



Memorandum

To: Town Council
From: Thomas Dansie, Director of Community Development
Date: September 5, 2025
Re: Ordinance Interpretation Request - Town Code Sections 10-21-3 and 10-21-8

Executive Summary

Section 10-1-3 of the Town Code authorizes the Town Council to resolve any ambiguity, uncertainty, or conflict regarding the Land Use Ordinance. Any person may request an interpretation from the Council by making a request in writing.

Luke Wilson has requested the Council resolve an uncertainty relative to sections 10-21-3 and 10-21-8 of the Town Code. Both of these sections regulate the maintenance and alteration of non-complying buildings. Non-complying buildings are those which were legally conforming to all land use requirements when they were constructed, and which now do not comply due to subsequent changes in the ordinance.

This request is related to the ongoing redevelopment of a single-family residential property at 517 Watchman Drive. However, when interpreting the Code the Council's interpretation is then binding on all properties moving forward. The Council should use the specific example at 517 Watchman Drive to illustrate the uncertainty in the Code with the understanding that the interpretation will have general townwide application.

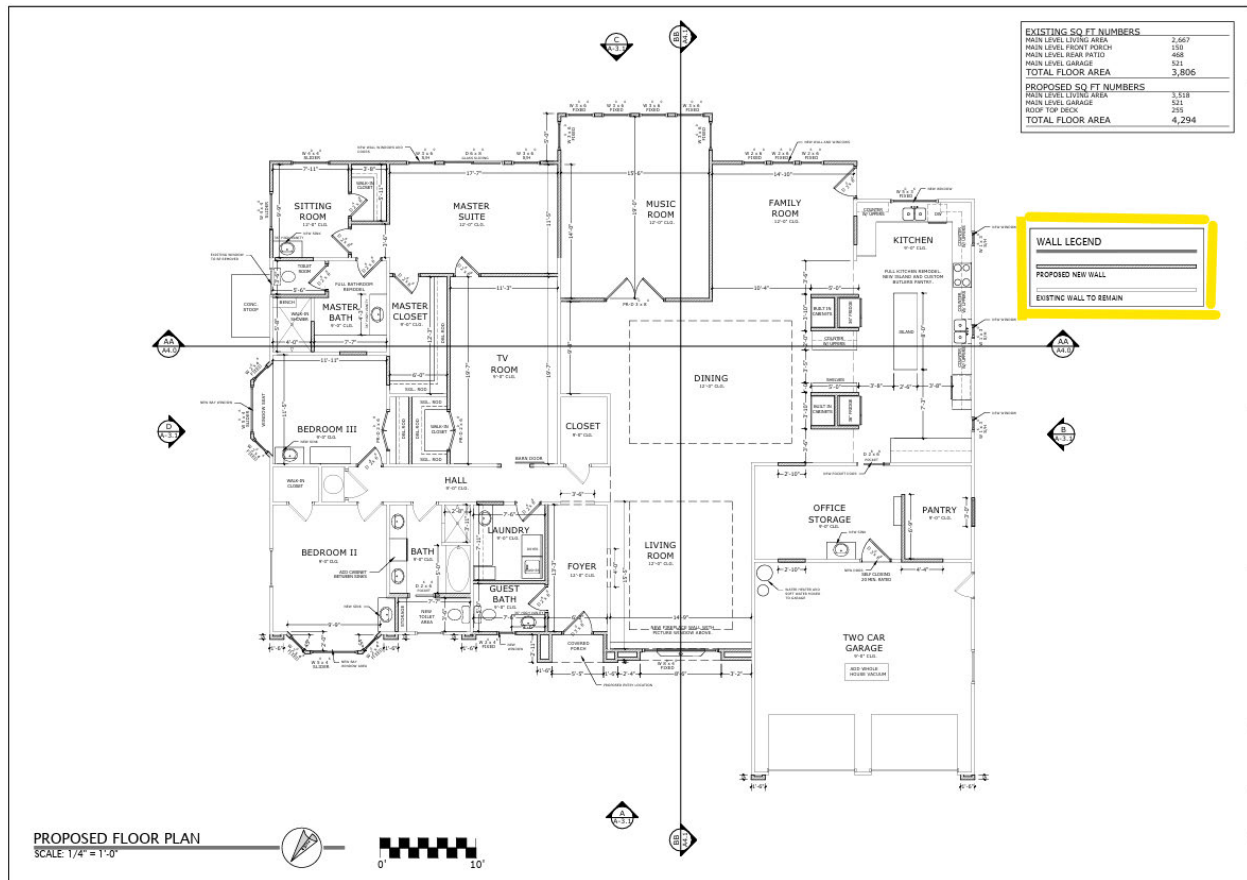
Per section 10-1-3 the Town Council must resolve the uncertainty "to further the purposes and goals of [the Land Use Ordinance]".

Background

The property at 517 Watchman Drive was developed with a single-family residence in 1988. At the time it was constructed it complied with all land use regulations. In 1992 the Town adopted a new land use ordinance which altered the setback and other requirements for the property. The existing home did not comply with the new front setback requirement (the new ordinance requires a 30 foot setback, the existing home was setback between 17 and 18 feet).



Earlier this year the property owners applied for Design/Development Review to remodel the home, including a small addition on the rear. Section 10-21-8(B)(1) allows a single-family residence to “be altered or added to if such alteration or addition will not result in expansion of any existing nonconformities or creation of new nonconformities.” Staff worked with the project designer to ensure all proposed additions were compliant with the current setback requirements, and that the alterations on portions of the building with the non-compliant setback did not expand the non-compliance. The approved Design/Development Review plans indicated which existing portions of the building would remain and which would be removed or replaced (shown in the figure below).



After the Design/Development Review was approved the Town gave the project contractor permission to begin the demolition portion of the project¹. The contractor began a piecemeal demolition, removing the portions of the building that were to be remodeled. However, at some point during the demolition it became evident that the entire existing framing of the structure had deteriorated to the point that it was no longer safe to continue use as part of the proposed renovation. (See photographs of the damaged structure below.)

¹ The Town does not have a formal demolition permit process. The Town requires documentation of asbestos and lead paint abatement, and otherwise does not regulate the demolition of buildings. Thus the approval given was based on verification of asbestos and lead paint clearances.



After discovering the extensive damage to the existing structure and in consultation with the project engineer, the contractor removed all of the existing framing, as well as the associated plumbing, electrical, and mechanical systems with the intent to replace the damaged framing with new framing. The replacement framing would be in the same location as the previously existing framing, as shown on the approved plans.

At this point the building foundation and driveway remain, but nothing else. (See photographs of the existing slab with the framing removed, below.)



Ordinance Uncertainty

There are two sections of the Code the applicant suggests need resolution: 10-21-3 and 10-21-8.

Section 10-21-3 of the Code reads as follows:

*A noncomplying building or structure in any zone may be continued, provided no additions, enlargements or alterations are made to said building, **except as allowed or required by law or as provided in other sections of this chapter. If any such noncomplying building is removed, every future building on the lot or parcel of land shall comply with the provisions of this title.** (emphasis added)*

The uncertainties the applicant requests to be clarified in this section are: 1) what it means to “remove” a building, and 2) what is the extent of alterations allowed “in other sections of this title.”

What constitutes removal of a building?

As detailed above, the foundation of the old building remains. Additionally, the new construction is proposed to be contained to the extent of the existing foundation in the area of the non-compliant setback. The applicant proposes that the combination of preserving the existing foundation and limiting the new construction to the exact location and extent of the previous construction means that the building has not been “removed.”

What alterations are allowed in “other sections of this title”?

Section 10-21-3 allows alterations of non-complying buildings as allowed in other areas of the Code. One of those other areas is section 10-21-8. This section regulates the extent of alterations allowed on a non-compliant structure. According to paragraph B of this section alterations are allowed on the first floor of a single-family residence with non-compliant setbacks, as long as there is no new setback non-compliance created with the alteration. This section is clear and staff and the applicant agree that the proposed alterations and additions shown on the approved DDR plans are consistent with this section.

What is less clear is paragraph A of section 10-21-8. This section allows alterations for “ordinary maintenance and repair.”

What is “Ordinary Maintenance and Repair”?

Paragraph A of section 10-21-8 reads as follows:

*Ordinary maintenance and repair: Ordinary maintenance and repair of noncomplying buildings and structures is allowed so long as such maintenance or repair will not result in expansion of any existing nonconformities or creation of new nonconformities. **“Ordinary maintenance and repair” means improvements made to a building for the purpose of keeping the structure in a state of repair and protecting the structure from failure or decline. The term shall also apply to the rehabilitation of a building or structure which is in disrepair for the purpose of making the structure safe and sanitary, in accordance with local building code. Further, interior improvements within***

*existing walls, not resulting in additional habitable space, shall be permitted.
(emphasis added)*

When interpreting Code the Council should use the plain language of the text whenever it includes a specific definition. In this case, the Code contains a definition of “ordinary maintenance and repair” which might or might not be consistent with how the Council would interpret that phrase in the absence of such a definition. In particular, complete removal and replacement of all the framing of a building might be outside the limits of what “ordinary maintenance and repair” would mean if that phrase were not defined in the Code. Since it is defined, the Council needs to interpret that phrase not based on personal opinions about the phrase in general, but based on what the language of the Code definition actually says.

The Code says that “ordinary maintenance and repair” includes “keeping a structure in a state of repair and protecting the structure from failure or decline.” This implies the structure will be *kept* and *protected*.

The Code definition also includes “rehabilitation of a building or structure which is in disrepair for the purpose of making the structure safe and sanitary.” As part of that rehabilitation it is possible that certain elements of the building or structure may need to be replaced to make the structure safe.

The applicant has referenced the ongoing renovation of the Flanigans Inn spa building as a comparable situation. The Council reviewed and approved a request to alter and add to the non-complying Flanigans Spa building in September 2023. Staff suggests the “ordinary maintenance and repair” process allowed in paragraph A is exactly what has occurred at the Flanigans building. Some portions of that structure had failed due to damage caused by both fire and water. To *rehabilitate* the building, those elements that were in disrepair were replaced to make the structure safe and sanitary. However, a significant portion of the existing framing and foundation was *kept* and *protected* in such a way to prevent failure or decline.

Staff suggests the current situation at 517 Watchman Drive differs from the Flanigans Inn example because all of the framing structure has been removed, and none has been kept or preserved. Thus, the question for the Council to consider is whether complete replacement of the building (exclusive of the foundation) is “ordinary maintenance and repair.” Again, when making that determination the Council should do so in light of the language in the Code definition and not based on a general impression of what the phrase could mean.

Staff Analysis

Staff has reviewed the situation extensively in light of the Code language, the DDR approval, and the series of events that resulted in removal of the building. Based on this review and analysis, staff determined complete demolition of all the framing of the structure was a “removal” of the building under section 10-21-3. This determination was based in part on previous precedent with a Town-owned building.

Several years ago the Town acquired the historic home on the Best Western property with the intent to rehabilitate it and use it as a history center. The building was non-compliant with setback requirements. During the course of the renovation the Town discovered issues with the foundation of the building. These could have been mitigated such that the existing foundation could have been preserved. The Town also discovered extensive termite damage throughout the framing of the structure. Based on an evaluation of the termite damage the Town concluded it was impossible to keep the existing framing of the structure as part of the proposed rehabilitation. All of the framing would need to be replaced. Staff's determination at that time was that removing all the framing of the structure would constitute "removal" of the building, and the non-complying allowance of the structure would be lost. Any future building on the property would need to meet the required setbacks.

Staff's analysis in the instance of the structure at 517 Watchman Drive was informed by this prior precedent.

Staff notes there are significant differences between the history center project and the 517 Watchman rehabilitation. The history center project was located on commercial property while 517 Watchman is a residential property. The history center project would have been a change of use in the structure (hotel check-in to public use museum) while the 517 Watchman project retains the single-family residential use. Most of the other properties on Watchman Drive are non-compliant with the current front setback requirement, thus the non-compliant setback on 517 Watchman was in keeping with the general character of the community. However, after considering all these factors staff was unable to justify deviating from the prior precedent set by the history center project based on the language in the Code.

Staff acknowledges that the Code does not explicitly state what "removal" of a building entails. The Code also does not contain specific regulations detailing to what extent a building may be rehabilitated to make it safe and sanitary. Thus there is enough uncertainty in the current Code language to warrant a review and resolution from the Town Council.

Council Action

The Council should resolve the following uncertainties in the Code:

1. Under what circumstances has a non-complying building been "removed" from the property and therefore no longer eligible for non-complying building status? (section 10-21-3)
2. Does the removal and subsequent replacement of all the framing of a building in disrepair qualify as "ordinary maintenance and repair?" (section 10-21-8)

The Council should keep the following in mind when making this resolution:

- The interpretation of the Code should be based on general application of the Code town-wide, and not limited to the specific instance at 517 Watchman Drive. Whatever interpretation the Council makes will be binding not only on the 517 Watchman Drive project, but also all other properties in the Town.

- The interpretation of the Code should be based on the plain language of the Code, when such plain language exists (i.e. the Code definition of “ordinary maintenance and repair”).

Note

The Council’s agenda for the current meeting includes an item to direct the Planning Commission to revise the language of sections 10-21-3 and 10-21-8 of the Town Code. However the Council resolves the uncertainty associated with these two Code sections, it will be important to revise the Code to make that interpretation explicit. The Council will be able to direct the Commission to make such a revision during action on that agenda item.

Under Review

Active

Application Review Status

Pre-Review	Approved		08/30/2025
Planning	Not Reviewed		
Final-Review	Not Reviewed		

Fees

Application Fee	\$100.00
Subtotal	\$100.00
Amount Paid	\$100.00
Total Due	\$0.00

Payments

09/02/2025	Online	\$100.00
Total Paid		\$100.00

Application Form Data

(Empty fields are not included)

Application #
TOS2025-079

Applicant First Name
Luke

Applicant Last Name
Wilson

Applicant Email Address
[REDACTED]

Applicant Phone Number
[REDACTED]

Please identify the section(s) of the Town Code you are requesting to be interpreted.

What is the ambiguity, uncertainty, or conflict associated with this code section(s) that you believe needs to be resolved?

We are remodeling the home. The studs in the walls were rotten with black mold and rot. The engineer requires replacement. We would like to replace those studs as part of the remodel. No expansion or change will occur on the portion of the home in question.

In section 10–20 1–3. It prescribes continued use provided no additions or enlargement or alterations are made. We propose none of those, only to refresh the structural elements that were rotten. The foundation of the home still exists, the entirety of the building has not been removed. In 10–20 1–8 it prescribes repair of noncomplying buildings and structures. Under section a it prescribes repair for purpose of keeping a structure from failure or decline. It also prescribes for rehabilitation of a structure in disrepair for purpose of making the structure, safe and sanitary. This is exactly what we propose to do. Further, in section B it actually prescribes alterations provided the Home is a single level home, which it is.

Provide a brief explanation of your preferred interpretation of the Town Code section(s) identified above.

We hope that the small portion of the home in question will be allowed to be repaired to its original state using structurally safe and sanitary products. We believe the code prescribes the pathway for this.

Inherent in the design approval, the roof had to come off for the remodel. The foundation has not been changed. Only about 27 studs were removed that had been anticipated to be left. Because of the rot and black mold and water damage, the engineer required removal. All we want to do is put them back in place.

Provide any relevant facts or information that will assist the Town Council interpret the Code section(s) listed above.

The most significant portion of the garage is the foundation and it remains untouched and intact. No change to the foundation. The only element in question are the roughly 27 rotten studs.

We are aware of many projects in town that are nonconforming and many have been worked on. In fact, we are currently working on one at the Flanagan's Inn. Part of the building actually lies outside the property line in the state right of way. The town approved the renovation of such building, in addition to architectural and structural changes. That project required foundation upgrades as well as framing upgrades. For a time the front section of that project was entirely deconstructed to accomplish these structural requirements.

Our subject property is not outside of the property line, only the setback. We propose no changes at all.

We understand that other homes on the same street are also out of compliance with setbacks. We do not think the town can require that we would have left faulty and unsafe materials in place. We anticipated leaving the walls in place as shown by the manner which we deconstructed the home by hand instead of by wholesale removal (meaning with a piece of equipment). Upon discovery of the rotten and unsafe and unsanitary Wood framing, the engineer required us to remove those elements on the home.

Staff kindly directed us to the council before we can proceed.

Thank you.

Signature

I agree that the facts stated in this application are true, and upon changes I will provide notification as needed.

Luke wilson - 08/30/2025 2:43 pm