

MUNICIPALITY OF ANCHORAGE



Director's Guidance 2018-01 **Establishing Nonconforming Rights (Grandfather Rights)** (updated February 2020)

A legal nonconforming right is the right to continue a particular land use that is no longer permitted under the current zoning rules. The nonconforming land use must have been established at a time when it was permitted, or at a time that predated any zoning regulation, and it must have been in continuous use since that time. If the nonconforming land use occurred after the adoption of the law, it cannot be deemed a legal nonconformity.

A request for a nonconforming determination provides a comprehensive history of your site. The establishment of nonconforming rights may help secure financing for mortgage or home improvement loans. When planning a project on the property, a nonconforming determination establishes existing site conditions that do not meet current Title 21 requirements and may allow the site to remain without change for items recognized as legally nonconforming. If the project requires change in the direction of conformity, the determination provides information about what items are eligible for the required changes.

Examples of some nonconformities are:

- Nonconforming lots of record (lots that are smaller than the minimum size allowed in the zoning district, but were created prior to zoning).
- Nonconforming uses of land (for example, a vehicle storage yard in an R-1 zoning district that existed before the date of zoning to residential).
- Nonconforming structures (buildings that encroach in required setbacks but existed prior to the date of adoption of the current requirement).
- Nonconforming uses of structures (a triplex in an R-1 district that existed before the date of zoning).
- Nonconforming characteristics of use (i.e., parking, signs, landscaping, building design standards or pedestrian amenities that do not meet current requirements, but were conforming at the date the requirements were established).

The Land Use Review Section of the Municipality of Anchorage Planning Department maintains records of legal nonconformities. If there is no record of a nonconformity, it is the property owner's responsibility to provide sufficient evidence to establish that the nonconformity existed prior to the adoption of the applicable law, and that the nonconformity has continued without interruption since it was established.

Anchorage Municipal Code Chapter 21.12. establishes criteria for nonconformities to the Land Use Regulations of the Municipality of Anchorage.

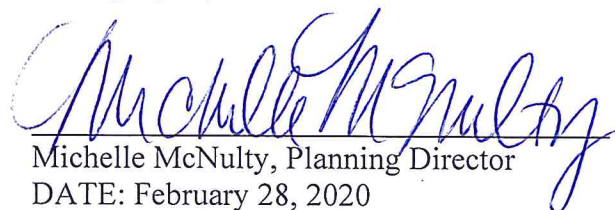
The following information is required to be submitted for a nonconforming determination:

1. A completed Application for Nonconforming Determination on the Municipal form;
2. The application must have the original signature of the property owner, or must be accompanied by a letter with the property owner's original signature authorizing the representative to apply on their behalf;
3. Specific written description of the purported nonconformity;
4. Legal description of the property;
5. Site address;
6. Municipal property appraisal parcel identification number;
7. An as-built survey of the property by a registered State of Alaska land surveyor. The survey must show all structures on the lot, and be no more than 2 years old;
8. Fee for zoning certification; and,
9. Additional information may be required as determined by the administrative official for the determination.

Optional information is helpful in establishing nonconforming rights. This information might include:

1. Aerial photos specific to the property taken at the time of adoption of the law for which the nonconformity is sought, and for subsequent years, when applicable. The Municipality of Anchorage has a library of historical aerial photos that will be used during the research process; however, additional close up aerials can be helpful in some circumstances.
2. Notarized affidavits of persons knowledgeable of the nonconformity. Affidavits must include the affiant's name, current address, past residences(s) if relevant, how the witness came to have knowledge of the activity, how long the witness lived near the subject property, and how long the witness has had knowledge of or done business with or seen applicable activities on the property. The witness should describe the location of their property in relation to the property in question if relevant; describe the buildings and uses observed on the property; and describe the kinds of activities and equipment used in the operation. The affidavit must be signed, dated, witnessed, and notarized.
3. Dated receipts or similar documents that are specific to the nonconformity sought.
4. Pictures specific to the nonconformity sought.
5. Parking calculations and parking layout, if applicable. The parking layout should include handicap parking, striping, and type of parking lot surface material.
6. Old tax returns, rent receipts, licenses, utility bills, advertising etc.

The request to recognize nonconforming rights is researched by Land Use Review staff and a written determination provided. Once established, nonconforming rights are subject to the provisions of Anchorage Municipal Code Chapter 21.12. and do not expire unless there is change to the property.



Michelle McNulty, Planning Director
DATE: February 28, 2020