



QUESTIONS CONCERNING NONCONFORMING USES

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[CGS § 8-2\(a\)](#)

...[Zoning] regulations shall not prohibit the continuance of any nonconforming use, building or structure existing at the time of the adoption of such regulations. Such regulations shall not provide for the termination of any nonconforming use solely as a result of nonuse for a specified period of time without regard to the intent of the property owner to maintain that use...

ISSUE

This report answers several questions on nonconforming uses.

The Office of Legislative Research is not authorized to issue legal opinions, and this report should not be considered one.

What is a nonconforming use?

A nonconforming use is a property use that legally exists at the time a zoning restriction prohibiting or limiting it is adopted. The term also generally applies to lots and structures that do not comply with zoning regulations.

For example, if a municipality adopts zoning regulations that permit only dwellings and schools in a particular zone, a restaurant that operates in that zone would become a nonconforming use. Similarly, if a municipality adopts setback requirements that require at least 40 feet between a house and the road, an existing house that is 15 feet from the road would become a nonconforming use.

Additionally, under [CGS § 8-13a](#), if a building or structure is situated on a lot in violation of lot area or boundary distance requirements, it becomes a protected nonconforming use if no enforcement action is taken within three years of its construction.



Does Connecticut law protect nonconforming uses?

Yes, the law specifies that municipal zoning regulations may not prohibit the continuance of a nonconforming use that was legal when the regulations were adopted or amended. It also prohibits municipalities from placing a time limit on the continuation of a nonconforming use. This means that municipalities cannot require nonconforming uses to terminate after an “amortization period,” during which property owners have an opportunity to recoup their investment ([CGS § 8-2](#), see sidebar for text; 9B Conn. Prac., Land Use Law & Prac. § 52.2).

In Connecticut, can municipalities regulate nonconforming uses?

Yes, municipalities may regulate a nonconforming use as long as they do not unreasonably interfere with the right to continue the use. They may prohibit (1) the expansion of a nonconforming use and (2) reestablishment of a nonconforming use after it is abandoned (9B Conn. Prac., Land Use Law & Prac. §§ 52.1, 52.3 & 52.5; see also *Taylor v. Wallingford Zoning Board of Appeals (ZBA)*, 65 Conn.App. 687 (2001)).

Additionally, municipalities may terminate a nonconforming use pursuant to their police powers when the use “directly imperils the public health or safety” (62 Am. Jur. Trials 1 (§ 28)).

Are Connecticut and Kansas the only states in which the right to continue a nonconforming use is not extinguished when the subject property is sold?

No. Nationally, the general rule is that the right to continue a nonconforming use “runs with the land.” When something runs with the land it means the benefit or burden is tied to the property; changes in ownership do not affect the benefit or burden. The right to continue a nonconforming use is transferred regardless of whether a prospective purchaser is aware of a property’s nonconforming use status (83 Am. Jur. 2d Zoning and Planning § 555; 8A McQuillin Mun. Corp. § 25:188).

In Connecticut, when is a nonconforming use considered abandoned (i.e., discontinued)?

Municipalities can prohibit property owners from reestablishing a previously abandoned nonconforming use, but passage of time alone does not constitute abandonment ([CGS § 8-2](#)). Instead, a municipality must look to the property owner’s intent (not a tenant’s). To abandon a nonconforming use, a property owner must voluntarily terminate the use with intent not to reestablish it. When a previous owner abandons a nonconforming use, a subsequent owner does not have a right to reestablish it (9B Conn. Prac., Land Use Law & Prac. § 52.5; *Caserta v. Milford ZBA*, 41 Conn. App. 77 (1996)).

Can a property become a nonconforming use when a municipality amends its zoning regulations to decrease the number of unrelated individuals who may live together in a single-family dwelling?

Yes. Any change to zoning regulations that prohibits a previously legal use can produce a nonconforming use. Thus, if a single-family dwelling is home to six unrelated individuals, but a regulation decreases the permitted number of unrelated individuals living together from six to four, the dwelling becomes a nonconforming use.

What was the holding in *Petruzzi v. Oxford ZBA*, 176 Conn. 479 (1979)?

Facts and Issue. In *Petruzzi*, the court had to determine whether the ZBA properly denied a building permit to property owners converting a pre-1948 building from a church to a dwelling. Although both uses were permitted in the zone in which the property existed, the municipal building official denied the application on the grounds that the building and lot did not conform to zoning regulations adopted in 1948 and subsequently amended (e.g., the building did not conform to setback requirements established in 1948).

The ZBA upheld the decision on the grounds that the property owners knew the building and lot were nonconforming when they purchased it with the purpose of converting it from a church to a dwelling. The trial court affirmed the ZBA's decision and further noted that the municipality's regulations prohibit substituting one nonconforming use for another.

Holding. The Connecticut Supreme Court reversed the lower court, holding that the law required the official to grant the permit because the (1) building and lot were protected nonconforming uses and (2) regulations permitted both the current and proposed use of the building. With regard to the former, the court noted that the zoning regulations specified that properties existing at the time of adoption (1948) would be grandfathered into the zoning scheme. According to the regulations, nonconforming uses were protected from orders of removal, alteration, or abandonment. With regard to the latter, the court held that the regulations did not prohibit switching between permitted uses on a legally nonconforming property; the official's only responsibility was to determine if the regulations permitted the proposed use (a dwelling).

The court concluded its opinion by summarizing the general state of the law: (1) state statute explicitly protects nonconforming uses and (2) the right to continue a nonconforming use runs with the land.

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