



Department of Planning and Building Services
380 A Avenue
Post Office Box 369
Lake Oswego, OR 97034
503-635-0290
www.ci.oswego.or.us

RETENTION, REMODELING, AND MAINTENANCE OF NONCONFORMING DWELLINGS IN RESIDENTIAL ZONES

1. WHAT IS A NONCONFORMING STRUCTURE?

Nonconforming structures were originally constructed **legally**, but do not meet current Code standards because either the Code has changed or the property has been annexed into the City. The structure could be nonconforming to one or many Code standards, including, but not limited to: setbacks, height, building design, lot coverage, and floor area.

2. CAN I KEEP MY NONCONFORMING STRUCTURE?

Yes, the nonconforming portions of a structure can be kept in their current state so long as they are not removed and rebuilt or expanded in a manner that increases the degree of nonconformity. Removal of any nonconforming portion of the building by an intentional act (see Section 3, below) will result in the loss of nonconforming status and any rebuilding will have to fully conform to current Code standards.

3. THE DIFFERENCE BETWEEN "ACT OF NATURE" AND "INTENTIONAL" DEMOLITIONS

If a nonconforming dwelling or accessory structure is damaged by any cause other than an intentional act (e.g., the damage is caused by a tree falling, windstorms, etc.), and no part of the structure is located in the flood management area, reconstruction is exempt to the extent that it was nonconforming to current Code provisions. Voluntary reconstruction or remodeling is considered "intentional demolition"; nonconformity is lost when the nonconforming portion of the structure is removed.

4. CAN I REMODEL OR ADD ON TO A NONCONFORMING STRUCTURE?

Yes, under the following conditions:

- a) The remodel does **not** meet the definition of demolition (LOC 45.12.100.1.d, copied below)
"Demolition" or "demolish" means removal of 50% or more of the total surface area of exterior walls or perimeter foundation of a residential structure as it existed on June 2, 2022, either as a single project or cumulatively over five years or less.

- b) The remodel does **not** result in an increase in floor area of the dwelling by 50% or more, where the total floor area of the dwelling *after* the addition exceeds 90% of maximum allowed floor area.
NOTE: New floor area created by converting existing unfinished and enclosed space within the structure is not counted toward the 50% increase, provided the conversion does not expand the building or increase roof height (including dormers).

EXCEPTIONS to (a) and (b): A nonconforming dwelling may maintain its nonconforming elements regardless of items a) and b), above, if it meets either or both of the below criteria:

- The dwelling is located on a publicly-owned property; or
 - The development maintains either a native tree 30 inches DBH or greater, or a native tree greater than 15 inches DBH if the lot contains no other native tree 30 inches or greater, within the building envelope of the lot. (Note: In both cases, the native tree must not be dead, invasive, or hazardous, as defined in LOC 55.02.020. The owner shall record a notice of development restriction requiring preservation of the native tree except if later found to be dead or hazardous prior to issuance of a building permit.)
- c) The remodel or alteration meets the definition of “maintenance,” and does not require replacement of any nonconforming portion of the structure (see items 6 and 7). Additions to nonconforming structures must fully conform to current Code standards.

5. WHAT IS DIFFERENT BETWEEN STANDARD BUILDING PERMITS AND BUILDING PERMITS THAT INCLUDE NONCONFORMING DWELLINGS?

If you plan to work on a nonconforming structure and want to retain nonconforming portions, staff **strongly recommends** that you work with a structural engineer to review the feasibility of your project, particularly if it is an older structure. If you encounter dry rot or structural deficiencies on nonconforming portions of a structure during construction, and these portions need to be removed and replaced, you will need to either obtain a variance, or redesign to comply with current code. This may result in delays and additional project costs.

Permit Materials Required:

For permits to remodel a nonconforming dwelling where a nonconformity is proposed to be retained, the City may require:

1. Scaled site plan(s), floor plans, and building elevations that clearly identify, label, and calculate the square footage of all exterior walls, perimeter foundations, and roofing proposed to remain, and all such features proposed to be removed;
2. Certification by a registered structural engineer for exterior walls, foundations, and roofing to remain; and,
3. Any other information the City Manager deems necessary to evaluate compliance with nonconforming code.

Special Inspection:

A special field inspection is required for “remodeling/altering” a nonconforming residential structure. The inspection verifies that remaining nonconforming wall(s) can be retained “as is” or would only require support or reinforcement of existing structural members (not replacement) in order to ensure sufficient support/capacity for the proposed development (see Section 6, below). The inspection takes place after removal of all portions of the structure to be remodeled/altere d, but prior to any new construction. The inspection requires the presence of both a building inspector and a city planner.

6. MAINTENANCE FAQS:

Can I reinforce an existing nonconforming structure?

Yes, provided reinforcement does not require the removal and replacement of any nonconforming portion of the structure. For example, sections of a nonconforming wall located within a required setback cannot be removed and replaced with more structurally robust wall sections; however, reinforcements can be added to the existing wall.

What if the structure is nonconforming to lot coverage?

Maximum lot coverage is dependent on the underlying zone and primary structure height. All structures, or portions thereof, over 30 inches in height are counted in lot coverage, excluding up to two feet of eaves. If a structure is nonconforming to lot coverage, in order to maintain that nonconformity, the footprint of the structure over 30 inches in height must be retained, and cannot be removed and rebuilt in place or transferred elsewhere on the site.

EXAMPLE 1: an existing covered porch may be enclosed underneath the existing porch roof, provided the roof is kept and all other standards are met (setbacks, floor area, etc.); however, the entire porch cover cannot be removed and rebuilt in order to construct the enclosure.

EXAMPLE 2: a second story can be added over the existing footprint of a structure, provided the addition does not increase the degree of nonconformity and all other standards are met (height, setbacks, floor area (as discussed under 4(b), above, setback planes, etc.). The vertical and horizontal shell of the existing structure’s first story, including the top plate, must be retained; reinforcement is allowed as long as the reinforcement does not require removal and/or replacement of the shell.

7. WHAT IS CONSIDERED “REPAIR/MAINTENANCE” ON A NONCONFORMING STRUCTURE

REPAIR/MAINTENANCE	STRUCTURAL ALTERATION: NOT MAINTENANCE
<p>Maintenance is “upkeep or repair of any structure or site feature necessary to keep the structure or site feature in good and safe condition. <u>Maintenance does not include structural alteration.</u>” [LOC 50.03.002.3]. Examples of allowed repair/maintenance activities include:</p> <ul style="list-style-type: none"> ✓ Adding to, such as installing reinforcing studs or supporting members in a nonconforming wall or adding interior structural walls as long as the reinforcements do not require structural alterations to existing nonconforming walls. Adding studs to an existing nonconforming lower story wall to add a <u>conforming</u> upper story. No horizontal or vertical nonconforming wall expansions are allowed. ✓ Replacement of windows or doors, including their framing components like headers, cripples, and sills, within existing nonconforming wall openings (no opening expansion). ✓ Removal of a door or window and its associated opening, and adding studs and sheathing to “patch” the nonconforming wall. This includes complete removal or partial removal (for example, reducing an opening to change a garage door to a “human” door). ✓ Adding or expanding a window in a wall that is nonconforming to setbacks, provided the wall surrounding the window is not removed and the window addition and/or expansion can be adequately supported without the removal and replacement of the nonconforming wall. ✓ Foundation patching without expansion of the footprint. ✓ Change/expansion of foundation footings (below grade) or addition of internal post and beams to increase the horizontal and/or vertical capacity of a structure. 	<p>Structural alterations are changes to the supporting members (see list on next page) of a structure. Changes can include removal of a supporting member (including replacement), relocation, expansion, and/or cutting of studs or sheathing.</p> <p>Structural alterations that are not allowed on nonconforming structures include:</p> <ul style="list-style-type: none"> ⊘ Relocation, expansion, or addition of wall openings for windows and doors that impacts framing, studs, and/or exterior sheathing (supporting members). ⊘ Horizontal and/or vertical expansions of nonconforming walls (may be separately permissible with a variance). ⊘ Horizontal and/or vertical expansions of nonconforming roof forms (may be separately permissible as a “change in roof pitch”; see next page). ⊘ Above-grade foundation removal ⊘ Full replacement of supporting members.

NOT SUPPORTING MEMBERS (ALLOWED UNDER REPAIR/MAINTENANCE)	SUPPORTING MEMBERS (STRUCTURAL ALTERATION)
<p>Sheetrock, exterior non-structural siding (of any kind), roof tiles/shingles, windows, doors, headers, cripples, and sills</p>	<p><u>Horizontal</u>: Joists, Beams, Girders, Floor/Top Plate <u>Vertical</u>: Studs, Wall Framing, Exterior Structural Sheathing (including T1-11 siding and diagonal tongue and groove) <u>Foundation</u>: Foundation Walls, Footings, Post and Beam <u>Roof</u>: Trusses, Beams, Girders, Sheathing</p>
CHANGES TO NONCONFORMING STRUCTURE ROOF PITCH	CHANGES TO ROOF PITCH OF A NONCONFORMING STRUCTURE WHICH ARE <u>NOT</u> ALLOWED
<p>Roof pitch changes are allowed within the nonconforming portion of a structure, except as noted to the right. Changes in roof pitch need to meet <u>all</u> of the following requirements:</p> <ul style="list-style-type: none"> ✓ The structure is a residential structure; and, ✓ The new roof form height complies with all height requirements of the zone; and, ✓ Does not increase the roof height by more than six feet above the existing wall top plate; and, ✓ The change does not increase any nonconforming wall plane either horizontally or vertically. All changes are limited to above the <u>existing</u> top plate. ✓ Increasing structural capacity by adding studs within the nonconforming wall is allowed. (See exception at right). <p>PARAPETS: Adding a low parapet wall around the perimeter of a new flat roof form is not technically a “change in roof pitch”, but it would be allowed and not considered a “wall expansion”, provided the parapet is functionally necessary for the roof for the purposes of drainage.</p>	<ul style="list-style-type: none"> ⊘ Any increase to structural capacity cannot be to allow a load increase on one bearing wall alone (i.e.: going from a flat or pitched roof form in which the walls share the load to a shed roof form in which one wall bears the primary load). ⊘ Removal and reconstruction of supporting members, e.g., bearing walls and studs, of the structure below the top plate in the area of nonconformity in order to support the modified roof pitch.