

SANTA CRUZ COUNTY PLANNING DEPARTMENT POLICY/ORDINANCE
INTERPRETATION

Interpretation No.: NCU-C-01 (Non-conforming use, commercial (non-residential))

Effective Date: 4/7/08

Originally Issued: none

Revised: none

Question:

What standard of proof do we use to determine the legal status of a commercial use, for the purpose of issuing building permits for certain types of health and safety repairs or for accessibility improvements?

Applicable Ordinance Section (s)

13.10.260 (a), 13.10.260 (c), 13.10.262 (a)

INTERPRETATION:

When reviewing building permit applications for the following improvements in commercial buildings:

1. Accessibility compliance;
2. Health and safety upgrades;
3. Plumbing, electrical, mechanical permits that are not in conjunction with a change or expansion of use;
4. Reroofing that does not require structural repairs or alterations;
5. Parking lot resurfacing;

we will accept the proof listed in this interpretation as an indication of presumed legal non-conforming status.

For these types of permits only, we will require applicants who do not have a valid use approval on file to provide documentation that their use existed back to the implementation date of ALUS (1985), rather than the implementation of the first zoning code (1958), as is currently required. If the use is consistent with the use documented in ALUS, and/or there is no evidence in ALUS or elsewhere to indicate that the use is illegal, then we will presume, for the purposes of issuing the above types of permits only, that the use is legal. If there is evidence indicating that the use began after the implementation of ALUS, we will require that the applicant obtain the required discretionary permits to legalize the use prior to obtaining building permits for the five categories of permits listed above. Any permit issued under this relaxed burden of proof standard requires the recordation of a statement by the property owner acknowledging that the issuance of the permit does not confer legal status to the use.

This revised burden of proof standard does not apply to structures with known use violations. These structures may be eligible for building permit issuance under Section 12.01.070(c), as outlined in Policy Interpretation BP-V.

Reason

Currently, owners of legal non-residential non-conforming uses may apply for building permits for ordinary maintenance and repairs in kind that do not require structural repairs (see

13.10.262(a), or for any accessibility improvements required under the ADA or Title 24, including structural work (see 13.10.260(c)(7)). However, before the building permit can be issued, the applicant must prove that they have a legal use (see Section 13.10.260 (c) (1)). Proof of legality must include either a copy of a valid permit demonstrating a legal use, or documentation proving that the use existed prior to the requirements for use permits. The applicant must also submit evidence demonstrating that the use has continued since its implementation, and that the use has not expanded. For many businesses, research and documentation going back prior to the implementation of the zoning ordinance (1958) is required to definitively establish a legal use.

Our current burden of proof requirements may be prohibitive to many owners of legal non-conforming businesses. It is likely that many business owners who do not have clear proof of a legal use either a) do not make needed repairs, or b) make the needed repairs without benefit of a permit. This is of particular concern with health and safety issues. This approach will allow owners of commercial non-conforming uses to apply for the appropriate building permits and legally make needed health and safety repairs and accessibility improvements.

Tom Burns, Planning Director

Date