

**Instructions to reader:** This chapter in the Unified Development Code will repeal the existing [Chapter 19.38](#) and replace with the chapter set forth below. For a summary of the effect of this chapter from current standards, please visit the Rethink Zoning Library at <https://everettwa.gov/2453/Rethink-Zoning-Library>.

## Chapter 19.38 Nonconformities

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#### 19.38.010 Purpose and intent.

- A. The purpose of this chapter is to regulate nonconforming structures, uses and lots. This chapter includes regulations for determining the legal status of nonconforming uses, structures and other site improvements by creating provisions through which they may be established, maintained, altered, reconstructed, expanded or abated.
- B. For additional requirements related other nonconformities, see the following sections of this title:
  1. Open space and common areas – see Chapter 19.09 for multifamily residential and 19.12 for industrial uses;
  2. Adult use businesses – see Chapter 19.13;
  3. Parking – see Chapter 19.34;
  4. Landscaping – see Chapter 19.35;
  5. Signs – see Chapter 19.36.
  6. Uses within shoreline jurisdiction – see Shoreline Master Program

#### 19.38.020 Nonconforming uses.

- A. Continuation. A nonconforming use is transferable to a new owner or tenant; provided, that the use is not expanded or discontinued as provided in subsection B of this section and may continue and need not be brought into conformance with this chapter unless a specific provision of the Unified Development Code otherwise requires conformance.
- B. Discontinuation. Any use which is nonconforming and has ceased for a period of two or more years shall lose such nonconforming status. All subsequent use of the property or building shall be a use which conforms with the requirements of the Unified Development Code.
  1. A nonconforming use shall be considered discontinued if it meets any of the following criteria:
    - a. A permitted use has been established within the building containing the nonconforming use;
    - b. No product or inventory is displayed, stored or sold directly related to the nonconforming use; and
    - c. Buildings and/or portions of the site engaged in the nonconforming use have been vacant for one year or more.
  2. For the purpose of this section a nonconforming residential use shall not be considered discontinued if the unit or units are vacant, provided the property is maintained consistent with the adopted provisions of the International Property Maintenance Code and with EMC Chapter 8.20.020, Nuisances. However, when a nonconforming residential use has been changed to a permitted use, the residential use shall not be re-established.

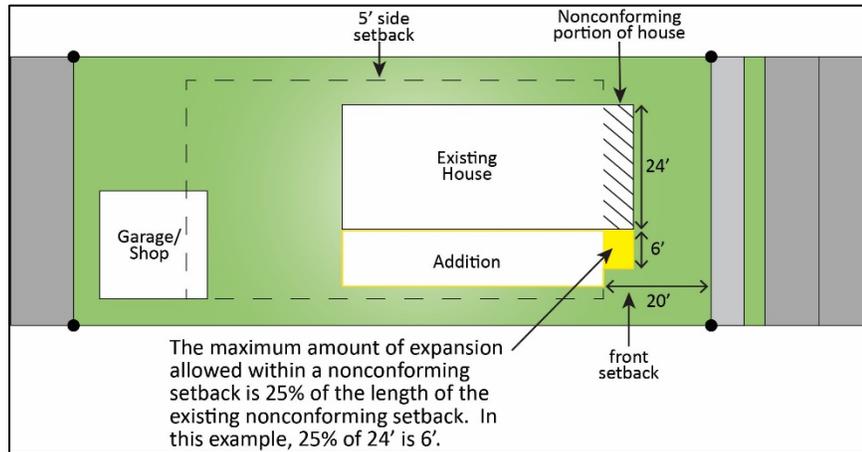
3. Voluntary demolition. Where a property owner undertakes voluntary demolition and replacement, the nonconforming use shall not be established in the new structure.
- C. Change of nonconforming use. In general, nonconforming use may not be changed to another nonconforming use. However, in certain circumstances a change of nonconforming use may be authorized, subject to the following requirements:
1. The intensity of the use shall not be increased. As a guide, the city shall consider traffic generation, parking, potential nuisance generation (noise, light/glare, smoke, dust, etc.), changes to products or services rendered and type of equipment used.
  2. The planning director shall have the authority to require supporting studies, plans, or additional information to evaluate the proposed change of nonconforming use.
  3. Conditions may be applied to limit the proposed impacts of the use on the surrounding properties and the City as a whole.
  4. Adaptive reuse of nonresidential buildings shall be permitted in accordance with Chapter 19.05.120 (Miscellaneous Use Table) and standards in Chapter 19.13.030.
- D. Expansion. A nonconforming use may be expanded through an increase in building area, land area and/or parking area using the review process described in EMC Title 15 and the following evaluation criteria:
1. For a residential use, the expansion shall not result in an increase in the number of dwelling units further above the maximum allowed by the Unified Development Code;
  2. The expansion shall not result in a decrease in the number of off-street parking spaces further below the minimum required by the Unified Development Code;
  3. The impact of traffic generated by the proposed use on the surrounding area, pedestrian circulation and public safety, and the proposal's ability to mitigate potential impacts.
  4. The site has sufficient area to provide for off-street parking, landscaping and screening from adjacent uses.
  5. The adequacy of streets, utilities and public services to accommodate the proposed use.
  6. Compatibility of the proposed use or building to surrounding properties, especially as it relates to size, height, location and setback of buildings.
  7. The number, size and location of signs and lighting, especially as they relate to more sensitive land uses.
  8. The landscaping, buffering and screening of parking, loading and storage areas.
  9. The generation of nuisance irritants such as noise, smoke, odor, glare, visual blight or other undesirable environmental impacts.
  10. Hours of operation and potential impacts on adjacent properties.
- E. Damage or Destruction.
1. If a structure housing a nonconforming use is destroyed to any extent by fire or other casualty not intentionally caused by the owner, the structure may be rebuilt and the use may be re-established if the following requirements are met:
    - a. The nonconformity is certified by the planning department;
    - b. A complete building permit application is filed within one year of such fire or other casualty; and
    - c. Construction is commenced and completed in conformance with the provisions of the building code then in effect. This provision shall not reduce any requirements of the building or fire codes in effect when such structure is rebuilt.
  2. Exception. A nonresidential nonconforming use located in a residential zone which is damaged beyond fifty percent of its appraised value, as determined by the building official, shall lose its nonconforming status and shall not be rebuilt.

**19.38.030 Nonconforming structures.**

- A. Alteration or Expansion.
1. Additions, maintenance or repair to a nonconforming structure which does not increase the nonconformity shall be permitted; provided the addition, maintenance or repair complies with building and Unified Development Code requirements.

2. A nonconforming structure which does not meet required setbacks or height may be expanded along the nonconforming setbacks or to the existing nonconforming height if approved by the planning director; provided the following criteria are met:
  - a. The expansion does not make the setback or height more nonconforming;
  - b. The expansion shall not exceed 25 percent within the nonconforming setback or for the portion of the structure that is nonconforming as to building height; and
  - c. The expansion complies with all other requirements of this chapter; and the nonconformity has been certified by the planning department.

Figure 38-1: Expansion of Nonconforming Building



- B. Damage or Destruction.
  1. If a nonconforming structure is destroyed or damaged to any extent by fire or other casualty not intentionally caused by the owner, the structure may be rebuilt if the following requirements are met:
    - a. The nonconformity of the structure is certified;
    - b. A complete building permit application is properly filed within one year of such fire or other casualty; and
    - c. Construction is commenced and completed in conformance with the provisions of the building code then in effect. This provision shall not reduce any requirements of the building or fire codes in effect when such structure is rebuilt.
  2. If a nonconforming structure which has no permanent foundation is destroyed and the foundation's location cannot be verified by the planning department, then any new construction shall comply with the requirements of the Unified Development Code.
- C. Demolition of Nonconforming Structures. Following the abatement or voluntary demolition of a nonconforming structure, any new construction shall be in conformance with the Unified Development Code, except in the following circumstances:
  1. A single-family dwelling or duplex which is nonconforming in setbacks, height or lot coverage may be voluntarily removed or demolished and replaced by a new single-family dwelling or duplex which has the same nonconforming setbacks, height or lot coverage as the prior nonconforming dwelling, provided:
    - a. The nonconformity is not increased;
    - b. The new dwelling meets all current building code requirements; and
    - c. The nonconformity of the dwelling is certified by the planning department.
  2. A detached accessory structure which is accessory to a single-family dwelling or duplex that has nonconforming setbacks may be demolished and a new accessory structure may be built in the same location; provided,

- a. The new accessory structure does not exceed fifteen feet in height within the setback, or the height at which the structure was certified above fifteen feet within the setback,
- b. The new accessory structure meets current building code requirements; and
- c. The location of the nonconforming accessory structure is certified by the planning department.

**19.38.040 Substandard lots - Nonconforming lots.**

This section addresses lots that do not meet minimum lot area and/or dimensional requirements of this title, and lots that have been created or altered prior to there being a formal land division requirement in the city. This section also addresses how such lots may be considered legal lots for zoning purposes.

- A. R-S, R-1 and R-2 zones. In the R-S, R-1 and R-2 zones, subject to other limitations imposed by other provisions of this title, a single-family dwelling may be erected on any single “lot” as defined in this title. A lot shall meet the following criteria, as applicable:
  - 1. A lot created via the subdivision process of Chapter 58.17 RCW;
  - 2. A lot which created prior to December 1, 1956;
  - 3. Any lot which met minimum lot area requirements under the regulations or standards of Snohomish County prior to annexation or incorporation into the city of Everett; and
  - 4. A lot reduced below minimum zoning requirements as a result of public acquisition of property.
- B. Substandard Lots - Multifamily, Commercial and Industrial zones. Any substandard lot may be used for any of the uses permitted in the respective zone, subject to the special regulations and end notes in EMC Chapter 19.05, and in accordance with the review process and general evaluation criteria in EMC Title 15 and all other regulations including minimum yards, provided:
  - 1. All such lots shall meet the definition of “nonconforming lot” as defined in this title and shall not have been merged or otherwise created illegally.
  - 2. Commercial or industrial lots which have been created through the binding site plan process are exempt from this section.
  - 3. The use complies with all other requirements of this title.
- C. Substandard Lots—Merger Clause. The following applies to substandard lots in the R-S, R-1 and R-2 zones which otherwise meet the criteria in subsection A of this section:
  - 1. If two or more substandard lots or a combination of lots or substandard lots and portion(s) of lots and substandard lots are contiguous and were acquired by common conveyance prior to the above dates, or which have been legally combined at any time subsequent to the above dates, and if all or part of the lots do not meet the requirements established for minimum lot area and width, the lands involved shall be merged and considered to be a single undivided lot. No portion of the lot shall be used, altered or sold in a manner which diminishes compliance with lot area and width requirements, nor shall any division of any such lot be made which creates a lot with area or width below the requirements permitted by this chapter.
  - 2. If two or more substandard lots or a combination of lots or substandard lots and portions of lots or substandard lots are contiguous and a structure is constructed on or across the lot line(s) which make the lots contiguous, then the lands involved shall be merged and considered to be a single undivided lot. No portion of said lot shall be used, altered or sold in any manner which diminishes compliance with lot area or width requirements, nor shall any division be made which creates a lot with area or width below the requirements permitted by this title.

For purposes of this section, “structure” means anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground and includes, but is not limited to, houses, garages, carports and accessory structures.

**19.38.050 Certifications.**

Certain nonconforming uses, structures and lots require certification by the city if any development or improvements are proposed on the subject lot or lots that requires a building permit. Certification involves providing documentation that the use, structure or lot was substantially and legally established either prior to enactment of zoning regulations, or prior to zoning regulations being changed, resulting in the use or structure no longer being in compliance with current code. Certification must establish the physical nature of improvements and when such improvements were installed. Certification involves providing the necessary application, fees and supporting documents to the Planning Department.

- A. Nonconforming Use or Building Certification. For a building permit application, it may be necessary to certify a use, building, or structure which complied with the zoning requirements at the time it was established or constructed and now does not comply with the current zoning use and/or development standards. The certification process typically involves submitting an application and supporting documentation showing the dates, location and/or nature of the use and structure(s).
  - 1. Development of a nonconforming use requires certification that the use was legally established based on the zoning and development codes at the time the use was established, and that the use was not discontinued except as allowed by this chapter.
  - 2. Development of a nonconforming building requires certification that the structure was legally established based on the zoning and development codes at the time the building was established, provided, however, that replacement of roofs, interior remodels, replacement of siding, window replacement or normal repair and maintenance does not require certification.
- B. Nonconforming Lot Certification.
  - 1. Substandard lots, as provided by 19.38.040 of this chapter, must be certified as nonconforming prior to the issuance of a permit for a principal building. In order to be certified as a legal lot for building purposes, the applicant shall provide sufficient information to verify that the lot was legally created and that all applicable city Unified Development Code requirements in effect at the time the lot was created were met, or that the lot was created prior to annexation to the city and met the minimum zoning or Unified Development code requirements of Snohomish County at the time the lot was established.
  - 2. Certification as a nonconforming lot shall not be construed as a representation or guarantee that the city can issue a building permit for the subject property. All applicable city regulations pertaining to the issuance of building permits must also be met in order for a building permit to be issued on a nonconforming lot certified under this section.
  - 3. Exception to lot certification requirement.
    - a. Residential zones. Lot certification is not required for any substandard lot that contains a dwelling unit.
    - b. Commercial and industrial zones. The planning director may waive the requirement for lot certification based on prior development activity and/or changes in zoning.

### **19.38.060 Definitions.**

The following definitions are used within this chapter. For additional definitions, please refer to EMC 19.04.

- A. "Nonconforming lot" means a legally established lot, the area, dimensions or location of which met the applicable Zoning or Unified Development Code requirements in effect at the time the lot was created, but which fails by reason of such adoption, revision or amendment of the Zoning or Unified Development Code, to conform to the present requirements of the zone in which it is located.
- B. "Substandard lot" means a parcel of land that does not meet minimum lot area, lot width, lot depth or lot frontage requirements of this title.