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Sec. 62.109. - Nonconforming use permits.

The planning commission may approve, modify and approve, or deny nonconforming use permits. To ensure the public welfare is served, the commission may attach conditions to the permits including, but not limited to, conditions concerning appearance, signs, off-street parking or loading, lighting, hours of operation, or performance characteristics, such as noise, vibration, glare, dust, or smoke.

The planning commission, in approving nonconforming use permits, may allow a nonconforming use for a specified period of time and then require its removal by attaching an expiration date to the permit if the commission makes the following findings: (1) termination of the nonconforming use or the continued vacancy of the building in which the nonconforming use was located would cause significant hardship; (2) permitting the nonconforming use for a period of time will facilitate the transition to a conforming use; and (3) permitting the nonconforming use for a period of time is consistent with the public health, safety, comfort, morals, and welfare. The period of time for which the permit is valid shall be determined in each case by the commission and shall be based on the extent of the hardship.

The planning commission shall hear and decide nonconforming use permits in accordance with the procedures and requirements of chapter 61, administration and enforcement. The planning commission may consider the following nonconforming use permits:

- (a) *Establishment of legal nonconforming status.* The planning commission may grant legal nonconforming status to uses or structures that do not meet the standards for legal nonconforming status in section 62.102 if the commission makes the following findings:
 - (1) The use or a nonconforming use of similar or greater intensity first permitted in the same zoning district or in a less restrictive zoning district has been in existence continuously for a period of at least ten (10) years prior to the date of the application;
 - (2) The off-street parking is adequate to serve the use;
 - (3) Hardship would result if the use were discontinued;
 - (4) Rezoning the property would result in "spot" zoning or a zoning inappropriate to surrounding land uses;
 - (5) The use will not be detrimental to the existing character of development in the immediate neighborhood or endanger the public health, safety, or general welfare;
 - (6) The use is consistent with the comprehensive plan; and
 - (7) A notarized petition of at least two-thirds of the owners of the described parcels of real estate within one hundred (100) feet of the subject property has been submitted stating their support for the use.

The application for the permit shall include the petition, evidence of a ten-year period of existence, evidence that conversion of the use and structure would result in hardship, a site plan meeting the requirements of section 61.401, floor plans, and other information as required to substantiate the permit.

- (b) *Nonconforming commercial and industrial parking use.* The planning commission may grant legal nonconforming status to allow the use of land without completely enclosed buildings as a parking lot to serve abutting property in OS-B5 Business and IR-I1 industrial districts if the commission makes the following findings:
 - (1) The commercial or industrial parking lot has been paved, maintained and used for commercial or industrial parking for at least ten (10) consecutive years prior to the date of the application;
 - (2) The parking lot occupies a legally subdivided parcel that is too small for development and has not been owned by a different adjoining property owner for at least ten (10) years prior to the date of the application;

- (3) The parking lot is to serve abutting commercially or industrially zoned property;
- (4) The parking lot will not be detrimental to the existing character of development in the immediate neighborhood or endanger the public health, safety, or general welfare;
- (5) The parking lot is consistent with the comprehensive plan; and
- (6) A notarized petition of at least two-thirds of the owners of the described parcels of real estate within one hundred (100) feet of the subject property has been submitted stating their support for the parking lot.

The application for the permit shall include the petition, evidence of a ten-year period of existence, a site plan meeting the requirements of section 61.401, and other information as required to substantiate the permit.

- (c) *Change of nonconforming use.* The planning commission may allow a nonconforming use to change to another use permitted in the district in which the existing nonconforming use is first allowed, or a use permitted in a district that is more restrictive than the district in which the existing nonconforming use is first allowed, or permit another, related nonconforming use at the same location if the commission makes the following findings:

- (1) The proposed use is equally appropriate or more appropriate to the neighborhood than the existing nonconforming use;
- (2) The traffic generated by the proposed use is similar to that generated by the existing nonconforming use;
- (3) The use will not be detrimental to the existing character of development in the immediate neighborhood or endanger the public health, safety, or general welfare; and
- (4) The use is consistent with the comprehensive plan.

The planning commission's findings may be a general rule or findings in a specific case.

- (d) *Expansion or relocation of nonconforming use.* The planning commission may permit the expansion or relocation of a legal nonconforming use if the commission makes the following findings:

- (1) In residential districts, the expansion, or relocation will not result in an increase in the number of dwelling units;
- (2) For expansion of a structure, the expansion will meet the yard, height and percentage of lot coverage requirements of the district;
- (3) The appearance of the expansion or relocation will be compatible with the adjacent property and neighborhood;
- (4) Off-street parking is provided for the expansion or relocation that meets the requirements of article 63.200 for new uses;
- (5) Rezoning the property would result in a "spot" zoning or a zoning inappropriate to surrounding land use;
- (6) After the expansion or relocation, the use will not result in an increase in noise, vibration, glare, dust, or smoke; be detrimental to the existing character of development in the immediate neighborhood; or endanger the public health, safety, or general welfare;
- (7) The use is consistent with the comprehensive plan; and
- (8) A notarized petition of at least two-thirds of the owners of the described parcels of real estate within one hundred (100) feet of the subject property has been submitted stating their support for the expansion or relocation.

The application for a permit shall include the petition, a site plan meeting the requirements of section 61.401, floor plans, and other information as required to substantiate the permit.

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(e) *Reestablishment of nonconforming use.* When a legal nonconforming use of a structure, or structure and land in combination, is discontinued or ceases to exist for a continuous period of more than one (1) year, the planning commission may permit the reestablishment of a nonconforming use if the commission makes the following findings:

- (1) The structure, or structure and land in combination, cannot reasonably or economically be used for a conforming purpose;
- (2) The proposed use is equally appropriate or more appropriate to the district than the previous legal nonconforming use;
- (3) The proposed use will not be detrimental to the existing character of development in the immediate neighborhood or endanger the public health, safety, or general welfare;
- (4) The proposed use is consistent with the comprehensive plan; and
- (5) A notarized petition of at least two-thirds of the owners of the described parcels of real estate within one hundred (100) feet of the subject property has been submitted stating their support for the use.

The application for the permit shall include the petition, a site plan meeting the requirements of section 61.401, floor plans, and other information as required to substantiate the permit.

(Ord 12-71, § 2, 12-12-12; Ord 15-32, § 3, 7-22-15)

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