

## Article 9. Non-Conforming Uses, Structures, and Lots

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### Sec. 17.0901. Existing Non-Conforming Uses

The lawful non-conforming use of land, or water; or a lawful non-conforming structure; or a lawful nonconforming use on a conforming or non-conforming lot which existed at the time of the adoption or amendment of this Article may be continued although the use does not conform with the provisions of this Article; however,

- (a) Only that portion of the land or water in actual use may be so continued and the use may not be extended, enlarged, substituted or moved; and the structure may not be extended, enlarged, reconstructed, substituted, moved or structurally altered except when required to do so by law or order or so as to comply with the provisions of this Article.
- (b) **Discontinuance.** If such non-conforming use is discontinued or terminated for a period of twelve (12) consecutive months, any future use of the structure, land, or water shall conform to the provisions of this Article or current State Statute.
- (c) **Abolishment or Destruction.** When a nonconforming structure based on use is substantially damaged by fire, explosion, flood, or other calamity to the extent of more than fifty (50) percent of its current equalized assessed value, it shall not be restored except so as to comply with the use provisions of this Article or current State Statute.

- (d) **Substitution.** A non-conforming use of land shall not be changed to another use except a use permitted in the district in which it is located.
- (e) The owners of property claiming to have a legal non-conforming use or a lawful conditional use, have the burden to prove that such use is in fact a non-conforming use or lawful conditional use in accordance with this Article.

### **Sec. 17.0902. Conforming Structures on Non-Conforming Lots**

The use of a structure existing at the time of the adoption or amendment of this Article may be continued although the lot area or lot width does not conform to the requirements of this Article.

- (a) Additions and enlargements to the structures are permitted and shall conform with the established building setback, height, parking, loading, and access provisions of this Article or current State Statute.
- (b) Existing structures on non-conforming lots which are damaged or destroyed by fire, explosion, flood, or other calamity, may be reconstructed, and shall conform with the established building setback, height, parking, loading, and access provisions of this Article or current State Statute.

### **Sec. 17.0903. Non-Conforming Structures on a Conforming or Non-Conforming Lot**

The use of a structure existing at the time of the adoption or amendment of this Article may be continued although the structure's size or location does not conform with the established building setback, height, parking, loading, and/or access provisions of this Article.

- (a) Additions and enlargements to existing nonconforming structures are permitted and shall conform with the established building setback lines along streets and the yard, height, parking, loading, and access provisions of this Article or current State Statute.
- (b) Existing non-conforming structures which are damaged by fire, explosion, flood, or other calamity to the extent that such damage is less than fifty (50) percent of the current equalized assessed value of the structure may be reconstructed and insofar as is practicable shall conform with the established building setback lines along streets and the yard, height, parking, loading, and access provisions of this Article. Existing non-conforming structures which are substantially damaged or destroyed by fire, explosion, flood, or other calamity to the extent of fifty (50) percent or more of the current equalized assessed value of the structure may be reconstructed and shall conform with the established building setbacks, height, parking, loading, and access provisions of this Article or current State Statute.
- (c) Existing non-conforming structures may be moved within the same lot or onto a different lot and, shall conform with the established building setback, height, parking, loading, and access provisions of this Article.

## Sec. 17.0904. Non-conforming Signs

- (a) All permanent signs which are in existence at the time of passage of this Zoning Ordinance, but which do not conform to one or more provisions of this Zoning Ordinance, shall be deemed to be a legal nonconforming sign and may be continued only as provided in this Zoning Ordinance.
- (b) Signs which do not conform to the provisions of this Zoning Ordinance, but which complied with all applicable ordinances, rules, and regulations in effect at the time of their erection, may remain so long as the use with which they are associated remains. No nonconforming sign shall be enlarged, reconstructed, or structurally altered or changed in any manner. Routine maintenance of nonconforming signs shall be permitted.
- (c) Any sign for which a permit has been lawfully granted prior to the effective date of this or any subsequent amendment of **Section 17.0303** and which does not comply with the provisions of such amendment may nonetheless be completed in accordance with the approved plans, provided construction of the sign is started within ninety (90) days after the passage of the ordinance amendment, and is diligently prosecuted to completion.
- (d) Whenever a nonconforming sign has been discontinued for a period of six (6) consecutive months, or whenever there is evident a clear intent on the part of the owner to abandon a nonconforming sign, such sign shall not, after being discontinued or abandoned, be reestablished, and the sign thereafter shall be in conformity with the regulations of this Zoning Ordinance.
- (e) Normal maintenance of a nonconforming sign is permitted, including necessary nonstructural repairs and incidental alterations which do not extend or intensify the nonconforming features of the sign.
- (f) No structural alteration, enlargement or extension shall be made in a nonconforming sign, except in the following situations. No structural alteration shall be permitted which reduces the amount by which a sign is nonconforming if the alteration does not bring the sign into conformity with all applicable regulations of this Zoning Ordinance.
  - (1) When the alteration is required by law; and/or
  - (2) When the alteration will actually result in eliminating the nonconforming sign.
- (g) If a nonconforming sign is damaged or destroyed by any means to the extent of fifty (50) percent or more of its replacement value at that time, the sign can be rebuilt or used thereafter only for a conforming use and in compliance with the provisions of the code. In the event the damage or destruction is less than fifty (50) percent of its replacement value, based upon prevailing costs, the sign may then be restored to its original condition and the use may be continued which existed at the time of such partial destruction until the nonconforming sign is otherwise abated by the provisions of this Zoning Ordinance. In either event, restoration or repair must be started within a period of six (6) months from the date of damage or destruction, and diligently prosecuted to completion.

- (h) Legal, permitted signs which do not meet the requirements of the minimum setback which conformed to the provisions of this article but were reduced in setback as a result of the exercise of eminent domain, the threat of the exercise of eminent domain, or acquisitions for right-of-way purposes by a governmental body and which are still located entirely upon private property and not in the twenty-five (25) foot sight triangle shall not be found to be nonconforming with the provisions of this Zoning Ordinance as a result of the loss of such territory if there is no other way to accommodate the sign on the subject parcel in accordance with the applicable provisions of **Article 6**.

### **Sec. 17.0905. Existing Non-Conforming Lots**

A lot which does not contain sufficient width or area to conform to the dimensional requirements of the provisions of this Article is a non-conforming lot. A non-conforming lot cannot be altered to decrease its width or area below or further below the dimensional standards applicable to that lot. A non-conforming lot may be used as a building site provided:

- (a) The use is permitted in the zoning district in which the lot is located, and the proposed building meets all other requirements of the Municipal Code, and
- (b) The lot is of record in the Register of Deeds office prior to the effective date of this Article or any amendment to this Article which affects the area or width of the lot, and
- (c) The lot abuts a dedicated street improved for and opened to the public for travel, and
- (d) The lot is:
  - (1) At least fifty (50) feet wide and six thousand (6,000) square feet in area, or
  - (2) Less than fifty (50) feet wide or less than six thousand (6,000) square feet in area and the lot is owned in separate ownership from the lands abutting the lot, or
  - (3) Less than fifty (50) feet wide or less than six thousand (6,000) square feet in area and abutting lands are in the same ownership, in which event the lot and the abutting lands must be combined prior to the issuance of a building permit. The combining of lands must result in a lot which is as close to the dimensional requirements of fifty (50) feet wide and six thousand (6,000) square feet in area as is practicable in the judgment of the Common Council. Any combination of lands under this subsection is not subject to the requirements of 17.0904(b).

## Sec. 17.0906. Wetland Non-Conforming Uses

Notwithstanding Section 62.23(7)(h) of the Wisconsin Statutes, the repair, reconstruction, renovation, remodel, or expansion of a legal non-conforming structure, or any environmental control facility related to a legal non-conforming structure, located in the C1 Wetland Conservancy District and in existence at the time of adoption or subsequent amendment of this Article, or of an environmental control facility in existence on May 7, 1982, related to that structure is permitted pursuant to Section 62.231(5) of the Wisconsin Statutes. Section 62.23(7)(h), however, applies to any environmental control facility that was not in existence on May 7, 1982, but was in existence on the effective date of this Article or amendment.

## Sec. 17.0907. Floodland Non-Conforming Uses

### (a) General.

- (1) **Applicability.** If these standards conform with s. 59.69(10), Stats., for counties or s. 62.23(7)(h), Stats., for cities and villages, they shall apply to all modifications or additions to any nonconforming use or structure and to the use of any structure or premises which was lawful before the passage of this ordinance or any amendment thereto.
- (2) The existing lawful use of a structure or its accessory use which is not in conformity with the provisions of this ordinance may continue subject to the following conditions:
  - a. No modifications or additions to a nonconforming use or structure shall be permitted unless they comply with this ordinance. The words “modification” and “addition” include, but are not limited to, any alteration, addition, modification, structural repair, rebuilding or replacement of any such existing use, structure or accessory structure or use. Ordinary maintenance repairs are not considered an extension, modification or addition; these include painting, decorating, paneling and the replacement of doors, windows and other nonstructural components and the maintenance, repair or replacement of existing private sewage or water supply systems or connections to public utilities. Ordinary maintenance repairs do not include any costs associated with the repair of a damaged structure. The construction of a deck that does not exceed two hundred (200) square feet and that is adjacent to the exterior wall of a principal structure is not an extension, modification, or addition. The roof of the structure may extend over a portion of the deck in order to provide safe ingress and egress to the principal structure.
  - b. If a nonconforming use or the use of a nonconforming structure is discontinued for twelve (12) consecutive months, it is no longer permitted and any future use of the property, and any structure or building thereon, shall conform to the applicable requirements of this ordinance;
  - c. The municipality shall keep a record which lists all nonconforming uses and nonconforming structures, their present equalized assessed value, the cost of all modifications or additions which have been permitted, and the percentage of the structure’s total current value those modifications represent;

- d. No modification or addition to any nonconforming structure or any structure with a nonconforming use, which over the life of the structure would exceed fifty (50) percent of its present equalized assessed value, shall be allowed unless the entire structure is permanently changed to a conforming structure with a conforming use in compliance with the applicable requirements of this ordinance. Contiguous dry land access must be provided for residential and commercial uses. The costs of elevating a nonconforming building or a building with a nonconforming use to the flood protection elevation are excluded from the fifty (50) percent provisions of this paragraph.
- e. **Damaged or Destroyed Structures.**
  - 1. Except as provided in this Article, if any nonconforming structure or any structure with a nonconforming use is destroyed or is substantially damaged, it cannot be replaced, reconstructed or rebuilt unless the use and the structure meet the current ordinance requirements. A structure is considered substantially damaged if the total cost to restore the structure to its pre-damaged condition equals or exceeds fifty (50) percent of the structure's present equalized assessed value.
  - 2. For nonconforming buildings that are damaged or destroyed by a nonflood disaster, the repair or reconstruction of any such nonconforming building may be permitted in order to restore it after the nonflood disaster, provided that the nonconforming building will meet all of the minimum requirements under 44 CFR Part 60, or under the regulations promulgated thereunder.
- f. A nonconforming historic structure may be altered if the alteration will not preclude the structures continued designation as a historic structure, the alteration will comply with the floodplain standards of the City, flood resistant materials are used, and construction practices and floodproofing methods that comply with the floodplain standards of the City are used.

**(b) Floodway Areas.**

- (1) No modification or addition shall be allowed to any nonconforming structure or any structure with a nonconforming use in a floodway area, unless such modification or addition:
  - a. Has been granted a permit or variance which meets all ordinance requirements;
  - b. Meets the floodplain standards of the City;
  - c. Will not increase the obstruction to flood flows or regional flood height; and
  - d. Any addition to the existing structure shall be floodproofed by means other than the use of fill, to the flood protection elevation.
- (2) No new on-site sewage disposal system, or addition to an existing on-site sewage disposal system, except where an addition has been ordered by a government agency to correct a hazard to public health, shall be allowed in a floodway area. Any replacement, repair, or maintenance of an existing

on-site sewage disposal system in a floodway area shall meet the applicable requirements of all municipal ordinances and ch. COMM 83, Wis. Adm. Code.

- (3) No new well or modification to an existing well used to obtain potable water shall be allowed in a floodway area. Any replacement, repair, or maintenance of an existing well in a floodway area shall meet the applicable requirements of all municipal ordinances and chs. NR 811 and NR 812, Wis. Adm. Code.

**(c) Floodfringe Areas.**

- (1) No modifications or addition shall be allowed to any nonconforming structure or any structure with a nonconforming use in a flood fringe area, unless such modification or addition has been granted a permit or variance by the municipality, and the modification or addition shall be placed on fill or floodproofed to the flood protection elevation in compliance with the standards for that particular use, except where the City's floodplain standards are applicable.
- (2) Where compliance with the provisions of the City's floodplain standards would result in unnecessary hardship and only where the structure will not be used for human habitation or be associated with a high flood damage potential, the Board of Appeals may grant a variance from those provisions of for modifications or additions, using the criteria listed below. Modifications or additions which are protected to elevations lower than the flood protection elevation may be permitted if:
  - a. No floor is allowed below the regional flood elevation for residential or commercial structures;
  - b. Human lives are not endangered;
  - c. Public facilities, such as water or sewer, will not be installed;
  - d. Flood depths will not exceed two (2) feet;
  - e. Flood velocities will not exceed two feet per second; and
  - f. The structure will not be used for storage of materials as described the City's floodplain standards.
- (3) If neither the provisions above can be met, one (1) addition to an existing room in a nonconforming building or a building with a nonconforming use may be allowed in the floodfringe, if the addition:
  - a. Meets all other regulations and will be granted by permit or variance;
  - b. Does not exceed sixty (60) square feet in area; and
  - c. In combination with other previous modifications or additions to the building, does not equal or exceed fifty (50) percent of the present equalized assessed value of the building.
- (4) All new private sewage disposal systems, or addition to, replacement, repair or maintenance of a private sewage disposal system shall meet all the applicable provisions of all local ordinances and ch. COMM 83, Wis. Adm. Code.

- (5) All new wells, or addition to, replacement, repair, or maintenance of a well shall meet the applicable provisions of this ordinance and ch. NR 811 and NR 812, Wis. Adm. Code.

### **Sec. 17.0908. Interpretation and Proof of Uses**

The owners of property who want to alter their use that they claim is either a legal non-conforming use or a lawful conditional use should apply for the alteration of said use, or the building in which it is located, with the Community Development Director or their designee. The Community Development Director or their designee, after a review of City records, may require documentation of the applicant in support their claim. Based upon a review of the submitted documentation, the Community Development Director or their designee may approve or deny the applicant's claim. If denied, the applicant may seek an interpretation of the matter from the Board of Housing and Zoning Appeals.