

Legal Nonconforming Uses and Structures

Code Summary for the Planning Commission, March 19, 2014

Definitions

Legal nonconforming structure: a structure or building, the size, dimensions, or location of which was lawful prior to the adoption, revision, or amendment to the zoning ordinance but that fails by reason of such adoption, revision, or amendment to conform to the present requirements of the zoning district.

Legal nonconforming use: a use or activity that was lawful prior to the adoption, revision or amendment of the zoning ordinance but that fails by reason of such adoption, revision, or amendment to conform to the present requirements of the zoning district.

Code Summary

- In general, legal nonconforming uses and structures may continue to be used and maintained as a result of vested rights obtained through the legal establishment of the nonconforming use or structure.
 - Ordinary maintenance, such as painting or plumbing repair, is permitted to protect health, safety and welfare.
 - Legal nonconforming uses and structures cannot be altered to increase the degree of nonconformity.
- Legal nonconforming structures must be brought into zoning code compliance when:
 - The gross floor area of the structure is doubled or more.
 - The value of proposed improvements to the structure equal or exceed the existing value of the structure.
- Rights to legal nonconforming uses are lost when:
 - The use is changed.
 - The use is abandoned for 12 months.
 - The structure housing the use is demolished or rebuilt.
- Rights to legal nonconforming parking are lost when the primary structure on the lot is demolished.
- Restoration of a legal nonconforming structure or a structure containing a legal nonconforming use to its nonconforming state is permitted in case of fire, explosion, etc., provided building permits are sought within 18 months of the disaster.

Implications of Changing Allowed Uses

- Uses no longer allowed become legal nonconforming uses
- Structures may also become legal nonconforming structures (because of nonconforming setbacks, lot coverage, floor area ratio, etc.)
- Property owners continue to operate and maintain structures at their option
- Tenants continue to operate businesses at property owner's discretion
- Transition occurs as economic or other factors weigh in favor of redevelopment vs. continued maintenance of existing structure.
- Overlake offers another approach: designating certain uses as "transitional" rather than nonconforming.