

**SANTA CRUZ COUNTY PLANNING DEPARTMENT POLICY/ORDINANCE
INTERPRETATION**

Interpretation No.: NCS-02R (Non-conforming Structures: Permits required for work to significantly non-conforming structures)
 Effective Date: 11/07/08
 Originally Issued: 8/13/96
 Revised: This interpretation revises and replaces Policy Interpretation NCS-02 (Nonconforming Structures: Significantly Nonconforming).

Question

When is a Level 5 Use Approval and/or a Variance required for work done to a significantly non-conforming structure?

Applicable Regulatory Section(s)

§13.10.265(e)
 §13.10.265(j)
 §13.10.230

INTERPRETATION:

The table below indicates when a Level 5 Use Approval and/ or a Variance is required for work to a significantly non-conforming structure:

Portions of the significantly non-conforming structure being worked on	Type of work	Approval Required *
1. Conforming portions	Non-structural**	No discretionary approval
	Structural	Level 5 Use Approval
2. Non-conforming and significantly non-conforming portions	Non-structural**	No discretionary approval
	Structural	Level 5 Use Approval and Variance. (Structural changes, including foundation replacement or the addition of structural support for seismic bracing, are <u>not</u> allowed to portions of a structure located in a right of way or over a property line.)

Notes:

*Applicants should discuss any proposed changes to walls less than 5 feet from a property line with Building Staff in order to understand building code requirements prior to submitting a planning application.

** Interior remodels, such as bathroom and kitchen remodels, will be assumed to be non-structural unless they require obvious structural changes such as opening up the ceiling.

Reason

For non-structural changes to a significantly non-conforming structure, no discretionary approval is required by the County Code.

For structural changes, subsection 13.10.265 (j) indicates that both a Variance and a Level 5 Use Approval are required for structural enlargements, extensions, reconstructions or structural alterations to significantly non-conforming structures “not allowed by 13.10.265(e).” However, it is unclear how subsection 13.10.265(e) relates to structural changes to significantly non-conforming structures, since the subsection specifically states that the subsection does not apply to significantly non-conforming structures.

Although the language in subsection 13.10.265(e) is unclear regarding what types of discretionary approvals are required for structural changes to significantly non-conforming structures, other sections of the Zoning Ordinance clearly treat significantly non-conforming structures differently from non-conforming structures, subjecting them to a high level of scrutiny and placing them in a different category than non-conforming structures. Subsection 13.10.265 (k) lists the types of non-conformities that are inconsistent to such a degree with current regulations that they pose a potential threat to orderly development or general welfare in the County and are therefore considered significantly non-conforming.

The higher level of scrutiny required for approval of changes to significantly non-conforming structures is also demonstrated in subsection 13.10.265 (j), which requires that specific findings be made in order to approve structural changes to significantly non-conforming structures, indicating that discretionary approval is required for all structural changes. It is consistent with the purpose of the non-conforming regulations to require a Level 5 Use Approval with a full public hearing and a Variance for all proposed structural changes to the non-conforming portions of significantly non-conforming structures, in order to evaluate whether the changes proposed to the structure pose a threat to the orderly development of the County.

Since structural changes to the conforming portions of significantly non-conforming structures do not require exceptions to the zoning district site and development standards, such changes require a Level 5 Use Approval only and do not require a Variance. This is consistent with Section 13.10.230 of the County Code, which states that variances are required for exceptions to the zoning district site and development standards.

Tom Burns, Planning Director

Date