

**Council Member Balarin, on behalf of the Committee on Planning, Economic Development, and Land Use, introduced the following, which was approved:**

**ORDINANCE 16.82.25**

**AN ORDINANCE AMENDING CHAPTER 375 (UNIFIED SUSTAINABLE DEVELOPMENT ORDINANCE) OF THE CODE OF THE CITY OF ALBANY IN RELATION TO THE NONCONFORMITY DETERMINATION PROCESS.**

*The City of Albany, in Common Council convened, does hereby ordain and enact:*

**Section 1.** Subsection (8) (Determinations of status of nonconformities) of Section 375-506 (Preexisting development and nonconformities) of Article V (Administration and Enforcement) of Chapter 375 (Unified Sustainable Development Ordinance) of Part II (General Legislation) of the Code of the City of Albany is hereby amended to read as follows:

- (8) Determinations of status of nonconformities.
  - (a) Any person having a legal or equitable interest in a preexisting development or nonconforming property may apply for a determination from the Chief Planning Official on such forms as the Chief Planning Official shall prescribe.
  - (b) Responsibility of the applicant/property owner. The burden of proving a structure or use is a legal nonconforming use resides with the property owner or other person with an equitable interest.
    - (i) It shall be the applicant and/or property owner's responsibility to provide any and all documentation or evidence required to support a preexisting development or nonconformity claim under the provisions of this § 375-506. Although City employees may assist applicants, no City employee or official shall be responsible for gathering evidence or documentation to support a claim of legal nonconformity.
    - (ii) Such evidence shall be sufficient to prove:
      - A. That the use was lawfully established in accordance with the applicable law and regulations in effect at the time of its establishment;
      - B. That the use has been continuously maintained since it was established; and
      - C. That the use has not been abandoned for a period in excess of one year.
    - (iii) Evidence may include but is not limited to photographs of the property or use (dated or with an affidavit as to the date of the photograph), utility bills, property tax statements or receipts, copies of leases or subleases, evidence of goods and services rendered from the property (dated or with an affidavit as to the date of the evidence), or notarized affidavits from the owner(s) of one or more properties within 300 feet of the subject property.
    - (iv) Where an applicant seeks a certificate to establish the legal or nonconforming status of a structure or other nonconformity only, the Chief Planning Official shall issue a determination upon review of a certified survey, building permits, or other documentation deemed necessary or sufficient by the Chief Planning Official.

(c) Notice to interested parties.

- (i) ~~The Chief Planning Officer shall provide interested property owners, members of the public, and the Common Council with notice of an application for a determination of legal nonconformity similar to the content of notices for applications for variances, and shall include information on how members of the public may submit comments or documentation to be considered by the Chief Planning Official.~~
- (ii) ~~A notice of the application shall be posted at the property on each side the subject property faces a public street with the same information and in the same manner as is required for notice of a variance request and shall include information on how members of the public may submit comments or documentation to be considered by the Chief Planning Official.~~
- (d) ~~The Chief Planning Official may not make a determination relating to a nonconforming use until 14 days after the date the public notices were mailed or the date the notice was posted at the subject property, whichever is later.~~
- (e) ~~The Chief Planning Official shall review all proof submitted by the applicant and all other comments and documents submitted. The applicant shall only be entitled to a determination finding a legal nonconforming use or structure if the evidence submitted clearly establishes that the property meets each and every criteria of a legal nonconformity set forth in Subsection (1) above.~~
- (e) ~~The determination of the Chief Planning Official shall be mailed to the applicant, the City Clerk, designated Common Council staff, any person who commented in writing regarding the application, and posted on the Planning Department website within five days of its issuance.~~

**Section 2.** This ordinance shall take effect immediately.

Matters in ~~strikethrough~~ to be deleted. Matter underlined is new material

**Passed by the following vote of all the Council Members elected voting in favor thereof:**

Affirmative - Adams, Anane, Balarin, Clarke, Conti, Farrell, Flynn, Frederick, Hoey, Johnson, Keegan, Kimbrough, Love, Robinson, and Zamer

Affirmative: 15 | Negative: 0 | Abstain: 0