

## Nonconforming Uses And Structures Under Denver's New Code November 2009



### NONCONFORMING USES

#### ***What Is A Nonconforming Use?***

An existing use that was legally permitted or established, and which has since that time been continuously and lawfully operated, but which is not a permitted use under the New Zoning Code.

#### ***Does A Use Become Nonconforming If It Doesn't Comply With New Code Procedural Requirements?***

No, a change in review procedures will not make an otherwise conforming use become a nonconforming use. For example, an existing use that was permitted by right but is now subject to Board of Adjustment special exception review under the New Code is not nonconforming.

#### ***Does A Use Become Nonconforming If It Doesn't Comply With New Code Parking Requirements?***

No, a change in parking requirements will not make an otherwise conforming use become a nonconforming use. For example, an existing use that provides less than the minimum number of parking spaces the New Code requires is not nonconforming.

#### ***Does A Use Become Nonconforming If It Doesn't Comply With New Code Separation Or Distance Requirements?***

No, changes in distance or separation requirements will not make an otherwise conforming use become a nonconforming use. For example, an existing industrial use that the New Code requires to be 500 feet away from a residential zone district is not nonconforming if it is only 100 feet away from the residential district when the New Code is adopted, or if a residential zone district is later established within 500 feet from the use after the New Code is adopted. The one exception to this general rule is billboard signs.

#### ***How Long May A Nonconforming Use Continue To Operate?***

A nonconforming use may continue to operate indefinitely on the same land area, and with the same floor area in the structure that the use occupied when it became nonconforming, provided the use continues to comply with all provisions of the New Code. The nonconforming use attaches to the property, not the owner personally, so a nonconforming use (or the structure housing it) may be sold without any effect on the nonconforming use's status.

#### ***Can A Nonconforming Use Expand In Size?***

Generally, a nonconforming use cannot expand the amount of floor area or land area it occupies. The *Zoning Administrator* may allow expansion of a nonconforming use's occupied floor area or land area only when necessary to ensure the use complies with federal, state, or other city law. Otherwise, the *Board of Adjustment* may allow an expansion through a zoning variance.

#### ***Are There Events Or Circumstances That Will Terminate The Right To Continue A Nonconforming Use?***

Yes, because the policy behind nonconforming uses is to encourage, over time, their change to a conforming use. Any of the following events will automatically terminate a nonconforming use's right to continue:

- Abandonment.
- Change in use (except to a permitted temporary use).
- Violation of the Zoning Code.
- Vacancy for 12 or more successive calendar months.
- Involuntary destruction or damage to the structure housing the nonconforming use (beyond 50% replacement cost), except involuntary destruction or damage to a residential structure housing a nonconforming residential uses in a residential zone will not terminate the nonconforming residential use.

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## NONCONFORMING STRUCTURES

### ***What Is A Nonconforming Structure?***

An existing structure that was lawfully erected or altered in conformity with the zoning rules in effect at that time, but which structure does not comply with all of the provisions of the New Code.

### ***Does A Structure Become Nonconforming If It Doesn't Comply With New Code Parking Requirements?***

No, a change in parking requirements will not make an otherwise conforming structure become a nonconforming structure.

### ***How Long May A Nonconforming Structure Continue?***

Any nonconforming structure may be occupied, operated, and maintained in a state of good repair, indefinitely.

### ***May A Nonconforming Structure Be Expanded Or Enlarged?***

Generally, a nonconforming structure may be enlarged or extended provided the enlargement or extension complies with all the provisions of the New Code. In the following two instances, limited extensions of nonconforming building elements of an existing residential structure are allowed:

- A nonconforming side setback of a residential structure in a residential zone district may be extended to accommodate an addition to the existing structure, with limits.
- A nonconforming finished ground floor height of a residential structure in a residential zone district may be extended to accommodate an addition to the existing structure, with limits.

### ***Are There Events That Will Terminate The Right To Continue A Nonconforming Structure?***

Yes, because the policy behind nonconforming structures is to encourage, over time, their change to a conforming structure. Any of the following events will automatically terminate a nonconforming user's right to continue:

- Obsolescence of the nonconforming structure (beyond 50% replacement cost).
- Involuntary destruction or damage to the nonconforming structure (beyond 75% replacement cost)
- *Exceptions:* The following nonconforming structures may be reconstructed after any amount of obsolescence, involuntary destruction or damage, provided the reconstructed structure is not enlarged and/or extended beyond that which existed previously unless the enlargement and/or extension complies with the New Code.
  - A nonconforming structure containing a residential use or a residential care use and located in a residential zone district.
  - A nonconforming structure located in the C-CCN (Cherry Creek North) Zone District.
  - A structure located in the D-C or D-TD (Downtown Core or Downtown Theater District) zone districts that became a nonconforming structure on October 14, 1994, as a result of the creation of the OD-2, OD-3 and OD-4 overlay districts regarding maximum building height or sunlight preservation requirements.
  - A structure located in a residential zone district that became a nonconforming structure on June 26, 1998, as a result of the creation the OD-6, OD-7 and OD-8 overlay districts.
  - A residential structure located in a SU zone district that became a nonconforming structure July 21, 2008, as a result of the creation of the OD-10 overlay district.