

Ten years ago, a couple bought a building and moved into its second-floor apartment with their teenage daughter. The couple operated a shoe store on the first floor of the building for many years. When the couple purchased the building, the area was predominantly rural and was zoned for nonresidential use. The municipality's zoning is cumulative.

Five years ago, the municipality rezoned the area to single-family residential use. The daughter was not aware of this change because she was away at college.

Recently, the daughter inherited the building from her parents. The daughter immediately moved into the apartment and took over the operation of the shoe store on the first floor. The daughter has learned that a developer is planning to build a large residential community in the area surrounding her building.

The daughter has asked her lawyer for advice regarding her ability to continue operating the shoe store.

Should the lawyer advise the daughter that she can continue to operate her shoe store?

- A. No, because the nonconforming use of the building terminated when the daughter's parents died.
- B. No, but the municipality must pay her reasonable compensation for her loss resulting from the change in zoning.
- C. Yes, because the shoe store is a nonconforming use.
- D. Yes, because the zoning is cumulative and the building is also used for single-family residential purposes.

Explanation:

A **nonconforming use** arises when property was used in a **lawful manner *before* a zoning law** was enacted or amended and that use continues even though it is **now prohibited** by the zoning law. When this occurs, the owner of the nonconforming use has a "grandfathered right" to **continue** that use until (1) it is enlarged, changed, or abandoned or (2) if provided in the zoning law, the amortization period has passed or the nonconforming use has not been registered.

Here, the building was in an area zoned for nonresidential use when the couple began to lawfully operate a shoe store. When the area was rezoned to single-family residential use, the shoe store became a nonconforming use. And since the shoe store was *continuously* operated by the couple and then their daughter—and there is no indication that the zoning law has an amortization period or registration requirement—the daughter should be advised that she can continue to operate her shoe store **(Choice A)**.

(Choice B) Under the Fifth Amendment [takings clause](#), the municipality would have been required to pay the daughter reasonable compensation had the zoning law taken her private property for public use (eg, by depriving her property of its economic value). But since the law does not affect the daughter's operation of the shoe store, no compensation is required.

(Choice D) Zoning is cumulative when it allows a *higher* use to exist in a *lower* use zone, as illustrated above. Here, the area was rezoned to the highest use (residential), so the shoe store's lower use (commercial) cannot exist in that zone. This is true even though the building also has a residential use since that other use does not change the commercial character of the store.

Educational objective:

A nonconforming use may continue until (1) the owner enlarges, changes, or abandons that use or (2) if provided in the zoning law, an amortization period has passed or the use has not been registered.

References

Pa. Nw. Distribs., Inc. v. Zoning Hearing Bd., 584 A.2d 1372, 1375–76 (Pa. 1991) (describing the right to and termination of a nonconforming use).

83 Am. Jur. 2d Zoning & Planning §§ 524–93 (2019).

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Cumulative zoning
(permits higher use in lower-use zones)

