



Memorandum

To: Planning Commission
From: Niall Connolly
Date: September 12, 2025
Re: Noncomplying Building

Introduction

The Town Council has directed the Planning Commission to review two sections of chapter 10-21 of the Code (10-21-3 and 10-21-8). The Commission is requested to make recommendations for amendments to this chapter to address some ambiguities that were uncovered during the most recent Council meeting. At the Town Council meeting of September 10th, the Council was asked to interpret sections 10-21-3 and 10-21-8 of the Springdale Municipal Code. These sections are as follows:

10-21-3: NONCOMPLYING BUILDINGS:

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.

10-21-8: MAINTENANCE, REPAIR, ALTERATION AND IMPROVEMENTS TO NONCOMPLYING BUILDING OR STRUCTURE:

Anything in this chapter notwithstanding, the following shall regulate the maintenance, repair, alteration and improvement of noncomplying buildings and structures. In all cases, where works constitute a substantial alteration of a structure, the works shall include measures, as necessary, to ensure the structure complies with town's current flood hazard reduction provisions, as set out in section 10-13A-8 of this title.

A. *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.

B. *Alterations:*

1. *Single-family dwellings:*

a. A single-family dwelling having nonconforming aspects may be altered or added to if such alteration or addition will not result in expansion of any existing nonconformities or creation of new nonconformities.

b. When a single-family dwelling is nonconforming as to setbacks, additions or alterations shall be permitted on the first floor if such addition or alteration will not result in the expansion of any existing nonconformities or the creation of new nonconformities.

2. *Multi-family dwelling or commercial building:* A duplex, multi-family dwelling or commercial building or structure having nonconforming aspects, but having a use that is conforming, may be altered or added to, with the approval of the Town Council, provided such alteration or addition will not result in an expansion of any existing nonconformities or creation of new nonconformities.

Background

This ordinance interpretation request arose from a residential project at 517 Watchman Drive. Although the Planning Commission is not being requested to take a view on this specific project, understanding this background may assist in the discussion.

The applicant received DDR approval to remodel their home and add some floorspace to the rear of their house. A portion of the existing home protruded into the front setback, and was legally noncomplying (i.e. it complied with the Code at the time it was built, but since then the Code has changed). The Code allows for alterations of noncomplying buildings, so long as the non-conforming aspect of the building is not expanded. On the other hand, if a noncomplying building is removed, any new building must be built to comply with today's Code.

The plans for this remodel retained the noncomplying part of the building and was compliant in all other respects, so it was approved. However, during demolition, it was discovered that all of the walls had experienced significant water damage and rot, and so they were removed. All that remained was the foundations. This then raised the question - had the building been removed - and therefore, could the noncomplying parts of the house be rebuilt? Ultimately the Council interpreted the ordinance in the following way:

- A building is not considered to be "removed" if the foundations are remaining.
- The entire removal of walls or other elements which are damaged due to water, rot or other deterioration could come under the definition of "ordinary maintenance and repair", as currently defined in 10-21-8(A).

This interpretation does not apply solely to the project on Watchman Drive, but applies to the entire Town.

Town Council Instruction to the Planning Commission

In making this interpretation, the Council acknowledged that there is some ambiguity in this section of the code, which would benefit from clarification. The Council therefore directed the Commission to review this section of the Code, with a view to addressing this ambiguity. In particular, the Planning Commission has been asked to explore the following points:

- The definition of “removal” of a building
 - Does removal of the building require removal of all of the structure, including the foundation and underground utilities? Or does removal of the above foundation elements constitute removal? Does it make a difference if the proposed new build above an existing foundation is limited to the extent of the existing foundation?
 - Is there some percentage of a building that must be removed before the entire building is considered “removed”?
- The definition of “ordinary maintenance and repair”
 - Should this be revised to more narrowly refer to things like replacement of worn roof shingles and patching of stucco, and not to complete removal and replacement of a building?
- Though not specifically addressed as part of their action on the interpretation request, the Council wondered if the allowance for reconstruction of buildings destroyed by “catastrophic events” allowed by sections 10-21-6 and 10-21-7 could be expanded to include other types of damage common to older buildings (e.g. water damage, rot etc).

Other Points to Consider

The approach the Town currently takes with noncomplying structures can be summarised as follows:

- They can legally remain in place so long as their noncomplying aspects are not expanded.
- If they are removed, any new buildings must comply with today’s ordinances.
- The general intention is that, over time, noncomplying buildings will eventually be phased out as properties are redeveloped.

There are many older, noncomplying buildings in Springdale, in particular in the central commercial zone. One of the upcoming Planning Commission priorities is to discuss the revitalization of nonconforming central commercial properties. This has a direct connection to this item, and so it may be worth considering these two items together. The issue with some of these noncomplying structures is that because bringing them into compliance would substantially reduce their commercial floorspace, it is unlikely that they will ever be comprehensively redeveloped. For example, many of these properties have reduced setbacks, limited landscape etc. So it is most likely that they will continue in their noncompliant state, and never benefit from substantial upgrades, because they could risk losing their noncomplying status. Thus the connection with revitalizing the town center. The Commission may wish

to explore creative solutions to this issue, at the same time as addressing the Council's direction on noncomplying buildings more generally.