

36.6 Nonconforming Uses – Expansion. A planning staff decision that a proposed crematory expansion to a nonconforming mortuary use is an outright permitted use in a residential zone will be remanded, where the decision does not explain the basis for that conclusion and the city’s code appears to prohibit expansions of nonconforming uses. *Hallowell v. City of Independence*, 53 Or LUBA 165 (2006).

36.6 Nonconforming Uses – Expansion. Combining two smaller service areas on the subject property into one larger service area does not constitute an alteration or expansion of a nonconforming use, absent evidence that the combined area significantly exceeds the total geographic extent or intensity of the former separate areas. *Leach v. Lane County*, 45 Or LUBA 580 (2003).

36.6 Nonconforming Uses – Expansion. Noise from a nonconforming racetrack use is an adverse impact of that use, not part of the use itself. Reductions in noise due to technological improvements since the time the racetrack became nonconforming cannot be applied to offset increases in the intensity of racetrack operations, for purposes of verifying the scope and intensity of the nonconforming use at the time it became nonconforming. *Leach v. Lane County*, 45 Or LUBA 580 (2003).

36.6 Nonconforming Uses – Expansion. A proposal to reconstruct a 35,987 square foot fruit processing facility with a 46,856 square foot facility, with extensive new paving, driveway and septic facilities, is properly regarded as an expansion or alteration rather than replacement of the smaller facility. *Hiebenthal v. Polk County*, 41 Or LUBA 316 (2002).

36.6 Nonconforming Uses – Expansion. A finding that a proposed church expansion doubling the capacity of the church will not have greater adverse traffic impacts is inadequate, where the finding relies solely on the church’s current plan to consolidate multiple daily services into a single service, and fails to explain why concentrating traffic from multiple services will not result in greater impacts or to address the possibility that future growth in church membership associated with the expansion may require additional services. *Weaver v. Linn County*, 40 Or LUBA 203 (2001).

36.6 Nonconforming Uses – Expansion. A code standard requiring that expansion of existing structures be supported by the “same improvements” is not reasonably interpreted to allow expansion only where the original *unimproved* septic system supports the structure. The standard is more reasonably read to allow expansion supported by an upgraded septic system, as long as it is not a different septic system. *Weaver v. Linn County*, 40 Or LUBA 203 (2001).

36.6 Nonconforming Uses – Expansion. A property owner may not decrease the scope and intensity of a nonconforming use to minimal levels for 20 years, and then resume the nonconforming use at the scope and intensity that existed at the time it became nonconforming, absent evidence that fluctuations in scope and intensity are a product of seasonal or other business changes rather than a decrease in scope and intensity for other reasons that remained relatively constant for a long period of time. *Marquam Farms Corp. v. Multnomah County*, 35 Or LUBA 392 (1999).

36.6 Nonconforming Uses – Expansion. At a minimum, a county's determination of the scope and nature of a nonconforming use must be precise enough to avoid improperly limiting the right to continue that use or improperly allowing an alteration or expansion of the nonconforming use without subjecting the alteration or expansion to any standards that restrict alterations or expansions. *Spurgin v. Josephine County*, 28 Or LUBA 383 (1994).

36.6 Nonconforming Uses – Expansion. A county can establish procedures for determinations concerning nonconforming uses as part of its zoning ordinance and, if it does so, can require parties to seek a determination regarding the existence or expansion of a nonconforming use through such zoning ordinance procedures, rather than allowing such issues to be initially determined in the county's code enforcement process. *Watson v. Clackamas County*, 27 Or LUBA 164 (1994).

36.6 Nonconforming Uses – Expansion. Where a city decision includes findings suggesting the city thought it was allowing a change in a nonconforming parking lot without increasing the number of parking spaces, and those findings are not supported by substantial evidence, but the decision makes it clear that the city's basis for concluding the criteria governing changes in nonconforming uses were met did not depend on the number of parking spaces when the parking lot first became nonconforming, the decision will be affirmed. *Glisan Street Assoc., Ltd. v. City of Portland*, 25 Or LUBA 116 (1993).

36.6 Nonconforming Uses – Expansion. LUBA will defer to a local government's interpretation of its own ordinance, that expansion of a nonconforming use onto property not currently utilized by the nonconforming use is not authorized, where that interpretation is not contrary to the express words or policy of the ordinance. *Leopold v. City of Milwaukie*, 24 Or LUBA 246 (1992).

36.6 Nonconforming Uses – Expansion. Because a nonconforming use is tied to the land on which it was lawfully established, it essentially belongs to the property owner, and there is no inherent reason why a tenant, with the permission of the property owner, may not apply to the local government for permission to expand the nonconforming use. *Berteau/Aviation, Inc. v. Benton County*, 22 Or LUBA 424 (1991).

36.6 Nonconforming Uses – Expansion. Under ORS 215.130(5) and (9) and similarly worded local regulations, if a proposed alteration (including an expansion) of a nonconforming use is of a type that "reasonably continues" the nonconforming use, it may be allowed so long as it will have no greater adverse impact on the surrounding neighborhood than the existing nonconforming use. *Berteau/Aviation, Inc. v. Benton County*, 22 Or LUBA 424 (1991).

36.6 Nonconforming Uses – Expansion. Whether a proposed expansion of an existing nonconforming use would have fewer adverse impacts than uses which are permitted in the zoning district is irrelevant to determining compliance with the requirement of ORS 215.130(9) that the proposed expansion will have no greater adverse impact on the

surrounding neighborhood than the existing nonconforming use. *Berteau/Aviation, Inc. v. Benton County*, 22 Or LUBA 424 (1991).

36.6 Nonconforming Uses – Expansion. ORS 215.130(5) and (9) provide a limited authorization for counties to approve the expansion of nonconforming uses which, by definition, are contrary to provisions of county plans and land use regulations and, therefore, must be construed narrowly. *Berteau/Aviation, Inc. v. Benton County*, 22 Or LUBA 424 (1991).

36.6 Nonconforming Uses – Expansion. That a proposed alteration or expansion of a nonconforming use will increase the potential for fire and explosion constitutes a "greater adverse impact on the neighborhood" within the meaning of ORS 215.130(9). *Berteau/Aviation, Inc. v. Benton County*, 22 Or LUBA 424 (1991).

36.6 Nonconforming Uses – Expansion. Business related changes in the volume or intensity of a use generally do not constitute an impermissible change in a nonconforming use, where such changes are attributable to market growth or fluctuation in business conditions and are not accompanied by changes in the nature of the use or structural alterations. *Coonse v. Crook County*, 22 Or LUBA 138 (1991).

36.6 Nonconforming Uses – Expansion. Expansion of the lawful nonconforming park use of a four acre parcel to an adjoining 11 acre parcel not already subject to such nonconforming use does not "reasonably continue" the park use of the four acre parcel and cannot be considered an "alteration" of the existing nonconforming use. *Komning v. Grant County*, 20 Or LUBA 355 (1990).