

Article 65 – Non-Conforming Use

ARTICLE 65 – NON-CONFORMING USE

Section 65.00 - Purpose & Intent

It is necessary and consistent with the establishment of this zoning code that all uses of land, or uses of structures not permitted in a zone, be regulated and permitted to exist under controls, the ultimate purpose of which is to phase out or change each non-conforming use to a conforming status.

A lawfully established structure, which does not meet the site development standards of a zone in which it is located, is considered a non-conforming structure. The provisions of this article do not apply to non-conforming structures unless the structure(s) also contains a non-conforming use. The action of replacing or expanding a non-conforming structure, in which a site development standard(s) remains unmet, shall be subject to the provisions of Article 66 – Variances.

Section 65.10 - Non-conforming Lots or Parcels

- A. In zones other than those specified in provisions B below, in which a single family dwelling is permitted, a single family dwelling and accessory uses may be erected on any lot or parcel otherwise conforming to the requirements or all applicable county laws at date of this Ordinance or its amendments making the lot or parcel non-conforming.
- B. A single family dwelling proposed on a non-conforming lot or parcel in a Forest Zone shall be subject to provisions in Article 4 - Forest (F-1), and Primary Forest (F-2) Zones and a single family dwelling proposed on a nonconforming lot or parcel in the Exclusive Farm Use zone shall be subject to provisions in Article 3 – Exclusive Farm Use (EFU) Zone.
- C. If the proposed use or structure as outlined in A or B above fails to comply with setback or height requirements, the procedure outlined in Article 66 - Variances shall apply.

Section 65.20 - Nonconforming Use of Land or Use of Structure

- A. The lawful use of land or use of a structure existing at the effective date of this ordinance or its amendments may be continued, although such use does not conform to the provision thereof, however, if such a use is discontinued for a period of one year, any such future use of such land or structure shall comply with the provisions of this ordinance.
- B. The Planning Director may authorize the reinstatement of a nonconforming use only where it is demonstrated that such resumption or reinstatement is necessary to allow reasonable amortization of a capital investment. The procedure for reinstatement shall be the same as for Conditional Use Permits, conditions may be imposed if reinstatement is allowed.

- C. In addition to and not in lieu of the authority in ORS 215 to continue, alter, restore or replace a use that has been disallowed by the enactment or amendment of a zoning ordinance or regulation, a public or private school that has been disallowed because it does not primarily serve the residents of the rural area in which the school is located, including all buildings essential to the operation of a school is located, including buildings essential to the operation of a school may be expanded if:
1. The use was established on or before January 1, 2009; and
 2. The expansion occurs on either the tax lot on which the use was established on or before January 1, 2009 or on a tax lot that is contiguous to that tax lot and which was owned by the applicant on January 1, 2009.¹

Section 65.30 – Maintenance, Expansion or Replacement of a Nonconforming Use of Land or Structure

- A. The maintenance, or replacement in kind of a nonconforming use of land, or a nonconforming use of a structure is permitted. In kind replacement is considered to be in the same footprint and to the same or lesser extent as the existing use.
- B. The Planning Director may authorize expansion, or replacement that is not in kind, of a nonconforming use of land, or a nonconforming use of a structure when it is found that such expansion or replacement will have no greater adverse impact on the neighborhood and will meet the site development standards of the zone in which it is located. The Application shall be reviewed under the procedures found in Article 72 (Planning Director’s Review Procedure).

Section 65.40 – Vested Rights

- A. Allowance of non-conforming uses and structures applies not only to those in existence but also to those which are in various stages of development when a change in the law no longer allowing the use or structure occurs.
- B. Hood River County desires to clarify the test of whether a vested right has been established. The test of whether a landowner has developed land to the extent that a vested right is acquired is defined in Hood River County by compliance with all of the following:

¹ Revised per HB 3099; Ref. File P-09-0240; Effective December 22, 2009

1. The property must have an approved land use permit for the type of development undertaken, i.e. must be platted as a partition or subdivision lot or qualify as an existing parcel with a land use permit for the proposed use or structure.
 2. If required, a building permit has been issued for the proposed structure.
 3. Proper access and utilities, including water, electricity, sewer or a site evaluation report approving the site for wastewater treatment and other utilities essential to the use must be in place, extended to, and ready to serve the proposed structure.
 4. The property owner acted in good faith in obtaining the required permits and making the improvements.
 5. The expenditures must be related directly to the nature of the improvements and the ultimate use of the completed project.
- C. If qualified as a vested right, the structure must be completed within one (1) year from the time the building permit expires.