

Nonconformity Frequently Asked Questions

1. What is a Nonconformity? A Nonconformity is a situation where a use, structure, lot dimension, or site improvement that was lawfully established previously does not conform to the City's current zoning standards. The Zoning Ordinance (Chapter 29 of the Ames Municipal Code) includes definitions for each situation and standards that attempt to balance allowing for property owners to continue using their property within reasonable limits and ensuring compatibility with the intended zoning standards.

A more in-depth explanation of the types of nonconformities and standards that apply to each type of nonconformity is included within **Section. 29.307. NONCONFORMITIES** of the Ames Municipal Code.

2. Am I allowed to continue my Nonconforming Use? (Section 29.307.1 and 29.307.2)

A nonconforming use is allowed to continue as long as it remains otherwise lawful and in accordance with the requirements of the Nonconformities section of the Zoning Ordinance. The use may continue upon sale or transfer of the property or business to another owner. If the use ends, changes, or is abandoned and the property is used for a more conforming use then the Nonconformity cannot be reestablished. If the use is abandoned for one year it may not be reestablished; however, an owner can appeal to the Zoning Board of Adjustment to demonstrate the use has not been abandoned.

3. Am I allowed to expand my Nonconforming Use? (Section 29.307.2(a))

In most situations the nonconforming use cannot be expanded. The nonconforming use cannot increase in intensity, but under certain conditions it may be modified. A nonconforming use may not be increased in intensity and may not be enlarged, expanded or extended to occupy parts of another structure or portions of a lot that it did not occupy on the effective date of this Ordinance, unless the expansion is approved by a Special Use Permit and the expansion meets all standards of the Zoning Ordinance. Any expansion is limited to an increase of 125% of the floor area.

4. Am I allowed to change to another Nonconforming Use? (Section 29.307.2(b))

A nonconforming use may be changed to another use in the same category of use with the approval of a Special Use Permit. For example, a Trade Use may be approved to change from retail to an entertainment use with approval of a Special Use Permit and conformance to the relevant standards of the Zoning Ordinance for the proposed new use.

5. Am I allowed to expand my Nonconforming Structure? (Section 29.307.3 (d))

Yes, if the structure includes a conforming use and the expansion meets the requirements of the Zoning Ordinance. For example, an addition to a structure for a conforming use would need to meet standards such as setbacks, lot coverage, floor area ratio (minimum and maximum), height (minimum and maximum), quantity of parking spaces, and open space and landscape requirements. The existing nonconforming elements of a structure would not need to be brought into conformance with the addition.

6. Am I allowed to remodel my existing Nonconforming Structure? (Section 29.301.3(b))

Yes, maintenance, remodeling and repair of a nonconforming structure shall be permitted without a variance or a Special Use Permit, provided that such maintenance, remodeling or repair does not increase the degree of nonconformity. In some situations remodeling allows for partial demolition and reconstruction of a structure, for example removing a front façade to install a new storefront window and entry.

7. Am I allowed to rebuild if my building is damaged by a fire or other natural causes? (Section 29.301.3(c))

Yes, a structure may be rebuilt without conforming to the current standards if the damage to the overall structure is less than 70% of its assessed value. Construction must be complete within 18 months from the time of the damage.

Additionally, a structure that is damaged in excess of 70% of its assessed value may be rebuilt if a Special Use Permit is approved by the Zoning Board of Adjustment and that the proposed restoration conforms to the fullest extent possible with the current zoning standards.

8. Am I allowed to reconstruct my parking lot and replace landscaping without complying with zoning? (Section 29.301.5)

Site improvements are categorized as “Other Nonconformities” and distinguished from Nonconforming Uses and Nonconforming Structures, even though they are often related to the other situations. Other Nonconformities are required to be improved as practicable based upon the scope of a project. For example, if a parking lot is reconstructed it must either comply with the current zoning standards for dimensions, landscaping, etc. or, if there is a lack of space to meet all the standards, the project must remedy as many of the nonconformities as can be accomplished without causing a new nonconformity.

10. What does the term Pre-existing Use mean compared to Nonconforming Use?

The term Pre-existing distinguishes a use from Nonconforming by allowing for a continuously operated Pre-existing use to continue its operations and have no predefined limitations on the expansion or other modifications of the use, other than complying with zoning development standards. Pre-existing also prohibits establishment of any new uses of that type. A Pre-existing designation is subject to a 12 month discontinued use standard similar to the 12-month abandoned use nonconforming standard. There is no allowance to change to another Pre-existing use as is permissible for certain nonconforming uses.