

Chapter 19.33

NONCONFORMING LOTS, STRUCTURES AND USES

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19.33.010 Legislative Intent.

Lots, uses, and structures exist which were lawful when established but whose establishment would be restricted or prohibited under current zoning regulations. This Chapter is intended to protect only those uses, structures and lots that were legally established prior to a change in regulation, and have not been abandoned or discontinued. However, a range of regulatory strategies provided herein allows nonconforming uses to continue so long as they are benign or compatible with neighboring properties. Nonconforming uses with incompatible attributes, as defined, may be injurious to neighboring properties or cause nuisances to the detriment of the community and therefore should not be reestablished when substantially damaged or destroyed.

The intent of this Chapter, under certain circumstances and controls, is to allow modifications to nonconforming lots, uses and structures consistent with the objectives of maintaining the economic viability of such lots, uses and structures, while protecting the rights of surrounding property owners to use and enjoy their properties. This Chapter is intended to provide a compatibility determination for evaluating the proposals for modification, expansion, and/or the restoration of damaged or destroyed nonconforming uses of structures because the effect of approving such applications could result in continuation of the nonconforming use for decades.

(Ord. 6-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 7-2013 § 1 (Exh. A) (part), 2015).

19.33.020 Applicability.

All nonconforming lots, uses and structures shall be subject to provisions of this Chapter.

- (1) If a lot, use or structure deemed legally nonconforming under past zoning regulations is brought into compliance with current standards, it shall be considered conforming.
- (2) The provisions in this Chapter do not supersede or relieve a property owner from compliance with building, fire, health or other life safety requirements of Yakima County Code.
- (3) Additional review requirements are provided within the jurisdictions of the Shoreline Master Program and the Critical Areas Ordinances for nonconforming uses or structures as defined in YCC Titles 16A, 16C or 16D.

(Ord. 6-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 7-2013 § 1 (Exh. A) (part), 2015).

19.33.030 Nonconforming Status.

- (1) Any lot, use, or structure which, in whole or part, is not in conformance with current zoning requirements shall be considered as follows:
 - (a) **Legal Nonconforming.** Lots, uses and structures legally created or lawfully established prior to subdivision or zoning requirements, under prior zoning codes and/or County subdivision regulations are legally nonconforming and may be maintained or altered subject to provisions of this Chapter.
 - (b) **Illegal Lots, Structures and Uses.** Structures, lots, required site improvements, uses and/or developments not legally established or existing as of the effective date of this Title retain their illegal status and must be abated or comply with this Title under actions directed as a result of enforcement proceedings and/or the necessary permit applications.

(2) It shall be the burden of a property owner or proponent to demonstrate the legal nonconformity of a lot, use, and structure. The legal nonconformity of a lot may be demonstrated by a deed or development permit executed prior to the change in code. Structural nonconformities may be demonstrated through development permits, historical photos, and affidavits from persons knowledgeable of the historic configuration of the structure. A list of items to establish the nonconforming status of a land use is provided below in Subsection 19.33.060(1).

(3) If the Administrative Official cannot conclusively determine that the nonconformity was lawfully established and in continuous use or operation based on Subsection (2) above, then the matter may be referred to the Hearing Examiner for Type 2 hearing review. The Hearing Examiner shall be authorized to render a decision as to whether the nonconforming use or structure was lawfully established and in continuous operation, and review it for compliance with this Chapter.

(Ord. 6-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 7-2013 § 1 (Exh. A) (part), 2015).

19.33.040 Legal Nonconforming Lots.

A nonconforming lot, as defined in Section 19.01.070 and created as a building site, which does not conform to minimum lot area, width or depth requirements of the zoning district in which it is situated may be developed, subject to the following:

(1) Establishment of Land Uses and Structures on Nonconforming Lots.

(a) A permitted use or structure shall meet all existing development standards of the zoning district within which it is located including, but not limited to, required yards/setbacks, lot coverage, density (units per parcel), parking, landscaping, storm drainage, signage, and road standards, subject to Subsections (1)(b) and (c) below. Adjustments to these standards shall be subject to Chapter 19.35.

(b) The following uses established on a nonconforming lot shall additionally require at least 20 feet of frontage on, or a minimum 20 foot wide access easement to, a public or private road:

- (i) Detached, single-family dwellings;
- (ii) Zero lot line, common wall or duplex development in the R-2, R-3 and B-1 districts;
- (iii) Multifamily development in the R-2, R-3, B-1 and GC districts; and
- (iv) Any permitted use or structure in the industrial (M-1, M-2) and commercial (SCC, LCC, GC) districts.

(c) The 20 foot-wide access standard shall not be adjustable below minimum fire safety standards established under YCC Title 13.

(2) Boundary Changes to Nonconforming Lots.

(a) A legal nonconforming lot may be increased in size to bring it into closer conformance with area, yard or depth requirements of the zone in which it is located. Reduction to a nonconforming lot's size is permitted only under Subsection 19.34.020(5)(d).

(b) A legal nonconforming lot combined with other land to eliminate the nonconformity with any or all lot requirements of its zoning district shall thereafter remain in compliance.

(c) A separate unit of "land" containing a building site reduced through governmental action or adverse possession below, or further below the required minimum size of the zoning district that it is located, shall be deemed a legal nonconforming lot. Any such action shall be reviewed under Chapter 19.34.

(Ord. 6-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 8-2015 § 2 (Exh. 4) (part), 2015; Ord. 7-2013 § 1 (Exh. A) (part), 2015).

19.33.050 Legal Nonconforming Buildings or Structures.

A legally established building or structure may continue to be used or occupied by a use permitted in the zoning district in which it is located even though it does not comply with present development standards (e.g., setbacks, lot coverage, density, height, etc.) of said zone. The legal nonconforming building or structure may be maintained as follows:

(1) Maintenance, Repair, Expansion or Structural Alteration. A legal nonconforming building or structure may be maintained, remodeled, repaired, expanded, enlarged, or structurally altered upon approval by the Building Official, as provided in this Subsection.

(a) Building Permit Required. When any enlargement meets applicable development standards for the zoning district and this Title, such as building height, lot coverage, or setbacks, a building permit will be required for the structural enlargement.

(b) Administrative Adjustment or Variance. When the enlargement does not meet the development standards of this Title, such as building height, lot coverage, or setbacks, relief may be requested in an administrative adjustment or variance under Chapter 19.35 and a demonstration of compliance with this Subsection prior to issuance of a building permit.

(i) The Reviewing Official must find the following factors present. Any proposed change or arrangement:

(A) Will not change or modify any permit condition previously imposed under Type 2, 3 or 4 reviews;

(B) Will not reduce the amount of required landscaping or the amount or location of required sitescreening;

(C) Will not create or materially increase any adverse impacts or undesirable effects of the project, in the Reviewing Official's determination; and

(D) Will comply with the applicable criteria of Chapter 19.35.

(ii) Any such request that does not meet all the requirements of this Subsection shall be denied.

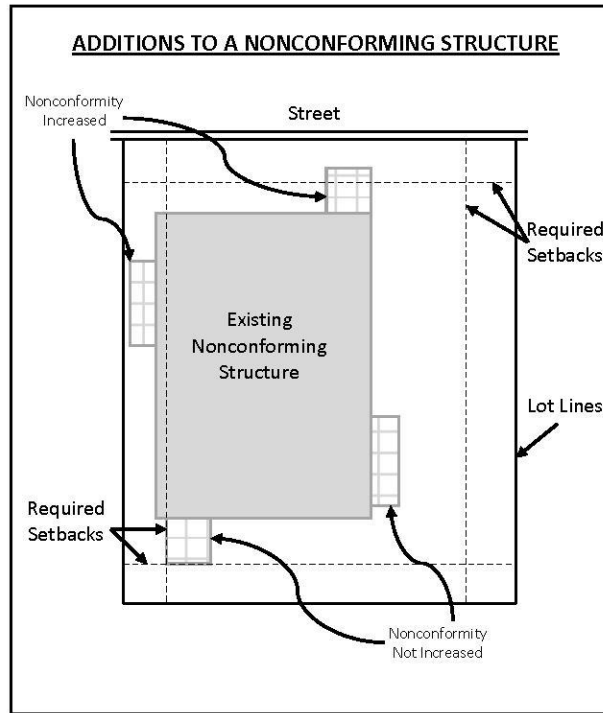


Figure 19.33.050-1. Additions to a nonconforming structure.

(2) Restoration of Damaged Building or Structure.

(a) Damaged or Destroyed Structure. A legal nonconforming building or structure damaged or destroyed by fire, flood, explosion, wind, earthquake, war, riot, calamity or other catastrophic event may be restored or repaired under this Subsection.

(b) Documentation. The property owner shall provide the information necessary under Subsection 19.33.030(2) to reasonably assure the Reviewing Official that a requested restoration or repair complies with this Section. Acceptable documentation may include:

(i) A basic site plan containing the information defined in Section 19.01.070 showing the actual dimensions of the nonconforming structure, its height, and its exact placement on the lot prior to being damaged; and

(ii) A written narrative describing the use or uses that existed immediately prior to damage; and

(iii) An affidavit or certificate from an insurance company or other entity with knowledge of the situation that the narrative and site plan accurately represents the nonconforming structure and its use or uses as they were immediately prior to damage or destruction.

(c) Natural Hazards – Additional Requirements. Nonconforming structures damaged or destroyed by flooding or other natural hazards shall additionally be subject to the requirements of YCC Titles 16A, 16C or 16D.

(d) Reconstruction Not Involving Expansion or Nonconforming Use. The Administrative Official may, through a Type 1 review process, approve reconstruction in conformance with the site plan or to be more conforming with the provisions and standards of the zoning district in which it is located. If it is determined that the requested reconstruction amounts to any expansion of the nonconforming structure's original bulk or dimension, the proposal shall be reviewed under Subsection (1) above. If it is determined the requested

reconstruction involves a nonconforming use, the proposal shall also be reviewed under Section 19.33.060 Legal Nonconforming Uses.

(e) Reconstruction of Structures. The building or structure, not expanding and not containing a nonconforming use, may be reconstructed to the footprint existing immediately before damage or destruction, provided:

(i) A building permit for said restoration shall be applied for within 18 months of the date of damage or disaster.

(ii) Restoration/reconstruction shall be completed within two years of the date of damage or disaster.

(iii) Upon receiving a written request, the Reviewing Official may, through a Type 1 review process, extend the above time limitations, provided the property owner submits documentation demonstrating there was no intent to discontinue the structure and building permits are obtained prior to the expiration of the extension. Documentation may include, but is not limited to, the following:

(A) Requests for approvals necessary to re-establish the structure submitted to appropriate county, state and federal agencies within 18 months after the structure was damaged or destroyed;

(B) The property or structure has been involved in litigation; and

(C) Disputes in insurance settlements in the case of fire or casualty.

(iv) A statement from the property owner merely stating there is no intent to abandon is not sufficient documentation without showing additional actions taken by the property owner to re-establish the structure.

(3) Relocation. A legal nonconforming building or structure shall not be relocated on the same lot unless said move results in bringing the building or structure into closer compliance with requirements of the zoning district in which it is situated.

(4) Signs. Any sign lawfully existing under all codes and ordinances in effect when this Title is enacted or amended may continue to be maintained and operated as a legal nonconforming sign, subject to Subsection (4)(b) below, so long as it remains otherwise lawful; provided that:

(a) No sign shall be changed in any manner that increases its noncompliance with this Title;

(b) If the sign is structurally altered or moved, its legal nonconforming status shall be voided, and the sign and any replacement will be required to conform to Chapter 19.20. Nothing in this Section shall be construed to restrict normal structural repair and maintenance; and

(c) The sign is not a hazardous sign or abandoned sign.

(d) The sign is not a portable sign, temporary sign or an illegal sign.

(Ord. 6-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 7-2013 § 1 (Exh. A) (part), 2015).

19.33.060 Legal Nonconforming Uses.

Any lawfully established nonconforming use or development may be continued at the same gross floor area or land coverage occupied on the effective date of the ordinance codified in this Title, or any amendment thereto, that made the use no longer permissible. Use of these buildings and land is subject to the following:

(1) Establishment of Legal Nonconforming Status.

(a) Any person may request a determination by the Administrative Official through a Type 1 process regarding legal status of a nonconforming use.

(b) Evidence submitted by the applicant shall demonstrate the specific use was lawfully created or established under the zoning regulations in existence at the time and that said use has been maintained and operated continuously, without alteration to the use outside of approval under applicable code, since the time zoning regulations governing the land changed. Acceptable documentation may consist of, but is not limited to, such items as:

- (i) Dated business receipts showing types of service or goods provided;
- (ii) Statements or records from utilities, such as power, water or gas, that indicate the date and type of use and demonstrate that the use was conducted over time;
- (iii) Operating licenses issued by government agencies;
- (iv) Property rental invoices or receipts;
- (v) Income tax records;
- (vi) Dated listings in telephone, business or Polk directories;
- (vii) Records of the County Assessor;
- (viii) Building, land-use or development permits;
- (ix) Dated photographs, newspaper clippings and other relevant documentation; or
- (x) Notarized affidavits from neighbors or persons who have observed the nonconforming use over required period of time may assist in substantiating its presence.

(c) If the Administrative Official cannot conclusively determine that the nonconformity was lawfully established and in continuous use or operation based on Subsection (b) above, then the matter may be referred to the Hearing Examiner for Type 2 hearing review. The Hearing Examiner shall be authorized to render a decision as to whether the nonconforming use or structure was lawfully established and in continuous operation, and review it for compliance with this Chapter.

(2) Change of Ownership, Tenancy, or Management. The legal nonconforming status of a use runs with the land, and is not dependent upon ownership, tenancy, or management, provided the nature, character, intensity or occupancy classification of the use does not change.

(3) Maintenance and Repair. Ordinary repairs and incidental alterations to correct deterioration or wear may be made to buildings containing a legal nonconforming use, provided:

(a) The required maintenance and repair activities are for the purpose of continuing the nonconforming use at or below the lawful nonconforming use level, except as permitted through the nonconforming use alteration review process under Subsection (4) below; and

(b) The value of work and materials in any 12 month period does not exceed 25% of the assessed valuation of such building or structure as established by the most current County Assessor's tax roll. Minor maintenance and repair includes such activities as painting, roof repair and replacement, plumbing, wiring, mechanical equipment replacement, and weatherization. Incidental alterations may include construction of nonbearing walls or partitions. Repair and alteration exceeding the 25% valuation shall require approval under the nonconforming use alteration review process of Subsection 19.33.060(4) below.

(4) Expansions or Alterations of Uses.

(a) When Authorized. No existing nonconforming use of a structure or land shall be altered, enlarged, expanded, extended or replaced except as authorized under this Section. Replacement or restoration of nonconforming uses due to damage or destruction shall be reviewed under Subsection (6) below, with criteria that may also apply in this Subsection.

(b) Definition. For this Section, the terms “alter, enlarge, expand, or extend” shall include, but not be limited to:

- (i) Increased hours of operation;
- (ii) Increased services or programs;
- (iii) Increased number of dwellings;
- (iv) Interior renovations or structural additions that increase the occupant load of the structure dedicated to the nonconforming use;
- (v) Any new structures accessory to the nonconforming use;
- (vi) Expansion of the structure, portions thereof, or portions of the site dedicated to the nonconforming use; ~~or~~
- (vii) Anything beyond regular maintenance and minor repairs described under Subsection (3) above; ~~or~~
or
- (viii) Establishing a new sign.

(c) Nonconforming Dwellings. Any alteration or expansion of a nonconforming dwelling shall not exceed an increase of 50% of the gross floor area (including attached structures) when the dwelling became nonconforming. New detached, private garages and other structures accessory to the dwelling may be established, but new accessory housing units shall not be established on a lot containing a nonconforming dwelling. Expansions to nonconforming dwellings, not exceeding 50% of the gross floor area, and new detached structures accessory to the dwelling, other than accessory housing units, may be allowed under Type 1 review by the Administrative Official, who may attach conditions and limit the size and number of proposed accessory structures, provided the proposal:

- (i) Will not change or modify any permit condition previously imposed;
- (ii) Will not reduce the amount of required landscaping or the amount or location of required sitescreening; and
- (iii) Will not create or materially increase any adverse impacts or undesirable effects of the project, in the Administrative Official’s determination.

(d) Process to Alter, Enlarge, Expand or Extending Nonconforming Uses or Structures. The Hearing Examiner may consider applications under Type 3 review to alter, enlarge, expand, extend or reconstruct a legal nonconforming use, other than residential structures and mining sites described in Subsections (4)(c) above and (e) below, in the same location or to include a portion of a structure, site or adjoining lot it did not previously occupy on the date said use became nonconforming. The alteration, enlargement, expansion, extension or reconstruction requested shall be denied if the Hearing Examiner finds that one or more provisions in Subsection (i) below of this Subsection are not met.

(i) Approval Criteria. The Hearing Examiner may grant the relief requested if he finds all of the following:

- (A) That the alteration or expansion requested would not be contrary to the public health, safety or welfare;
- (B) That the alteration or expansion is compatible with the character of the neighborhood; and does not significantly jeopardize future development of the area in compliance with the provisions and the intent of the zoning district;
- (C) That the use or structure was lawful at the time of its inception;

- (D) That the value of nearby properties will not be significantly depressed by approving the requested alteration or expansion;
 - (E) That the nonconforming structure shall comply with all development standards and codes to the extent feasible;
 - (F) That the use or structure will not cause, increase or expand detrimental attributes for the area in which it is located due to: use of hazardous materials; generation of noise, odors or electronic interference; introduction of incompatible uses; or generation of large numbers of vehicle trips; change in hours of operation; and emissions of light or glare; and
 - (G) That the proposed alteration or expansion requested will not create negative health or safety impacts and need not be excluded to protect the public from harm.
- (ii) Findings and Conclusions. The Hearing Examiner shall prepare written findings and conclusions stating the specific reasons for his decision to approve, approve with conditions or deny the application. The findings shall include the Hearing Examiner's determination regarding compliance of the proposed alteration or expansion with the criteria established in Subsection (4)(d)(i) above.
 - (iii) Conditional Approval. When approving alteration or expansion of a nonconforming use, the Hearing Examiner may attach conditions to the proposed alteration or expansion or any other part of the development to assure the development is improved, arranged and screened to be compatible with the objectives of the Comprehensive Plans, this Title, and neighboring land uses.
- (e) Nonconforming Mining Site/Operation. Enlargement or expansion of a nonconforming mining site/operation that does not have a current permit from the Department of Natural Resources (DNR) may be allowed when the site is within an area plan designated mineral resource overlay, subject to the respective listed required level of review (1, 2, 3 or 4), rather than the nonconforming use expansion procedure of this Section. Those without current DNR permits shall be required to comply with this Title by applying for and receiving approvals for designation and operation of the site.
- (5) Change of Use. The legal nonconforming use of a building, structure, or land may be changed, subject to the following:
- (a) Change to an Allowed Use in the Zone. Applications to convert from a nonconforming use to a use allowed in the zone shall be made under Type 1, 2, 3 or 4 review, depending on the designated level of review for the new use as a Type 1 Permitted, Type 2 Administrative or Type 3 or 4 Conditional Use. Once converted to a permitted use, the nonconforming use shall not be re-established.
 - (b) Change to Another Non-Allowed Use. A legal nonconforming use may be changed to another non-allowed use, subject to a Type 2 review, only if all of the following conditions are met:
 - (i) The proposed new use must have equal or lesser overall adverse impacts to the surrounding area considering such factors as traffic, required on-site parking, hours of operation, noise, glare, dust, odor, and vibration.
 - (ii) The proposed use will not introduce hazardous materials, compromise wells, otherwise cause detrimental health hazards, or interfere with development potential of nearby properties under current zoning regulations.
 - (iii) The change in use will not result in an increase in the amount or area devoted to outdoor storage of goods and/or materials, nor will it cause a reduction in existing or required landscaping and sitescreening.
 - (iv) The proposed new use will not enlarge the structure or building space.
 - (v) The proposed change in use will involve minimal structural alteration.

- (vi) The Reviewing Official may impose conditions to ensure compliance with Subsections (5)(b)(i) and (ii) of this Section.
 - (c) Required site improvements, parking and signage shall be subject to the specific provisions of this Title.
- (6) Restoration of Damaged Building or Structure. A building or structure containing a legal nonconforming use damaged by fire, flood, explosion, wind, earthquake, war, riot, calamity or other catastrophic event may be restored or repaired, and its nonconforming use may be resumed or continued, as follows:
- (a) Substantial or Partial Destruction of a Residential Structure. When a lot contains one or more legal, nonconforming, habitable dwellings, as defined in YCC Title 13, a dwelling with gross square footage not to exceed an increase of 50% of the building at the point it became nonconforming may be reconstructed through Type 1 review. Nonconforming mobile homes may only be replaced with a site-built dwelling, modular home or a manufactured home conforming to siting requirements of Section 19.18.290. The replaced or restored dwelling must be constructed according to building, health, and life safety codes within the time frame of Subsections (6)(d) and (e) below. New detached, private garages, carports and other residential accessory structures may be established without regard to a time frame under Subsection (4)(c) above.
 - (b) Partial Destruction of a Non-Residential Structure. If the extent of either damage or repair cost does not exceed 50% of either the square footage or assessed value, as established by the most current County Assessor's tax roll, of a building or structure containing a nonconforming use, other than a dwelling or accessory residential structure, the building or structure may be reconstructed to the footprint existing immediately before partial destruction, subject to the time frames of Subsections (6)(d) and (e) below. Any expansion is subject to the review process of Subsection (4) above.
 - (c) Substantial Destruction of a Non-Residential Structure. If the extent of either damage or repair cost exceeds 50% of either the square footage or assessed value of such building or structure as established by the most current County Assessor's tax roll, the building or structure shall only be reestablished when approved as an alteration under Subsection (4) above.
 - (d) A building permit application for said restoration shall be filed for within 18 months of the date of the damage, disaster or destruction.
 - (e) Restoration/reconstruction shall be completed within two years from the date of the issuance of the permit.
 - (f) Upon receiving a written request submitted prior to the expiration of 18 months following destruction, the Administrative Official may through a Type 1 review process extend the above time limitations for special circumstances beyond the control of the owner of said building or structure. A lapse of more than 18 months shall be considered a discontinuation under Subsection (7) below.
- (7) Discontinuation of Legal Nonconforming Use. If a legal nonconforming use of land is discontinued or terminated, it shall not be re-established. Any subsequent use of the building or land shall conform to requirements of the zoning district in which it is located.
- (a) A use is discontinued when:
 - (i) It is succeeded by an allowed land use listed for the zoning district;
 - (ii) It is succeeded by another non-allowed use under Subsection (5) above;
 - (iii) The structure in which the use was located was damaged or destroyed and an application for rebuilding or replacement is not made within 18 months of the damage or destruction, or the application for the replacement of the nonconforming structure is denied through the Type 3 review process under Subsection (4) above; or

(iv) The use has ceased for a period of 18 months or more, or the terms of the permit allows for a longer period of time. Barring an express provision in the terms of the permit, use cessation by abandonment for such a period shall create a presumption of intent to abandon.

(b) The Administrative Official may, through a Type 1 process, grant an extension to the timeframe identified above, provided the property owner submits documentation demonstrating there was no intent to abandon the use and other applicable permits are obtained prior to the expiration of the extension.

Documentation may include, but is not limited to, the following:

(i) Requests for approvals necessary to re-establish the use or structure submitted to appropriate county, state and federal agencies within 18 months after the use was discontinued;

(ii) The property or structure has been involved in litigation;

(iii) Disputes in insurance settlements in the case of fire or casualty;

(iv) Delay in transferring title due to probate proceedings; or

(v) Attempts to sell or lease the site are ongoing due to:

(A) The time involved for marketing the premises; or

(B) The structure is a specialized type of building requiring a specialized type of use due to equipment, processes or configuration.

(c) A statement from the property owner merely stating there is no intent to abandon is not sufficient documentation without showing additional actions taken by the property owner to re-establish the use or structure.

(Ord. 6-2017 § 2(C) (Exh. 1) (part), 2017; Ord. 8-2015 § 2 (Exh. 4) (part), 2015; Ord. 7-2013 § 1 (Exh. A) (part), 2015).