

# Non-Conforming Use Determination

## What is a non-conforming use?

This is a use that does not conform to currently applicable standards or regulations.

## What are the categories of non-conformities?

Non-conformities typically occur in three general categories or combinations:

1. Non-conforming lots – Typically these have substandard size or dimensions
2. Non-conforming structures – Typically these have substandard setbacks or excessive heights
3. Non-conforming uses – The use is inconsistent with the allowances or procedures of the underlying district, such as multiple family dwelling units in a single-family zone

## What is the difference between legal and illegal non-conformities?

There are two methods for establishing non-conforming legal status:

### Legal Non-conformity

This applies to those uses, structures or lots which in whole or part are not in conformance with current zoning standards, but were legally established as a prior date when they were in conformance with applicable standards. Such uses structures or lots may be maintained or potentially altered subject to the provisions of CCC 40.530 Non-conforming Uses, Structures and Lots.

### Illegal Non-conformity

This applies to those uses, structures or lots that in whole or part are not in conformance with current zoning standards and were not

in conformance with applicable standards at the time of their inception. Such illegal nonconforming uses, structures or lots shall not be approved for any alteration or expansion, and shall undertake necessary remedial measures to reach conformance with current standards or be discontinued.

## Who bears the burden of demonstrating a non-conforming legal status?

The owner or the applicant (proponent of such conformity) bears the full burden of establishing that any non-conformity is a legal non-conformity. Depending on the type of application, examples of acceptable proof include, but are not limited to, business license, tax returns, business transaction receipts, utility statements, and dated aerial photographs. Additional information may be required for proving intensity and size of the operation.

## When are legal non-conforming uses considered abandoned?

They are considered abandoned if the legal non-conforming use ceases for a period of six months or more, or is changed to a conforming use.

## Can a non-conforming use be changed to another non-conforming use?

The responsible official may allow a legal nonconforming use to be changed to another legal nonconforming use, subject to a Type II review, only if all of the following conditions are met:

- The proposed new use can be clearly demonstrated to involve equal or lesser adverse impacts to the surrounding

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For an alternate format, contact the Clark County ADA Compliance Office.  
Phone: (360) 397-2322  
Relay: 711 or (800) 833-6384  
E-mail: [ADA@clark.wa.gov](mailto:ADA@clark.wa.gov)

area, as it currently exists and as it is likely to develop in the future consistent with the underlying zoning district.

- The proposed change in use will involve minimal structural alteration.
- The proposed new use will not increase the amount of space occupied by a nonconforming use, except in cases where a legal nonconforming use proposes to expand within an existing building without structural alteration except as required by law, where such building had been originally designed for such internal expansion of use.
- The proposed change in use satisfies the requirements of Site Plan Review, if applicable.

### **What is the requirement for processing requests for the expansion or alteration of legal non-conforming uses and associated structures?**

Legal nonconforming single-family dwellings or duplexes and accessory structures may undergo expansion or alteration within an existing legal lot, provided such expansion does not violate standards for setbacks, height, or other applicable code provisions. Such expansions shall be subject to Type I review under this code.

Legal nonconforming uses and associated structures other than single-family dwellings or duplexes may undergo expansion or alteration, subject to compliance with all of the following listed criteria. Conditions of approval shall be required as necessary to ensure compliance. Such proposed expansions or alterations shall require site plan approval. A Conditional Use permit may also be required if the responsible official finds that the proposed expansion raises significant community concerns relative to the criteria of this chapter.

- The proposed expansion or alteration will not increase the extent of adverse impacts to the surrounding area and its character, or increase the extent of adverse impacts to future development likely to occur in the surrounding area consistent with the underlying zoning district.
- The proposed expansion or alteration is limited to the legal lot of record of the existing use, unless expansion to adjacent lots serves to limit potentially adverse impacts.
- The proposed expansion or alteration fully complies with all applicable local, state or federal requirements.

### **Can I rebuild if a structure containing a non-conforming use is destroyed?**

If a structure containing a non-conforming use is destroyed by any cause leading to a loss of sixty percent or greater of the structure's latest appraised value, any future structure on the site shall conform to regulations of the underlying zoning district.

### **Can the responsible official's decision be appealed?**

The Responsible Official's decision may be appealed to the county Hearing Examiner by the applicant or any person or group. An appellant must submit an appeal application and fee within 14 calendar days after the written notice of the decision.

For more information on appeals, see our *Appeals* handout.

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**Note: This handout is not a substitute for county code. For more detailed information, please refer to Clark County Code 40.530 Nonconforming Uses, Structures and Lots.**

**Fee schedule**

The following fees are required to be paid when the application is submitted.

**Non-conforming use Determination**

Planning	\$2,000
Issuance	\$53