

Nonconforming Uses

A nonconforming use is generally defined as “a land use or structure that was legal when established, but does not conform to the restrictions of the current zoning ordinance.” The term “nonconforming use” actually covers several situations, including nonconforming uses, nonconforming lots and nonconforming structures.

The pattern that is created as new areas develop and older areas redevelop means that some long-established uses simply do not meet newly adopted regulations such as setback requirements, use requirements or minimum lot sizes. Rather than require the immediate elimination of these long-established uses (which could open up the community to liability) the zoning ordinance will outline a set of conditions for the continued existence of nonconforming uses.

Landowners are given some latitude with nonconforming uses to change the original use “if the changes are not substantial and do not impact adversely on the neighborhood.” However, expansion, enlargement or intensification of nonconforming uses is strictly prohibited. Another way to think about it is that any change that increases the negative impact on surrounding properties should be prohibited. To decide if the aggravation is increased, courts examine the nature and extent of the changes to the nonconforming use and their effects on the surrounding area. The Iowa Supreme Court stated this principle quite eloquently when it said “the prohibition against expanding or enlarging a non-conforming use defends against the growth of a pre-existing aggravation. That pre-existing aggravation, the nonconforming use, survives as a matter of grace. The public is not required to expand upon that grace to its increasing aggravation.”

To prevent nonconforming uses from becoming blights, communities should allow for routine maintenance and repair.

Resumption of a use or structure after it has been “destroyed” is likewise prohibited. Zoning ordinances traditionally have set a specific threshold (often 50% of assessed value) for defining this destruction, and courts generally defer to the stated threshold. Recently some communities have been redrafting their ordinances to relax this requirement—permitting reconstruction if the structure was destroyed by an act of God and the new structure will be of the same size, area, use, etc.

Once a nonconforming use has been “abandoned,” its resumption can also be prohibited. The courts seem to make a distinction between “abandonment” (indicating no intent to resume the use) and “discontinuance” (use stopped temporarily, but with every intention of resuming), but the courts have also had considerable difficulty over the years defining the distinction. They seem to give landowners the benefit of the doubt when they eventually try to re-establish nonconforming uses after periods of nonuse. Local governments also have difficulty establishing abandonment, both in terms of timing and whether a property is being used. Most ordinances state a time period (usually six months to a year) that creates a presumption of abandonment if the property is not used for that period.

