

Nonconforming Use Verification



Facts to Know

RELATED FACTS TO KNOW:

Use Table, Helpful Contact Information, Pre-Application Meeting.

INTRODUCTION:

Each zone district in Commerce City allows for specific uses. On occasion the city's code changes and uses that once were permitted in a particular zone district become illegal. In this unique situation, these uses are classified as 'legal nonconforming uses'. The Nonconforming Use Verification is intended to provide a certification that the nonconforming use was legal when it was established. If the use is determined to be legally nonconforming, it is subject to the regulations outlined for legal nonconformities in the Land Development Code (LDC). In contrast, an illegal use refers to a use that was not legal at the time it was established and is not currently legal. An illegal use shall not be eligible for the Nonconforming Use Verification and may be subject to enforcement action by the City of Commerce City.

A Nonconforming Use Verification only documents that a use was found to be legally nonconforming at the time of the review. Pursuant to LDC Sec. 21-5520, if a nonconforming use is discontinued for a period of 180 days, it is considered abandoned and may not be re-established as such. Any use that occurs beyond what is described in the Verification is prohibited and shall be deemed a violation of the LDC and subject to enforcement. **Please Note: No new legal conforming uses are allowed on property with a legally nonconforming use until the legally nonconforming use is terminated.**

GENERAL TIMEFRAME AND PROCESS:

The time to process an application for a Nonconforming Use Verification varies, depending on the complexity and magnitude of the request. However, the Nonconforming Use Verification process generally takes 4 to 6 weeks.

- Whether a request is initiated by the city or the property owner, a complete application is filled out and signed by the applicant.
- The application is reviewed for completeness by the Planning Division and the Neighborhood Services Division. The review will not commence until the application is determined to be complete.
- The Director either will approve or deny the application based on the results of the application review.

FTK: Nonconforming Use Verification

GENERAL NOTES:

A Nonconforming Use may be verified as a result of an investigation by the city or at the request of a property owner or an authorized agent of the property owner having a legal interest in the property, such as power of attorney, a lessee, or a purchase contract. If the verification process is initiated by the property owner, they or their authorized agent must sign an application form prior to the city beginning the review.

Nonconforming Use Verifications will be issued only if the director finds:

1. The use conformed to the applicable zoning ordinances in effect at the time it was established; and
2. There is no evidence the use has been discontinued for 180 days.

In addition, please be aware of the following conditions associated with this request:

- The city is authorized to impose any condition(s) on the approval of a Nonconforming Use Verification necessary in order to carry out the general purpose and intent of the Land Development Code (LDC) or the Comprehensive Plan.
- The city may revoke an approved Nonconforming Use Verification if the applicant fails to comply with any of the conditions that were imposed by the city in conjunction with the approval, if the city finds that the applicant submitted incorrect or false information, or the non-conformity stopped or ended for a period of time greater than what is allowed by city code.
- An approval shall authorize only the development described in the approved submission.

NON-CONFORMING USE CODE LANGUAGE:

Section 21-5500: General Provisions	
1.	A nonconformity existing at the time of the adoption of this land development code, or created by the adoption of this land development code, may continue in the same manner as it existed on the effective date of this land development code, except as otherwise provided herein.
2.	The owner of the property shall bear the burden of establishing the existence of any claimed legal nonconformity.
3.	Changes of tenancy, ownership, or management of an existing nonconformity shall be permitted, and in such cases the nonconformity shall continue to be subject to the standards of this land development code.
4.	Repairs and normal maintenance required to keep any nonconformity in a safe condition shall be permitted.
5.	No use that is accessory to a principal nonconforming use shall continue after the principal nonconforming use ceases to exist.
6.	No existing use or structure shall be deemed nonconforming solely because of the lack of off-street parking required by the land development code.

FTK: Nonconforming Use Verification

Section 21-5520: Nonconforming Use of Land	
1.	Expansion. A nonconforming use of land shall not be enlarged, expanded, extended, increased nor moved to occupy an area of land which was not occupied before the adoption of this land development code.
2.	Abandonment. If a nonconforming use is discontinued for a period of 180 days or more, any future use of the land shall conform to the standards of the district in which it is located.
3.	Additional Uses. No additional conforming uses are allowed until all nonconforming uses are removed or terminated.

Section 21-5530: Nonconforming Use of Structures	
1.	Expansion. A nonconforming use of a structure shall not be enlarged, expanded, extended, increased, or moved to occupy an area of the structure that was not occupied before the adoption of this land development code.
2.	Accessory Uses and Structures Restricted. No additional accessory use, building, or structure shall be established on the site of a nonconforming use.
3.	Change in Use. A nonconforming use may be changed to a different nonconforming use only if the board of adjustment determines that the new use will result in a lesser degree of nonconformity than the current use and approves the change. After such change, the use may not revert to the original nonconforming use nor may it be changed to any other use except in compliance with the terms of this section.
4.	Abandonment. If a nonconforming use is discontinued for a period of 180 days or more, any future use of the structure shall conform to the standards of the district in which it is located.
5.	Restoration. If a conforming structure containing a nonconforming use is damaged to the extent of more than 60% of its replacement value, all future use of the rebuilt or restored structure shall be a conforming use.
6.	Alteration and Repair. If a structure containing a nonconforming use is repaired or altered at a cost that exceeds 60% of its value, all future use of the structure shall be a conforming use.

COMMON QUESTIONS:

- What are my rights with a nonconforming use? In most cases, if you are able to establish that the property's current use began before zoning changes made it non-conforming, you have a right to continue that use.

- Why do I need these rights? Should you decide to sell the property, the new owner will want assurance of the use's legitimate status. Also, if a complaint or legal challenge is made against the use, you will need to prove your right. **NOTE: Lenders may not make a loan for a legally nonconforming use.**

- How do I obtain proof? Obtaining proof of a legally nonconforming use may be done in several different ways. The more complete the documentation, the better your chances of establishing a legally nonconforming use. The following is a list of some (but not all) of the types of records that are accepted as proof of the use's existence:
 - Licenses such as beer, liquor, retail or professional, that show the dates of use.
 - If the property is rented, receipts showing dates of use.
 - Receipts showing services or goods provided if the use is a type of business.
 - Tax records.

FTK: Nonconforming Use Verification

- Statements from utilities such as power, water, or gas, which indicate time and amount of use.
- Notarized statements from neighbors who have observed the non-conforming use over the required period.
- Aerial photographs.

What do I do with the proof? After you have gathered the materials to prove your legally nonconforming use, submit them to the city's Planning and Neighborhood Services Divisions. If your evidence is substantial enough, you may be issued a Nonconforming Use Verification.

Is that all there is to it? Not quite. Under certain circumstances, a legally nonconforming use will cease to exist and may not be reestablished. The most common reasons are:

- The nonconforming use is discontinued for a continuous period of 180 days.
- Buildings or structures are damaged to an extent greater than 60% of their appraised value.
NOTE: Repairs and normal maintenance shall be permitted if they are required to keep any nonconformity in a safe condition.

NOTE: If you lose the ability to operate a legally nonconforming use, it cannot be reestablished under Commerce City Code. In such a case, the property may only be used for the purposes specified in the Land Development Code. The nonconforming use must be discontinued or moved to a property that has the correct zoning in place. Variances or exceptions are not allowed.

SUBMITTAL REQUIREMENTS:

- Submit one (1) copy of the Nonconforming Use Verification Application.
- If owner (or owner's representative) initiated, one (1) copy of a general warranty deed, with a complete legal description (often times in the form of Exhibit "A," attached to the warranty deed) for the property or properties for which the application is made.
- Two (2) copies of the completed Nonconforming Use Verification Narrative Questionnaire. This questionnaire is found with the Nonconforming Use Verification Application.
- Two (2) copies of a current aerial of the subject property.
- Any other information or technical studies that confirm the legality of the establishment of the use (i.e., photographs, documentation from a utility provider, copies of real estate records, copies of insurance records).

Be sure to include all of the requested information. An incomplete submittal will not be accepted or reviewed until such time as all information has been submitted. **Do not answer with a 'Yes' or 'No' or 'N/A'. Be specific!**

For additional information, call the Community Development Department at 303.289.3683.