Nonconforming Uses in Illinois

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ZONING ORDINANCES have existed in the United States for four decades. They are recognized as a proper exercise of the police power, and are sustained as constitutional if fair and reasonable. Illinois municipalities have, in many instances, adopted comprehensive master plans to aid in city planning. Pursuant to these plans, detailed zoning maps have usually been prepared describing the use which can be made of land in particular areas of the municipality. The word "use" in connection with zoning may refer to any possible use of land including the erection of a building thereon, the business carried on in the building, as well as excavations from the land.

The object of zoning classification is to put land to the use to which it is best suited. The classification is determined, usually, by the prevailing use, for zoning attempts to preserve the character of a neighborhood. For example, if an area is dotted with commercial buildings, the land will probably be zoned for commercial uses. Likewise, if an area is predominantly residential, the land will probably be zoned for residential use only. The establishment of mutually exclusive zoning districts, that is, districts which are restricted to one use and one use only, insures a compatible and desirable environment.

At the time of the enactment of a zoning ordinance, however, there may be a use of land within the affected area which does not conform to the newly enacted ordinance. For example, there may be a retail store in an area zoned residential or a single-family dwelling in an area zoned commercial. These uses, although proper before the enactment of the zoning ordinance, then become "non-
Conforming uses." Continuance of these nonconforming uses must be permitted although they no longer conform to a new classification. However, many restrictions are placed on such nonconforming uses of land.

This article will study and analyze pertinent Illinois court decisions to see how zoning regulations which apply to nonconforming uses have been construed. Attention will also be focused on the effect which abandonment, change, alteration, and expansion of nonconforming uses have on their ultimate elimination.

Nonconforming Use as a Property Right

Zoning ordinances, when first enacted in Illinois, made no provision for nonconforming uses. The court, however, soon recognized that a nonconforming use was a property right which must be protected. Historically, the first case was *Western Theological Seminary v. City of Evanston*, where the Illinois Supreme Court refused to retroactively apply a zoning ordinance and eliminate a nonconforming use immediately. The appellant, Western Theological Seminary, had planned to erect college buildings, including a library, on property it had leased for that purpose. It had expended over $150,000 for its leasehold and had raised $400,000 in funds. The zoning ordinance in effect at the time the land had been leased permitted colleges, schools and libraries. Later, the city amended the ordinance and eliminated the words “libraries, schools and colleges.” The appellant then sought to enjoin the city from enforcing the amended ordinance as to its land. The Illinois Supreme Court, in this case of first impression, reversed the lower court's decision. Speaking in unequivocal language, the court said:

Neither the city council nor the legislature is authorized, under the power of the Constitution, to take away or limit the appellant's right to make any use of the property which was lawful at the time it acquired it, except in such ways as may be necessary for the public health, comfort, safety or welfare. So far as the property which the appellant acquired relying on the validity of the ordinance, permitting its use for schools and colleges is concerned, the amendment, by depriving it of the right to make such use—which is the

5 325 Ill. 511, 156 N.E. 778 (1927).
NONCONFORMING USES IN ILLINOIS

destruction of the only property it acquired—is unreasonable and arbitrary.\(^6\)

The court determined, therefore, that under the guise of zoning, a municipality could not abolish a nonconforming use immediately.\(^7\) The reasoning generally given behind this doctrine as stated in the *Western Theological Seminary* case is that it would be a taking of property without due process of law if an owner of property were prevented from continuing his nonconforming use.

Today, there is a state enabling statute which requires that municipalities must provide for nonconforming uses in all zoning ordinances.\(^8\) The following is an example of a provision concerning nonconforming uses in a Chicago ordinance passed under this enabling statute.

Any nonconforming use, building or structure which existed lawfully at the time of the adoption of this comprehensive amendment and which remains nonconforming, and any such use, building or structure which shall become nonconforming upon the adoption of this comprehensive amendment or of any subsequent amendments thereto, may be continued, some for specified and respective periods of time, subject to the regulations which follow.\(^9\)

**Existence as a Requirement**

In order to establish a right to a nonconforming use, the use must have been in existence at the time the ordinance became effective. In *People ex rel. Delgado v. Morris*,\(^10\) a landowner in Highland Park attempted to modify a structure so as to increase the number of apartments available for rent. A building permit had been issued for less intensive remodeling and when the true intentions of the owner were discovered by the Highland Park authorities, the permit was revoked. In reply to an action to compel the issuance of the building permit, the village contended *inter alia* that the

\(^6\) *Id.* at 523, 156 N.E. at 783. See note 20 *infra*, for a discussion on the exception to the rule that a nonconforming use must be in existence to qualify.

\(^7\) The idea that the right to a nonconforming use is a property right has been reiterated in many subsequent cases. See, e.g., *Douglas v. Village of Melrose Park*, 389 Ill. 98, 58 N.E.2d 864 (1945); *Schneider v. Board of Appeals of City of Ottawa*, 402 Ill. 536, 84 N.E.2d 428 (1949); *Village of Oak Park v. Gordon*, 82 Ill. 2d 295, 205 N.E.2d 464 (1965).

\(^8\) Ill. Rev. Stat. ch. 24, § 11-13-1 (1965). See note 16 *infra* as to the protection given to nonconforming uses. See note 30 *infra* as to the provisions providing for the elimination of nonconforming uses.


building was in violation of a 1922 zoning ordinance and a later amendment thereto in 1942, inasmuch as the ordinance restricted the area to single-family residences.

The Second District Appellate Court, in overruling this contention, said that the evidence showed that the building was used as an apartment building from 1917 up to the enactment of the ordinance. The court held that the nonconforming use was therefore in existence prior to and at the time of enactment of the ordinance and that the land owner was entitled to continue such use notwithstanding the ordinance. 1

In the same vein, the Illinois courts have held that where the owner of property, because of the circumstances, is able to use only part of his land at one time, the entire area will be protected as a nonconforming use. 12 If an owner is excavating, he cannot remove all the minerals at once and part of the land may remain unused at the time the zoning becomes effective. Nevertheless, for the purpose of determining whether a nonconforming use is in existence, all of the land is said to be an actual use, thereby exempting the entire area from the subsequent zoning. 13

It would appear that the courts are quite liberal in finding that a nonconforming use is in existence at the time that the new zoning becomes effective. The decisions are reasonable, and a contrary policy would be unjust since it would be unreasonable to require the property owner to shut down his already existing business and move to a new location.

The use, in order to be protected, must be the same both before and after the ordinance is made effective. In Price v. Ackmann, 14 the court found the use was not the same. There, the defendants erected a 10' x 10' building in 1915 and used it in their business as carpenters and contractors. After the 1928 city ordinance classifying the area as residential was passed, the defendants

11 See the following cases where it was held that a nonconforming use was in existence: City of Chicago v. Reuter Bros. Iron Works, 398 Ill. 202, 75 N.E.2d 355 (1947); Price v. Ackmann, 345 Ill. App. 1, 102 N.E.2d 194 (2d Dist. 1951); Sebath v. City of Chicago, 56 Ill. App. 2d 307, 206 N.E.2d 286 (1st Dist. 1965).


14 345 Ill. App. 1, 102 N.E.2d 194 (2d Dist. 1951).
erected a new building, 50' x 50'. They installed a heavy pole to support electrical wires, put in new machinery and began to use a neighboring tract of land. The court held that the character of the building had so drastically changed that the defendants could not claim a nonconforming use. On the other hand, in Goldman v. Chicago, the court found the use to be the same. There, the land was first used as a storage warehouse, and later as a terminal for the loading and unloading of electrical appliances. The use was held to be essentially the same as the use before rezoning, thus qualifying as a nonconforming use.

The courts have also aided the property owner by liberally interpreting the language of the state statute which provides for nonconforming uses. In Village of Skokie v. Almendinger, the defendants claimed a nonconforming use although, at the time the zoning ordinance became effective, title to one of the three lots was in another party. The defendants operated a trailer camp on three lots, two of which they owned an one of which they apparently rented. They were clearly entitled to a nonconforming use as to the two lots they owned, but a question arose as to whether they were entitled to a nonconforming use as to the third lot which they rented. The Appellate Court quoted from the state statute which provided that in all ordinances passed pursuant thereto "... due allowance shall be made for existing conditions... The powers conferred by this article shall not be exercised so as to deprive the owner of any existing property of its use or maintenance for the purpose to which it is then lawfully devoted..." The court held that since all three lots were used as a trailer camp at the time the ordinance was passed, "... and in giving the statute the liberal construction evidently indicated, the question of title is not of paramount importance."

Although the right to a nonconforming use is dependent upon its existence prior to the effective date of the ordinance, exceptions are made where the property owner, relying on the existing ordinance, has expended large sums of money and has made a sub-

15 351 Ill. App. 2d 522, 113 N.E.2d 480 (2d Dist. 1953) (Abstr.).
17 Id. at 526, 126 N.E.2d at 423.
18 Id. at 527, 126 N.E.2d at 424.
stantial change. The owner would suffer irreparable harm if not allowed to complete his building.\textsuperscript{19} Hence, it has been held that an owner can finish a building, enjoying, then, the use for which the building was constructed. He would be entitled to a legal nonconforming use if he has made a substantial change in position.\textsuperscript{20}

The question that must be decided is how "substantial" must the reliance be in order to qualify for a nonconforming use. In\textit{ Deer Park Civic Ass'n v. City of Chicago},\textsuperscript{21} this issue was first discussed. There, the defendants, relying on a zoning ordinance, secured a permit to build a plant. They spent $41,000 for the property, made contracts, and incurred liabilities in excess of $500,000. This was held to be a substantial change, entitling the defendants to a nonconforming use.

Although the courts do not state what dollar amounts constitute a substantial change, the decisions seem to indicate that the party must have invested thousands of dollars, as well as performed other acts, such as making contracts, in order to secure a nonconforming use.\textsuperscript{22} The apparent reason for this ruling is that after spending large sums of money and incurring the liability of contracts, it would be grossly unjust to deprive the land owner of his lawful, intended use. The damage he has suffered is not outweighed by the benefit to the community at large. A contrary holding would constitute a taking of the individual's property without due process of law.

\textsuperscript{20} Ibid. See Western Theological Seminary v. City of Evanston, 325 Ill. 511, 156 N.E. 778 (1927), where the court may have been persuaded by the large sums there expended.
\textsuperscript{22} In Segro v. Howarth, 54 Ill. App. 2d 1, 203 N.E.2d 173 (4th Dist. 1964), the party spent $23,000 for the property, paid fees and filed detailed plans and specifications. This was substantial; in Illinois Masons Contractors Inc. v. City of Wheaton, 19 Ill. 2d 462, 167 N.E.2d 216 (1960), expenditures of $6500 for materials, securing a loan of $50,000 and making contracts totalling over $130,000 was substantial; in Cos Corp. v. City of Evanston, 27 Ill. 2d 570, 190 N.E.2d 364 (1963), expenditures of $47,000 for the property and adjoining property cost $189,000 were made as well as $90,000 for architect's fees and $10,000 in legal or organizational fees. This was substantial. In People ex rel Skokie Town House Builders v. Village of Morton Grove, 16 Ill. 2d 183, 157 N.E.2d 33 (1959), the party spent money for plans and commitments for mortgage loans as well as $1630 for permits and $200 as a deposit for sidewalks. The party also entered into an oral construction contract for $195,000. The expenditure of the $1830 was admitted, although whether there was such an oral contract was not admitted. This was held to be a substantial change although it seems that the court considered the $195,000 contract in reaching its decision.
The rule should be expanded so that the mere expenditure of money in reliance upon the ordinance is held to be a substantial change entitling the property owner to complete the nonconforming use. Consider the case of People ex rel. Nat'l Bank of Austin v. County of Cook. There the court found that the plaintiff showed only an expense of $1600 for employees' salaries. The employees had worked on plans to build several apartments on the plaintiff's land. This land was then zoned residential. Such reliance was held not to be substantial. Nevertheless, it seems that the plaintiff's loss was substantial in comparison to the public good. Certainly the land cost more zoned for apartments than if it had been originally zoned residential. Also, the owner lost part of his investment, since he was only allowed to erect single family residences. Although it is desirable to eliminate nonconforming uses, such "elimination" can be more rapidly accomplished by preventing the expansion of nonconforming uses, rather than by cutting them off after there has been reliance.

Although the property owner can finish his nonconforming use if he has made a substantial change, the courts will not make another exception and entitle him to a nonconforming use if his previous use violated the existing ordinance. In one case, a county ordinance prohibited the dumping of garbage within a distance of one mile of the corporate limits of any city. The defendant operated a garbage dump within one mile of the municipality of Chicago Heights before a subsequent zoning ordinance was passed. Defendant was not entitled to a nonconforming use because "an illegal use cannot be a nonconforming use," and it gives rise to no rights at all.

The Illinois courts recognize that the nonconforming use is like a covenant running with the land, i.e., even though the owner buys the land after an ordinance is passed changing the use,

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25 Id. at 129, 153 N.E.2d at 279.
26 See also Eggert v. Board of Appeals of City of Chicago, 29 Ill. 2d 591, 195 N.E.2d 164 (1963). In Village of Skokie v. Almendinger, 5 Ill. App. 2d 522, 126 N.E.2d 421 (1st Dist. 1955), defendants were held to be entitled to a legal nonconforming use although they did not have title; at first, and were actually trespassers. Nevertheless, their nonconforming use was a permitted use at the time they used the land.
the owner stands in the place of his grantor and has the same rights.\textsuperscript{27}

It can be said, therefore, that the Illinois courts do not hesitate in finding an existing noncomforming use. The property owner's right to a nonconforming use seems to be paramount to the interest of the public at large. Certainly the property owner's right should be paramount for he improved his property lawfully, relying on an existing ordinance. Such a right, being a property right, must be protected.

\textbf{Elimination of Nonconforming Uses}

A nonconforming use, once established, is protected from immediate abrogation. As pointed out before, it is desirable to eliminate these uses; the general way to eliminate them is to "... prevent any increase in the nonconformity and, when changes in the premises are contemplated by the owner, to compel so far as is expedient a lessening or complete suppression of the nonconformity."\textsuperscript{28}

An Illinois enabling statute provides for the elimination of nonconforming uses:

\ldots \textit{[P]rovisions may be made for the gradual elimination of uses, buildings and structures which are incompatible with the character of the districts in which they are made or located, including, without being limited thereto, provisions (a) for the elimination of such uses for unimproved lands or lot areas when the existing rights of the persons in possession thereof are terminated\textsuperscript{29} or when the uses to which they are devoted are discontinued; (b) for the elimination of uses to which such buildings and structures are devoted if they are adaptable for permitted uses; and (c) for the elimination of such buildings and structures when they are destroyed or damaged in major part, or when they have reached the age fixed by the corporate authorities of the municipality as the normal life of such buildings or structures.}\textsuperscript{30}

\textsuperscript{27} Forbes v. Hubbard, 348 Ill. 166, 180 N.E. 767 (1932); Schneider v. Board of Appeals of City of Ottawa, 402 Ill. 536, 84 N.E.2d 428 (1949).
\textsuperscript{29} The author could find no case involving an ordinance passed under this section providing that nonconforming uses could be eliminated "when the existing rights of the persons in possession thereof are terminated." The Illinois courts do hold that a subsequent purchaser of a nonconforming use has the same rights as his grantor. See cases cited note 27 supra. There may be a possible conflict here if an ordinance is passed under this section of the statute, and tested in court.
Although zoning laws are construed so as to protect nonconforming uses, such zoning laws "... are also subject to the rule that public policy opposes the extension and favors the ultimate elimination of nonconforming uses." The interpretation and construction which courts give to the provisions providing for the elimination of nonconforming uses determines whether nonconforming uses will be eliminated gradually (thereby benefiting the individual property owner) or expediently (thereby aiding the community at large).

Municipalities have passed ordinances, under the enabling act, providing for the elimination of the nonconforming use. These uses may be eliminated by:  
1. providing that if the use is abandoned it must then conform to the permitted use;  
2. by prohibiting a change to a different use;  
3. by prohibiting substantial alterations;  
4. by prohibiting expansion of extension;  
5. by determining the life expectancy of the building at the end of which time the nonconforming use must cease and conform to the permitted use.

(1) Abandonment

Typical zoning ordinances provide that if nonconforming uses are "discontinued or abandoned," the owner must conform his premises to the permitted use. In *Douglas v. Village of Melrose Park,* the Illinois Supreme Court had to determine when a nonconforming use was discontinued. The building in question had been used as a printing shop from 1924 until 1937. In 1937, the printing machinery was removed and the building was vacated. The plaintiff, as owner, tried to rent the building, but could find no tenant. Later, she sought a permit to operate a small factory. The village refused to grant a permit, claiming that, since the building was not being used, it had ceased as a nonconforming use and such use had been discontinued. The ordinance provided that if a nonconforming use was "discontinued," the owner could

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82 Id. at 25.186 et seq.  
83 389 Ill. 98, 58 N.E.2d 864 (1945).
not go back to the nonconforming use. The court held that the word "discontinued" was equivalent to "abandonment," and that the efforts made by the plaintiff to rent or sell did not show abandonment. The word "abandonment" means more than a mere suspension of the nonconforming use.

... [T]ime is not an essential element of abandonment though it is evidential, especially in connection with other facts evidencing such intention.\(^{34}\)

Subsequent decisions have given similar interpretations as to the meaning of the word "abandonment." There must be an intent to abandon, and a mere cessation of use does not result in a loss of the nonconforming use.\(^{35}\) These principles are clearly shown in the facts of Brown v. Gerhardt.\(^{36}\) There, the plaintiffs were the owners of a three-story residence. The building was built in 1891 and in 1914 the former owners converted the building to contain six dwelling units. In 1923, the area was zoned residential, and the building became a nonconforming use. From 1931-1937, the premises were used as a single-family dwelling. From 1937-1940, several of the units were rented out. In 1940 plaintiffs bought the building and began to remodel so that by 1942 it contained five units.

Plaintiffs sued for an injunction to restrain the zoning authorities from enforcing the zoning ordinance against them. The court had to determine whether or not the property had lost its nonconforming status. The court said that there were two times when the right to continue the nonconforming use could have have been lost: First, from 1931 to 1937 when the premises were used as a single-family dwelling, and second, from 1940 to 1942 during which time the building was being remodeled.

The court held that from 1931-1937, when the premises were used for a single-family residence, the nonconforming use was merely suspended. It was noted that a depression was on and much property was vacant.

The mere fact that only one family occupied a six-family dwelling is not conclusive of intention to abandon it for multiple-dwelling purposes.\(^{37}\)

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34 Id. at 101-2, 58 N.E.2d 865-6 (1945).
37 Id. at 110, 125 N.E.2d at 56.
From 1940-1942, the plaintiffs remodeled the premises. This, the court held, showed the opposite of an intention to abandon.

The court's interpretation of the word "discontinued" are just. Any doubt as to the meaning the word is generally resolved in favor of the free use of property by the individual.

(2) Change

The second way to eliminate nonconforming uses is to provide that if the nonconforming use is changed to a new and different use, the use will be lost.88

Two Illinois Supreme Court cases strictly construed ordinances prohibiting a "change" in nonconforming uses. In a 1954 case, the plaintiff bought a building after 1942 and wanted to conduct a business of spraying paint and protective coatings on metal parts. In 1923, the district in which the plant was located had been classified as commercial and in 1942 it was rezoned for business purposes. Provisions were made for the continuance of non-conforming uses. The premises at the time of rezoning were used as a tinsmith shop, and the second floor was used as a carpenter's wood working shop. The plaintiff claimed that his present use was a lawful, nonconforming use. The court held that a tinsmith and wood working shop were not the same as the present use of spraying paints and protective coatings on metal parts.

The fact that both might be generically described as "manufacturing" does not make them identical for present purposes. It is the particular use and not its general classification that is contemplated by the ordinance.40

The court took a similar stand in a later case.41 The plaintiff's property contained a one story brick building. Prior to 1900 the plaintiff had manufactured small items and employed about twenty men. The area was rezoned, prohibiting factories, but provided for the continuance of nonconforming uses. Later, the plaintiff manufactured road building equipment and employed forty-five men.

40 Id. at 15, 119 N.E.2d at 748.
41 Dube v. City of Chicago, 7 Ill. 2d 313, 131 N.E.2d 9 (1955).
Since a nonconforming use must be the same both before and after the effective date of the new ordinance in order to be protected, it became necessary to determine whether there had been a change in the nonconforming use. The court held that the present use was different, and, therefore, plaintiffs had to comply with the ordinance. The court reasoned that "... though the new use and old fall within the classification of 'manufacturing,' it is the particular use and not the general classification which governs."^43

The narrow construction by the court means that the subsequent purchaser must continue the business of his predecessor if he wants to continue the nonconforming use of the premises. If he changes to a new business, although still in the same classification, he will lose the right to continue the nonconforming use.

(3) Alterations

Another way to eliminate a nonconforming use is to place a limit on the amount of alterations which can be made.^44 By limiting the alterations, it is hoped that the property owner will give up his nonconforming use and move to an area where his use is permitted.

When the Illinois Supreme Court first passed on the question of the validity of such alteration ordinances, the ordinance in question prohibited alterations or repairs in excess of thirty percent of the buildings cubic contents. The court held that the power to regulate a nonconforming use also included the power to limit the alterations of the use. In that case, the plaintiff made a general charge that the ordinance restrained him from using the property for a more profitable enterprise. The court replied that this argument could be made to almost any property in any zoned district and had no substance to it.^47

The majority of decisions interpreting "alteration ordinances," indicate that mere internal alterations using the same space in the

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^43 Dube v. City of Chicago, supra note 41, at 322, 131 N.E.2d at 14.
^46 Ibid.
^47 Ibid.
same building do not involve substantial alterations and are proper.48

(4) Expansion or Extension

Similar to alteration restrictions are ordinances which prevent a property owner from expanding or extending his nonconforming use. Since a property owner desires and may find it necessary to enlarge his business, such ordinances, it is thought, will encourage him to move to areas where his business is permitted.

Although Illinois courts were liberal in their finding of non-conforming uses, the courts are not liberal in their interpretations of ordinances limiting expansion or extension. Some ordinances prohibit expansion or extension altogether, and these ordinances have been upheld.49 Generally, "expansion" or "extension" is interpreted to mean to extend or enlarge onto additional land. Thus, where the property owner had a nonconforming use consisting of two steel towers used for radio broadcasting, the erection of signs on the towers advertising the owner, although such signs were seventy-five feet high, did not expand the nonconforming use.50

Other ordinances have allowed a limited amount of enlargement on the owner's land and these ordinances were also upheld. In one case,51 the plaintiff wanted to replace a nonconforming use, a tavern, with a new building which would be more than fifty percent larger. The applicable ordinance allowed a maximum of a fifty percent increase in an expansion of a nonconforming use. The court, in denying plaintiff's request to enlarge his building, put great stress on the fact that the area was zoned residential and was now ninety-five percent residential. The trend was towards single-family homes in this area, and the tavern was not compatible with the zoning then in effect.

Although there are tight restrictions on expansion, the non-

48 See, e.g., Schneider v. Board of Appeals of City of Ottawa, 402 Ill. 536, 84 N.E.2d 428 (1949). Also see Exchange Nat'l Bank of Chicago v. City of Chicago, 28 Ill. 2d 341, 192 N.E.2d 343 (1963), where the plaintiff wanted to increase his nonconforming use by 40 percent, which was not allowed.
conforming user can still continue his use. Further, his nonconforming use is probably one of the very few of that kind in that area, thereby giving the property owner a monopoly in his business.

Whether or not a limitation on expansion includes a limitation on volume or intensity is also a problem. The First and Second District Appellate Courts have been faced with this question. The First District has held that where the county zoning ordinance prohibited a nonconforming use from being expanded, the prohibition included an increased intensity of the same use as well as an expansion beyond the original purpose.

However, the Second District Appellate Court ruled that where the zoning ordinance contains no restrictions upon an increase in volume, none will be implied. Thus, an increase of a nonconforming use from a two-family dwelling to a three-family dwelling was allowed. The Second District Court indicated that the word "expansion" could limit an increase in intensity or volume in the same building, but the ordinance must specifically state such limitation, i.e., the court will not imply that the municipal corporation meant to include intensity or volume in the word "expansion."

Another Second District case also held that a limit on intensity must be specifically spelled out in the ordinance. There, the defendant had been operating a summer camp on his land since 1915. When the rezoning was adopted, he had about fifteen trailers in one line on his land, and one electrical line furnished electricity to the trailers. Thereafter, the number of trailers increased to seventy or eighty in five lines and the defendant put in four more power lines. The applicable ordinance said that "a nonconforming use of the land shall not be extended beyond the area actually so used at the time of the passage of the ordinance." The trial court held that the defendant had violated the ordinance because the extent or volume of business conducted on his land

52 People v. Triem Steel & Processing Inc., 5 Ill. App. 2d 371, 125 N.E.2d 678 (1st Dist. 1955) (Abstr.).
55 Id. at 351, 152 N.E.2d at 185-6.
had been increased by parking additional trailers beyond the "area" actually occupied by trailers at the time of the passage of the ordinance.

The Appellate Court, however, in reversing, held that the ordinance "... intended to limit nonconforming uses of land to a tract actually used or to a use existing at the time of the passage of the ordinance, as distinguished from a tract held for some contemplated future use." The court cited the case of Village of Skokie v. Almendinger, and said that in that case similar provisions of the Cities and Villages Act were liberally construed. "A liberal construction of the Act does not permit a limitation of such protection to a portion only of a property devoted to such use or to an area thereof actually so used." The court further stated that no provision of the Lake County zoning ordinance prohibited any increase in intensity or volume of the use.

The principle behind ordinances which limit alterations, change and expansion is directed toward containing the uses from actually becoming a new use. This prohibition should not be applied where a use is broadened in its own original confines.

(5) Amortization

Municipal corporations attempt to eliminate nonconforming uses further by providing for the amortization of nonconforming structures. Amortization ordinances provide for the determination of the life expectancy of the building, and at the end of this contemplated lifetime, the use must cease. The owner has had the beneficial use of his property over the period of its lifetime, and is believed to have recovered his investment. Thus, if the restrictions on alteration, change and expansion do not rid the area of the nonconformity, amortization provisions certainly will.
In *Village of Oak Park v. Gordon*, the Illinois Supreme Court was called upon to determine the validity of an amortization ordinance for the first time. Oak Park passed an ordinance in May, 1958, providing that all nonconforming rooming and boarding houses located within any dwelling district had to be removed or converted to a permitted use by May 1, 1963. The owner of a rooming house continued to rent to two or more roomers, but no more. The defendant, Gordon, failed to convert his rooming house, and the village filed a quasi-criminal complaint against him in the municipal court. The defendant bought the house in 1951 for $31,000 and invested $10,000 in improvements. In order to comply with the amortization ordinance, he would have had to discontinue renting two rooms, thereby losing over $1200 annually, or make expensive alterations to convert the upstairs into rooming space for two boarders. The house looked like other houses in the neighborhood.

The court held that there was no evidence that the public interest would be helped in any way by requiring the defendant to alter his property to accommodate two instead of four roomers. "... [T]he court held the ordinance unconstitutional as applied to the defendant's property, and further said:

In so holding, we do not intend to express any opinion as to the validity of this or other amortization ordinances as applied to other properties. Each case must be judged upon the particular facts of that case due consideration given to the respective interests of the public and the individual property owners.

Although the *Gordon* decision applies only to its particular

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63 32 Ill. 2d 295, 205 N.E.2d 464 (1965).
64 Id. at 298, 205 N.E.2d at 466.
65 Ibid.
facts, it does temper the idea of having a short and limited period of time in which to eliminate a nonconforming use. Whether future amortization ordinances will receive the same treatment is still subject to conjecture.

LOCATION ORDINANCES

There is one line of cases which, although not primarily concerned with nonconforming uses, results in giving nonconforming uses preferential treatment.

The facts in these unexpected cases were identical. The municipalities had passed "location" ordinances which stated that no tanks for the storage of flammable liquids could be installed on any lot where any of the boundaries of the lot were within 200 feet of a public building. The plaintiffs wanted to use their land for filling stations; the land was generally less than 200 feet away from buildings used for public gatherings. These location ordinances were attacked on the grounds that they did not apply to existing, nonconforming uses, filling stations which were within 200 feet of public buildings; therefore, it was contended that there was an unreasonable discrimination and the plaintiffs were denied equal protection of the laws.

In Rasmussen v. Village of Bensenville, the court said:

Plaintiffs have cited cases from other jurisdictions which hold that location ordinances of this type under consideration are unconstitutional in that they do not apply to all nonconforming uses. (Citing authorities.) However, in view of Illinois legislature recognition of nonconforming uses, and of the Illinois court decisions on this subject, we find no constitutional objection to the Location Ordinance on the ground of discrimination and unequal application with reference to the nonconforming use.

The Illinois courts have upheld location ordinances on the

66 56 Ill. App. 2d. 119, 205 N.E.2d 631 (2d Dist. 1965).
67 One of the cases cited was Boothby v. City of Westbrook, 138 Me. 117, 25 A.2d 316 (1941). There the court was faced with a similar location ordinance and held it was unconstitutional since it did not apply to existing nonconforming uses. The court said: "Insofar as fire prevention is concerned, which is the sole legitimate purpose for which the ordinance could be enacted and is authorized, no real and valid distinction between the business prohibited and those permitted by the exception clause is discoverable. . . . Allowing the owners of existing filling stations to continue to operate certainly does not promote fire prevention." Id. at 124, 25 A.2d at 319.
68 Rasmussen v. Village of Bensenville, supra note 66, at 126, 205 N.E.2d at 634.
69 Also see Schwartz v. City of Chicago, 19 Ill. 2d 62, 166 N.E.2d 59 (1960).
grounds that they have a direct relationship to the public safety. Evidence showed that gas tanks could explode and, therefore, a distance of 200 feet was necessary in order to safely remove people from public buildings in the event of an explosion. The ordinances are based upon the police powers of the municipalities, and there is a definite safety requirement which is being met. Yet it seems to this writer that the decisions which uphold location ordinances are erroneous when they overrule a defense of equal protection of the laws on the grounds that a nonconforming use is a property right to be protected as opposed to a future use which is not to be protected. A gas tank of a filling station is just as dangerous to public safety regardless of whether it is classified as a nonconforming use and permissible, or whether it is classified as being prohibited under the provisions of a location ordinance. The classification made by location ordinances does deny equal protection of the laws.

A conflict becomes apparent when it is realized that location ordinances are upheld to protect public safety and nonconforming uses which are, in instances such as these, just as dangerous as the activities proscribed by location ordinances are upheld to protect property rights. In one instance public safety is held to outweigh a property right and in the other instance a property right is held to outweigh the public safety. The fact that the distinguishing element is the existence of a use before the location ordinance is passed makes the conflict almost incredible. This would seem to indicate that the controversy between the individual property owner and the community at large is not settled as yet after four decades of zoning decisions.

**CONCLUSION**

When zoning ordinances first appeared, Illinois courts were liberal in finding nonconforming uses protected. When it came, however, to the question of whether the uses had been eliminated

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70 Although the point was not involved, it would seem that the municipality could get rid of nonconforming uses where such uses would be substantially detrimental to the safety and welfare of the community.

Certainly, ordinances which provide for health and safety regulations, e.g., minimum building requirements, apply to existing nonconforming uses. See, e.g., Abbate Bros. v. City of Chicago, 11 Ill. 2d 357, 142 N.E.2d 691 (1957); City of Chicago v. Miller, 27 Ill. 2d 211, 188 N.E.2d 694 (1963).
by alteration, expansion or change, the courts were not as liberal. In most instances, it was felt that the desirability of community planning, which benefited the majority, was superior to the rights of the individual property owner to expand or alter an existing nonconforming use. Ordinances providing for the elimination of nonconforming uses have generally been upheld. Nevertheless, decisions do appear which indicate that the courts still weigh the interest of the property owner and the interest of the community at large, in the hopes of striking the most favorable balance. Until now, the courts have been intent on balancing the interests of the individual and the community, always being careful that the individual property owner's rights are considered.