

City of Clayton Land Use Code

Planning and Development Services Staff Clarification SC18-01

Date: January 17, 2018

Subject: First Floor Retail Uses—Downtown Overlay Districts

Code Sections: Permitted Uses—downtown overlay districts (CBD Core, Downtown Core and Maryland Gateway); Article III, Section 410.090; Article IV, Section 410.150; and Article XIV, Section 410.805

Non-Conforming Uses; Article IV, Section 405.440

Initiated by: Planning Staff

Background/Considerations:

The Zoning Regulations impose specific limitations on allowed first floor uses for buildings located within certain Overlay Zoning Districts. Below are the Zoning Regulations as they pertain to first floor uses for buildings located in the CBD Core, Downtown Core and Maryland Gateway Overlay Zoning Districts:

“All ground floor uses must be retail in nature, but may include personal care services, dry cleaning facilities, food and beverage service uses, consumer service offices (limited to financial institutions including banks, savings and loans and credit unions, real estate offices and travel agencies) or governmental offices.”

Existing non-conforming uses occupying the ground floor of buildings are allowed to continue operation under provisions of the Zoning Regulations found in Article IV: Non-Conforming Uses.

“Any non-conforming use of part or all of a structure or any non-conforming use of land may be continued, so long as otherwise lawful, subject to the following provisions:

1. *Ordinary repair and maintenance.* Normal maintenance and incidental repair or replacement, installation or relocation of non-bearing walls, non-bearing partitions, fixtures wiring or plumbing may be performed on any structure.
2. *Remodeling.* No structure shall be remodeled unless the use thereof shall thereafter conform to all provisions of the Zoning Code. For purposes of this Section, the term “*remodel*” shall mean to reconstruct or relocate exterior walls, bearing walls or bearing partitions; or to substantially alter the exterior appearance of a building by adding or removing architectural elements by changing the roof line or by closing up or relocating door or window openings.
3. *Expansion of use.* No non-conforming use of a lot or building shall be enlarged, expanded or extended to occupy a greater area of a lot or building than was occupied on the effective date of this Zoning Code or amendment thereto and no additional accessory use, building or structure shall be established thereon.
4. *Enlargement of building or structure.* No building or structure that is devoted in whole or in part to a non-conforming use shall be enlarged or added to in any manner, unless such building or structure addition and the entire use thereof (both existing space and the addition) shall thereafter conform to all provisions of the Zoning Code.
5. *Moving.* No structure that is devoted in whole or in part to a non-conforming use shall be moved in the whole or in part for any distance whatsoever, to any location on the same or any other lot, unless the entire structure and use thereof shall conform to all provisions of the zoning district in which it is located after being so moved.

6. *Change in use.* A non-conforming use shall not be changed to any use other than a use permitted in the zoning district in which the use is located. When a non-conforming use has been changed to any permitted use, it shall not thereafter be changed back to a non-conforming use.
7. *Abandonment or discontinuance.* In the event that the non-conforming use of any building or premises is discontinued for a period of one (1) year, regardless of any reservations of an intent not to abandon or resume such use, any subsequent use or occupancy of such structures shall comply with provisions of this Chapter including those of the zoning district in which the structure is located.
8. *Non-conforming accessory uses.* No use which is accessory to a primary non-conforming use shall continue after such primary use shall cease or terminate.”

The non-conforming use regulations ensure that over time, buildings with non-conforming uses transition into conforming uses and space, while not immediately impeding the function of existing businesses. Provisions for continuing a non-conforming use are defined in the section above; however, the ability to continue a non-conforming use if a tenant leaves and a similar business attempts to occupy the space is not specifically outlined. This policy document will clarify the distinction made by staff in interpreting these provisions.

The overlay district regulations intend to restrict the first floor uses to those that generate pedestrian traffic and attract visitors throughout the day and evening. The use regulations stem from goals of the Downtown Mater Plan and the desire to create a vibrant street atmosphere and downtown area. The first floor tenant spaces of older buildings including the walls, windows, doors and facilities are designed for office uses, not retail type uses. Therefore, it is easier to replace tenants with similar tenants because less investment is required to prepare the space. The transition from a non-conforming office use to a retail type use can become a significant barrier to continued occupancy of the first floor, resulting in long term vacancies that are detrimental to a vibrant street atmosphere.

Typically, uses are not allowed in districts because they are deemed incompatible with the other allowed uses and nature of the district. Office uses are permitted in the CBD Core, Downtown Core and Maryland Gateway Overlay Districts, just not as the primary first floor use. Generally, offices are not known to create the same level of pedestrian traffic and visits as retail type uses, which is the reason for restricting offices from the first floor; however, office uses are still compatible and vital to the downtown commercial area.

Determination/Clarification:

If staff determines that the proposed first floor use is the same or substantially similar to the previous non-conforming use tenant and the eight provisions listed above are met, then the proposed tenant may occupy the space. All commercial tenants are required to obtain a Commercial Occupancy Permit prior to operating. Staff evaluates proposed uses against the Zoning Regulations during review of Commercial Occupancy Permit Applications.

Author: Anna Krane
Planner

Approved: Susan M. Istenes, AICP
Director of Planning and Development Services