

BERNALILLO COUNTY

Planning & Development Services
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ZONING SECTION

NONCONFORMING PERMIT

A Nonconforming Permit documents a use or structure that legally existed prior to the adoption of the zoning ordinance, but has become prohibited by reason of new regulations or requirements. There are two types of nonconforming permits – Nonconforming Use Permit (NCU) and Nonconforming to a regulatory standard (NCR).

The following information is needed for a Nonconforming Use Permit (NCU) **and** a Nonconforming permit to regulatory standard (NCR), such as height or yard requirement:

- A completed application form, including the legal description and UPC number of the property is required for all permits
- A detailed site plan of the subject property, indicating the location of all buildings and structures, as well as the property dimensions and site conditions. The plan is to be drawn to scale and of sufficient clarity to convey the scope of the request.

In addition, the following is needed for a NCU permit:

- Three (3) notarized statements from neighbors or nearby property owners verifying the property was legally developed prior to May 17, 1973, and has been in continued use since that time. These statements must include:
 1. The legal description and street address of the subject property
 2. The printed name, signature, address and telephone number of the individual verifying the status of the property
- Any other documentation that will assist the property owner to demonstrate the nonconforming status of the property such as documents from the County Assessor's Office, aerial photographs, information from the Polk Directory or surveys.
- \$ 45.00 permit fee

The submission of a nonconforming application will allow Bernalillo County to determine if the existing development was legally established prior to the implementation of the zoning ordinance.

After the required documents have been submitted and the application has been accepted, the zoning office will conduct all necessary research to confirm the provided information. A permit for a NCU will require a site inspection of the property. The Zoning Administrator will then prepare a letter certifying the zoning designation of the property and referencing the nonconforming status of the site.

If it is determined that Bernalillo County is unable to substantiate the legal existence of the current development; property owners will be responsible for taking the necessary steps to correct the noted deficiencies.

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NONCONFORMANCE TO BERNALILLO COUNTY ZONING CODE

The Comprehensive Zoning Ordinance of Bernalillo County defines “nonconforming” as:

Any building or structure or portion thereof, or use of a building or land which does not conform to the zoning regulations and which lawfully existed on the effective date of those regulations with which it does not conform.

In other words, nonconformance relates to certain aspects of a property that do not meet the current standards as outlined in the Zoning Ordinance, but were established prior to the implementation of Zoning Regulations. Sometimes referred to as a “grandfather clause”, nonconformance provisionally allows uses which pre-existed current zoning regulations. Amendments to the Nonconforming Regulations in the Zoning Code in June of 2014 were adopted to delete removal dates of nonconforming buildings/structures.

Applicable Provisions

- ↻ Any building or structure nonconforming as to use is not required to be removed or converted to a conforming building or structure, as previously required.
 - ↻ Any nonconforming building or structure may be maintained, repaired, or altered, provided that any building or structure nonconforming as to use shall not be structurally altered except as required by law.
 - ↻ Any building or structure nonconforming as to use shall not be added to or enlarged unless such building or structure afterwards is converted to a conforming use; provided, however, that a total maximum expansion of 25% of its floor area may be permitted by the Zoning Administrator and further provided:
 - For residential lots with multi-family dwelling units, the 25% limitation shall apply to the following:
 - a. A building or structure that contains a use that is not allowed in the underlying zone category; or
 - b. A building or structure that does not nearly meet the yard requirements of the Zoning Code, such as setbacks or height; or
 - c. A building or structure that is deemed to be structurally unsound as determined by the owner; or
 - d. As determined by the Zoning Administrator using the above criteria. The Zoning Administrator shall also strongly consider the property owner's request as to which building or structure should be limited to the 25 percent expansion limitation.
- In any case, the expansion shall not increase the number of dwelling units on the lot or within a structure.
- ↻ Any building or structure nonconforming only as to yard requirements, such as height or setbacks, shall not be added to or enlarged except in compliance with certain requirements.
 - ↻ Any nonconforming building or structure may be moved in whole or in part to another location on the lot, provided that every portion of such building or structure which is moved is made to conform to all of the regulations of the zone in which it is located, or in the event such moving will make it nonconforming to a lesser extent.
 - ↻ Any nonconforming building or structure which is damaged by fire, flood, wind, earthquake, or other calamity or act of God or public enemy, may be restored, but not to an extent greater than the original floor area, provided such restoration shall be started within six months of the damage and shall be prosecuted diligently to completion.
 - ↻ Any building or structure nonconforming as to use regulations that becomes vacant and remains unoccupied or is not used for a continuous period of one year or more shall not thereafter be occupied except by a conforming use.
 - ↻ The use of any nonconforming building or structure may be changed to another use permitted in the same or more restrictive zone.