

Chapter 108-12 Noncomplying Structures, Nonconforming Uses, And Nonconforming Lots

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Sec 108-12-1 Purpose And Intent

The purpose and intent of this chapter is to provide standards for the development and use of noncomplying structures, nonconforming uses, and nonconforming lots. These structures, uses, and lots are considered legal, despite not meeting the current requirements of the zone in which they are located.

For purposes of this chapter, the terms “noncomplying structure” and “nonconforming structure” shall be considered interchangeable unless specifically defined otherwise in this Land Use Code.

Sec 108-12-2 Maintenance, Repairs, And Alterations

Maintenance, repairs, and structural alterations may be made to noncomplying structures on lots of record.

Dwellings or other structures built on lots or parcels which were once legal, but have since been modified in a manner that is in violation of applicable laws, may be issued land use or building permits when the proposed work does not increase the degree of noncompliance, and the owner agrees to correct the violation or bring the structure closer to compliance where reasonably feasible. In restoring the structure to a safe condition, no expansion of the structure is allowed.

Sec 108-12-3 Additions And Enlargements

Except as provided in subsection (c), a structure which is occupied by a nonconforming use shall not be added to or expanded in any manner, unless such expansion is made to conform to all yard and use regulations of the zone in which the structure is located.

Except as provided in subsection (c), a noncomplying structure (main or accessory) shall not be added to or enlarged in any manner, unless such addition or enlargement conforms to all the

regulations of the zone in which it is located, or conforms to the reduced yard setbacks as allowed in section 108-12-13.

A legally constructed dwelling or other structure on a lot of record, which has yard setbacks that are less than the required yard setbacks for the zone in which it is located, shall be allowed to have an addition, provided that:

The addition does not encroach into the required yard setbacks further than the existing dwelling or other structure; and

The addition is located completely on the same property as the existing structure and does not encroach into a road right-of-way or on to adjacent property.

A legally constructed dwelling or other structure on a lot of record, which is located within a stream corridor setback (as defined by the Ogden Valley City Land Use Code sections 108-7-23 and/or 104-28-2), may be added to or enlarged, provided that:

The addition does not encroach into the stream corridor setback further than the existing dwelling or other structure; and

The addition meets the yard setback requirements of the zone in which it is located or conforms to the reduced yard setbacks as allowed in section 108-12-13; or

The addition does not encroach into the required yard setbacks further than the existing dwelling or other structure.

Sec 108-12-4 Alteration Where Parking Insufficient

A structure lacking sufficient automobile parking space as required by this chapter may be altered or enlarged, provided additional automobile parking space is supplied to meet the requirements of the Ogden Valley Land Use Code.

Sec 108-12-5 Moving Noncomplying Structures

A noncomplying structure shall not be moved in whole or in part to any other location on a lot or parcel, unless every portion of such structure is made to conform to all regulations of the zone in which it is located, or made to conform to the reduced yard setbacks as allowed in section 108-12-13.

Sec 108-12-6 Restoration Of Damaged Buildings

A noncomplying structure which is damaged or partially destroyed by fire, flood, wind, earthquake, or other calamity, act of God, or the public enemy, may be restored and the occupancy or use of such structure or part thereof, may be continued or resumed, provided that such restoration is started within a period of one year, by obtaining a land use permit, and substantial progress is maintained throughout the project. **Substantial progress means** "Substantial Progress" means that a required inspection has been passed within the last 6-months includes ongoing good-faith reconstruction activity, such as permitted construction activity, material procurement, site work, or other documented efforts toward completion. Periods of delay caused by weather, financing, insurance claims, contractor availability, seasonal construction limitations, or agricultural operational needs shall not constitute abandonment.

Nothing in this chapter shall be interpreted to prohibit the repair or reconstruction of a legal noncomplying structure using the same or similar construction methods, materials, or structural systems, provided the reconstruction complies with applicable building safety codes.

Sec 108-12-7 One-Year Vacancy Or Abandonment

A legal nonconforming use shall not be considered abandoned unless both:

- (1) The use has ceased for a continuous period of one year; and
- (2) There is clear evidence of intent to abandon the use.

Seasonal, agricultural, agritourism, or temporary interruptions caused by market conditions, weather, operational cycles, property transfer, or building repairs shall not constitute abandonment.

Time periods during which a structure is under active restoration pursuant to Section 108-12-6 shall not be considered vacancy or abandonment.

Any building or structure for which a valid building permit has been issued and actual construction was lawfully begun prior to the date when the structure became noncomplying, may be completed and used in accordance with the plans, specifications and permit on which said building permit was granted. The term "actual construction" is hereby defined to be the actual placing of construction materials in their permanent position, fastened in a permanent manner, actual work in excavating a basement or the demolition or removal of an existing structure begun preparatory to rebuilding; provided that in all cases actual construction work shall be diligently carried on until the completion of the building or structure involved.

Sec 108-12-8 Change Of Use

The nonconforming use of a legal structure may be changed to a conforming use or to another use that is equal or less intensive in land use impacts, as determined by objective standards related to traffic, noise, parking, and utility demand. Agricultural and agritourism uses shall be presumed equal or less intensive unless clearly demonstrated otherwise.

Sec 108-12-9 Expansion Of Nonconforming Use

A nonconforming use may be extended to include the entire floor area of the existing legal structure in which it was conducted at the time the use became nonconforming, provided no exterior expansion of the structure occurs and no new land use impacts are created. A land use permit shall only be required if exterior building modifications or increased parking, traffic, or utility impacts are proposed.

Sec 108-12-10 Legal Use Of Nonconforming Lots

Development on a nonconforming lot is permitted. Development on a nonconforming lot is limited to only those permitted and conditional uses allowed on the smallest minimum lot size for the applicable zone. A new use on a nonconforming lot is prohibited if the proposed use requires a lot size larger than the smallest lot size permitted in the zone. A legally established use may continue on a nonconforming lot regardless of the lot size requirements of the use.

Sec 108-12-11 Subdivision Plat Requirements For Nonconforming Lots; Exemptions

All lots and parcels shall be platted as part of a subdivision in conformance with the requirements of title 106 of this Land Use Code, unless otherwise exempted by state code or this Land Use Code. The platting of nonconforming lots, and the amendment to a platted subdivision containing nonconforming lots are governed as follows:

The following rules govern the treatment of an unplatted lot that does not conform to the current lot standards and may not have complied with the requirements of the subdivision code in effect at the time of the lot's creation:

If the existing lot can be defined as a lot of record, as defined in section 101-2, the lot shall be exempt from subdivision platting requirements.

If the existing lot was created prior to July 1, 1992 and contained a lawfully permitted single family dwelling unit, then the lot shall be exempt from subdivision platting requirements, and is a nonconforming lot.

If the existing lot was created prior to July 1, 1992, and does not qualify for the provisions of subsections (a)(1) and (a)(2), then the lot shall be platted in accordance with title 106 of this Land Use Code. Lot standards applicable for such subdivision lot may be reduced to meet the minimum standards of the zone in effect at the time of the lot's creation so long as it does not create any more lots than currently exist, and the current lot size is not materially reduced from its current acreage, except for minor adjustments necessary to facilitate a more accurate legal description. All such platted lots that do not conform to current zoning standards shall thereafter be considered nonconforming lots. A lot that does not meet the minimum standards of the zone in effect at the time of the lot's creation may be reconfigured upon platting to comply with such standards as long as the reconfiguration does not cause any other lot to become nonconforming or more nonconforming. A lot platted pursuant to this subsection may be further reduced in size to accommodate any right-of-way dedication as may be required by title 106 of this Land Use Code. No unplatted lot or parcel governed by this subsection shall be granted a land use permit for new principal structures intended for residential or commercial use prior to subdivision platting. This requirement shall not apply to agricultural uses, agricultural structures, fencing, irrigation infrastructure, or other improvements that do not create additional development rights.

Any lot legally platted within the bounds of a subdivision that was created pursuant to the standards of the zoning code and subdivision code in effect at the time of its creation, but no longer complies due to subsequent changes to these codes, may be amended pursuant to the minimum standards in effect at the time of its creation. The amendment shall not create any new lots. An amended plat shall be required.

Sec 108-12-12 Reconfiguring Nonconforming Lots

Nonconforming lots may be reconfigured in a manner that complies with the standards of the zone in effect at the time of the lot's creation if the reconfiguration does not create any more lots than currently exist. The reconfiguration shall not cause any other lot to become nonconforming or more nonconforming. If the nonconforming lot is part of a platted subdivision an amended subdivision plat is required.

Sec 108-12-13 Setback Requirements For Nonconforming Lots

A nonconforming lot that has a smaller width than is required for the zone in which it is located may be developed in a manner that does not exceed the following allowed reduction in side yard setbacks:

A nonconforming lot's actual width (v) may be divided by the current required frontage/width (w) in order to formulate a ratio or proportional relation (x). (Formula: "v" divided by "w" equals "x".) The ratio may then be multiplied by the current zone's side yard setback requirement (y) in order to establish a reduced setback (z). (Formula: "x" multiplied by "y" equals "z".)

Calculated setbacks shall be rounded to the nearest whole foot, with fractions of 0.5 feet or greater rounded up. In no case shall the reduced setback be interpreted to allow encroachments closer than the minimum setbacks established in this section.

The reduced side yard setback is subject to the conditions listed below.

Under no circumstances shall an interior lot be allowed to reduce the side-yard setback requirement below five feet on one side and eight feet on the other.

Under no circumstances shall a corner lot be allowed to reduce the side-yard requirement below ten feet when the side yard fronts on a street.

Sec 108-12-14 Parcels Previously Combined For Tax Purposes

Parcels that have been combined by the county recorder's office for tax purposes shall be allowed to separate one or more of the combined parcels on an approved and recorded form if:

The parcels that are being separated were originally created prior to July 1, 1992;

The properties as configured prior to the combination met area and frontage/width requirements for the zone in which they were created, or were considered nonconforming lots;

The combination was done by the current owner or same owner acting as trustee, and was done by a quit claim, combination form, or other instrument, which states the consolidation of parcels is for tax purposes;

No new lots are being created; and

The separation of parcels results in a configuration consistent with the original parcels and conforms to the ordinance that was in place prior to the recording of the combination form, and the resulting lots conform with the provisions of section 108-12-11.

The separation of combined parcels authorized under this section does not authorize a change in the configuration of an approved and recorded subdivision or lots within such subdivision. Any

change to the configuration of a subdivision must comply with title 106 of the Land Use Code, and any applicable state law.

Sec 108-12-15 Effect Of Public Right-Of-Way Expansion

Any structure that legally existed with conforming or nonconforming setback prior to the expansion of a public right-of-way where the expansion of such public right-of-way makes the structure noncomplying or more noncomplying to the setback requirements of this Land Use Code shall be deemed a legal, noncomplying structure.

Any lot that legally existed in a conforming or nonconforming status prior to the expansion of a public right-of-way where the expansion of such public right-of-way makes the lot nonconforming or more nonconforming to the standards of this Land Use Code shall be deemed a legal, nonconforming lot.

This section does not excuse or exempt any past or future action that creates or modifies a lot in a manner that is in violation of applicable laws.