



CITY OF HAGERSTOWN, MARYLAND

Department of Planning
301/739-8577, Ext. 138

NONCONFORMING USE PROCESS

WHAT IS A NONCONFORMING USE?

A nonconforming use is the use of a building or property that does not conform to the use regulations prescribed by the Zoning Ordinance for the district in which it is located, but which was lawfully in existence at the effective date of the Ordinance or subsequent text or map amendment. *An example of a nonconforming use is the longstanding and continued use of a property for a motor vehicle repair business on a property that was later classified in a "residential" district that would not permit such uses.*

WHAT IS THIS PROCESS ABOUT?

The Zoning Ordinance allows for an owner or lessee of a property to file documentation with the City Planning Department certifying that the use is nonconforming. This is done to:

- 1) create an official City record of the use in order to clear property for transfer, and
- 2) safeguard against allegations of zoning violations in the future.

HOW DOES THE PROCESS WORK?

Complete and submit the attached application, providing the required description of the use (including a plan of the property for outdoor uses of land) and supporting documentation. The Zoning Administrator reviews the application and issues a letter confirming the existence and extent of the nonconforming use (or stating why the application was rejected), and creates a file that will be kept at the City Planning Department for future use. Should your application be rejected in full or part, or should a concerned party dispute the Zoning Administrator's approval of your application, the decision may be appealed to the Board of Zoning Appeals within 30 days of the date of the written decision.

WHAT DO I NEED TO DEMONSTRATE?

An applicant needs to demonstrate 1) that the establishment of the use predates the adoption of the zoning ordinance, or subsequent ordinance or zoning map amendment that may have rendered the use nonconforming, 2) the extent of the use and 3) that since the date that the use became nonconforming, it has not ceased operation for a period of 12 months or more.

CAN I USE THIS PROCESS TO EXPAND OR CHANGE MY NONCONFORMING USE?

No. The Zoning Administrator can only acknowledge the existence of a nonconforming use. Changing or enlarging the use is addressed elsewhere in the Zoning Ordinance.

WHY SHOULD I GET MY NONCONFORMING USE CONFIRMED?

As time goes by, it becomes more and more difficult to document the history of a nonconforming use. Paperwork is discarded. Witnesses move away. While your use may go unchallenged for years, it is easier to document the use now rather than years from now. Having your use confirmed by the Planning Department creates an official record with the City that the use is nonconforming.

WHAT KINDS OF DOCUMENTATION DO I NEED?

Anything that demonstrates the existence of the use prior to the date the use became nonconforming can be used as evidence in your application. Such documentation could include:

- Business records or historic city directories identifying a business at that location.
- Old photographs.
- Historic property, insurance, land use maps, surveys, government records or deeds that may identify the use.
- Any other materials that are pertinent to documenting the use on the property.
- Notarized affidavits from current or past property owners, tenants, neighbors, etc. who have direct knowledge that the use predates the date it became nonconforming. Third hand accounts are not acceptable, however second hand accounts are acceptable only if:
 1. The witness providing the affidavit can identify the individual who informed them of the creation of the use,
 2. Identify that person's relationship to the property and how that person would have known when the use became nonconforming,
 3. The specific year that this person stated the use began or became nonconforming, and
 4. The year that this person informed the witness providing the affidavit about the use.

For example, you are purchasing an automobile repair facility located in a residential district and that use of the property appears to have become nonconforming in 1977. The current owner purchased the property in 1980 from the previous owner who informed him that he started the business there in 1970. This information is acceptable, provided that the current owner provides an affidavit stating 1) who informed him of this (name of former owner) 2) how this person would have had first hand knowledge (started the business) 3) the year the use began or became nonconforming (1970) and 4) the year that he was informed of this by the person with direct, firsthand knowledge (in 1980 when he bought the property).

FOR MORE INFORMATION

Contact the Hagerstown City Zoning Administrator at 301-739-8577, extension 139.

CITY OF HAGERSTOWN, MARYLAND

NONCONFORMING USE CONFIRMATION APPLICATION
(All requested information is required to be completed by all applicants)

- 1. **Owner of Property:** _____
Mailing Address: _____
Telephone: _____ **Fax:** _____ **Email:** _____

- 2. **Applicant (if different from owner):** _____
Mailing Address: _____
Telephone: _____ **Fax:** _____ **Email:** _____

- 3. **Agent or Counsel (if applicable):** _____
Mailing Address: _____
Telephone: _____ **Fax:** _____ **Email:** _____

SITE INFORMATION
(Please provide all requested information)

Address or Location of Property: _____
Current Zoning: _____ **Property Size:** _____

ALLEGED NONCONFORMING USE

ON A SEPARATE SHEET OF PAPER, THOROUGHLY DESCRIBE THE NATURE AND EXTENT OF THE ALLEGED NONCONFORMING USE TO INCLUDE (BUT NOT BE LIMITED TO) AMOUNT OF AREA OF BUILDING AND/OR LAND USED FOR THE NONCONFORMING USE, PARKING PROVIDED FOR THE USE, HOURS OF OPERATION, NUMBER OF EMPLOYEES, NUMBER OF DWELLING UNITS (IF APPLICABLE), AND ANY OTHER PERTINENT INFORMATION NECESSARY FOR THE ZONING ADMINISTRATOR TO DETERMINE THE EXTENT OF THE USE. ATTACH THE SUPPLEMENT TO THIS APPLICATION. FOR APPLICATIONS INVOLVING ANY OUTDOOR USE OF LAND (INCLUDING PARKING AREAS), PROVIDE A DRAWING OF THE PROPERTY OF SUFFICIENT QUALITY AND DETAIL TO ILLUSTRATE THE USE.

THE APPLICANT CITES THE FOLLOWING DATE THAT THE PROPOSED USE BECAME NONCONFORMING (check one):

_____ **ADOPTION OF THE CURRENT CITY ZONING ORDINANCE (MARCH, 1977)**

_____ **AMENDMENT OF THE ORDINANCE OR MAP ADOPTED ON:** _____
Insert date of amendment here.

SUPPORTING DOCUMENTATION

LIST ALL SUPPORTING DOCUMENTATION THAT IS PROVIDED WITH THIS APPLICATION AND ATTACH THOSE DOCUMENTS TO THIS FORM. PROVIDE COPIES ONLY. *DO NOT SUBMIT YOUR ORIGINAL DOCUMENTS. THEY WILL NOT BE RETURNED.*

- 1. _____
- 2. _____
- 3. _____
- 4. _____
- 5. _____
- 6. _____
- 7. _____
- 8. _____
- 9. _____
- 10. _____

APPLICANT'S/OWNER'S STATEMENTS

This application and its addenda and supporting documentation are true and accurate to the best of my knowledge and belief.

Owner's Signature: _____ Date: _____

Applicant's Signature*: _____ Date: _____

*If different from owner.