DCLU

Director's Rule 17-93

Applicant	Page 1 of 4	Supersedes 12-90
CITY OF SEATTLE DEPARTMENT OF CONSTRUCTION AND LAND USE	**Publication** 9/3/93	**Effective** 12/1/93
	Code and Section Reference SMC 23.84.026 and 23.40.002 SBC§202(e)	
Subject Establishment for the Record of Uses Not Established by Permit	**Type of Rule** Code Interpretation	
	Ordinance Authority 3.060.040 SMC	
Index Land Use Code/Procedural Requirements Building Code/Procedural Requirements	**Approved** R F Krochalis	**Date** 11/23/93

BACKGROUND

The Land Use Code requires that all uses of land be established by permit. [See Sections 23.40. 002 and 23.76.006]. Sometimes a use has been ongoing for a certain period of time but has never been legally established by permit. An attempt to seek a permit for such an ongoing use may arise when a complaint of an illegal use has been received by the Housing and Zoning Enforcement Division (H/Z), or a property owner seeks a permit relating to the use or a Certificate of Land Use showing the legally established use of the property, and a check of Department records shows that the use has never been established by permit. In some cases, the owner is aware that the use has not been properly established, and voluntarily comes forward to obtain a permit.

The Land Use Code defines "nonconforming use", at Section 23.84.026, as follows:

> A use of land or a structure which was lawful when established and which does not now conform to the use regulations of the zone in which it is located. A use shall be considered established if it conformed to applicable zoning regulations at any time, or when it has commenced under permit, a permit for the use has been granted and has not expired, or a structure to be occupied by the use is substantially underway in accordance with Section 23.04.010 D.

If the use is permitted outright under current zoning, and meets all current Building Code and Land Use Code development standards, and would require no discretionary review such as a Shoreline Substantial Development Permit or SEPA (environmental) review, the owner may apply for and obtain a use permit. On the other hand, a property owner may seek a permit to establish a use "for the record" if: (1) The use is nonconforming, as defined above, either because the use is no longer permitted outright under the Land Use Code or does not meet all current development standards, such as density, open space, or setbacks; (2) The use meets all Land Use Code standards but does not meet current Building Code requirements; or (3) Establishment of the use under current standards would require a discretionary review, and the owner decides to demonstrate that the use commenced at a time when it would have been permitted outright, and predated any ordinances or laws requiring discretionary review, and (if commenced after January 1, 1976) that it met the Building Code standards in effect at the time the use commenced. This rule sets forth the standards for reviewing applications to establish uses for the record.

RULE

Part I. Proving Existence of a Use for the Record.

A. An application may be submitted to establish a use for the record if: (1) The use is not permitted outright under the use standards of the current zoning or applicable overlay district; (2) Current Building Code standards or Land Use Code development standards for the use are not met; or (3) Under current Municipal Code provisions, the use requires discretionary approval such as SEPA (environmental) review or a Shoreline Substantial Development Permit. The Department will issue a permit establishing the use for the record if the following requirements are met:

1. The applicant must show that the use was commenced at or prior to a time when it could have been lawfully established either by construction or conversion under the Zoning Ordinance or Land Use Code then in effect. For example, density, parking, and open space must meet standards of the Zoning Ordinance or Land Use Code provisions in force at the time establishment of the use can be proved. If discretionary approval such as conditional use, variance, or environmental review would have been required for establishment of the use at the time its establishment can be proved, proof that such approval was given must be submitted. In addition to official documents from the authorizing agency, other documentation that the official document was obtained will be accepted. For example, minutes of a Board of Public Works meeting in which the use was discussed and approved or a notation on a City property record card indicating approval will be accepted in lieu of the permit document itself.

2. The applicant must show that the use has been in existence continuously, with no interruption that would constitute abandonment or discontinuance of a nonconforming use under the provisions of either former or current land use regulations.

3. In the case of dwelling units, the minimum standards for habitable dwellings in the Seattle Housing and Building Maintenance Code (HBMC) in effect at the time of application must be met. If the dwelling unit was created prior to January 1, 1976, or if it was created after January 1, 1976 and a zoning Notice of Violation (NOV) has been issued regarding it, then site inspection is required by H/Z to determine if minimum HBMC standards are met. (See Part II)

4. In the case of all structures, the minimum applicable Building Code standards for fire and life safety must be met. If the use to be established was created within a structure after January 1, 1976, all Building Code standards must be met for the year in which the use is both in existence and first met the applicable Zoning Ordinance or Land Use Code standards. Review by a Building Plans Examiner, and inspection by a Building Inspector, are required for all uses to be established to a date after January 1, 1976. (See Part III)

B. DCLU may accept the following as documentation of the existence of a use from a time when it would have been permitted outright and as documentation of its uninterrupted continuation:

1. Signed written statements from persons having no financial interest in the property and who are not relatives of the applicant or property owner. Notarization is not required.
2. Occupancy listings from the Polk Directory or Reverse Telephone Directories.
3. Business and/or licensing records.
4. County records showing the previous permitted use if the property was formerly not part of the City of Seattle.
5. Assessment records.
6. Evidence of more than one electric or gas meter or sewer hookup.
7. Other evidence that the Director deems useful and reliable, based on the circumstances of the individual case. Examples include, but are not limited to: photographs, U.S. Census reports, and signed written statements of experts.

It is the responsibility of the applicant to furnish at least two different types of documentation from the sources listed above. The Department, in its discretion, may require further documentation if the documentation submitted by the applicant does not demonstrate the existence of the use from a time when it was permitted outright, or fails to show continuous, uninterrupted maintenance of the use. The Department may also accept only one type of documentation from the sources listed above if that documentation is particularly persuasive. Any number of signed written statements, however, are not sufficient by themselves to document the existence of a use.

Any party who disagrees with the Department's analysis of the documentation presented, or its analysis of the applicable Zoning Ordinance or Land Use Code, may elect to request a formal interpretation of the Land Use Code under Seattle Municipal Code (SMC) Section 23.88.020.

Part II. HBMC Inspection

In the case of applications to establish dwelling units for the record, a H/Z Inspector will conduct a site inspection to determine compliance with minimum standards of the HBMC under the following circumstances:

A. *USE COMMENCED PRIOR TO JANUARY 1, 1976 (REGARDLESS OF WHETHER HOUSING AND ZONING HAS AN ACTIVE ZONING NOV ON THE PROPERTY).*

OR,

B. USE COMMENCED AFTER JANUARY 1, 1976 AND HOUSING AND ZONING HAS AN ACTIVE ZONING NOV ON THE PROPERTY.

Where an HBMC inspection is required as described above, a permit establishing a dwelling unit for the record shall not be issued until after the H/Z Inspector has determined that the subject structure is in compliance with the HBMC. If violations of the HBMC are noted, they must be corrected prior to issuance of a permit except, if correction of violations requires a Building Permit or Electrical Permit, the use permit may be issued after application is made for the appropriate Building Permit or Electrical Permit. Final approval of the use permit is dependent on final approval of any such building or electrical permit that is issued in this manner. When applications require a change of occupancy, a Certificate of Occupancy must be issued following final approval of the permit.

In cases other than dwelling units, the Land Use Specialist or Building Plans Examiner may, as part of the determination of compliance with the appropriate Zoning Ordinance or Land Use Code, request site inspection of the property by a H/Z Inspector to determine conformity of the site to plans submitted and to the HBMC if applicable. Any violations noted must be corrected before a use permit will be issued.

For uses commenced prior to January 1, 1976, final approval of the use permit shall be given by the Land Use Specialist or Zoning Plans Examiner who performed the review for compliance with the appropriate Zoning Ordinance or Land Use Code.

Part III. Building Code Review and Inspection

In the case of applications to establish dwelling units, or any other uses located within structures, for the record, a Building Plans Examiner will review the plans to determine compliance with the Seattle Building Code effective on the date the use is both in existence and first could have been legally established, and site inspection will be conducted by a Building Inspector under the following circumstances:

A. *USE COMMENCED AFTER JANUARY 1, 1976 AND THERE IS NO ACTIVE ZONING NOV RELATED TO THE USE ISSUE.*

OR,

B. *USE COMMENCED AFTER JANUARY 1, 1976 AND HOUSING AND ZONING HAS AN ACTIVE ZONING NOV ON THE PROPERTY.*

OR,

C. *USE COMMENCED PRIOR TO JANUARY 1, 1976, IS NOT A DWELLING UNIT, AND THE LAND USE SPECIALIST OR ZONING PLANS EXAMINER DETERMINING COMPLIANCE WITH THE APPROPRIATE ZONING ORDINANCE OR LAND USE CODE CONCLUDES THAT THERE IS INSUFFICIENT INFORMATION ON THE PLANS SUBMITTED TO DETERMINE THAT MINIMUM STANDARDS OF THE BUILDING CODE HAVE BEEN MET.*

Where a Building Code review is required, a permit establishing a use for the record shall not be issued until after the Building Plans Examiner has determined, based on the plans submitted, that the subject structure is in compliance with the Building Code in effect at the time the use is established. If no corrections to the plans are required, the use permit may be issued after plan approval, subject to final approval on a site inspection by a Building Inspector. If corrections to the plans are required, these corrections must be made prior to issuance of a permit. Once the plans have been approved, the permit may be issued as a combination use and building permit. Final approval will be made on a site inspection by a Building Inspector.

In cases other than dwelling units, the Land Use Specialist or Zoning Plans Examiner may, as part of the determination of compliance with the appropriate Zoning Ordinance or Land Use Code, request site inspection of the property by a H/Z Inspector to determine conformity of the site to plans submitted and to the HBMC if applicable. Any violations noted must be corrected before a use permit will be issued.

The applicant will be charged the basic 1½ hour fee for establishing use for the record. Fees for additional research, plan checking, or other services performed by the Department shall be assessed as set forth in the Fee Ordinance.