

Introduced by: Mayor
Date: 10/13/20
Hearing: 11/10/20
Action: Enacted as Amended
Vote: 5 Yes, 4 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2020-43**

**AN ORDINANCE AMENDING KPB 21.44.110, NONCONFORMING USES, TO CLARIFY
EXPANSION RELATED TO AGRICULTURAL PURPOSES, THAT A
NONCONFORMING USE RUNS WITH THE LAND, AND TO EXTEND THE
NONCONFORMING USE APPLICATION DEADLINE FOR C & H ESTATES**

- WHEREAS,** property owners within the C & H local option zone district (LOZD) have expressed concern relating to marketability of title due to perceived ambiguity in KPB 21.44.110, Nonconforming Uses; and
- WHEREAS,** the amendments to KPB 21.44.110 will clarify staff interpretation that nonconforming use for agricultural uses is applied to the entire parcel wherein rotation of crops or usage of greater farmable acreage is not considered expansion of the use for purposes of LOZD code;
- WHEREAS,** the KPB 21.44.110(H) addition to code states that a nonconforming use determination is particular to the use not the owner, the use runs with the land and transfers upon sale or lease of a property; and
- WHEREAS,** the amendments serve to clarify the borough's historical interpretation and implementation of KPB 21.44.110; and
- WHEREAS,** the clear focus of KPB 21.44.110 is on the use not the owner; and
- WHEREAS,** a nonconforming use is akin to a prior existing use thus it is logical that a prior existing use would run with the land; and
- WHEREAS,** a nonconforming use is not the same as a non-allowed use; and
- WHEREAS,** the one-year deadline under KPB 21.44.110 for C & H Estates LOZD property owners to apply for a nonconforming use determination expires January 7, 2021, the deadline should be extended to account for the amendments to this section of code; and
- WHEREAS,** at its meeting of October 12, 2020, the Planning Commission reviewed this ordinance and recommended approval by unanimous consent;

**NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI
PENINSULA BOROUGH:**

SECTION 1. That a new section KPB 21.44.110 is hereby enacted:

21.44.110. Nonconforming uses.

- A. *Determination.* Nonconforming uses in effect on the date of initial adoption of the LOZD are allowed to continue operation. The burden of proof that the nonconforming use existed before adoption of an LOZD is on the applicant. If the planning director denies nonconforming use status, the applicant must comply with the requirements of the LOZD. Failure to apply for a nonconforming use determination within one year from the date of notice of the adoption of an LOZD ordinance shall result in termination of all right to continued operation as a nonconforming use and require full compliance with all provisions of this chapter. Written notice of the nonconforming use application requirements shall be given by certified mail or personal delivery to all property owners within an LOZD. If notice cannot effectively be given by these methods, the planning director may post the subject property.
- B. *Decision.* The planning director shall give notice of the application for a nonconforming use determination to property owners within the district. The notice shall include a summary of the application, a vicinity map, and a deadline for submitting written comments or evidence regarding the existence of the use prior to making a determination. The planning director shall issue a decision regarding the nonconforming status based on the written application, written comments, or evidence regarding the existence of the use prior to the adoption of an LOZD. The planning director's decision may be appealed by the applicant or affected property owners to the planning commission within 15 days of distribution of the decision.
- C. *Discontinuance.* Any nonconforming use of land or building which has ceased by discontinuance for an uninterrupted period of 365 days shall thereafter conform to the provisions of this chapter. Lack of intent to cease use or abandon the use does not suspend the 365-day time period. If a nonconforming use of a temporary structure is discontinued, it shall not be recommenced.
- D. *Expansion Prohibited.* A nonconforming use of a building or land may not be increased, intensified, or expanded or moved to any other part of the lot, tract, or parcel it occupies after the ordinance forming the district is adopted, nor may the use be moved to a parcel which is subject to this chapter. A nonconforming use for farm or agricultural purposes attaches to the entire parcel. Nothing in this paragraph should be construed to limit the increase of total area or acreage used for farm or agricultural purposes under a nonconforming use determination.
- E. *Change of Use.* The use of a nonconforming building may be changed only to a use conforming to this chapter.

- F. *Standards.* In order to qualify as an allowed nonconforming use, the use must meet the following standards on the date the assembly approves formation of the district:
1. A use must have been legally established under prior law.
 2. A use must be operational in accordance with the type of use.
 3. The purchase, clearing, or improvement of land preparatory to the use is inadequate to qualify the parcel for nonconforming use status, unless the site has been prepared or construction completed to the extent that it is no longer feasible to use the property for a conforming use.
- G. Conditions may be placed on nonconforming uses by the planning director to protect the residential character of the LOZD by limiting excessive noise, excessive traffic, fire hazards, and to provide appropriate screening, lighting, and hours of operation.
- H. A nonconforming use determination runs with the land and will transfer upon the sale or lease of the parcel if all requirements of this section are met. A nonconforming use determination is distinct from a non-allowed use and references in this title relating to non-allowed uses are not applicable to nonconforming uses.

SECTION 2. Notwithstanding, the one-year deadline under KPB 21.44.110(A), the deadline for property owners within the C & H Estates LOZD to apply for a nonconforming use determination is extended to April 7, 2021.

SECTION 3. That this ordinance take effect immediately upon enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 10TH DAY OF NOVEMBER, 2020.

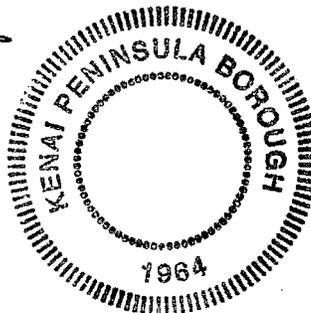


 Brent Hibbert, Assembly President

ATTEST:



 John Blankenship, MMC, Borough Clerk



Yes: Chesley, Cox, Dunne, Johnson, Hibbert
No: Bjorkman, Carpenter, Derkevorkian, Elam
Absent: None