



Validity of CUP's for Nonconforming Uses

Background: The land use regulations for each zoning district contains a list of uses which are either 1) permitted outright, 2) permitted subject to certain limitations, 3) permitted on approval of a Conditional Use Permit (CUP), or 4) not permitted at all. CUP's are approved by the Planning Commission pursuant to the process and findings found in Part IV, Article 6 of the Zoning Ordinance (Section 10-2.4.601 *et seq.*), and may only be revoked following a public hearing and subject to the findings contained within Section 10-2.4.608 of the Zoning Ordinance. Furthermore, case law has established that CUP's are not approved for a particular individual, business, or property owner, rather that they remain valid on the property to which they are approved for a particular type of use. A CUP remains valid even if the property is sold to a different owner. Typically a CUP remains valid even when the conditionally permitted use ceases, thereby preserving the right to restart the use, so long as the applicable land use regulations for the zoning district remain the same (i.e. the use continues to be conditionally permitted in that zone).

A nonconforming ("grandfathered") use is one that was legal at the time the use was established, but is no longer permitted due to changes in the zoning regulations. Section 10-2.1.303 of the Zoning Ordinance defines nonconforming uses as "[the] use of a structure or land which was lawfully established and maintained, but which does not conform with the use regulations or required conditions for the district in which it is located by reason of adoption or amendment of [the Zoning Ordinance] or by reason of annexation of territory to the City." Section 10-2.3.302 allows nonconforming uses to continue in their existing location, but stipulates that if discontinued for a period of six months or more, or if changed to a use that conforms to the zoning regulations, the nonconforming use may not be reestablished.

Action: The nonconforming use regulations contained in Section 10-2.3.302 of the Zoning Ordinance apply to both permitted and conditionally permitted uses. If a nonconforming use is discontinued for a period of six months, or is replaced with a different use, it may not be reestablished. Similarly, if a use that was legally established with an approved CUP is discontinued for a period of six months, or is replaced with a different use, then it may not be reestablished and the CUP is no longer valid if, under the current zoning regulations, the use is no longer permitted or conditionally permitted in that particular zoning district.