

Non-Conforming Uses, Buildings, and Sites

The Planning and Development Act, 2007

2024

Introduction

This guide is intended to explain the implications of legal, non-conforming status under *The Planning and Development Act, 2007* (Act). Municipalities and property owners may find this information valuable for assessing existing development which no longer conforms to local zoning bylaws. This guide summarizes the provisions of sections 88-93 of the Act.

What is a Non-Conforming Use, Building, or Site?

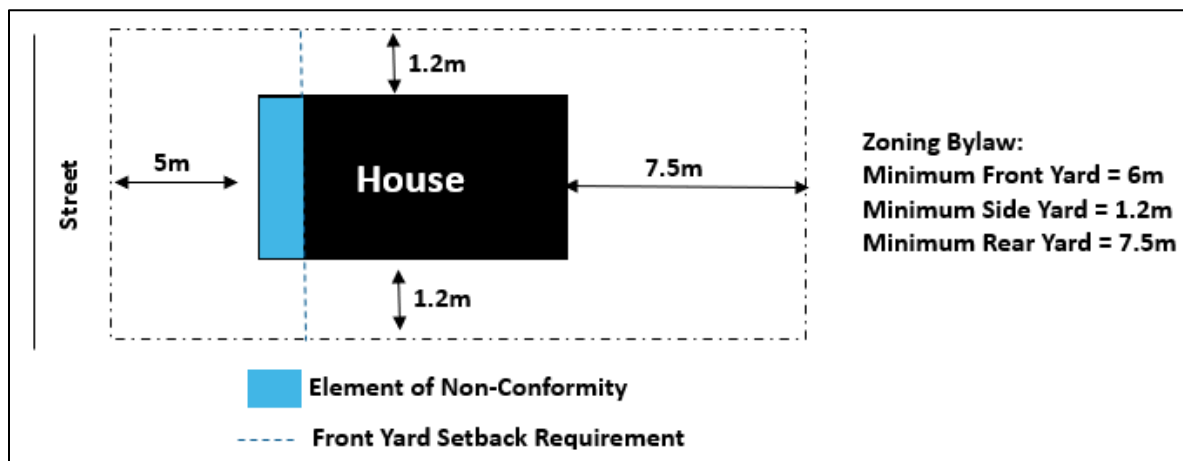
A use, building, or site becomes non-conforming and is offered legal protections under the Act when changes are made to the zoning bylaw. If a use, building, or site conformed to the zoning bylaw in effect at the time of development, it may continue to exist in its current form even if, over time, it no longer meets zoning requirements due to bylaw changes.

The Element of Non-Conformity

Non-conforming uses, buildings, or sites are created when either a zoning bylaw is amended to impact the development or a new zoning bylaw is adopted. Non-conformity may occur in situations such as:

- If a land use is removed from a zoning district, any existing uses of that type in the zone will become non-conforming.
- If a municipality decides to alter a minimum site standard by amending the zoning bylaw, any site not meeting those standards will become non-conforming.
- If a municipality changes the minimum standards for a building by amending the zoning bylaw, any building that does not conform to the new standards will be non-conforming.

The element of non-conformity is the aspect of the use, site, or building that no longer meets the current zoning requirements. For example, if a municipality changes their zoning bylaw standards to require a minimum front yard setback of six (6) metres, any building legally constructed at less than six metres from the front property line will gain non-conforming status. The element of non-conformity is any portion of the building which extends beyond the new required front yard setback. While the entirety of the building may be referred to as a non-conforming building, the element causing the non-conformity is only a portion of the building. The element of non-conformity is shown in the diagram below:



Non-Conforming Uses

Legal, non-conforming uses are land uses which were allowed at the time they were established, but recent changes to a zoning bylaw or adoption of a new zoning bylaw no longer allow the new establishment of the same type of land use. Under Section 89 of the Act, a non-conforming use may be continued if it has not been discontinued for a period of more than 12 consecutive months. This is often referred to as “existing non-conforming” as the use is existing but non-conforming to the current zoning bylaw. The element of non-conformity in the case of a non-conforming use is the land use itself. For example, a former zoning bylaw may have permitted gas stations in the country residential zoning district, but a newly adopted zoning bylaw no longer allows them. All existing gas stations which received permits under the former zoning bylaw become legal non-conforming uses. The gas stations can continue to operate indefinitely if they do not stop operation for longer than 12 consecutive months.

Changes to a Non-Conforming Use

The protections under the Act that allow non-conforming land use to continue are tied to the intensity of the use on the property. Intensity of use refers to the elements of the operation which contribute to the scale and impact on adjacent land uses. This is often measured differently depending on the land use. For example, the intensity or scale of a daycare may be tied to the number of children in its care at one time. Intensity of use should be measured using factors which affect the use’s impact on the community. Factors that generate noise, traffic, or require higher levels of servicing are often looked at when determining the intensity of a use.

Under section 90 of the Act, a non-conforming use must not be increased in intensity, area, or volume within a building or on the parcel it occupies. A non-conforming use also must not be:

- Relocated within a building.
- Moved to a different building on the parcel.
- Moved to another portion of the parcel where the use is situated.

For example, if an auto repair shop was approved in one bay of a multi-use commercial property, the operation would be limited to the bay it was approved for if the use was no longer allowed in the zoning district. The repair shop could not move to another building on the property or expand to operate in other spaces.

Non-Conforming Buildings

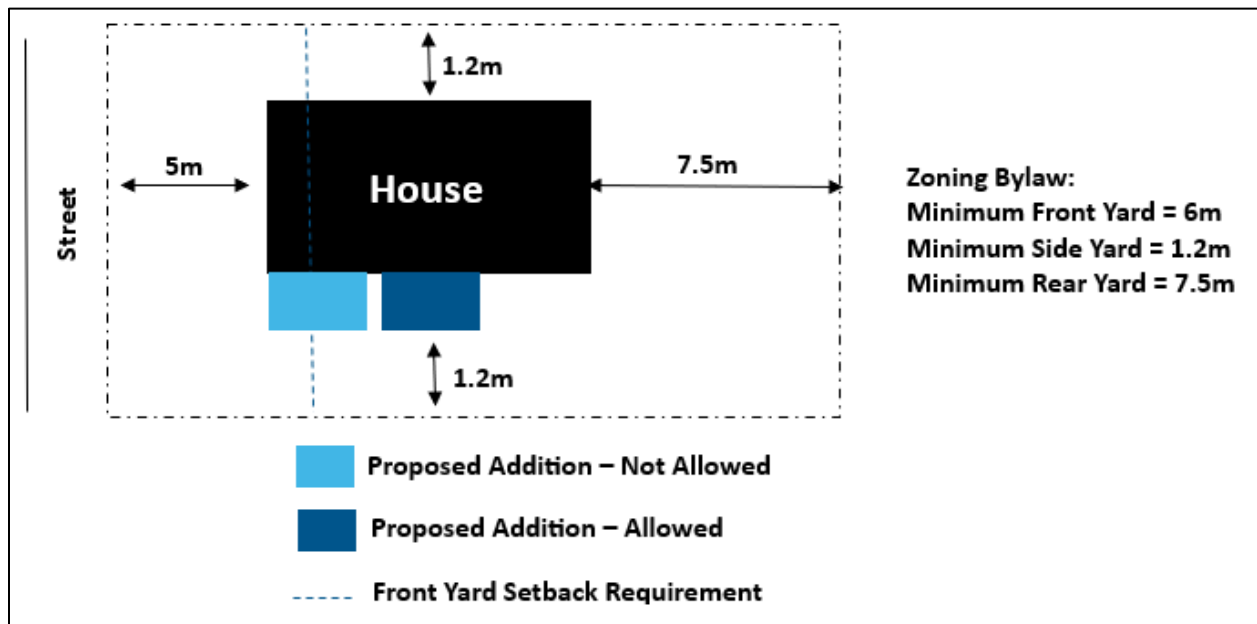
Zoning bylaws frequently contain development standards which seek to influence the location of buildings on a property to achieve different outcomes. Development standards affecting buildings commonly include setback distances from a property line, minimum or maximum floor areas, or maximum building height. The non-conformity of buildings is often linked to a building’s location on a site. Non-conforming buildings which met development standards in effect at the time they were constructed, but new or changed development standards have caused the building to no longer conform.

Structural Repairs, Alterations, and Additions

Non-conforming buildings may continue to be used, and structural repairs, alterations, and additions can be made to them under two conditions:

1. The proposed repair, alteration or addition must conform to the current zoning bylaw requirements.
2. The element of non-conformity must not be increased by any work undertaken to the building.

In the example below, a side yard addition is proposed for a non-conforming building. The light blue addition would not comply with the current setback requirement of 6 metres. The dark blue addition could be approved since it meets all requirements of the current zoning bylaw. However, the zoning bylaw can clarify these instances to allow for the light blue addition.



Damage to Buildings

Under section 92 of the Act, if the extent of damage to a non-conforming building is such that the cost of repair is more than 75 per cent of the construction cost to replace the building above its foundation, the building cannot be repaired or rebuilt in a non-conforming manner. It must be rebuilt to conform with the current zoning bylaw.

Change of Occupancy

Section 93 of the Act states that the non-conforming status of a building or site runs with the land. A change in ownership, tenancy, or occupancy does not impact the non-conforming status, which can remain in a non-conforming state indefinitely.

Non-Conforming Sites

Non-conforming sites are parcels that were created using the standards of a previous zoning bylaw that has since been amended to the effect that the existing sites no longer meet minimum standards. For example, an older area may contain several sites with a 10-metre frontage. These sites may have been created before the municipality had a bylaw to regulate site frontage. The municipality has recently adopted a new zoning bylaw, which requires a minimum frontage of 15 metres in the area. The group of sites has now become legal, non-conforming upon adoption of the new minimum standard.

The sites can continue to be used in their current form due to the protections provided under the Act. Any future subdivision of non-conforming sites must meet the current zoning bylaw requirements.

Legal Non-Conforming vs. Non-Compliant

Legal Non-Conforming

Legal non-conforming status is applied to uses, buildings, and sites that met any bylaw requirements at the time they were established but, due to changes to a municipal zoning bylaw, no longer conform. The purpose of providing these legal protections is to recognize that the element of non-conformity did at one time comply with requirements. Non-conforming status under the Act allows continuation of the non-conformity and prevents municipal enforcement of bylaws retroactively. The property owner is responsible for proving whether a use, building, or site complied with requirements when it was established and, therefore, whether the protections under the Act would apply.

Non-Compliant

Non-compliant development differs from non-conforming in that it never met the municipal regulations when it was established. Non-compliant development has always been a contravention of municipal bylaws. If there is no evidence that a use, building, or site was established under the permissions of the municipal zoning bylaw in effect at the time of establishment, it may be considered non-compliant. Non-compliant development may be subject to enforcement by the municipality under Section 242 of the Act.

For example, a property owner may have established a land use without approval from the municipality even though the zoning bylaw required permits at the time. This would not qualify as a legal, non-conforming use since a permit was required and was not issued. The municipality can pursue enforcement at any time under Section 242 of the Act. This section also applies to development which encroaches on adjacent properties or roadways. Protections for non-conforming development do not apply to development constructed beyond the property lines onto other properties.

More Information

For more information on non-conforming uses, buildings, and sites, please contact the Ministry of Government Relations' Community Planning Branch via email at communityplanning@gov.sk.ca or:

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