



COMMUNITY DEVELOPMENT DEPARTMENT

Planning, Zoning and Building Safety

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Carlos De La Torre, P.E., Director

MEMORANDUM

TO: Board of Supervisors
Through: Michael Ortega, County Administrator

FROM: Michael Turisk, Interim Planning Director 
For: Carlos De La Torre, P.E., Community Development Director

SUBJECT: Docket R-11-09 -- Proposed Amendments to Section 2003 of the Cochise County Zoning Regulations pertaining to Legal Nonconformances.

DATE: February 1, 2012 for the February 14, 2012 Meeting

PROPOSED ZONING REGULATION AMENDMENTS: LEGAL NONCONFORMANCES

The Board of Supervisors will consider two proposed amendments to Section 2003 of the Cochise County Zoning Regulations regarding our requirements which help to determine, identify or verify legal non-conforming uses.

I. BACKGROUND

Per Section 2003 of the Zoning Regulations, a legal, nonconformance is any use of land, lot or parcel, building or structure which lawfully existing either prior to January 1, 1975 (the date in which the Zoning Regulations took effect), or which was rendered nonconforming with respect to site development standards (e.g., minimum setbacks) as a result of amendments to the Zoning Regulations since that time. Legal nonconformances are otherwise commonly known as “grandfathered” uses.

Furthermore, per Section 2003:

*In the event a nonconforming use of land, building or structure is changed to a permitted use, or is discontinued for a period of **12 consecutive months**, any future use is required to comply with all requirements of the Zoning Regulations.*

Staff has proposed increasing the maximum discontinuance period from 12 months as noted above, to *36 months*, or such time as the Board may determine. Doing so would allow a larger window of opportunity for legal nonconforming activities which have ceased to resume as before so long as the discontinuance period is not more than 36 months. A change of use, however, would continue to be required to meet current minimum site development standards.

This larger window would conceivably allow more legal nonconforming uses to continue without having to comply with an array of sometimes difficult regulations.

In addition, Section 2003.02 of the Zoning Regulations states:

*Any use of land, lot or parcel, building or structure, lawfully existing either prior to **January 1, 1975**, or rendered nonconforming as a result of subsequent amendments to these regulations, may be continued even though such use does not now conform with these Regulations.*

Currently, in order to demonstrate or prove the legitimacy of a legal non-conformance, the Zoning Regulations require evidence that the land, lot or parcel, building or structure existed prior to January 1, 1975, over 37 years ago. Since it is typically very difficult for property owners and staff to locate and produce viable evidence of use prior to that date, staff has proposed amending this requirement to allow the use based on the best available historical evidence. However, in all cases, such evidence must suggest the use existed at least 10 years prior to the date of the determination of nonconformance (or such time as the Board may determine).

II. PROPOSED TEXT AMENDMENTS

The proposed text amendments to the relevant portions of Section 2003 are in **boldface**:

2003.02 Continuing Existing Uses

A. Any use of land, lot or parcel, building or structure, lawfully existing either prior to January 1, 1975, or rendered nonconforming as a result of subsequent amendments to these regulations, may be continued even though such use does not now conform with these Regulations. **It is often difficult for owners and the County to find and produce evidence of use prior to January 1, 1975. Accordingly, for purposes of determining use under this subsection, the use prior to January 1, 1975 may be inferred from the best available historical evidence, [but in all events any such evidence must demonstrate or suggest the use at least ten (10) years prior to the date of the determination of nonconforming use].**

B. Nothing herein shall be construed to prevent the continued use or reasonable repair or alteration of a nonconforming structure or use for the purpose used at the time such use became nonconforming.

2003.03 Discontinuance of Nonconforming Uses

A. In the event that a nonconforming use of land, building or structure is changed to a permitted use, or is discontinued for a period of ~~12~~ **36** consecutive months as a result of conduct within the control of or attributable to the property owner, any future use thereof shall be in conformity with these Regulations.

IV. Planning and Zoning Commission

On December 14, 2011, the Planning and Zoning Commission voted unanimously to forward a recommendation of approval of the proposed Zoning Regulation amendments to the Board of Supervisors.

V. Staff Recommendation

Staff recommends that the Board of Supervisors approve Docket R-11-07 as proposed.