

BERNALILLO COUNTY

Planning & Development Services
111 Union Square SE, Suite 100
Albuquerque, NM 87102
(505) 314-0350 Fax: (505) 314-0480
www.bernco.gov



ZONING SECTION

NON-CONFORMING 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.

The following information is needed for a Nonconforming Use Permit (NCU) **and** a Nonconforming permit to regulatory standard, 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
- Three (3) copies of 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 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
- \$ 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.

BERNALILLO COUNTY

Planning & Development Services
111 Union Square SE, Suite 100
Albuquerque, NM 87102
(505) 314-0350 Fax: (505) 314-0480
www.bernco.gov



ZONING SECTION

NON-CONFORMANCE TO BERNALILLO COUNTY ZONING CODE

Information Sheets

What is a Nonconformance?

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, nonconforming relates to certain aspects of a property that do not meet the current standards as outlined in the Zoning Code, but were established prior to the "clause" or "sunset provision." Nonconformance allows an extension to the uses or development which pre-existed current zoning regulations.

Applicable Provisions:

- Any building or structure nonconforming as to use shall be removed or converted to a conforming building or structure no later than May 17, 2033, unless otherwise noted
- 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. Nonetheless, the building or structure must be used residentially, located in a zone that permits residential uses, and will not increase the number of dwelling units on the lots or in the structure
- If a lot is occupied by both a conforming and a nonconforming structure, detached accessory building may be built, provided they are clearly incidental to the conforming use and do not exceed 25 percent of the floor area of the conforming use
- Any building or structure nonconforming only as to height regulations shall not be added to or enlarged unless such addition or enlargement conforms to all of the regulations of the zone in which it is located.
- Any building or structure nonconforming only as to yard setbacks requirements shall not be added to or enlarge 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 act of God or public enemy, may be restored, but not to an extent greater than the original floor area which existed at the time of the damage, 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.

BERNALILLO COUNTY

Planning & Development Services
111 Union Square SE, Suite 100
Albuquerque, NM 87102
(505) 314-0350 Fax: (505) 314-0480
www.bernco.gov



ZONING SECTION

NON-CONFORMING USE PERMITS

Nonconforming properties are those that do not meet the current standards outlined in the Zoning Ordinance, but were established prior to the implementation of the ordinance (May 17, 1973). Nonconformance may apply to a use; or to the height, setback, separation distance, or size of a building or structure. In order to conform to standards a permit is required for nonconforming properties. The County issues Nonconforming Use Permits (NCU's) to document and track such properties and/or their uses.

Upon request, the Zoning Administrator will issue a written statement certifying the zone designation for a particular tract or lot located within the unincorporated area of the County, and acknowledges the type of nonconformance recognized by the County. As with statements of zonal certification, individuals request a NCU in order to buy or sell a property, or to obtain financial backing in their transaction. All requests for NCU's must be made in writing to the Zoning Administrator through the permitting process.

The Application Process

STEP 1. Submitting the application

Staff members should review the packet for completeness. Confusing or incomplete information should be brought to the attention of the applicant. Staff members responsible for processing applications are not expected to advise individuals on their submittals. Rather, they should offer suggestions for clarification to people who are confused or uncertain of the process.

The burden of supplying adequate and detailed information rests with the applicant. Those who have in-depth questions concerning their requests should be advised of the availability of staff members, supplemental handouts, and scheduled consultations. Incomplete applications are not accepted.

Applicants are responsible for submitting the following information:

1. Completed ZA application
 - Name and address of the owner
 - Name and address of the agent (if applicable)
 - A letter from the property owner authorizing the agent to act on their behalf (if applicable)
 - Clear directions to the property
 - Description of the existing buildings and uses on the subject site
 - Printed name and signature of applicant or agent
2. 3 copies of a detailed site plan
 - All existing buildings and structures
 - Location of property lines and easements, as well as public and/or private rights-of-way
 - Setback distances of all buildings
 - Separation distances between all buildings and structures

(SITE PLANS ARE TO BE DRAWN TO SCALE AND OF SUFFICIENT CLARITY TO CONVEY THE SCOPE OF THE REQUEST)
3. 3 notarized statements from neighbors or relatives' verifying the property was legally developed prior to 1973 and has been in continued use since that time.
4. Payment of the filing fee
 - \$45.00 for NCU's

County staff is responsible for verification and inclusion of the following information:

1. Street address of the site
2. Legal description of the subject site
3. Property code number (UPC) of the site
4. A letter from the property owner authorizing the agent to act on their behalf (if applicable)
5. Correct listing of the registered property owner
6. Zone atlas page with subject site referenced
7. Review of the necessary information
8. Collection of the filing fee for the request
9. Correct data entry for case tracking and scheduled inspection

STEP 2. Research and inspection of the property.

After County staff has accepted the application, the Zoning Inspector for the area begins the necessary research to confirm the nonconforming aspects of the property. Aerial photographs and ownership information are commonly used. Ultimately, a site inspection of the property is conducted. NCU requests that meet the standards for review are forwarded to the Zoning Administrator.

STEP 3. Preparation of the notice.

Based upon the submitted information and the recommendation of the Zoning Inspector, a letter is prepared by the Zoning Administrator recognizing the nonconforming aspects of the subject property. In cases where the property is nonconforming as to use, an expiration date is indicated in the letter.

NCU Application Flow Chart

