

RID (Rule Interpretation Decision)

(Use additional sheets as necessary)

Type of RID	Requested Response Time	DSD Assigned RID # 107
Customer RID <input type="checkbox"/>	24 hours <input type="checkbox"/>	
Internal Staff RID <input checked="" type="checkbox"/>	10 working days <input type="checkbox"/>	
	As time available <input type="checkbox"/>	

1. Project Name: Nonconforming Uses

2. Project Number: n/a

3. Project Street Address: n/a

4. Applicant Name: n/a.

5. Applicant Address: n/a

6. Applicant Telephone #: n/a

7. Applicant e-mail Address: n/a

8. Rule in Question:

Sec. 35-702. - Continuing Lawful Use of Property and Structures.

(b) Limitations on Nonconforming Uses.

(3) Continuance. *The lawful use of any building existing as of the effective date of this chapter may be continued, although such use does not conform to the provisions of this chapter. Such use may be extended throughout the building, provided no structural alterations or additions to the structure, except those required by law or ordinance, are made thereto.*

9. Applicant's Position:

Date: 5-11-12 **Contact:** Andrew Spurgin **Contact Telephone #:** 210-207-8229

Staff and Department customers need guidance interpreting 35-702(b)(3) as it applies to the ability of nonconforming uses to reconfigure occupancies within existing buildings.

10. Staff Finding:

(Including date of finding and name of city staff person formulating finding)

Date: 5-11-12 **Contact:** Andrew Spurgin **Contact Telephone #:** 210-207-8229

UDC subsection 35-702(b)(3) begins with a qualifying statement, "the lawful use of any building existing as of the effective date of this chapter..." meaning that the expansion provision in this subsection is limited to legally established uses existing as of June 4, 2001 which was the effective date of Chapter 35, the UDC. Nonconforming use

registration pursuant to 35-705 is required to verify the pre-June 4, 2001 establishment date.

The second qualifier to the provision in 35-702(b)(3) is that any expansion within an existing building may only be carried out when there are no structural alterations or additions.

Addition is defined in the UDC, Appendix A, "Definitions," as: *a completely new structure or new component to an existing structure.*

Structural alteration is not defined in the UDC however pursuant to 35-A101 (a) the following provision controls: *Words, phrases and terms not defined in this chapter, but defined in the building code adopted by Chapter 6 of the City Code, shall be given their usual and customary meanings except where the context clearly indicates a different meaning.*

Chapter 6 of the City Code is the Building Code that adopted the International Building Code (IBC) and International Residential Code (IRC). IBC Section 202 has several definitions to support the context what is considered "structural alteration."

Alteration: Any construction or renovation to an existing structure other than repair or addition.

Primary Structural Frame: The primary structural frame shall include all of the following structural members:

- 1. The columns;*
- 2. Structural members having direct connections to the columns, including girders, beams, trusses and spandrels;*
- 3. Members of the floor construction and roof construction having direct connections to the columns; and*
- 4. Bracing members that are essential to the vertical stability of the primary structural frame under gravity loading shall be considered part of the primary structural frame whether or not the bracing member carries gravity loads.*

Secondary Members: The following structural members shall be considered secondary members and not part of the primary structural frame:

- 1. Structural members not having direct connections to the columns;*
- 2. Members of the floor construction and roof construction not having direct connections to the columns; and*
- 3. Bracing members other than those that are part of the primary structural frame.*

Based on these IBC provisions staff finds that "structural alteration" does not include any repairs that are "like for like" in nature, but would include any changes to primary structural frame or secondary structural members. A structural alteration would include any alterations to firewalls or anything outside the existing footprint or roof height.

Structural alteration does not include changes to the location of tenant demising walls or similar space partitions when such walls are not load-bearing in nature. Similarly, any changes to occupant load that would require introduction of new primary or structural members, including increases to fire-rated walls, would be considered a structural alteration.

11. Staff Position:

(Including date position presented internally and name of city staff person formulating position)

Date: May 11, 2012 **Contact:** Andrew Spurgin **Contact Telephone #:** 210-207-8229

UDC subsection 35-702(b)(3) was intended as a transitional provision for existing uses that were lawfully in place prior to June 4, 2001 and that were made nonconforming by adoption of the May 3, 2001 Chapter 35 of the City Code, which is the UDC. This does not include any nonconformity created by subsequent amendments to the UDC.

In order to expand a nonconforming within an existing structure pursuant to 35-702(b)(3), the use must be a registered nonconforming use in accordance with 35-705 and limit such interior expansion to that which does not include structural alteration. The nonconforming use registration application is available online at <https://webapps1.sanantonio.gov/dsddocumentcentral/upload/NCU%20Application%2082108.pdf>

Based on the IBC provisions and in discussion with the Department's Assistant Director for Building Development, staff proposes addition of the following definition to the UDC in a future update to assist with interpretation of 35-701(b)(3):

Structural alteration: Any change in either the primary structural frame or secondary members of a building, such as bearing walls, fire walls, columns, beams, and girders, or any change in the dimensions or configurations of the roof height or building footprint.

12. Departmental Policy or Action:

(Including date of presentation of policy or action to the applicant, the effective date of the policy or action, schedule for pursuing an amendment to the code if required and signature of the Director)

Date of policy/action: Immediately **Effective Date of policy/action:** Immediately

Accepts staff position.



Roderick Sanchez, AICP, C.B.O
Director



Date