

ADMINISTRATIVE DETERMINATION

Date: August 2008
Made By: Michelle Groenevelt, Community Development Director
Bradley Kraushaar, City Planner
RE: Non-conforming residential use in the Central Business District

The following Administrative Determination addresses how non-conforming residential uses in the Central Business District (CBD) shall be regarded and handled under Title 3, Chapter 11 of the McCall City Code.

In a structure in the CBD that contains residential uses, but does not have >50% of the first floor area as commercial uses, such residential use shall be deemed non-conforming. As such, per MCC 3.11.04 the non-conforming residential use shall not be expanded. Further, accessory structures shall be deemed to have the same use of the building or space to which they are accessory (i.e. a garage serving a residential use shall be considered as part of the residential use; ditto a garage serving a commercial use). As such, a structure accessory to a non-conforming use shall also not be expanded.

Below are the sections of the McCall City Code that relate to this administrative determination:

MCC 3.4.02: COMMERCIAL USE REGULATIONS and Table 3.4.02:

Allowed Use	NC	CC	CBD
Dwelling, multi-family	C	C ^{1,2}	C ^{1,2}

Notes:

1. Subject to subsection [3.4.04\(D\)](#) of this chapter.
2. Single, two-family, or multi-family dwellings are allowed as part of a mixed use development.

MCC 3.4.04: COMMERCIAL ZONE SPECIAL DEVELOPMENT STANDARDS:

- D) Uses: Residential uses are allowed within the CBD and CC zones; provided, that commercial and/or public use development shall be incorporated into any residential development. This can be achieved in several ways, such as:
1. In a multistory structure, provide for commercial space at the street level with residential space above (or below).

2. Within a parcel, provide for a commercial building facing the primary street, with residential units to the rear or side.
3. Provide for a combination of living and entrepreneurial spaces, such as artists lofts and quarters or specialized training facilities within a site residence.
4. In each case, a proposal will be expected to provide at least fifty percent (50%) ground floor area in commercial or public uses. (Ord. 821, 2-23-2006, eff. 3-16-2006)

MCC 3.11.04: NONCONFORMING USES OF LAND:

Where at the time of the adoption of applicable regulations, lawful use of land existed which would not be permitted by the regulations imposed by this title, and where such use involves no individual structures other than small or minor accessory buildings, the use may be continued so long as it remains otherwise lawful, provided:

- (A) No such nonconforming use shall be enlarged or increased.
- (B) No nonconforming use may be moved in whole or in part to any portion of the lot or parcel other than the nonconforming use occupied at the time of the adoption of regulations prohibiting such use.
- (C) If any nonconforming use of land ceases for any reason for more than eighteen (18) months, any subsequent use of land shall conform to the regulations specified by this title for the zone in which such land is located; provided, however, that the owner of such land may, in writing, file with the administrator during or before such eighteen (18) month period expires, give notice that the owner intends to suspend the use and intends to preserve the right, not exceeding three (3) years, to resume the use.
- (D) No additional nonconforming structure(s) shall be erected in connection with such nonconforming use of land. (Ord. 821, 2-23-2006, eff. 3-16-2006)