

Seattle Permits

— part of a multi-departmental City of Seattle series on getting a permit

How to Legalize a Use Not Established by Permit

Updated November 18, 2010

Seattle's Land Use Code specifies the type of development or "use" allowed on property in different zones in the city. Examples of different types of uses are single family homes, multifamily residences, office buildings, and warehouses. The Land Use Code requires that all uses of land be established by permit.

This Client Assistance Memo (CAM) explains how to legalize a use not previously established by a permit issued by the Seattle Department of Planning and Development (DPD) or its predecessor, the Building Department. In many cases, a use not previously established by permit will be considered a "nonconforming" use. This CAM further explains what a nonconforming use is, and when a nonconforming use can become recognized as legal through the DPD permit process.

Establishing Nonconforming Uses

An existing use is called a "nonconforming use" if it would not be permitted in its location by current land use laws, but it has been in continuous operation since a time when it was permitted by applicable laws. If a use not allowed under the current zoning commenced under permit, or a permit for the use has been granted and has not expired, or substantial progress has been made toward construction of a structure to be occupied by the use, then DPD recognizes the use as "established" in our records, and therefore legally nonconforming.

Sometimes, a use has been ongoing for a certain period of time but has never been legally established by permit. If that use is permitted outright under current zoning, and meets all current Seattle Municipal Code (SMC) standards, the owner may apply for and obtain a use permit by the same procedures that apply to

new uses. If the use is not permitted outright under current zoning or does not meet some other SMC regulation, the use may still be "established" as a "legally nonconforming" use if it commenced at a time when it met applicable zoning and other regulations, and has continued to the present time, even if it does not meet all present regulations.

Establishing a Use for the Record

DPD calls the procedure detailed in the previous paragraph "establishing a use for the record," and this CAM is primarily concerned with applications to establish this type of use and the criteria for issuing permits that recognize such uses.

A typical example of the need to establish a use for the record is a situation in which property is zoned for single family residences only, but a triplex structure is located on it. The triplex is nonconforming because the present zoning is limited to single family residences. The structure also may not meet the present Seattle Building Code (SBC) because, for example, it lacks a sprinkler system or one-hour fire wall required for new multifamily structures.

If a permit exists for this triplex in DPD records, and the use has not been discontinued, then it is recognized as a legally established nonconforming use. However, if there is no permit, or the available permits describe the structure as a single family residence, then DPD cannot recognize the triplex use as legal unless the owner first demonstrates that the triplex was put on the lot when zoning and other regulations such as the SBC would have allowed it, and that the structure has been used continuously as a triplex since that time. If DPD accepts this demonstration, then a permit can be issued recognizing the triplex as an established use.

Recent Residential Code Changes

In 2001, the Seattle City Council adopted changes to the conformity regulations that now allow a nonconforming residential use, such as a triplex in a single family zone, to be established for the record if the use

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predates July 24, 1957, even if the use was not permitted under Seattle's original zoning code of 1923. This new provision applies only to residential uses. Nonresidential uses, such as a commercial office in a single family zone, that predate 1957 must still meet the requirements of the 1923 code or predate zoning regulations. Also, this new code provision does not apply within the Shoreline Overlay District or within any of the Industrial zones.

NOTE: An alternative to establishing a use not established by permit may be to apply for an accessory dwelling unit (ADU) permit instead, if you are the owner and occupant of a single family residence and you wish to legalize one additional dwelling unit.

Why Apply for a Permit to Establish a Use?

There are several situations in which you might wish to demonstrate that a use of property not established by permit is a legal land use:

- You may have applied for a permit to change or expand the use, and a routine check of DPD records shows that the use claimed for the structure does not have a permit. (**NOTE:** There are limits on changes to or expansions of nonconforming uses.)
- You may wish to sell a building as a duplex or triplex, but the most recent permit shows a single family residence.
- You may find that the use is permitted under present zoning, but it is advantageous to show that it commenced prior to the beginning of modern SBC requirements on Jan. 1, 1976, or prior to the effective date of other codes affecting land use, such as the Shoreline Master Program or the State Environmental Policy Act (SEPA).
- You may simply have discovered that there are no City records for the triplex use you always thought you had, and you want to clear up any title, tax assessment, or other problems that may result from maintaining a use not established by permit.

Criteria for Establishing Use

A permit to establish a use from a certain date in the past can only be issued if the criteria and documentation discussed below are met and proper site plan and structural drawings are provided. If the use to be established is a dwelling unit, then the DPD inspection process must verify that applicable standards of the Housing and Building Maintenance Code (HBMC) and/or SBC are met (if the use commenced after Jan 1, 1976).

The fact that a use has existed for a long time does not necessarily mean that it can now be established by permit. The use must either be something that can be approved under present City codes or something that could have been authorized at its present location in the past and has existed since that time.

Unless a use can be established under the present Land Use Code and other present codes, an applicant must demonstrate the following before a permit can be issued:

- 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 a conditional use, variance, or environmental review—would have been required for establishment of the use at the time its establishment can be proved, then proof that such approval was given must be submitted. In addition to official documents from the authorizing agency, extraneous 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.

If the nonconforming use is residential and predates July 24, 1957, and is not located in the Shoreline Overlay District or any of the Industrial zones, then the use may be legalized for the record based on documentation showing that it was in existence prior to July 24, 1957, and has remained in continuous use since that time. Legalization of residential uses prior to July 24, 1957, is also subject to the inspection process described below. The documentation presented is subject to the standards discussed in the subsection on documentation of existence of use, beginning on page 3 of this CAM, just as are uses postdating July 24, 1957.

- 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.

- In the case of dwelling units, that the minimum standards for habitable dwellings in the HBMC in effect at the time of application are met. If the dwelling unit was created prior to Jan. 1, 1976— or if it was created after Jan. 1, 1976, and a zoning Notice of Violation (NOV) has been issued regarding it—then site inspection is required by DPD inspectors to determine if minimum HBMC standards are met. If inspection shows that minimum standards are not met, then repairs must be made before a permit will be issued establishing the use. If electrical work is needed to satisfy HBMC standards, an electrical permit can be issued prior to issuance of the use permit if zoning approval is granted.
- For all structures, that minimum applicable SBC standards for fire and life safety are met as set forth in Section 104. If the use to be established was created within a structure after Jan. 1, 1976, all SBC standards must be met for the year in which the use first legally commenced. Review by a building plans examiner, and inspection by a building inspector, are required for all uses to be established to a date after Jan. 1, 1976.

Example of the Significance of Dates for Establishing Uses

To understand the importance of dates when establishing a use, consider this example of trying to establish for the record a nonconforming duplex on a lot now zoned for single family residences. To do this, you will need to show that the duplex use has existed since a time when the property was zoned to allow duplexes, or that the duplex use predates July 24, 1957.

Because there have been a number of different zoning ordinances in effect since Seattle was originally zoned in 1923, the year from which you must prove the duplex existed will vary. The most significant dates are 1923, 1947, 1957 and 1982, because substantial rezones and significant code changes affecting most of the city occurred in those years. Another significant date is 1988, when density standards for the multifamily zones removed in 1982 were reimposed. As noted previously, Jan. 1, 1976, is significant as the date after which complete SBC review is required.

Finally, if the use you are trying to prove commenced in your structure before the property was annexed into the city of Seattle, the date of annexation may be the critical date to which you must prove your use. Significant annexations occurred in north Seattle, in particular, between 1942 and 1954. For many residential nonconforming uses, the critical date is now July

24, 1957, as this date now applies to all residential uses commenced prior to that date and not located in the Shoreline Overlay District or in any of the Industrial zones.

For example, if the duplex use is shown to have started in 1950, then a permit can be issued once the structure is certified by inspection to be in compliance with minimum HBMC standards. If the use began in 1960, but could not have been permitted under the zoning for the property until 1982, then a permit cannot be issued until a full review under 1982 SBC standards and inspection by a building inspector has been completed. A HBMC inspection would not be required unless necessary to clear a zoning Notice of Violation (NOV) issued on the property.

Documenting Existence of a Use

To prove that your use was established at a time when it would have been legal, you must submit documentation that the use was in existence prior to whatever the critical date for the property is. For example, if your use could only have been legally established prior to 1947, tax assessment records from 1975 will not provide sufficient proof. The standard of proof required by DPD is a preponderance of evidence. In other words, your documentation must show that it is more probable than not that the use in question existed prior to the critical date.

The first step in gathering information about establishing a use is to determine what zoning was in effect at the time your building was constructed or the use began, and when zoning changes later occurred.

If establishing your use for the record appears to be required, the land use planner will refer you to the Public Resource Center (PRC), located directly across from the ASC on the 20th floor of Seattle Municipal Tower. PRC staff will help you to review maps showing past zoning and annexation information, if applicable. If you decide to apply for a permit, you will also need to review the available permit history for your structure in the DPD Microfilm Library (part of the PRC).

For general information, call the ASC at (206) 684-8850 or the PRC at (206) 684-8467.

Examples of records that DPD will accept as documentation of the existence of a use are:

- **Occupancy listings** from the Polk Directory or Reverse Telephone Directories. The Seattle Public Library, Central Branch, located at 1000 Fourth Ave., has copies of the Polk reverse directories dating from 1939. Qwest, the telephone company,

also has a reverse directory. To submit reverse directory information as proof of use, make copies of the pages showing the occupants of your property at several-year intervals beginning at the time you wish to establish the occupancy.

- **Business and/or licensing records.** Obtain licensing records from the Washington State Department of Licensing and Consumer Affairs, (206) 684-8484; they can document a business use.
- **County records** showing the previous permitted use if the property was formerly not part of the City of Seattle. Very few of these records are actually now available, but the information number for King County zoning is (206) 296-6655.
- **Tax assessment records.** Records from 1972 to the present can be obtained from the King County Assessor, King County Administration Building, 500 Fourth Ave., (206) 296-7300. Tax records prior to 1972 must be obtained from the Washington State Archives Puget Sound Branch, located in Bellevue, (425) 564-3940. To obtain tax records you will need the tax account number and the legal description of the property. These records often date back as far as 1937, and they can provide detailed history—such as dates of construction of buildings—to even earlier dates.
- **Sewer hookups.** Dates of hookups are important. Sewer records can be obtained from the Seattle Department of Transportation's Street Use Section, (206) 684-5253.
- **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.
- **Other evidence** that DPD's 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 such as engineers, architects, or building professionals, testifying to the age of a structure or its fixtures, such as kitchen equipment. In some cases, a DPD inspection may be necessary to make a final determination of the age of a structure. An inspection of this type is generally made by a Building Inspector.

It is your responsibility to furnish at least two different types of documentation from the sources listed above. DPD, in its discretion, may require further documentation, if the documentation you have submitted 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. DPD may, in some cases, 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.

Please also note that if you or a prior owner have ever applied for and been granted permits for work inconsistent with the use you are now seeking to establish, DPD may deny your application. For example, if you have applied to establish a legally nonconforming duplex for the record in a single-family zone, we will deny the application if prior permits which identified the building as a single-family residence have been issued for additions to the structure in question.

If you disagree with our analysis of the documentation presented, or our analysis of the applicable Zoning Ordinance or Land Use Code, you may choose to request a formal interpretation of the Land Use Code under Seattle Municipal Code (SMC) Section 23.88.020. If, for any reason, your application cannot be granted, further maintenance of the use not established by permit may subject you to enforcement action according to standard DPD procedures.

Applying for a Permit

To apply for a permit, please visit the DPD Applicant Services Center (ASC), located on the 20th floor of Seattle Municipal Tower at 700 Fifth Ave. You may also contact the Applicant Services Center at (206) 684-8850. (Note: an appointment may be necessary and a fee may be required to speak with a land use planner.)

In order to schedule an application intake appointment, you will need to fill out a Preliminary Application, available on DPD's website at www.seattle.gov/dpd/publications/forms or by calling (206) 684-8850.

Before you come for your intake appointment, you will be expected to complete the Use For the Record Information Worksheet attached to this CAM. This worksheet contains space for providing basic information about your property, including address and legal description, the presently permitted use, why you are applying for a permit to establish a use not previously established by permit, and basic zoning history.

At your intake appointment, you will be asked to submit the Use For the Record Information Worksheet, a copy of the white property record card for the property, a copy of the most recent permit establishing a use, and a copy of the zoning Notice of Violation (NOV), if one has been

issued on your property. The property record card and permit can be obtained from the DPD Microfilm Library (located on the 20th floor of Seattle Municipal Tower at 700 Fifth Ave.). Please check with microfilm staff to be sure the most recent permit actually establishes a use and has been given final approval by DPD.

You will also need to submit the supporting documentation you have gathered to prove existence of the use at a time when it was legal under zoning, and two or three sets of plans as follows:

- For uses that commenced **prior** to Jan. 1, 1976, two sets of plans meeting plan quality standards as set forth in CAM 106, including:
 1. Appropriate cover sheet.
 2. Plot plan showing configuration of on-site parking and, for all structures, measurements showing location of the structure on the site.
 3. For structures, floor plans showing all rooms, doors, windows, stairs, common areas, and kitchen and bathroom facilities.
 4. Highlighting of dwelling unit(s) to be established.
- For uses that commenced **after** January 1, 1976, three sets of plans meeting plan quality standards as set forth in CAM #106, including:
 1. Appropriate cover sheet.
 2. Plot plan showing configuration of on-site parking and, for all structures, measurements showing location of the structure on the site.
 3. For structures, floor plans showing all rooms, doors, windows, stairs, common areas, and kitchen and bathroom facilities.
 4. For structures, a copy of the original building floor plans (if available from DPD microfilm library), as reference document.
 5. Highlighting of dwelling unit(s) to be established, on original plans and on application plans.

If you have questions about the application process, visit the ASC and ask to speak to a land use planner.

Questions about plan preparation can best be answered by a permit specialist, available in the ASC or by calling (206) 684-8850.

If you have questions about development standards, the zoning history of your property, or about what documentation will be useful to support your application, contact Public Resource Center (PRC) staff on the same floor as the ASC or call them at (206) 684-8467.

Inspection Procedures

1. Housing and Building Maintenance Code (HBMC) Inspection

If you are establishing a dwelling unit or units for the record, a DPD inspector will conduct a site inspection to determine compliance with minimum standards of the HBMC under the following circumstances:

- use commenced **prior** to Jan. 1, 1976 (regardless of whether the compliance service center has an active zoning notice of violation on the property)
- use commenced **after** Jan. 1, 1976, and the compliance service center has an active zoning notice of violation on the property

In this situation, your plans must also conform to the SBC in effect at the time the use is both in existence and first could have been legally established.

It is your responsibility to arrange for the required inspection. If your use can be approved under applicable zoning, the land use planner who analyzes the zoning issue will refer your application for the HBMC inspection or SBC review, as needed. Where an HBMC inspection is required as described above, a permit establishing a dwelling unit for the record will not be issued by DPD until after the 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. However, if correction of violations requires a building permit or electrical permit, we will issue the use permit after application is made for the appropriate building permit or electrical permit.

In cases where you are establishing some use other than a dwelling unit, a site inspection may be required as part of the determination of compliance with the appropriate Zoning Ordinance or Land Use Code, to determine conformity of the site to plans submitted and to the HBMC if applicable. You will receive a letter explaining why such an inspection is required. Any violations noted must be corrected before a use permit will be issued.

For uses commenced prior to Jan. 1, 1976, final approval of the use permit will be given by the land use planner who reviewed your application for compliance with the appropriate Zoning Ordinance or Land Use Code.

2. Building Code Review and Inspection

If you are establishing for the record a use that is located within a structure (this applies to most uses

other than parking lots and outdoor storage), a building plans examiner will review your plans to determine compliance with the SBC effective on the date the use first could have been legally established, and a site inspection will be conducted by a building inspector under any of these circumstances:

- the use commenced **after** Jan. 1, 1976, and the compliance service center has **no active zoning NOV** related to the use issue.
- the use commenced **after** Jan. 1, 1976, and the compliance service center **has an active zoning NOV** on the property. In this situation, an HBMC inspection is also required prior to completion of the “establish use for the record” approval.
- the use commenced **prior** to Jan. 1, 1976, **is not a dwelling unit**, and the land use planner 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 under Section 104 of the SBC have been met.

Where a SBC review is required, a permit establishing a use for the record will not be issued by DPD until after the building plans examiner has determined, based on the plans submitted, that your structure is in compliance with the SBC.

If no corrections to the plans are required, the use permit will 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 issue as a combination use and building permit, if alterations to your structure are required to bring it into compliance with the SBC. Final approval will be made on a site inspection by a building inspector.

For non-residential uses, the land use planner 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 DPD 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.

Fees

The application fee for a permit establishing a use for the record is a standard charge for 1½ hours of work

by a land use planner. This fee is subject to possible change every January when a new Fee Ordinance is adopted by the City Council. Fees for additional research, plan checking, or other services performed by DPD may also be assessed as set forth in the Fee Ordinance, as required for each individual project. The HBMC inspection is incorporated into the standard fee, but additional charges will be made for SBC review and any building permit that needs to be issued to bring a structure into compliance with the SBC.

For an up-to-date fee listing visit DPD's website at www.seattle.gov/dpd/about/fees or contact the Public Resource Center, located on the 20th floor of Seattle Municipal Tower at 700 Fifth Ave., (206) 684-8467.

Access to Information

Links to electronic versions of DPD **Client Assistance Memos (CAMs), Director's Rules,** and the **Seattle Municipal Code** are available on the "Publications" and "Codes" pages of our website at www.seattle.gov/dpd. Paper copies of these documents are available from our Public Resource Center, located on the 20th floor of Seattle Municipal Tower at 700 Fifth Ave. in downtown Seattle, (206) 684-8467.

USE FOR THE RECORD INFORMATION SHEET

Date _____

Instructions to Applicant:

1. Complete all applicable lines not within boxes.
2. Have DPD land use planners complete the lower two boxes.
3. Bring info sheet to your appointment.

<i>DPD USE</i>
Project No. _____

Subject Property: Address _____

Property Description _____

This property is currently in use as: *(if dwelling units, include the number of units)*

The property has been in this use since (year): _____

I want to establish the above use because:

- 1. I have received a notice of violation (NOV) from Housing & Zoning Enforcement.
Violation # _____
- 2. I want to sell or refinance.
- 3. Other: _____

TO BE COMPLETED BY A LAND USE PLANNER IN THE DPD APPLICANT SERVICES CENTER

Use that is currently established by permit _____

GIS Zoning Page _____ Zone _____ Need to establish use for the record rather than as a new use because:

- use not permitted outright under current zoning
- use does not meet current development standards: ___ parking, ___ density, ___ other _____
- use predates discretionary reviews; use under current zoning would require:
___ SEPA (since 1976), ___ Shoreline (since 1974), ___ Other _____

TO BE COMPLETED BY A LAND USE PLANNER IN THE DPD PUBLIC RESOURCE CENTER

ZONING HISTORY

From	To	Zoning
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____