

Chapter 19.88

Nonconforming Uses and Noncomplying Structures

19.88.010 - Purpose

This Chapter regulates the continued existence of nonconforming uses or noncomplying structures. While nonconforming uses and noncomplying structures may continue, this Chapter is intended to limit enlargement, alteration, restoration, or replacement which would increase the discrepancy between existing conditions and the developments prescribed by this Title. In addition, applications are reviewed to ensure that they are reducing the degree of nonconformity and improving the physical appearance of the structure and site through such measures as site and building design, or the improved functions of the Use in relation to other uses.

19.88.020 - Determination of a Noncomplying Structure of a Nonconforming Use

The Director or designee shall determine the nonconforming or noncomplying status of properties. As described in Utah Code 10-9a-511, the property owner shall have the burden of establishing the legal existence of a noncomplying structure or nonconforming use through substantial evidence.

- A. The Director or designee shall determine a legal nonconforming use upon finding that:
 - 1. The use legally existed before its current land use designation;
 - 2. The use has been maintained and not discontinued for one year or more since the time the land use ordinance governing the land changed; and
 - 3. Because of one or more subsequent land use ordinance changes, the use does not conform to the regulations that govern the use of the land.
- B. The Director or designee shall determine a legal noncomplying structure upon finding that:
 - 1. The structure legally existed before the structure's current land use designation; and
 - 2. Because of one or more subsequent land use ordinance changes, the structure does not conform to the regulations that now govern the use of the land.
- A. Determinations. Upon review of an application, a written determination shall be issued by the Director or designee of the non-conforming or non-complying status on a property.

- B. Appeals. Pursuant to Section 19.12.040 of this title, any person adversely affected by a final decision of the Director or designee may appeal that decision to the land use hearing officer.

19.88.030 - Continuation of Use

- A. Continuation of a Nonconforming Use. Subject to the limitations in this section, the nonconforming use of land may continue, provided that no such nonconforming use of land can in any way expand or extend either on the same or adjoining property.
- B. Continuation of a Noncomplying Structure. A Non-Complying Structure that was lawfully constructed may be used and maintained, subject to the standards and limitations of this Chapter.

19.88.040 - Abandonment or Loss of a Nonconforming Use

- A. Abandonment of a Nonconforming Use. A nonconforming use that is discontinued for a minimum period of one (1) year is presumed abandoned and shall not thereafter be reestablished or resumed. Abandonment may also be presumed to have occurred if a majority of the primary structure associated with the nonconforming use has been voluntarily demolished without prior written approval of the Emigration Canyon City regarding the extension of the nonconforming use; or the primary structure associated with the nonconforming use remains vacant for a period of one (1) year.
 - 1. Any party claiming that a nonconforming use has been abandoned shall have the burden of establishing the abandonment.
 - 2. After a nonconforming use has been abandoned, any subsequent use of the building, structure, or land must conform to the regulations for the zone in which it is located.
 - 3. "Majority" is defined as more than fifty percent (50%) of the square footage of the primary structure.
- B. Rebuttable Presumption of Abandonment. After abandonment has been presumed by the Director or designee, the property owner may rebut the presumption of abandonment by submitting sufficient evidence that abandonment has not in fact occurred.

19.88.050 - Nonconforming Use

- A. Expansion of Use Permitted. A nonconforming use may be extended through the same building, provided no structural alteration of the building is proposed or made for the purpose of the extension.
- B. Change of Use.

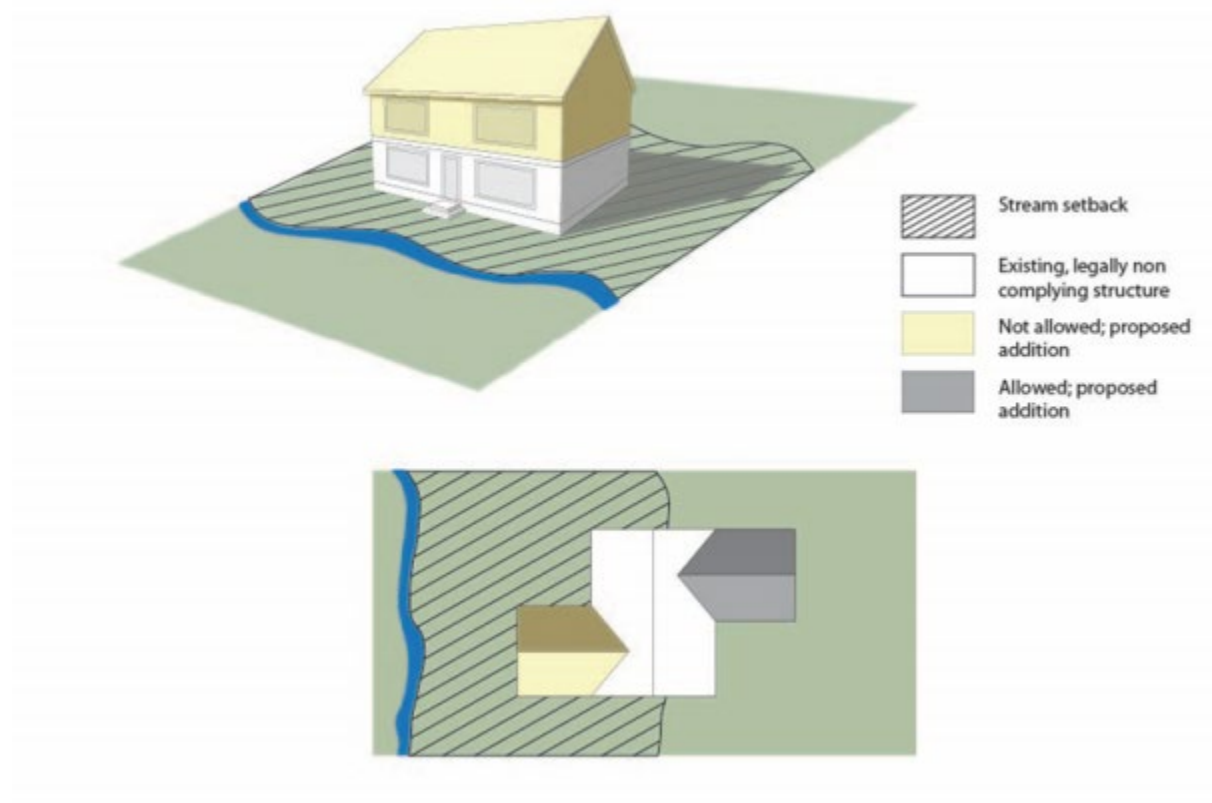
1. A nonconforming use may be changed to any use allowed in the most restrictive zone where such nonconforming use is allowed, provided the Planning Commission finds that such use would not be more intensive than the most recent existing legal nonconforming use.
2. Any change of a nonconforming use to another nonconforming use is a conditional use and subject to the conditional use approval standards, except that the proposed nonconforming use need not conform to the adopted General Plan.
3. As part of the change of use, structures cannot be enlarged, removed, reconstructed or otherwise altered except for interior remodeling and exterior restoration or renewal that will make the appearance of the structure more nearly conform to the character of the area in which it is located.
4. As part of the change of use, the existing lot cannot be enlarged or modified except to create landscape, fencing, curb, gutter and sidewalk, road widening or minimum off-street parking to provide a safer and more compatible facility.

19.88.060 - Noncomplying Structure or Structure Occupied by a Nonconforming Use

- A. Maintenance, Exterior or Interior Remodeling, or Repairs Permitted. The Owner may complete normal maintenance and incidental repair on a complying Structure that contains a Non-Conforming Use or on a Non-Complying Structure. This Section shall not be construed to authorize any violations of law nor to prevent the strengthening or restoration to a safe condition of a Structure in accordance with an order of the Building Official who declares a Structure to be unsafe and orders its restoration to a safe condition.
- B. Addition, Enlargement, Expansion. A non-complying structure shall not be added to, enlarged, or expanded in whole or in part unless the proposed change complies with all current land use regulations. In other words, all new square footage of building must fully comply with the setback, size, and height regulations set forth in this title (see Figure 1).
- A. Moving or Reconstruction at a New Location. A non-complying structure shall not be moved in whole or in part, for any distance whatsoever, to any other location on the same, or any other lot unless:
 1. The proposed change will lessen the degree of the existing noncompliance and not create any new noncompliance of all or any part of the structure; or
 2. The proposed change complies with all governing land use regulations at the time of the change.

3. For the purposes of this Chapter, “lessen the degree of existing noncompliance” means:
 - a. To decrease the gross total square footage of structure not in compliance (see Figure 1); and,
 - b. To increase the distance from the ordinary high-water mark, wetlands, and/or property line when the nonconformity pertains to a setback distance.
- C. Remodels Requiring Reconstruction. A noncomplying structure that has deteriorated to a state where a full demolition or construction or reconstruction of a foundation is necessary for interior or exterior remodels may be reconstructed in the same location subject to current land use regulations. The existing noncompliance may continue if the degree of noncompliance is not increased or a new violation in land use regulations is not created.
 1. A noncomplying structure that has deteriorated to a condition that the structure is rendered uninhabitable may not be reconstructed, restored, or substituted, once written notice from the Emigration Canyon City is served to the property owner that the structure is uninhabitable and that the nonconforming use or noncomplying structure will be lost if the property owner does not apply with a complete land use application within one (1) year from the day in which the written notice is served.
- D. Damage or Destruction. A noncomplying structure or structure occupied by a nonconforming use that is damaged or destroyed by fire, flood, wind, earthquake or other calamity or act of God or the public enemy, and the damage is not the result of the intentional or reckless disregard of the owners or occupants, may be restored, and the occupancy or use of such structure or part thereof that existed at the time of such damage or destruction may be continued or resumed, provided that such restoration is started within a period of one (1) year following damage or destruction, and the restoration is diligently prosecuted to completion.

19.88.060 Figure 1 Adding to a non-complying structure



(Figure 1: Adding to a non-complying structure.)