Chapter 21.61 Nonconforming Uses, Structures, and Lots

Sections:

21.61.010 Nonconformities in general.
21.61.015 Definitions.
21.61.020 Nonconforming lots.
21.61.030 Nonconforming structures.
21.61.040 Nonconforming uses.
21.61.050 Proof of nonconforming use or structure.
21.61.060 Termination of nonconforming use or structure.
21.61.070 Small wind energy systems.

21.61.010 Nonconformities in general. When a zoning ordinance or other land use regulation is adopted or amended, or when the zoning district designation applicable to a lot changes, or when annexation or other boundary changes occur, then as a result a previously lawful lot, structure, or use may no longer be allowed. Such previously lawful lot, structure, or use shall be considered a nonconforming lot, structure or use. Such nonconformities may continue, subject to the requirements of this chapter and any other provisions of the Homer Zoning Code that expressly apply to nonconforming lots, structures, or uses. (Ord. 08-29, 2008).

21.61.015 Definitions. For the purposes of this chapter the following words and phrases shall be interpreted or defined as set forth in this section, and such interpretations or definitions shall supersede any conflicting interpretations or definitions set forth elsewhere in this title:

"Abandon" means (a) with respect to a use, the cessation of such use for any length of time, combined with intent to indefinitely cease such use, or (b) with respect to a structure, the cessation of occupancy of such structure for any length of time, combined with intent to indefinitely cease occupancy of such structure.

"Change" means, with respect to a nonconforming use, that the nonconforming use has been converted to a different use for any period of time, regardless of intent.

"Discontinued" means that a nonconforming use has ceased, and has not substantially resumed, for a period of 12 consecutive months, regardless of intent.

"Occupy" or "occupancy" means actual physical occupancy of a structure or lot, regardless of intent.

"Primary use" means the primary activity actually conducted in a serious, substantial, and ongoing manner on a lot or in a structure, and for which the lot or structure is actually and primarily occupied and maintained, regardless of intent.

"Substantially resumed" means substantial and continuous resumption of the use as the primary use for a period of at least 60 consecutive days. Activity that does not meet this standard is not sufficient to interrupt a period of discontinuance.

"Use" means activity actually conducted on a lot or in a structure, and for which the lot or structure is actually occupied and maintained, regardless of intent. (Ord. 08-29, 2008).

21.61.020 Nonconforming lots. a. A nonconforming lot containing at least 6,000 square feet on May 16, 1978, may be developed in conformity with all other provisions of this title even though such lot fails to meet currently applicable minimum area or width requirements.
b. No lot containing less than 6,000 square feet on May 16, 1978, may be used except as follows:
(1) In the residential districts, i.e., RR, UR, and RO, on any lot that fails to meet minimum area or width requirements, one single-family dwelling with a proper zoning permit is permitted; and
(2) in all other districts such lots may be used only in full compliance with all applicable provisions of the current

zoning code. (Ord. 08-29, 2008).

21.61.030 Nonconforming structures. A nonconforming structure may be continued so long as it remains otherwise lawful, subject to the following provisions:
a. A nonconforming structure may be enlarged or altered, but only if it does not increase its nonconformity;
b. If a nonconforming structure is moved for any reason for any distance whatsoever it shall thereafter conform to the code provisions applicable in the zone in which it is located after it is moved;
c. If a nonconforming structure or nonconforming portion of a structure is damaged by any means to an extent of more than fifty percent of its replacement cost at time of the damage, it shall not be reconstructed except in conformity with the provisions of Homer City Code.
d. If at any time a nonconforming structure is abandoned or brought into conformity with this title, the structure shall thereafter conform to all the regulations of the district in which it is located, and the nonconforming structure shall not be allowed to continue in use. (Ord. 08-29, 2008).

21.61.040 Nonconforming uses. A nonconforming use may be continued so long as it remains otherwise lawful, subject to the following provisions:
a. No nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied as of the date it became nonconforming;
b. No nonconforming use shall be moved in whole or in part to any other portion of the lot that was not occupied by the nonconforming use as of the date it became nonconforming;
c. Any new structure built in connection with the nonconforming use must be in full compliance will all applicable provisions of the zoning code and other laws then in effect.
d. If at any time a nonconforming use is abandoned, changed, discontinued, or ceases to be the primary use of a lot, the use of that lot shall thereafter conform to the code provisions applicable in the zone in which the lot is located, and the nonconforming use shall not thereafter be resumed or allowed to continue. (Ord. 08-29, 2008).

21.61.050 Proof of nonconforming use or structure. a. It is the responsibility of the owner to produce evidence proving the existence and continuous use of every lawful nonconforming use and structure.
b. Proof of the following nonconforming uses and structures shall be submitted to the City Planner:
1. Uses and structures that existed lawfully before annexation to the city on or after March 20, 2002, and that are nonconforming as a result of the annexation;
2. Structures that existed lawfully before inclusion within the Bridge Creek Watershed Protection District and that are nonconforming as a result of the inclusion;
3. Structures that existed lawfully on or before September 27, 1982; and
4. Structures that existed lawfully before an amendment to this title or an amendment to the zoning map, and that are nonconforming as a result of the amendment.
c. Proof of all other nonconforming uses and structures shall be submitted to the City Planner for presentation to the Planning Commission at a public hearing.
d. Upon presentation of such proof, the reviewing authority finds to be a nonconforming use or structure under HCC §21.61.010. For each use or structure that the reviewing authority finds to be a nonconforming use or structure under HCC §21.61.010, the reviewing authority shall adopt a written decision that includes a complete description of the nonconforming use or structure.
e. No zoning permit may be issued under HCC Chapter 21.70 for any activity on a lot prior to a determination under this section approving of all nonconforming uses and structures existing on the lot. (Ord. 09-10(A) §1, 2009; Ord. 08-29, 2008).

21.61.060 Termination of nonconforming use or structure. The right to continue a nonconforming use or structure previously approved under this chapter is subject to termination by the Commission if it finds, after providing the property owner notice and an opportunity to be heard at a public hearing, that
a. in the case of a nonconforming structure, it has subsequently been abandoned or brought into conformity with the Homer Zoning Code, or
b. in the case of a nonconforming use, the use has subsequently been abandoned, changed, discontinued, or ceases to be the primary use of a lot. (Ord. 09-10(A)§2, 2009; Ord. 08-29, 2008).

21.61.070 Small wind energy systems. The installation of a small wind energy system that complies with all applicable laws at the time of its installation does not enlarge, increase or expand a nonconforming use or structure. (Ord. 09-34(A) §22, 2009.)

Source URL (retrieved on *2013-12-10 02:20*):
http://www.cityofhomer-ak.gov/cityclerk/chapter-2161-nonconforming-uses-structures-and-lots