



## **Memorandum**

**To:** The Planning Commission  
**From:** Niall Connolly, Principal Planner  
Thomas Dansie, Director of Community Development  
**Date:** 31 December 2025  
**Re:** Definition of “Removal” and “Ordinary Maintenance and Repair” Relative to Noncomplying Buildings

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### **Introduction**

The Planning Commission has been discussing how best to define the terms “removal of a building” and “ordinary maintenance and repair” as they relate to noncomplying buildings. The Town Council has asked the Commission to craft definitions for these terms in order to resolve some apparent ambiguity in the Code.<sup>1</sup> Over the last number of meetings there have been productive discussions as the Commission has considered the pros and cons of different approaches. The Commission has also sought to gain a broader understanding of how nonconformities are dealt with generally in planning practice, as well as relevant case law.

As reference, the current code language regulating “ordinary maintenance and repair” is reproduced below:

*“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.”*

At the November 19th meeting, Commissioner McCulloch suggested that it would be helpful to have some sample scenarios that the Commission could consider. As the Commission discusses these scenarios, it may be possible to refine opinions and arrive at appropriate definitions. Following this direction, staff has prepared a number of scenarios for the Commission’s discussion. These are included below. Staff will present each of these scenarios in the meeting to allow for Commission feedback and

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<sup>1</sup> A recent Town Council interpretation found that reconstructing all portions of a structure above the foundation was “ordinary maintenance and repair” because a large part of the framing had been compromised by mold and rot. In this case the Council found the structure had not been “removed” because the foundation and slab remained. However, the Council directed the Commission to address this issue and make it more clear in the ordinance when a building has been “removed” and what are the limits of “ordinary maintenance and repair.”

discussion. Staff recommends that the Commission should try to draw a conclusion on each scenario, recognising that there may not be consensus every time. Where it is not possible to gain unanimous agreement on a particular scenario, the Commission could resort to a straw poll to gain the majority opinion. The staff can then use this to craft ordinance language that represents the Commission's majority opinion.

### **Existing Ordinances, Policies, and Practices for Background**

The Commission has reviewed relevant background information on noncomplying structures in previous meetings. This is helpful information for the Commission to have a working familiarity with the following ordinances, policies, and practices surrounding noncomplying structures. The following is a summary of some of the background and foundational information the Commission has discussed in previous meetings. This foundational information could be useful when discussing staff's scenarios.

#### *Reconstruction on Noncomplying Building after Catastrophic Event*

The Town Code and State Law both allow a noncomplying structure that is destroyed by a catastrophic event to be reconstructed in the configuration that it existed prior to the destruction. See Section 10-21-7 of the Town Code:

*"Any noncomplying building or structure that is damaged or destroyed by fire, explosion, earthquake or other catastrophic event may be rebuilt to the configuration of the structure which existed immediately prior to the damage having occurred; provided, however, that in rebuilding the noncomplying structure the noncomplying aspects may not be expanded and, to the extent possible without eliminating any of the preexisting noncomplying aspects, the rebuilding shall be consistent with the current building code. Notwithstanding this, a rebuilt structure shall be consistent with the Town's current flood hazard reduction provisions, as set out in section 10-13A-8 of this title."*

#### *Substantial Improvement / Substantial Damage to Buildings Noncompliant with Flood Hazard Requirements*

The Town Code and National Flood Insurance Program (NFIP) standards have standards for improvements to noncomplying structures in flood hazard areas. If a structure in a flood hazard area undergoes a "substantial improvement" or is subject to "substantial damage" then the entire structure must be brought into compliance with flood hazard regulations. Substantial Improvement is defined as any improvement the value of which equals 50% or more of the value of the existing structure. Substantial damage means any damage whereby the cost of restoring the structure to its original condition would equal or exceed 50% of the value of the structure before the damage. This is a specific policy related to compliance with flood hazard regulations. But it could inform the Commission's action on the broader issue of noncomplying buildings.

#### *Voluntary Demolition*

Utah State Code states that a municipality *may* prohibit the reconstruction of a noncomplying structure if "the property owner has voluntarily demolished a majority of the noncomplying structure" (Utah Code 10-20-1003(3)(b)(ii)). This establishes the minimum requirement for

compliance with current standards as voluntary destruction of the “majority” of the structure. Note that the State Code is permissive (*may*) and not compulsory (*shall*). In other words, the Town can, but is not required to, require compliance with current standards only when a “majority” of the structure is voluntarily removed. Of course, the Town can establish a less restrictive standard (e.g. require compliance only upon complete removal of a structure), but cannot establish a more restrictive standard (e.g. require compliance after voluntary removal of only one wall).

#### General Nonconforming Use Policy and Case Law

The Utah Land Use Institute has published a primer of nonconforming uses and noncomplying structures. This document outlines the general policy surrounding nonconforming uses (inclusive of noncomplying structures) as follows:

*“While the normal bias in applying land use ordinances is to resolve ambiguities in favor of the use of property, this is not so with nonconforming uses. There is a well-accepted premise in land use law that nonconformities should be eliminated over time. While normally land use regulations are construed in favor of the use of property, the ordinances allowing nonconforming uses and restricting them are strictly construed against the nonconforming use.”*

#### **Scenarios for Discussion at the Meeting**

Staff will present the scenarios on the following pages at the January work meeting for Commission discussion. Staff recommends Commissioners come prepared to respond to and discuss each of these scenarios. As noted earlier, it is possible that the Commission will be unable to come to consensus on the appropriate response to one or more of these scenarios. In such a case staff recommends the Commission take a straw poll to determine the majority supported position. Staff will then draft ordinance language based on those majority positions.

# Noncomplying Building Scenarios

January 7, 2026

# Scenario 1

Lucy's house is legally noncomplying. It encroaches into the front and side setbacks. The house is in good condition and has no specific structural damage or decay. She wants to redevelop the property with a new house and plans to voluntarily remove the entire house (including the slab, foundations, and underground utilities) and rebuild.

- A. Lucy's new house needs to comply with all current ordinances, including the front and side setbacks.
- B. Lucy should be allowed to build her new house in the footprint of the old one, including in the area of the noncomplying setbacks, as long as all other zoning standards are met.
- C. Don't know.
- D. Other.

## Scenario 2

Lucy decides not to demolish her entire house, but to keep some of the structure and do a major renovation and addition. Remember, the existing house is in good condition with no damage or decay.

- A. Lucy can renovate the noncomplying parts of her house, and to do so she needs to keep the slab or foundation in addition to the majority of the framing elements (i.e. wall studs, joists, trusses, etc.). She can also make an addition, and all parts of the addition need to meet all zoning requirements, including setbacks.
- B. So long as Lucy keeps the slab or foundation, she can rebuild the noncomplying part of her house if she keeps to the same footprint in the area on noncomplying setbacks. All vertical elements of the house can be completely replaced.
- C. Lucy can completely remove the structure (including the slab and foundation) and reconstruct. However, the new construction needs to be contained within the footprint of the original house in the area of the noncomplying setbacks. She is free to replace the foundation and slab, so long as it is in the same location as the original house in the area of the noncomplying setbacks.
- D. Don't know.
- E. Other

# Scenario 3

Mark's house also has noncomplying setbacks. The house has water damage and mold, as well as some termite damage. These issues have developed over time. He would like to make repairs to his house for the purpose of making it safe and sanitary to occupy. He does not plan to make alterations or renovations other than those necessary to make the structure safe.

- A. Mark is free to work on the mold with bleach and an old toothbrush, and call pest control. If he starts replacing the framing, sheathing, or anything else, he needs to bring the house into compliance.
- B. Mark can make more significant repairs (e.g. replacing some damaged sheathing or studs), but he must retain the foundation or slab, as well as the majority of the studs and the roof joists. If the repairs require replacement of the slab or the majority of the framing elements the house needs to come into compliance.
- C. Mark has flexibility to make significant repairs, including replacement of the slab / foundation and/or all or the majority of the framing elements. However, if he wants to remove any structural elements, such as roof joists, studs or slab/ foundation - he must first obtain a written opinion from an expert (such as an engineer, the Town building inspector, etc.) that such interventions are necessary due to the damage that has occurred to the structure.
- D. Don't know.
- E. Other.

## Scenario 4

Mark (from scenario 3) decides that as long as he is doing some work to make the house safe and sanitary he might as well add that theater room he has always wanted, change roofline, and raise the ceiling height from 8' to 10', which will result in an increased building height (still in compliance with the building height max). All these changes are proposed in the area of the noncomplying setbacks.

- A. The extra design changes and renovations exceed the scope of “ordinary maintenance and repair” and Mark can’t make them.
- B. As long as Mark preserves the existing foundation and slab in the noncomplying setback area he can replace the vertical elements of the construction with a new structure that is completely different in design than the old, assuming compliance with all other zoning standards.
- C. Mark can remove the slab and foundation and replace the entire structure with something brand new, as long as he does not increase the degree of the setback noncompliance and all other zoning standards have been met.
- D. Don’t know.
- E. Other.



# Scenario 5

Caroline owns a commercial property on SR-9. It does not comply with the Town's setback, parking, and landscape ordinances. There is nothing wrong with the building and it still has useful life, but the design is outdated the building is a little bit tired. She would like to freshen up the building and give it a new lease of life.

- A. Carline should only be allowed to make cosmetic improvements, such as repairing stucco, re-roofing, painting etc. If she wants to do more, then the building needs to be brought into compliance.
- B. She can make significant improvements to the building, but must preserve the existing foundation/slab, the majority of the studs, and the roof joists, otherwise she needs to bring the building into compliance.
- C. So long as she stays within the footprint of the original building, she can rebuild (including replacing the slab/foundation and framing) with an entirely new design as long as the new building is in the same noncomplying area.
- D. Don't know.
- E. Other.

# Scenario 6

Doug's commercial property does not comply with the Town's setback, parking and landscape ordinances. The building has deteriorated over time and is in need of extensive repairs to keep it safe to occupy.

- A. Doug should only be allowed to make cosmetic improvements, such as repairing stucco, re-roofing, painting etc. If he wants to do more, then the building needs to be brought into compliance.
- B. He can make the improvements necessary to keep the building safe (as documented and certified by an engineer or building inspector), but must retain the undamaged foundation/ slab, studs and other structural elements. He also cannot make any changes to the building not directly related to making the building safe, otherwise he needs to bring the building into compliance.
- C. So long as he stays within the footprint of the original building, he can rebuild in the same noncomplying area in a manner that is essentially the same building and design as existed previously.
- D. In addition to repairing the building to make it safe and sanitary Doug can also make improvements unrelated and in addition to the repairs necessary to make the building safe, again staying within the limits of the original noncomplying building.
- E. Don't know.
- F. Other.