

What is a Legal Non-Conforming Right?

A Legal Non-Conforming Right is the right to continue a particular land use that is no longer permitted under the current zoning rules. In order to be eligible, the land use must have been established at a time when it was permitted under previous zoning regulations or at a time that would have predated any zoning by-law being in existence and has to have been in continuous use since that time.

The Ontario *Planning Act* governs how Zoning By-laws can be used for regulating the use and development of land. It also provides for what is known as legal non-conforming rights (also more generally known as "grandfathering").

What this means is: if you have a use on your land that was legally established at a time it would have complied with the Zoning By-law or was established prior to any zoning by-law existing, and then a new Zoning By-law is passed which has the effect of no longer permitting the use on your property, then you could have non-conforming rights to continue the use on the property. If the use is eventually discontinued, or changes to another use, you would lose the non-conforming rights and will not be able to re-establish the use which is no longer permitted without an amendment to the Zoning By-law. It should also be noted that a temporary cessation in a use does not necessarily result in the loss of the non-conforming right.

How to Establish a Non-Conforming Right

In some instances, it is possible and you may wish to formally establish a Non-Conforming Right. This is done through the submittal of an affidavit and other relevant information to the City of Ottawa. The City will review the information provided and if appropriate, acknowledge that the information provided supports the claim to a legal non-conforming right.

Understanding what a legal non-conforming right is and how it affects you is the first step.

What is the Non-Conforming Right Process?

Application

The affidavit should address three key points:

- Does the person(s) putting forward an affidavit or counter affidavit have personal knowledge?
- When was the specific use established and was it legally established at a time when the zoning would have allowed it? (often, the applicant is aware of the by-laws at the time of the inception of the use, but this is something we check as we have easier access to old zoning by-laws... but this does help the process proceed more quickly)
- Has it been continuous since establishment?

Once a complete application is received, a circulation process is initiated. A notice is sent to the Ward Councillor, Registered Community Organization and owners/occupants within a 60 metre radius of the subject property. The notice contains a summary of the affidavit, an explanation of the process and a contact person within the Planning, Department and Building Services Department.

Counter Affidavit

If you have been circulated as a result of the above process or have information that would contradict that found in the application, it is possible to submit a counter affidavit. Similarly, as with the affidavit submitted when the application was filed we are looking for information that would address the same three key points mentioned above.

Change or Expansion of Use

If you want to expand the physical area utilized by a Non-Conforming Use, or to change to another non-conforming use, you will need the permission of the Committee of Adjustment to do so. This will require the submission of a 'Minor Variance/Permission' application to the Committee. The process for submitting a Permission application, including the fee, is the same as for a Minor Variance Application. The submission requirements will vary, and a Planner should be contacted prior to submitting an application. The Committee will assess the application, and issue a written decision. There is a 20 day appeal period following Committee of Adjustment decisions.

For More Information:

If you require general information about legal non-conforming rights, please contact a Development Information Officer, located at any of the Client Service Centres. You can make an appointment by calling a Development Information Officer at 613-580-2424 ext. 23434 or dioinquiry@ottawa.ca

If you require assistance with a submitted application to establish legal non-conforming rights on a property, please contact a zoning by-law writer and interpretations officer. You can reach Jacob Saltiel at 613-580-2424 ext. 13465 or Jacob.saltiel@ottawa.ca.

If you require assistance with making changes to an established legal-nonconforming right, please contact the Committee of Adjustment, 101 Centrepointhe Drive, 4th Floor, 613-580-2436, cofa@ottawa.ca
website: Committee of Adjustment | City of Ottawa

