



LAND USE NONCONFORMITIES

Frequently Asked Questions

What are nonconformities?

Nonconformities are simply any land uses, structures or lots that do not comply with the current zoning ordinance of a city.

What are legal nonconformities?

Legal nonconformities are those that were legal when the zoning ordinance or amendment was adopted, in that they complied with then existing ordinance and law. Legal nonconformities generally have a statutory right to continue. The rights of legal nonconformities are often referred to as grandfather rights.

What are illegal nonconformities?

Illegal nonconformities are those that were not permitted when established. In contrast to legal nonconformities, illegal nonconformities do not have the rights associated with legal nonconformities. Illegal nonconformities may exist because a prior zoning ordinance was not enforced as written. Failure by the city to enforce a prior zoning ordinance does not give a landowner the legal right to continue an illegal nonconformity. Before assuming a particular nonconformity is entitled to the statutory right to continue, it is important to consider whether the nonconformity ever complied with existing ordinance or law.

What are the statutory rights of legal nonconformities?

In Minnesota, any legal nonconformity generally has a statutory right to continue. Specifically, legal nonconformities may be continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion. These rights were once limited to repair and maintenance, but in 2004 the legislature afforded the rights to replacement, restoration or improvement but not expansion. For more information, see [Minn. Stat. § 462.357](#).

What about nonconformities in a floodplain area?

Legal nonconformities in floodplain areas have more limited rights. Cities may regulate the repair, replacement, maintenance, improvement or expansion of nonconforming uses and structures in floodplain areas to the extent necessary to maintain community eligibility for the National Flood Insurance Program (NFIP).

Who benefits from the nonconforming rights?

The rights of legal nonconformities attach to and benefit the land and are not limited to a particular landowner. If the benefited property is sold, the new owner will have the continuance rights.

This material is provided as general information and is not a substitute for legal advice.
Consult your attorney for advice concerning specific situations.

Can nonconforming rights be lost?

Yes, state statute provides that the right to continue a legal nonconformity can be lost if the use is discontinued or destroyed.

How can rights be lost through discontinuance?

There is an exception to continuance rights when a nonconforming use is discontinued for more than one year. Under case law, a one-year period of discontinuance creates a presumption of abandonment. A landowner can then rebut the presumption by presenting evidence of intent to continue the use, or that the discontinuance was beyond his or her control.

How can rights be lost through destruction?

There is an exception to continuance rights when a nonconforming structure is destroyed by more than 50% of its assessed market value, and no building permit is applied for within 180 days. This exception is known as the 50% rule and used to have greater impact before the 2004 legislature provided that applying for a building permit within 180 days of destruction defeats the exception.

Can legal nonconformities be phased-out?

Historically, the theory behind legal nonconformities was that the property would eventually comply with the zoning ordinance. The statutory right to continue was more limited, and cities could phase out nonconformities over time through a process called amortization. Current law prohibits amortization, except for adult uses.

What is a city's role in administering nonconformities?

The rights of legal nonconformities to continue does not depend on local ordinance, and so a city often has little role administering nonconformities. A landowner may assert their continuance rights in response to city enforcement of a zoning ordinance. The burden is on the landowner to establish their property qualifies for nonconforming rights.

What should a zoning ordinance provide for nonconformities?

Some cities choose to address nonconformities in their zoning ordinance either by merely codifying the statutory rights, or sometimes by setting up systems to register legal nonconformities. If a zoning ordinance covers nonconformities, cities should carefully review the ordinance provisions and make sure they are consistent with the current state statute.

When can a nonconforming use be expanded?

The statutory right of legal nonconformities to continue specifically provides that the right does not include expansion of the use. Because the state statute does not define expansion, some cities choose to define expansion in the city zoning ordinance. The definition could refer to any physical expansion of the nonconforming use, or even intensifying the use.

What about violations of other city ordinances?

Despite their right to continue without complying with the current zoning ordinance, it is important to keep in mind that all legal nonconformities must generally comply with all other city ordinances, such as a nuisance ordinance or a licensing ordinance.