

## POLICIES AND PROCEDURES FOR EVALUATING NONCONFORMING STATUS

A nonconforming use, structure or lot does not comply with current zoning regulations, but is considered legal because the condition was allowed at the time it was originally established and that same condition has been maintained, continuously, over time.

If adequate evidence is not provided to document the nonconforming status when it was first established and that the status has been maintained at the property, without interruption, the property owner does not have the legal right to continue that status and the use, structure or lot will be required to be altered in order to comply with the current City of Kent Zoning Code requirements.

If the Zoning Inspector denies a request for a "Certificate of Nonconforming Use," the Applicant may appeal this decision to the Board of Zoning Appeals. The appeal shall be governed by the Kent Codified Ordinances, including 1109.09(a), 1109.10(b), 1109.11, 1109.12, and will result in the use of the following meeting procedures:

1. The Chairperson shall call the case and read the following statement:

*This case is an appeal of a decision of the Zoning Inspector denying the Applicant's request for a "Certificate of Nonconforming Use," pursuant to KCO 1109.09(a), 1169.11, and 1169.13. Therefore, a legal standard different from the preamble read at the beginning of the meeting applies.*

*Members of the Board of Zoning Appeals act as judges in determining whether the Zoning Inspector's decision should be affirmed or if the decision should be reversed. The decision of the Board of Zoning Appeals shall be based upon the evidence and sworn testimony presented by the City, the Applicant, and the public. The Board of Zoning Appeals Members may also rely upon their own personal knowledge, experience, and common sense.*

*The burden of proof is on the Applicant to prove, by a preponderance of the evidence, that:*

*(1) the pre-existing nonconforming status has been legally in existence prior to the enactment of the City's Zoning Ordinance on September 22, 1971, or any other applicable City of Kent Zoning Code amendment enacted on a subsequent date.*

**AND**

*(2) the nonconforming status has been in continuous use since the nonconforming condition was established, up through and including the present day. Continuous use is defined as no interruption of use greater than two (2) consecutive years.*

*At the conclusion of the presentation of evidence and after a discussion amongst the Board Members, the Board of Zoning Appeals shall entertain motions and take a vote.*

*Any party or individual considering an appeal of the decision of the Board of Zoning Appeals is advised to seek private legal counsel.*

2. The Chairperson shall make certain that all prospective speakers (witnesses) are under oath.
3. The Chairperson shall invite the City of Kent representative(s) to present to the Board of Zoning Appeals the facts and evidence relied upon by the Zoning Inspector in denying the Applicant a "Certificate of Nonconforming Use."
4. The Chairperson shall invite the Applicant (or the Applicant's representative) to present to the Board of Zoning Appeals the facts and evidence the Applicant believes will convince the Board of Zoning Appeals to overturn the Zoning Inspector's decision.
5. The Chairperson shall invite the City of Kent's representative(s) to rebut the Applicant's case.
6. The Chairperson shall open the topic to public comment.
7. The Chairperson shall close the topic to public comment.
8. The Chairperson shall invite the Board Members to discuss the case.
  - a. The Chairperson shall ensure that the discussion continues to focus only on relevant criteria. Relevant criteria is any evidence that supports or disproves the Applicant's claim that the pre-existing use was legal at the time it was established AND the nonconforming use has been in continuous use since the nonconforming use was established as a legal use up through and including the present day. Continuous is defined as no interruption of use greater than two (2) consecutive years.
9. Forms of documentation to be considered as evidence the nonconforming use was allowed when the nonconforming use was established **AND** the use was continuous includes, but is not limited to:
  - a. Building permits;
  - b. Income tax records;
  - c. Rent payment receipts;
  - d. Insurance policies for the property;
  - e. Dated aerial photos

Documentation will need to be provided to the City's staff at the time Applicant applies for the appeal so that the information can be reviewed and included in the meeting packets, which are disseminated to the BZA prior to the scheduled meeting. If documentation is not provided, the City's staff will request the BZA delay/continue the case to the next scheduled meeting in order to allow adequate time for review of the documentation.

10. Without limitation, the following **IS** considered relevant testimony evidence:
  - a. The date, month, or year that the Applicant identifies that the nonconforming use was legal;
  - b. The continuing nature of the nonconforming use.
  
11. Without limitation, the following **IS NOT** considered relevant testimony evidence:
  - a. The impact the Board's decision will have on the Applicant's property value;
  - b. The price the Applicant paid to purchase the property;
  - c. The financial rate of return the Applicant hopes to generate on the property;
  - d. The impact the Board's decision will have on the profitability of the property;
  - e. The Applicant's ability to insure or finance the property;
  - f. The Applicant's character; AND
  - g. How the neighbors would like to see the property developed.
  
12. In order to vote in favor of granting the Applicant's appeal, a Board of Zoning Appeals Member must individually find, by a preponderance of the evidence (i.e. more likely than it is not likely), that:
  - a. The pre-existing use was legal at the time it was established **AND**
  - b. The nonconforming use has been in continuous use since the nonconforming use was established as a legal use up through and including the present day. Continuous is defined as no interruption of use greater than two (2) consecutive years.
  
13. Discussion shall continue until a Board Member makes a motion granting or denying the Applicant's appeal of the Zoning Inspector's decision. If a Motion dies for lack of a "second" or if a properly seconded motion fails to receive three (3) votes, the discussion shall resume.
  
14. Discussion shall continue in this manner until either the Applicant moves to table the hearing to a later Board of Zoning Appeals meeting or a motion granting or denying the Applicant's appeal receives at least three (3) votes.