

REVIEWED AS TO FORM
CODE REVIEW COMM.

169 - 0044
98-45604

REVIEWED
BWD
LEGAL COUNSEL

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Title 18, the Deschutes *
County Zoning Ordinance, Relating to Nonconforming *
Uses and Declaring an Emergency. *

98 AUG 31 AM 8:12
MARY SUE PENNINGTON
COUNTY CLERK

ORDINANCE NO. 98-037

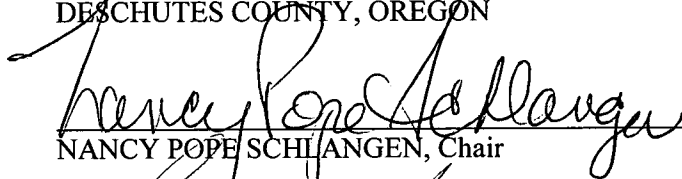
THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON,
ORDAINS as follows:


Section 1. AMENDING. Deschutes County Code Section 18.120.010, Nonconforming uses, is amended to read as set forth in Exhibit "A," attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 2. EMERGENCY. This ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this ordinance takes effect on its passage.

DATED this 26th day of August, 1998.

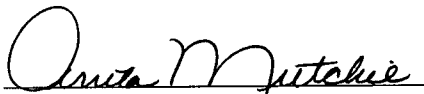
BOARD OF COUNTY COMMISSIONERS OF
DESCHUTES COUNTY, OREGON


NANCY POPE SCHLANGEN, Chair


ROBERT L. NIPPER, Commissioner


LINDA L. SWEARINGEN, Commissioner

ATTEST:


Anita Mitchell
Recording Secretary

MICROFILMED
OCT 14 1998

KEYPUNCHED
OCT 15 1998

18.120.010. Nonconforming uses.

Except as otherwise provided in this title, the lawful use of a building, structure or land existing on the effective date of this title, ~~or any amendment thereto or any ordinance codified therein~~ may be continued although such use or structure does not conform with the standards for new development specified in this title. A nonconforming use or structure may be altered, restored or replaced subject to this section. No nonconforming use or structure may be resumed after a one year period of interruption or abandonment unless the resumed use conforms with the provisions of this title in effect at the time of the proposed resumption.

A. Expansion or Replacement of a Nonconforming Structure.

1. Nonconforming Structure. For the purposes of this section, a nonconforming structure is one that was lawfully established and violates current setbacks of this title but conforms with respect to use.

2. Replacement or Expansion without Additional Encroachment in Setback Area. A nonconforming structure may be replaced with a new structure of the same size on the same footprint as the preexisting nonconforming structure or may be expanded with an addition that does not project into the setback area at any point along the footprint of the structure, subject to all other applicable provisions of this title.

3. Replacement or Expansion with Additional Encroachment in Setback Area. Replacement or expansion of a nonconforming structure that would involve an additional projection into the front, side or rear yard setback area at any point along the footprint of the existing or preexisting structure may be allowed provided such additional projection into the setback area (1) does not exceed 900 square feet; (2) does not exceed the floor space of the existing or preexisting structure; (3) does not cause the structure to project further toward the front, side or rear property lines than the closest point of the existing or preexisting structure; and (4) meets the variance approval standards set forth in paragraphs 18.132.025(A)(1), (A)(2), (A)(3) and (A)(4) of this title.

Such replacements or expansions must conform with all other applicable provisions of this title.

B. Verification of Nonconforming Use.

1. Subject to the procedures set forth in ~~this section and in chapter 22.40~~ Title 22 of the county code for processing declaratory rulings, the planning division will verify whether or not a use constitutes a valid nonconforming use in accordance with the provisions of this section and applicable state law. Verification of the existence of a nonconforming use is required prior to or concurrent with any application to alter or restore the use. ~~The burden of proof shall be on the applicant to demonstrate its lawful existence.~~

2. Subject to paragraph (F)(2) of this section, ~~The~~ applicant shall demonstrate all of the following:

a1. The nonconforming use was lawfully established on or before the effective date of the provisions of this title the zoning ordinance prohibiting the use.

2. ~~The nonconforming use was actually in existence on the effective date of the provisions of this title prohibiting the use, or had proceeded so far toward lawful completion as of the date it became nonconforming that a right to complete and maintain the use would be vested;~~

b3. The nonconforming use as it existed on the date it became nonconforming, considering the nature and the extent of the actual use of the property, has not been interrupted continued without abandonment or interruption for a period in excess of one year or was never abandoned; and

c. Any alteration in the nature and extent of the nonconforming use was done in compliance with applicable zoning ordinance standards governing alterations of nonconforming uses.

3. For purposes of determining whether an abandonment or interruption of use has occurred, the following shall apply:

a. The reference period for determining whether an abandonment or interruption of a nonconforming use or an aspect thereof has occurred shall be one year.

EXHIBIT "A"

b. An abandonment or interruption in a use or portion thereof may arise from the complete cessation of actual use of a property for a one-year period or may arise from a change in the nature or extent of the use made of the property for a one-year period or more.

c. An interruption or abandonment that constitutes less than full cessation of the use or a portion thereof may, in accordance with paragraph (F)(4) of this section, result in a declaration of a continuing use, but of a lesser intensity or scope than what would have been allowable if the nature and extent of the use as of the date it became nonconforming had continued.

d. Absent an approved alteration, a change in the nature of the use may result in a determination that the use has been abandoned or has ceased if there are no common elements between the activities of the previous use and the current use.

e. Change of ownership or occupancy shall not constitute an interruption or abandonment, provided that, absent an approved alteration, the continuing use made of the property falls within the allowed scope of use made of the property by previous owners or occupants.

f. Factors to be considered in determining whether there has been a change in the nature and/or extent of a use shall include, but are not limited to, consideration of the type of activities being conducted, the operating characteristics of the activities associated with the use (including off-site impacts of those activities), the frequency of use, the hours of operation, changes in structures associated with the use and changes in the degree to which the activities associated with the use occupy the site.

C. Maintenance of a Nonconforming Use. Normal maintenance of a verified nonconforming use or structure shall be permitted. Maintenance does not include alterations which are subject to ~~paragraph subsection (E) below of this section.~~

D. Restoration or Replacement of a Nonconforming Use. A verified nonconforming use may be restored or replaced if all of the following criteria are met:

1. Restoration is made necessary by fire, natural disaster or other casualty;

2. The nonconforming use is restored or replaced on the same location and is the same size or smaller than it was prior to the damage or destruction; and

3. The restoration or replacement of the nonconforming use is commenced within one year of the damage or destruction.

E. Alteration of a Nonconforming Use.

1. The alteration of a nonconforming use shall be permitted when necessary to comply with any lawful requirement.

2. Any other alteration to a nonconforming use ~~permitted under this section shall also~~ may be permitted subject to all applicable provisions of this title, including site plan review and upon a finding that the ~~Alteration does not include expansion of a use or structures associated with that use or a change in use.~~

~~1. The alteration of a nonconforming use shall be permitted when necessary to comply with any lawful requirement.~~

~~2. In all cases other than that described in above, alteration of a nonconforming use or any physical improvements may be permitted by the hearings Officer when both of the following criteria are met:~~

~~a. The alteration is necessary to reasonably continue the nonconforming use.~~

~~b. The alteration will have no greater adverse impact on the neighborhood.~~

3. For the purposes of paragraph (E)(2) of this subsection, an "alteration of a nonconforming use" shall include any change in the use of the property that would constitute a change in the nature or extent of the use of the property.

F. Procedure.

1. Any application for verification of a nonconforming use or to expand, alter, restore or replace a nonconforming use shall be processed in conformance with the applicable procedures set forth in this section and the applicable procedures for a declaratory ruling under of Title 22, the Deschutes County Uniform Development Procedures Ordinance.

2. Notwithstanding section 22.20.010 of the Deschutes County Code, the initial decision on an application for an alteration of a nonconforming use shall be made administratively, without a

public hearing. The Planning Director may give prior notice of the pending application pursuant to section 22.20.020 of the Deschutes County Code.

3. Except as allowed by subparagraph (a) of this paragraph, the burden of proof shall be on a verification applicant to prove the existence, continuity, nature and extent of the use.

a. Notwithstanding section 22.24.050 of the Deschutes County Code, if an applicant demonstrates by a preponderance of the evidence that the nature and extent of the use sought to be verified is of the same nature and extent as the use of the property for the 10-year period immediately preceding the application, without interruption or abandonment, it shall be presumed that the nonconforming use, as proven, lawfully existed at the time the use became nonconforming and has continued without interruption or abandonment until the date of application.

b. The presumption may be rebutted by a preponderance of evidence showing that the use was unlawful prior to the time it became nonconforming, or that the use prior to the 10-year period was of a different nature or different in extent than the use, as proven, or that the use prior to the 10-year period was interrupted or abandoned. If the presumption is so rebutted, the presumption shall disappear and be of no further aid to the applicant.

4. If the proof demonstrates the continued existence of a valid non-conforming use, but of a different nature or extent than that claimed by the applicant, the hearings body may declare there to be a valid nonconforming use to the extent proven.

5. An approval of a verification, replacement or restoration of a nonconforming use verification shall not be conditioned; an approval shall be sufficiently detailed to describe the allowed parameters of the verified use. However, an approval of an alteration of a nonconforming use may be conditioned in a manner calculated to ensure mitigation of adverse impacts so that the change has no greater adverse impact to the neighborhood.

6. After a decision has been rendered on an application for a verification of a nonconforming use (including any appeals

provided for under Title 22 and under state law), the applicant shall not be entitled to reapply under section 22.28.040 for another verification determination involving the same use of the property. (Ord. 98-037 § 1, 1998; Ord. 95-050 § 1, 1995; Ord. 93-043 § 20, 1993; Ord. 91-038 § 1, 1991)