



PLANNING & DEVELOPMENT SERVICES  
PO BOX 4169, 911 NORTH 7th AVENUE  
POCATELLO, IDAHO 83205  
PHONE (208)234-6184; FAX (208)234-6586

### Nonconforming Use Determination Application

Filing Fee: \$26.00

Permit #: \_\_\_\_\_

Submittal Date: \_\_\_\_\_

Receipt #: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Receipt Date: \_\_\_\_\_

**Applicant Information:**

**Representative Information:**

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

City, St, Zip: \_\_\_\_\_

City, St, Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

Phone: \_\_\_\_\_

**NOTE: If the Owner of the subject property has a Representative, then the Representative must submit "Notarized Consent" from the property owner for the representative to submit the application.**

**Subject Property Information:**

Street Address: \_\_\_\_\_ Zip: \_\_\_\_\_ Zoning District: \_\_\_\_\_

Legal Description:

Lot: \_\_\_\_\_ Block: \_\_\_\_\_ Subdivision: \_\_\_\_\_

Property Identification Number (PIN#): \_\_\_\_\_ Deed Reference # (Submit copy of deed): \_\_\_\_\_

Other Legal Description: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Type of Nonconforming Use Determination Request:

- Legal nonconforming lot.
- Replacement of a nonconforming structure.
- Expansion of a nonconforming structure.
- Replacement of a nonconforming use.
- Expansion of a nonconforming use.

Note: Based on the type of request, Planning and Development Services will determine if an additional application process will be required.

**Municipal Code 17.01.170(A) Nonconforming Situations:** The purpose of this section is to bring nonconforming situations into conformance with this code and the comprehensive plan, allowing them to continue only subject to the standards and requirements of this chapter. Except as otherwise provided in this chapter, any lot, land use, or structure lawfully existing on the effective date of this chapter or subsequent amendments thereto that does not comply with the standards of this chapter shall be known as a legal nonconforming situation. Change of ownership, tenancy, or management personnel in a nonconforming

situation shall not affect its legal nonconforming status. The applicant, not the city of Pocatello, has the burden of proving that any nonconforming situation was legally established.

**Please attach all pertinent information and documentation pertaining to your request. Failure to provide adequate information and documentation may result in a denial of the request.**

An approval of this application does not permit the violation of any federal or state codes, any section of the Building Code, or other Pocatello Municipal Codes as adopted. An Approval of this application does not exempt the applicant from the provisions of the Federal Fair Housing Act or ADA requirements. Further, other conditions, requirements, etc. may be imposed as part of the building permit process.

I hereby acknowledge that I have read this application and state that the above information, including all submitted materials, is correct and I agree to the above terms and conditions.

Signature of Owner: \_\_\_\_\_ Date: \_\_\_\_\_

Signature of Representative: \_\_\_\_\_ Date: \_\_\_\_\_

## 17.01.170: ADMINISTRATIVE PROVISIONS:

A. Nonconforming Situations: The purpose of this section is to bring nonconforming situations into conformance with this code and the comprehensive plan, allowing them to continue only subject to the standards and requirements of this chapter. Except as otherwise provided in this chapter, any lot, land use, or structure lawfully existing on the effective date of this chapter or subsequent amendments thereto that does not comply with the standards of this chapter shall be known as a legal nonconforming situation. Change of ownership, tenancy, or management personnel in a nonconforming situation shall not affect its legal nonconforming status. The applicant, not the city of Pocatello, has the burden of proving that any nonconforming situation was legally established.

1. Legal Nonconforming Lots: Lots or parcels legally created but which do not now conform to the legal lot standards of this code may be occupied by uses otherwise permitted if those uses will comply with all other provisions of this code.
2. Legal Nonconforming Buildings/Structures: A building that was legally established but no longer conforms to all development standards of this title is considered a legal nonconforming structure. Notwithstanding standards of this section, minor repairs and routine maintenance that do not increase the nonconformity of a legal nonconforming structure are permitted. A legal nonconforming structure that is destroyed by fire or some other calamity, not intentionally caused by the owner, may be replaced. In such case, the replacement structure shall not exceed the original dimensions or density of the previous structure, unless through the replacement and expansion process outlined in subsection A2c of this section. Expansion or reconstruction of legal nonconforming structures shall comply with the following:
  - a. Interior Remodeling: Interior remodeling which does not change the existing use or the extent of the nonconforming use shall be permitted.
  - b. Replacement; Expansion: Permits to replace or expand existing nonconforming structures by up to a total of fifty percent (50%) of the original building area may be sought through the variance process regardless of the underlying zoning district. Any modification to bulk or placement of a nonconforming structure, including increased building height or decreased setbacks, will require a variance.
  - c. Criteria For Nonconforming Structure Expansion Or Replacement: Variance applications for expansion or replacement of a nonconforming structure shall meet the following criteria:
    - (1) The lot or parcel was legally created.
    - (2) All bulk and placement standards such as height, setbacks, etc., shall be met, except as specifically varied through this process.
    - (3) The proposed development shall not adversely impact the public's health, safety, or general welfare and the visual appearance of the development will not produce an effect inconsistent with adjacent and surrounding architecture and site development patterns.
3. Legal Nonconforming Uses: A use that was legally established but no longer complies with the allowed uses or restrictions of this title is considered a legal nonconforming use. If the structure housing a legal nonconforming use is destroyed by fire or some other calamity, not intentionally caused by the owner, it may be replaced and the use continued. In such case, the replacement structure shall not exceed nor the use intensify beyond the original dimensions, density, or operational characteristics, unless through the expansion or change process outlined in subsection A3c of this section.
  - a. Interior Remodeling: Interior remodeling to the building housing the legal nonconforming use, which does not change or intensify the nonconforming use, shall be permitted.
  - b. Expansion: Permits to expand existing nonconforming uses by up to a total of fifty percent (50%) of the original building or land area or density may be sought through the conditional use permit process regardless of the

underlying zoning district. Further, any site modifications that could change or intensify a nonconforming use such as, but not limited to, parking spaces, traffic circulation, ingress/egress, curb cut location, landscaping removal, or similar items of change will require a conditional use permit.

c. Criteria For Nonconforming Use Expansion Or Change: Conditional use permit applications for expansion, change, or intensification of a nonconforming use shall meet the following criteria:

- (1) The lot or parcel was legally created.
- (2) New development shall comply with the current standards set forth by this code, except as specifically varied through this process.
- (3) The proposed expansion or change shall be designed to minimize potential impacts on public health, safety, and general welfare and shall be within the following parameters:
  - (A) The degree of noise, vibration, dust, odor, fumes, glare, or smoke created by the use will not be increased;
  - (B) The number and kinds of vehicular trips associated with the use shall not be changed so as to cause additional impacts on surrounding properties unless mitigating measures are taken;
  - (C) The amount and nature of outside storage, loading, and parking shall not be changed so as to cause increased adverse impacts;
  - (D) The visual appearance of the development shall be designed to be compatible with the adjacent and surrounding architecture and site development patterns;
  - (E) The hours of operation shall not be increased unless specifically altered through this process and adverse impacts minimized.

d. Termination Of Nonconforming Uses: Legal nonconforming use status will be lost as prescribed by Idaho Code section 67-6538, or as amended.

4. Completion Of A Nonconforming Development: A development lawfully under construction, for which a permit has been issued, or for which a land use application has been accepted on the date this chapter is adopted may be completed even if not in compliance with this chapter. The development would be considered legal nonconforming and may be used for the purpose for which it was designed, approved, intended, and arranged.

B. Proportionate Compliance: When a change in use is proposed for existing structures and/or site, proportionate compliance with parking and landscaping standards set forth in this title shall be allowed. Proportionate compliance denotes the difference in these standards to the extent that use or area is changed. These are outlined below:

<u>Condition</u>	<u>Status</u>
New construction	Full compliance
Replacement by conforming use	Existing can remain
Replacement by nonconforming use	Existing can remain
Expansion of conforming use <50%	Proportionate compliance
Expansion of conforming use >50%	Full compliance
Expansion of nonconforming use	See subsections A2 and A3 of this section

C. Enforcement: The mayor, or his designee, shall be the enforcement officer of this title.

1. Violation; Penalty: Any person who fails to comply with or violates any of the provisions of this title may be charged with a misdemeanor violation, and upon conviction thereof, shall be subject to a fine of not more than one thousand dollars (\$1,000.00), or imprisonment for a period not exceeding six (6) months, or both. Each day on which the violation occurs shall be deemed a separate offense.
  2. Civil Enforcement: Appropriate actions and proceedings may be taken at law or in equity to prevent any violation of these regulations, to prevent unlawful construction, to recover damages, to restrain, correct, or abate a violation, to prevent illegal occupancy of a building, structure, or premises; and these remedies shall be in addition to the penalties described in this chapter.
- D. Severability: If any section, subsection, paragraph, sentence, clause, or phrase of this title should be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this title, which shall remain in full force and effect; and to this end the provisions of this title are hereby declared to be severable.  
(Ord. 2846 § 1, 2008)