alteration** category of work involves a change in the layout of interior space while other portions of the space remain without rearrangement. *Alteration* is defined in the regulations as "the rearrangement of any space by the construction of walls or partitions, the addition or elimination of any door or window, the extension or rearrangement of any system, the installation of any additional equipment or fixtures, and any work that affects a primary structural component." There is a short list of materials that may not be used, as well as *products or practices* that must be used when *alteration* work is undertaken. The *materials and methods* requirements also apply to alteration work. To address the possibility that the reconfiguration of space could create a safety hazard, there are some additional requirements for *alteration* work that specify that the work undertaken cannot create a nonconformity with the basic requirements that did not exist before the *alteration* began. That is, in an *alteration*, the portion of the building being worked on does not need to be brought up to the standard established in the basic requirements. The *basic requirements* are used as a measuring stick. However, the work being done cannot make the building less conforming with the basic requirements than it was before the work was undertaken.

The **Reconstruction** category involves extensive work to the interior of a building, door, or tenant space. It is commonly referred to as a "gut rehab." The regulations define *reconstruction* as "any project where the extent and nature of the work is such that the work area cannot be occupied while the work is in progress and where a new certificate of occupancy is required before the work area can be reoccupied." *Reconstruction* includes *repair, renovation, and alteration* in any combination. Asbestos hazard abatement and lead hazard abatement projects are not classified as reconstruction although occupancy of the work area is not permitted. A reconstruction project has a delineated work area that involves an entire use, primary function space, or tenancy; projects that do not involve an entire use, primary function space, or tenancy are not reconstruction projects.

Where the work area is an entire use, primary function space, or tenancy, a project becomes reconstruction when two conditions are met: 1) the area where the project is taking place cannot be occupied while the work is in progress; and 2) when a new certificate of occupancy is required before the area can be reoccupied. *Repair, renovation, and alteration* work that make up a *reconstruction* project must comply with the requirements for the applicable category of work. The entire area must comply with basic requirements. Certain reconstruction projects must also meet the supplemental requirements, which apply only when the work area for a *reconstruction* project exceeds a specific size. Each supplemental requirement has its own threshold of applicability.

### Change of Use
The use, or function, of a building is called a use group. The Rehab Subcode also uses these same use groups to determine what work must be done when a building changes use groups. The amount of work that is required can range from nothing to a great deal. Previously, the code provided that any building or portion of a building undergoing a change of use had to meet code requirements for new construction. Under the Rehab Subcode, the work required is now dependent on whether a greater hazard is created. In sum, the change of use of a building means a change of the use group as defined in the building subcode or by the provisions of another subcode. The change in the use of a space in a building may not require that the entire building undergo a change of use group, but it may mean, for example, that the change in the way the space is used may trigger the requirements of one of the technical subcodes. For example, the plumbing subcode may require additional toilet fixtures, the electrical subcode may require ground fault circuit interrupters, or the mechanical subcode may require that the heating, ventilation, and air conditioning (HVAC) system be upgraded.

Additions

Additions are required to comply with the provisions of the technical subcodes for new construction. Work in the existing building, which is related to the addition, must comply with the requirements for repair, renovation, alteration, and reconstruction, as applicable, where such work is undertaken. There are also some requirements that apply to additions. For example, the addition cannot extend the height or area of the building beyond the limits established by the rehab subcode.

Historic Buildings

The Rehabilitation Subcode includes provisions for buildings that meet the standards for historic buildings established by the relevant state or federal agencies. The Rehab Subcode allows the use of replica materials, establishes provisions for historic buildings used as historic museums, and identifies building elements that may meet relaxed code requirements in order to preserve the historic value and integrity of a historic building.

Additional Information

Copies of the Rehabilitation Subcode are available for $10.00 per copy. Checks must be made payable to "Treasurer, State of New Jersey" and sent to:
  Department of Community Affairs
  Division of Codes and Standards-Publications Unit
  Post Office Box 802
  Trenton, New Jersey 08625-0802