



Establishing Rights for Pre-Existing Legal Non-Conforming Uses

What is a Legal Non-Conforming Use?

A non-conforming use is defined as any lawful use of a building, structure or land which does not conform to the zoning regulations where it is located. Non-conforming uses usually occur when the use conformed to zoning regulations when it was originally established, but became non-conforming due to a zoning change or annexation.

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. That right is sometimes referred to as a "Grandfather Right."

Uses that have been in existence, but never were lawfully permitted are not legal non-conforming uses.

How Do I Obtain Proof?

Obtaining proof of a pre-existing non-conforming use can be done in several different ways.

First you must establish when the use became in existence. Second you must establish that the use was a permitted use per the laws at the time it was established.

The following is a list of some (but not all) of the types of records which are accepted as proof of the use's existence:

- A permit issued clearly identifying use at the subject address.
- 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.
- 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.

Is That All There Is To It?

Not quite. Under certain circumstances, a non-conforming use will cease to exist, and cannot be reestablished. The most common reasons are:

- The Non-Conforming use is discontinued for a continuous period of one year without submitting intent to continue the use to the City.
- Another use has been established on the property.
- It is clear that the owner intended to abandon the non-conforming use, even if the elapsed time is less than stated above.
- Buildings or structures are damaged to an extent of 50% or more of their current assessed taxable value.
- Buildings or structures are deemed dangerous.

If you lose a non-conforming use, it cannot be re-established. In such a case, the property may only be used for the purposes specified by ordinance. The non-conforming use must be either discontinued or moved to a property which has the correct zone.

Garden City has a, ***Nonconforming Status Determination*** application, where a City Planner and, or the Legal Department will review your materials and provide an analysis of the documentation provided.

Nonconforming uses cannot be enlarged or expanded without a conditional use permit approval. Changes to structures for routine maintenance may be required to be brought to current standards.