



CITY OF PORTLAND, OREGON BUREAU OF DEVELOPMENT SERVICES



1900 SW Fourth Avenue, Portland, Oregon 97201, www.portlandoregon.gov/bds

Documenting A Nonconforming Situation

Nonconforming situations

Nonconforming situations are land uses or developments that do not comply with the current zoning code, but are still considered legal. A specific site may be nonconforming because it contains either a nonconforming use, residential density, development or combination of these. Nonconforming situations have vesting rights. This means that they were allowed when established and maintained over time, and became nonconforming due to changes in regulations. These situations are called nonconforming since they do not conform with the current zoning regulations.

Purpose of documenting a nonconforming status

By documenting a nonconforming situation, the site owner is assured of whether or not the property really has vesting rights. Without these rights there is no legal basis to continue the situation that does not conform to the current zoning regulations. If the owner wants to expand or alter the nonconforming situation, the vesting rights must first be documented. In order to purchase or sell property that does not conform to the zoning regulations, it is important to find out if the property has vesting rights or not since this may impact what type of use is allowed on the site.

Proving a nonconforming situation

To prove a nonconforming situation, the applicant must show that the nonconforming situation was legally established and maintained over time. Documentation such as building permits, land use reviews, and zoning code sections or maps is acceptable to document that the use was allowed when established. Records such as utility bills, income tax records, business licenses, telephone directory listings, leases, dated aerial photos, insurance policies, or maps and advertisements in dated publications can be used to verify continuous use over time. All of these items are examples of standard evidence per Zoning Code Section 33.258.038. In order to submit nonstandard evidence, a Determination of Legal Nonconforming Status land use review is required to determine if the evidence is satisfactory. That procedure is explained later in this document.

Timeline length of documentation

The year-to-year documentation must begin with the year that the zone change occurred which made the land use situation nonconforming. Yearly documentation from the time of establishment is required only when there has been a change of use. In this circumstance, a complete history of use must be documented.

Nonconforming property history

Information about the zone changes and zoning regulations that made the property nonconforming can be obtained from the Development Services Center. There are several items that must be identified about the property including: the original zoning, the date of the zone change, subsequent zoning, land use reviews and regulations that may apply to the zoning. The most reliable source of this information is the Planning and Zoning Review Section of the Bureau of Development Services.

Information documenting nonconforming situation allowed when established

Copies of building permits and inspection cards can be obtained from the Resource/Records section of the Development Services Center. Records of past land use reviews are on file in the Planning and Zoning section of the Development Services Center.

Information on the continuous operation of nonconforming situations on the property

Utility information can be obtained from utility companies or the Portland Water Bureau. The public library has records of telephone business directory listings in the [Polk's Portland City Directory](#).

All evidence must show the specific nonconforming situation. For example, to establish that an auto body shop is nonconforming, a directory listing must specifically identify the specific use as an auto repair site. Acceptable evidence from a directory listing could be advertisements that list the specific uses at the location.

Losing a nonconforming status

A property may lose its nonconforming status due to a lapse in use exceeding three years or a change to a use which is allowed in the zone. Details on what sort of lapses cause a property to lose its nonconforming status are found in Zoning Code Section 33.258.050.

Nonstandard documentation

If the documentation collected to show legal establishment and continued use is not standard evidence, the applicant may request a Determination of Legal Nonconforming Status Review to have the evidence evaluated. More information about this land use review is available in Zoning Code Section 33.258.075.

Determination of legal nonconforming status review

This process allows for the evaluation of nonstandard evidence submitted to document a nonconforming status. It is always processed as a Type II procedure, regardless of the zoning for the site. The procedure is described in a separate application packet. The Planning and Zoning section of the Development Services Center has the necessary application forms.

For more information visit or call the Planning and Zoning staff at the Development Services Center at 1900 SW 4th Avenue, Suite 1500, 503-823-7526

Information is subject to change.
For current Portland Zoning Code visit www.portlandoregon.gov/zoningcode