

NONCONFORMING USE CONFIRMATION/EXPANSION

A nonconforming use is a lawfully established use, whether of a structure or a tract of land, which does not conform to the use regulations of the zoning district in which it is located.

Pursuant to [Sec. 129.0.D and E](#) of the Howard County Zoning Regulations, the factual existence of a nonconforming use may be confirmed and enlarged by the Hearing Authority.

PROCESS

Submission

Petitions are submitted to the Department of Planning and Zoning upon. A plan that contains the items listed on the petition checklist must accompany the petition.

Completeness Review

A DPZ planner reviews the petition to determine if it contains adequate information for an evaluation of all criteria. If deficiencies are identified, the applicant is notified in writing and given the opportunity to correct or supplement the information provided in the petition. Once the petition is complete, it is forwarded to the Hearing Authority for scheduling.

Scheduling

The Hearing Authority schedules the hearing date based upon public notice requirements and the number of cases in review.

Correspondence

Public Service and Zoning Administration Division staff within the Department of Planning Zoning are designated as the Clerk to the Hearing Authority prior to scheduling of the hearing and after the hearing is concluded and receives all correspondence/documentation during these times.

After the case is scheduled and prior to conclusion of the hearing, the Board Administrator/Secretary is designated as the Clerk to the Hearing Authority and receives all motions, correspondence/documentation, including revised petitions/plans, during this time.

Public Hearing Sign

A public hearing sign must be posted on the property 30 days prior to the hearing. The Department of Planning and Zoning supplies the poster(s) to the petitioner, who is responsible for erecting and maintaining them. Prior to the hearing the petitioner must sign an affidavit attesting that the property has been posted in accordance with the applicable requirements.

Advertising

The petitioner, at his/her own expense, must advertise the date, time and place of the hearing at least 30 days prior to the hearing, in at least two newspapers of general circulation in Howard County. The Department of Planning and Zoning provides the text for the advertising.

Technical Staff Report

The Department of Planning and Zoning issues a Technical Staff Report, which includes an evaluation of the following:

1. That any changes or additions to the activities taking place in connection with the nonconforming use will not change the use in any substantial way;
2. That an enlargement may not exceed 100% of the gross floor area of structures or 100% of the gross acreage in the case of nonconforming land, above that which legally existed at the time the use first became nonconforming;
3. That the boundaries of a nonconforming use may be enlarged only to provide additional parking area;
4. That an enlargement would not cause a violation of the bulk regulations for the zoning district in which the property is located; and
5. That the extension, enlargement or structural alteration would not cause an adverse effect on vicinal properties.

Included in this report are comments from other agencies, which may have an interest in the case. The report is provided to the Hearing Authority at least 14 days prior to the hearing. The report is posted on the Howard County website and is available for review at the DPZ Front Counter.

Hearing

The Hearing Examiner conducts all nonconforming use confirmation/expansion hearings unless there is a conflict of interest, then the petition is heard by the Board of Appeals. The petitioner must attend the public hearing, present his or her petition, and answer any questions. Petitioners may choose to represent themselves or engage an attorney or other competent professional to present the case. Interested parties may attend the hearing and present testimony as permitted in the Hearing Examiner's Rules of Procedure.

Decision

The Hearing Examiner issues a written Decision and Order containing Findings of Fact, Conclusions of Law, the Decision, and any conditions the Hearing Examiner finds appropriate.

Reconsideration

Within 15 days of the issuance of a Decision and Order any party may request that the Hearing Examiner suspend and reconsider the Decision. The Hearing Examiner may reconsider the Decision only under limited circumstances such as cases of fraud, mistake or irregularity, to correct a clerical error, or for other good cause shown. The Hearing Examiner shall not rehear a matter unless new evidence is submitted which could not reasonably have been presented at the original hearing.

Appeals

A decision rendered by the Hearing Examiner may be appealed to the Board of Appeals of Howard County within 30 days after the Decision and Order is issued. Information concerning this appeal process should be obtained from private counsel or the Clerk of the Board of Appeals.

Expiration

A Decision and Order approving an extension or enlargement of a nonconforming use shall become void unless a building permit conforming to the plans for which the approval was granted is obtained within two years, and substantial construction in accordance therewith is completed within three years from the date of the decision. An approval for which a building permit is not required shall become void unless the extension or enlargement is implemented within two years from the date of the decision. If a decision is appealed, the time period shall be measured from the date of the last decision.