

Proposed FAQ for Residential Code, Sections R105.3.1.1, R322, AJ101.3

Q. When determining whether proposed work constitutes a substantial improvement as described in R105.3.1.1, do costs for multiple permits need to be considered cumulatively over time?

A. Sometimes they do; it depends on the specifics of each individual situation. Different situations are addressed below.

A1. Multiple permits issued for one work project. When multiple permits are issued for a work project (e.g., separate permits for excavation, foundation, electrical, etc.) the costs associated with each permit must be considered together when determining substantial improvement.

A2. Permits issued simultaneously for different work projects. When permits are issued for separate work projects taking place at the same time on the same building, the cost for the projects must be considered together when determining substantial improvement. This includes permits that overlap; i.e., one permit is issued while a previous permit is still open.

A3. Permits issued within a 12-month period. Related work permitted within a 12-month period shall be considered to be a single work project. The costs must be considered together when determining substantial improvement.

Justification

Answers A1 and A2 are consistent with FEMA guidance (FEMA P-758, Substantial Improvement/Substantial Damage Desk Reference) and are consistent with current practice in Massachusetts.

Answer A3 is based on this statement in Appendix J of the Residential Code, AJ101.3:

Related work permitted within a 12-month period shall be considered to be a single work project.

Considering costs cumulatively for permits issued within a 12-month period will allow communities to prevent permit applicants from circumventing Code requirements for substantial improvements.

Relevant Code Sections:

R105.3.1.1 Determination of Substantially Improved or Substantially Damaged Existing Buildings in Flood Hazard Areas. For applications for reconstruction, rehabilitation, addition, alteration, repair or other improvement of existing buildings or structures located in a flood hazard area as established by section 322.1.1, the building official shall examine or cause to be examined the construction documents and shall make a determination with regard to the value of the proposed work. For buildings that have sustained damage of any origin, the value of the proposed work shall include the cost to repair the building or structure to its pre-damaged condition. If the building official finds that the value of proposed work equals or exceeds 50% of the market value of the building or structure before the damage has occurred or the improvement is started, the proposed work is a substantial improvement or restoration of substantial damage and the building official shall require existing portions of the entire building or structure to meet the requirements of section R322. For the purpose of this determination, a substantial improvement shall mean any repair, reconstruction, rehabilitation, addition or improvement of a building or structure, the cost of which equals or exceeds 50% of the market value of the building or structure before the improvement or repair is started. Where the building or structure has sustained substantial damage, repairs necessary to restore the building or structure to its pre-damaged condition shall be considered substantial improvements regardless of the actual repair work performed. The term shall not include either of the following:

1. Improvements to a building or structure that are required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to ensure safe living conditions.
2. Any alteration of a historic building or structure, provided that the alteration will not preclude the continued designation as a historic building or structure. For the purposes of this exclusion, a historic building shall be any of the following:

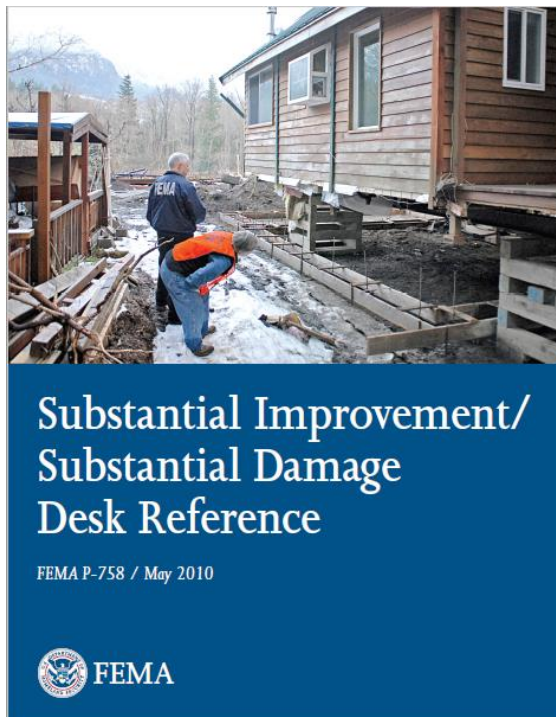
2.1. Listed or preliminarily determined to be eligible for listing in the National Register of Historic Places.

2.2. Determined by the Secretary of the U.S. Department of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined to qualify as an historic district.

2.3. Designated as historic under a state or local historic preservation program that is approved by the U.S. Department of the Interior.

AJ101.3 Multiple categories of work. Work of more than one category shall be part of a single work project. Related work permitted within a 12-month period shall be considered to be a single work project. Where a project includes one category of work in one building area and another category of work in a separate and unrelated area of the building, each project area shall comply with the requirements of the respective category of work. Where a project with more than one category of work is performed in the same area or in related areas of the building, the project shall comply with the requirements of the more stringent category of work.

FEMA Guidance



<https://www.fema.gov/media-library/assets/documents/18562>