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City Planning and Development

CPD-DS Certificate of Legal Nonconformance - Questions & Answers

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For full information on Legal Nonconformance, please see section 88-610 of the Kansas City Zoning and Development Code(KCZDC). See [Information Bulletin No. 147 - Filing or Amending an Application for Certificate of Legal Nonconformance \(CLN\)](#) for a copy of the CLN application and submittal procedures.

Section 88-610-01-A of the KCZDC clarifies the intent of the section as follows:

In older cities such as Kansas City, many lots, uses, buildings, structures and other development features that were lawfully established (i.e., in compliance with all regulations in effect at the time of their establishment) have been made nonconforming by virtue of adoption of the city's first zoning ordinance in 1923 or by subsequent changes to the zoning map or to the zoning regulations themselves. Nonconformity regulations are intended to clarify the effect of this nonconforming status and avoid confusion with illegal buildings and uses (those established in violation of zoning regulations). The regulations of this article are also intended to:

1. Recognize the interests of landowners in continuing to use their property for uses and activities that were lawfully established;
2. Promote maintenance, reuse and rehabilitation of existing buildings;
3. Place reasonable limits on nonconformities that have the potential to adversely affect surrounding properties; and
4. Secure eventual compliance with the standards of this zoning and development code.

Legal nonconforming uses are existing, legally established uses that are not permitted uses in their current location and zoning district, but are permitted to continue on condition that the property owner obtains a Certificate of Legal Nonconformance (CLN). Legal nonconforming uses typically are not created intentionally but occur because, over the years, the Zoning Ordinance's requirements for lot area per dwelling unit were made more restrictive in the regulations for residential districts, lot width regulations were established for buildings with 2 units and up, and use regulations were revised. In addition to these text amendments, rezoning of land without consideration for the existing uses on the property also creates legal nonconforming uses. Both text amendments and rezonings are considered to be "amendments" to the Zoning Ordinance.

Questions and Answers:

1. Why do I have to obtain a CLN?

A CLN is necessary to preserve the existing, previously established legal use of the property when changes to the Zoning Ordinance or to the zoning of the property no longer allow that use. The CLN application process is required to make the determination that the use was legal at the time the use was first established on the property. As examples:

The property is zoned R-7.5 and the building is a duplex that was constructed in 1922 and has been continuously used as a duplex. A CLN is required because R-7.5 does not allow duplexes.

The property is zoned R-2.5 and the building is a duplex that was constructed in 1945 and has been continuously used as a duplex, the lot area is 4,400 sq ft. A CLN is required because the current R-2.5 regulations require a lot area of 5,000 sq ft for a duplex.

2. How do I obtain a CLN?

The application for CLN is available online as [Information Bulletin No. 147 - Filing or Amending an Application for Certificate of Legal Nonconformance](http://webfusion.kcmo.org/coldfusionapps/IBS/Files/IB147.pdf). This application is filed by filling out the application form, paying the applicable application fee, submitting evidence showing when the use was first established and submitting a certified copy of the deed. The application is available at: <http://webfusion.kcmo.org/coldfusionapps/IBS/Files/IB147.pdf>

3. If others, i.e., neighborhood association or City Councilperson, initiate a rezoning or amendments to the Zoning Ordinance that create a non-conforming situation on my property, am I still obligated to pay a fee in order to continue to legally use my property as I had before the rezoning or change to the Zoning Ordinance?

Yes, if your property is made nonconforming by a rezoning or other amendment to the Zoning Ordinance, you must file an application for CLN and pay the required filing fee any time after the effective date of the ordinance approving the rezoning or amendment. If your property is the subject of a rezoning request, you are required to receive notice of the public hearings before the City Plan Commission and City Council, and you may appear at these hearings to represent your interest in the property. You may also meet with the proponents of the downzoning and work with them to ensure that the zoning of your property will not be changed to make your use nonconforming.

4. If my neighborhood is downzoned, how long do I have to file an application for CLN?

Properties that are not in compliance with the Zoning Ordinance may be subject to a notice of violation at any time, so it is in a property owner's best interest to obtain a CLN as soon as possible. There is no time limit for filing an application for CLN provided the property was made nonconforming by an amendment to the Zoning Ordinance prior to March 31, 1975 or after January 23, 2006. For those properties made nonconforming by a rezoning (downzoning) after March 31, 1975 and before January 23, 2006, the property owner shall have a period of one year to file an application for CLN.

5. What evidence is required to prove the property was legally established?

Evidence required may include notarized affidavits from persons who have first-hand knowledge as to the history of the use of the subject property. Supporting evidence may also include building permits, water service permits, telephone records, photographs, building permit plans, government records, business records, newspaper articles, City ordinances, Zoning Ordinances and any other information that will support the application.

6. What is the purpose of the field inspection that is required as part of the application for CLN?

A field inspection is required to verify the information provided in the application. The inspection will also help to support the decision to either approve or deny the application. In the inspection, the inspector must be provided access to all portions of the building. Significant information discovered in the inspections includes the floor plan of the building, the original construction of the building, the number of water and electric meters serving the building, any alterations or changes to the building since its original construction and other information.

7. Do surrounding property owners have any say in the decision on the application for CLN?

All immediately adjoining property owners or property owner across the street are sent a notification and an affidavit requesting information they may have supporting or opposing your application. Neighboring property owners or any other persons may have information on the history of the use of the property. Any relevant information provided by a neighboring property owner or any other person must be notarized and sent to City Planning and Development- Development Services for consideration.

8. How long does the CLN process take?

Processing time, including inspections and legal notices, takes between 45 and 60 days from the date of application.

9. How is the decision to approve or deny a CLN made?

The Development Services Division of City Planning and Development Department reviews all of the information provided with the application and obtained after the CLN was filed. A determination is made as to the earliest date in history the use existed and then a review of the zoning regulations that existed on the property at that time is made. This decision making is strictly an objective review of the facts supporting the application, if the evidence shows the use was legal and continuous under the zoning regulations that existed when the use was established - the CLN is approved. Otherwise, the application is denied.

10. When is the decision on a CLN application final?

The initial decision to approve or deny a CLN is published in the local legal newspaper and given to the owner in writing. A fifteen (15) day time period is allowed for the owner or any neighboring property owner to appeal the decision to approve or deny the application to the Board of Zoning Adjustment. If no appeal is filed, the final decision to approve or deny is given to the property owner in writing.

11. If the owner or any other aggrieved person appeals the decision to approve or deny the CLN to the Board of Zoning Adjustment (BZA), what power does the BZA have to overturn the decision of the City Planning and Development Department(CPD) ?

The BZA is required to review the evidence that exists in the CPD file for the CLN and any additional information that is supplied at the hearing. The BZA will hear testimony from the owner, CPD and any neighboring property owners or neighbors at the hearing. The BZA has the authority by an affirmative vote of 4 members to overturn the decision of CPD.

12. What happens to the property if the CLN is denied?

CPD will require the property owner to obtain building permits to convert the property to a use that complies with the current zoning. If the owner fails to comply, the City may pursue prosecution of the property owner through the Municipal Court's Housing Court until the property is converted to a conforming use.

13. What if the BZA has already approved variances to allow the use of my property?

If the BZA has previously approved variances to allow the use of a property, the use is not considered to be a nonconforming use. Variances approved by the BZA go with the land regardless of what happens to the building on the property. However, if the zoning is changed to a district that does not permit the use of the building, a CLN will be required.

14. How is a CLN abandoned?

A CLN is determined to be abandoned when the use is changed to a conforming use or to a more conforming use. If the CLN was issued for a 6 unit apartment building in an R-2.5 zone and the building is deconverted to 4 units, it can't go back to 6 units and the CLN is still necessary because R-2.5 does not allow a 4 unit apartment building. If the building is deconverted to 2 units and is on a 50 ft wide 6,000 sq ft lot, it's a conforming use and the CLN is no longer required and is abandoned.

15. Do I have to apply for a CLN or can I apply for variances or rezoning to allow the continued use of the property?

The CLN procedure is an administrative process that allows owners of legally nonconforming properties to continue to use the property in a nonconforming manner. However, if the zoning allows the use of the building but there is insufficient lot width or lot area, the property owner may apply for variances through the BZA. This is also an option available if the CLN is denied. The BZA will typically ask whether you have pursued a CLN and may decide against your appeal if you are eligible for a CLN.

You should be prepared to demonstrate to the BZA that the zoning regulations applicable to your property cause a practical difficulty or unnecessary hardship due to exceptional circumstances or surroundings specific to the property and that any variance granted will not be detrimental to the community.

The BZA does not have the authority to grant use variances. Therefore, if the use is not allowed in the district, you may file an application for rezoning approval by the City Plan Commission and City Council.

16. Does a CLN expire or become void if the original property owner dies or sells the property?

No, a CLN is valid so long as the use exists and goes with the land and building to which it applies.

17. If I have plans in review for construction of a new building, or have been issued a building permit for a new building, and my property is rezoned (downzoned) to a zoning district that does not permit the proposed use of my building, will I be allowed to construct the building once the permit is issued?

Yes, provided a building permit is obtained prior to the effective date of the rezoning that would make the proposed building or use of the building nonconforming and the construction of the building starts within six (6) months of the date of issuance of the building permit. Additionally, the construction must be completed in a timely manner in order to be eligible for a CLN. An application for CLN must be submitted and approved prior to issuance of the certificate of occupancy for the building.

18. Can I reconstruct or repair my legal nonconforming property if it is damaged or destroyed by fire or any other act?

A property that has been issued a CLN may be reconstructed or repaired provided that not more than 50 percent of the volume of the nonconforming structure is destroyed or structurally damaged. Documentation of existing conditions will be required prior to permit issuance and may involve field inspection by CPD. Details of permitted reconstruction are enumerated in section 88-610-04-D-5 of the Kansas City Zoning and Development Code.

19. Can I construct an addition, either a footprint addition or additional floor area, to my legal nonconforming structure

Yes, provided the structural alterations, including enlargements and expansions comply with all applicable lot and building standards.