

Is your Property Non- Conforming (Grandfathered)?



Your House is about to Expire!

City of Albuquerque
Code Enforcement Division
Planning Department
(50) 924-3850

If your property is Non-Conforming (Grandfathered) to the Comprehensive City Zoning Code you need to apply for Status Established Building with the Zoning Hearing Examiner by
March 27, 2012.

NONCONFORMING. A structure or use of structure or land which does not conform to this article and which was in conformity with any zoning ordinance in effect at the time it was created.

STATUS ESTABLISHED BUILDING. A building nonconforming as to use which is approved to maintain its nonconforming use status. Such approval shall apply only to a building for which the existing use is prohibited upon expiration of its nonconformance amortization period. Such approval shall not be available to nonconforming uses that resulted from Zoning Code text amendments. Approval of a status established building can only occur on or before the expiration of its nonconformance amortization period.

§ 14-16-4-13 STATUS ESTABLISHED BUILDING REVIEW PROCEDURES.

(A) *Application and Fee.* (1) Request for review of a premises nonconforming as to use for approval of status established building(s) is initiated by application to the City on prescribed forms. Each application shall be accompanied by an accurate site plan of the property and other documentation necessary for verification. Documentation may include affidavits and historical documents, including property surveys, County Assessor and building permit records, Sanborn Insurance maps, City Directory citations, aerial photos, and other information as may be required by the City. Each application shall include sufficient copies of materials and include evidence of ownership or interest in property, and shall be complete and accurate. Incomplete or inaccurate information may be grounds for deferral or denial. (2) An affidavit shall accompany each application for review of premises seeking status established building approval for any structure to be used for residential purposes. That affidavit shall state that the property owner asserts that the structure is suitable and safe for human habitation. (3) An application fee of \$90.00 shall accompany each application for review of a premises. Application fees for applications that are withdrawn shall not be refunded.

(B) *Hearing and Decision.* (1) A duly filed application for status established building shall be decided upon the record at or after a public hearing by the City Hearing Officer, as defined by the Independent Office of Hearings Ordinance (§§ 2-7-8-1 et seq. ROA 1994) who shall serve in the position of "Hearing Officer for Status Established Buildings". (2) Notice of a hearing for approval of a status established building and the procedure for such hearings shall be as specified in § 14-16-4-2(B) of this Zoning Code as it pertains to the Hearing and Decision on SPECIAL EXCEPTIONS, with the exception that all references in that section to "Zoning Hearing Examiner" or "Hearing Examiner" shall be replaced by "Hearing Officer for Status Established Buildings," and all references to "special exception(s)" shall be replaced by "status established building(s)". In addition, applicants for status established building shall post and maintain one or more signs, as provided and where instructed by the Planning Director, for at least 30 days before the date of the hearing.

(C) *Criteria for Decision.* A status established building shall be approved if and only if, in the circumstances of the particular case and under conditions imposed, the applicant for status established building is able to demonstrate to the satisfaction of the Hearing Officer that: (1) the current use of the building is nonconforming; (2) the subject property is clearly identified by a site plan and the improvements upon it are accurately depicted; (3) the continuance of the use, if approved, will not be contrary to the public health, safety or welfare of the community. (4) the use, as currently operated and/or maintained, did not, and the continuance of the use is not likely to, significantly interfere with the enjoyment of, or be injurious to, other land in the vicinity; (5) no significant public purpose would be served by requiring removal of the use; (6) the use, if continued, will not be damaged by surrounding structures or activities; and (7) continuance of the use does not create a significant disparity between the existing zoning and the status established building.

The following factors shall be evaluated in determining whether there is a significant disparity between existing zoning and the status established building: (a) the scale, height and overall density of the building; (b) the noise, air or other pollution generated by the use; (c) the traffic and traffic congestion generated by the use; (d) parking needs and availability; (e) usable open space; (f) lighting generated by the use; (g) access to the building; (h) existing landscaping; (i) any other factor deemed relevant by the Hearing Officer.

(D) The Hearing Officer may, when approving a status established building, impose conditions necessary to meet the criteria for granting a status established building that are tailored to the specific impact the conditions are intended to mitigate, including, but not limited to, density, intensity of use, parking, open space, and landscaping/buffering.

(E) *Appeal, Fees, Hearing, and Decision.* (1) The appeal procedure for status established buildings shall follow the appeal procedures, including notification, specified for Special Exceptions as specified in § 14-16-4-4 APPEAL of this Zoning Code. Appeal of a decision of the Hearing Officer for a status established building application is to the Board of Appeals. (2) The filing fee for an appeal is \$55. (3) Appeal shall be made to the City on prescribed forms accompanied by a copy of the file of the decision of the Hearing Officer and information detailing the reason for appeal.