



Nonconformities and MRCCA Rules: What You Need to Know

Nonconforming properties are common.

Nonconformities are relatively commonplace, but the concept may not be completely understood. Most medium to larger communities have many nonconforming properties. When zoning standards change, any lawfully established lot, structure, or use that does not conform to the new standards becomes legally nonconforming. Cities routinely update their zoning standards, creating nonconforming properties. Legal nonconformities are different from “illegal nonconformities,” or violations of the zoning code. These occur when people make changes to the use or to the property that violate the zoning code in effect at the time.

Legal nonconformities and “grandfathered” rights are the same thing.

To be a legal nonconformity or to be “grandfathered,” the lot, structure, or use must have been legally established before the effective date of the ordinance change that prohibits it.

Minnesota law protects the rights of owners of nonconforming properties.

Minnesota Statute ([MS §462.357, Subd. 1e](#)) states that nonconformities may be continued, including through repair, replacement, restoration, maintenance, or improvement. The law also allows local governments to permit the expansion of nonconformities. In general, local governments may only require compliance with current zoning standards for a structure that is abandoned for more than 12 months or destroyed beyond 50% of its market value, if a permit to rebuild it has not been applied for within 180 days. When local governments update their zoning ordinances consistent with the MRCCA rules, these protections for property owners will remain in effect.

There are many types of legal nonconformities, including:

1. **Nonconforming lots of record.** These lots were legal when they were subdivided but do not meet the current requirements for area, width, depth, access, or other requirements.
2. **Nonconforming structures.** These are buildings that met the standards at the time they were constructed, but now encroach into the current setback standards (such as from the water, bluff, or property lines) or exceed the current height or area limitations.
3. **Nonconforming characteristics of use.** This catch-all category covers nonconformities to the parking, landscaping, signage or other requirements. Site characteristic nonconformities are very common because standards (landscaping, lighting, parking, trash, sidewalks) are constantly evolving.
4. **Nonconforming uses of land.** A use becomes nonconforming when a new zoning district is applied to a property that does not allow a use that was legally established under the previous zoning district. Nonconforming uses of land are rare.

The proposed MRCCA rules will have a modest impact on nonconformities.

Many nonconformities already exist under current local MRCCA ordinances. The proposed rules and any ordinance changes implementing the rules will both create and eliminate nonconformities. The



proposed rules do not regulate lot sizes or the width of existing lots, so they will not create nonconforming lots of record.

The rules also do not prohibit any land uses, so they will not create any nonconforming uses.

The proposed rules may create nonconforming structures in some locations due to an increase in the setback requirements from the water and bluffs; however, the DNR has worked closely with communities to minimize the creation of new nonconforming structures. In some locations, existing nonconforming structures will actually become conforming due to a reduction in setback requirements and the elimination of minimum lot sizes in some districts.

Some expansion of nonconforming structures may be allowed by local governments.

Nonconformities are regulated by local governments consistent with state statutes. Many local governments in the MRCCA already allow limited expansion of nonconforming structures, and the proposed rules will retain their ability to do so. The proposed rules state: *“Local governments may choose to allow lateral expansion of legally nonconforming principal structures that do not meet the setback requirements in part 6106.0120, provided that such expansion does not extend into the shore impact or bluff impact zones or further into setbacks required by these MRCCA rules.”*

Nonconformities rarely affect the sale of property.

There are no known instances where lenders have refused to finance a mortgage for a property that is a nonconforming lot of record, or has a legal nonconforming (or “grandfathered”) structure or nonconforming characteristic of use. Lenders may have some concerns with illegal nonconformities (in violation of the local ordinance) or with properties that are nonconforming uses of land. State law allows cities to require that the property come into conformance with the current zoning district if a property is abandoned for more than 12 months or it is destroyed by more than 50% and a building permit is not obtained within 180 days. (Different requirements apply in floodplains – see below.)

Many local planning and zoning staff in the MRCCA noted that in most cases when a lender contacts them about a nonconformity, they simply want verification of whether it is legal and can be rebuilt if destroyed.

If my property has nonconforming characteristics, such as a cleared shore impact zone, how will that affect me?

Under state law and under the proposed rules, your site may remain as it is. However, any future vegetation clearing would have to comply with the local ordinance. A single nonconforming feature of a property does not mean that the entire property is “nonconforming.”

What about nonconformities in a floodplain area?

Legal nonconformities in floodplain areas have more limited rights because federal rules for flood insurance are more stringent than state law. Local governments must meet federal standards affecting nonconforming uses and structures in floodplain areas in order to maintain community eligibility for the National Flood Insurance Program (NFIP).

Resources for Further Information

The following websites offer good information on nonconformities:

- [City of St. Paul Park](#)
- League of Minnesota Cities [Resource Library](#): (type in keyword “nonconformities”)

