Chapter 17.60: Non-Conforming Uses, Structures, and Lots

17.60.010 Purpose
The purpose of this Chapter is to establish regulations applicable to non-conforming lots, uses and structures. These regulations distinguish legally established non-conforming lots, uses and structures from illegal non-conforming lots, uses and structures. The intent of this Chapter is to discourage the expansion, enlargement or intensification of legal non-conforming uses and to establish a procedure to recognize legal non-conforming lots, uses and structures (provided they are not expanded, enlarged, intensified, removed or abandoned). The intent is not to discourage owners from performing routine maintenance or making improvements to a structure or a lot. Furthermore, with respect to illegal non-conforming lots, uses and structures, the intent of this Chapter is to prohibit and abate illegal non-conforming lots, uses and structures.

17.60.020 – Definitions
(1) "Non-conforming lot" means a lot that, at the time of its establishment, met the minimum lot size requirements for the zone in which it is located but which, because of subsequent changes to the minimum lot size applicable to that zone, no longer complies with requirements.
(2) "Non-conforming structure" means structure that complied with zoning and development regulations at the time it was built but which, because of subsequent changes to the zoning and/or development regulations, no longer fully complies with those regulations in regards to height, setbacks, lot coverage, size, or area.
(3) "Non-conforming use" means a use of property that was allowed at the time the use was established but which, because of changes in zoning regulation, is no longer permitted.
(4) "Lot of record" means (a) an undeveloped lot, tract or parcel of land shown on an officially recorded short plat or subdivision or (b) a parcel of land officially recorded or registered as a unit of property with the County Auditor, Assessor or Treasurer and described by platted lot number or by metes and bounds and lawfully established for conveyancing purposes on the date of recording of the instrument that first references the lot. Use of the term "lot of record" does not mean that the lot was created in conformity with the legal regulatory requirements for subdivision of property in accordance with Chapter 58.17 RCW.
(5) "Expansion," "enlargement," or "intensification" means any increase in a dimension, size, area, volume, or height, any increase in the area of use, any placement of a structure or part thereof where none existed before, any addition of a site feature such a deck, patio, fence, driveway or parking area, any improvement that would allow the land to be more intensely developed, any move of operations to a new location on the property, or any increase in intensity of use based on a review of the original and historical nature, function or purpose of the non-conforming use, the hours of operation, traffic, parking, noise, exterior storage, signs,
exterior lighting, types of operations, types of goods or services offered, odors, noise, area of operation, number of employees, and other factors deemed relevant by the City. (6) "Intensification of use, non-residential" includes, in addition to the description in WMC 17.60.020(5), any change or expansion of a non-residential use that results in both a greater than 10% increase in parking need or the Director of Public Works determines there is a material likelihood the use will have a negative impact regarding traffic generation, noise, smoke, glare, odors, hazardous materials, water use, and/or sewage generation, shall be an "intensification of use" for the purposes of this Chapter. (7) "Intensification of use, residential" includes, in addition to the description in WMC 17.60.020(5), any change to a residence use which will result in an increase in the number of bedrooms is an "intensification of use" for the purposes of this Chapter. (8) "Pre-Existing" means that which existed prior to the adoption of the ordinance codified in this title. (9) "Alteration of nonconforming structures" means any change or rearrangement in the supporting members of existing buildings, such as bearing walls, columns, beams, girders, or interior partitions, as well as any changes in doors, windows, means of egress or ingress or any enlargement to or diminution of a building or structure, horizontally or vertically, or the moving of a building from one location to another. This definition excludes normal repair and maintenance, such as painting or roof replacement, but includes more substantial changes. 17.60.030 – Abatement of Illegal Non-Conforming Use, Structure or Lot. The City may take such action as it deems necessary to abate or to enjoin any illegal non-conforming use, structure, lot or other site improvement when the owner or the owner's agent, successor, tenant, occupant or assignee fails to discontinue such use or fails to remove such non-conforming structure after written notice from the City. Such notice shall be sent to the owner at the address shown in the current online records of the County Treasurer and Assessor. 17.60.040 – Completion of Structure Nothing contained in this title shall require any change in the plans, construction, alteration, or designated use of a structure for which a building permit has been legally issued and construction commenced prior to the adoption of the ordinance codified in this title and subsequent amendments thereto. 17.60.050 – Non-Conforming Uses A. A non-conforming use may not increase in intensity or be made more non-conforming without special permission from the Hearing Examiner set forth in a Conditional Use Permit obtained as per Chapter 17.72. B. A structure containing a non-conforming use may be enlarged or extended only by special permission of the Hearing Examiner through a Conditional Use Permit as per Chapter 17.72. The extension of a non-conforming use within a structure existing on the date this ordinance was amended that was built for the non-conforming use is not considered an extension of a non-conforming use. For example, if a building was constructed for the non-conforming use, but the use did not fill the entire building, expanding the use into the empty portion of the building does not constitute the extension of the non-conforming use.
C. No non-conforming use shall be moved in whole or in part to any other portion of the lot or zoning district in which it is located. If moved, it must be to a district in which the use is permitted.

D. If any non-conforming use ceases for any reason for a period of six months, any subsequent use shall conform to the regulations specified by this title for the district in which such use is located.

E. The Hearing Examiner may recognize a legal non-conforming use and/or may authorize reinstatement of a non-conforming use. The procedure for recognizing and/or reinstatement shall be the same as for Conditional Use Permits as outlined in Chapter 17.72 and conditions may be imposed as part of reinstatement.

F. A non-conforming use cannot be changed to another kind of non-conforming use. The non-conforming use must remain either the prior non-conforming use legally established or a use permitted in the zoning district. If a non-conforming use is changed to a conforming use, the use cannot be changed back to the prior non-conforming use, unless permitted by the Hearing Examiner.

G. If a structure containing a non-conforming use is destroyed by any cause to an extent exceeding fifty percent of the cost of replacement of the structure, using new materials, a future use of the property shall conform to the provisions of this title. See Section 17.60.080 for single-family dwelling exemptions.

17.60.060 – Non-Conforming Structures

A. A non-conforming structure may be continued and maintained in reasonable repair and safe condition, provided that the structure is not enlarged, extended, or increased without special permission from the Hearing Examiner through a Conditional Use Permit as per Chapter 17.72. A non-conforming structure may not be made more non-conforming.

B. A non-conforming structure may not be moved in whole or part to any other portion of the lot of zoning district in which it is located, unless the move brings the structure into conformance.

C. A non-conforming structure may be used for a use permitted in the zoning district where the structure is located. In order to accommodate a permitted use, the structure may be repaired, modified, or altered, internally and externally; provided such repairs and modifications (1) do not increase the non-conformance of the structure and (2) that such repairs and modifications satisfy the International Building Code standards.

D. In addition, a non-conforming structure as described in Section C may be modified or altered in such a manner that it conforms to the standards of the district, this title, and the International Building Code.

E. If a non-conforming structure is destroyed by any cause to an extent exceeding fifty percent of the cost of replacement of the structure, using new materials, a future structure of the property shall conform to the provisions of this title. See Section 17.60.080 for single-family exemptions.

F. A non-conforming structure that is made conforming will not be allowed to become non-conforming again, without following the Variance process outlined in Chapter 17.81.

17.60.070 – Non-conforming Lots

Any permitted use may be established on an undersized lot that cannot satisfy lot size or width requirements of this Title, provided that:
A. All other applicable zoning development standards, such as building setback requirements and lot coverage requirements, are met or a variance has been granted;
B. The lot was legally created and satisfied the lot size and width requirements applicable at the time of creation;
C. No unsafe condition is created by permitting development on the non-conforming lot; and
D. The lot was not created as a “special tract” to protect critical areas, provide open space, or as a public or private access tract.

17.60.080 – Single-Family Dwellings
A. Single-family dwellings, including manufactured homes, existing in the C-1, C-2, C-3, I-1, or I-2 districts at the time of passage of the ordinance codified in this title shall be allowed to remain, and any addition or improvements thereto shall meet the standards of the LDR-6 zoning district.
B. In any zone, a single-family dwelling destroyed by any cause to any extent, shall be allowed to be improved or reconstructed, provided the setback standards of the LDR-6 district are maintained or provided that the original footprint of the destroyed dwelling is maintained.

17.06.090 - Inquiries Concerning Non-Conforming Status
An owner or agent claiming a legal non-conforming use, structure or lot may petition the City to formally recognize the legal non-conforming use, structure or lot. Initial City review will be a Type ___________ review and is the sole method to obtain recognition. This review shall be subject to the requirements of WMC ___________. The owner/agent has the burden of showing legal non-conforming status. Non-Conforming status is established by documentary evidence and by narrative statements.

An owner/agent shall provide documentary evidence to establish the following:

1. Date the use was established or lot was created; date structure was completed;
2. Initial use at time of establishment, creation or completion;
3. Chronological list of subsequent uses;
4. Any advertisement for sale of the property; any advertisement for lease of the property;
5. Proof of business operation if a business use is claimed. Proof of business operation includes but is not limited to state and local business licenses, state business and occupation tax returns, state sales tax returns;
6. If multi-family use is claimed, proof of use as a multi-family unit during the prior 24 months and proof of compliance with RCW _________ and WAC ____________;
7. Certificate of occupancy;
8. If the property has been leased, a copy of the leases.

The owner/agent may provide narrative statements to establish facts for which there is insufficient documentary evidence. Narrative statements shall be provided in affidavit or certificate form.

Official written recognition by City officials or the planning staff of legal non-conforming shall be given greater weight than informal oral statements by City officials or the planning staff. Oral
statements which identify the date and time of the oral statement, the persons present, the question asked will be given greater weight than general statements lacking such details. There is a rebuttable presumption that a business was not operated on the property and the business use was abandoned unless the documentary proof described in Subsection 5 is provided. "Leasing" property is not a separate independent business use for purposes of this Chapter but is considered a form of title.

After Type ____ review, the City shall issue a written decision either recognizing the legal non-conforming use or finding that a legal non-conforming use has not been established. The owner/agent shall have 20 days to appeal the decision to the Hearing Examiner. The Hearing Examiner shall review the decision based on the materials submitted by the owner/agent at the Type ____ review and on any supplementary material provided by the City. The petitioner shall pay a filing fee in an amount set by City Council Resolution. The Petitioner shall reimburse the City for 50% of the Hearing Examiner expense for this or any other review, application or petition under this Chapter.