

## CHAPTER 8

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### Nonconforming Uses, Structures and Lots

(Adopted Ordinance 2022-23; 10/03/22)

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#### **SEC. 16-8-1 NONCONFORMING USES, STRUCTURES, AND LOTS**

Existing lawful nonconforming uses, structures, and lots shall meet the provisions of this Section, and those located within floodplains, shorelands, and shoreland-wetlands shall also comply with the Village floodplain, shoreland, and shoreland-wetland regulations, whichever is more restrictive.

#### **SEC. 16-8-2 EXISTING NONCONFORMING USES**

The lawful nonconforming use of land or water; or a lawful nonconforming use in a conforming or nonconforming structure; or a lawful nonconforming use on a conforming or nonconforming lot that existed at the time of the adoption or amendment of this Ordinance may be continued although the use does not conform with the provisions of this Ordinance; however:

- (a) Only that portion of the structure, fixture, land, or water in actual use may be so continued and the nonconforming use may not be extended, enlarged, reconstructed, substituted, or moved except when required to do so by law or order or so as to comply with the provisions of this Ordinance.
- (b) If such nonconforming use is discontinued or terminated for a period of 12 months, any future use of the structure, fixture, or premises shall conform to the provisions of this Ordinance.
- (c) When a structure with a nonconforming use is damaged by violent wind, vandalism, fire, flood, ice, snow, mold, infestation, or other calamity to the extent of more than 50 percent of its equalized assessed value, it shall not be restored except so as to comply with the use provisions of this Ordinance.

- (d) Total Lifetime Structural Repair or alternations to a building, structure, fixture or premises containing a nonconforming use shall not during its life exceed 50 percent of the equalized assessed value of the building, premises, structure or fixture unless permanently changed to a conforming use in accordance with the use provisions of this Zoning Code. Ordinary maintenance repairs are not considered structural repairs, modifications, or additions. Some examples of such repairs include painting, calking, decorating, paneling, and other nonstructural components; and the repair or replacement of doors, windows, utilities, and sewage treatment and water supply systems. Figure No. 1 reflects the method by which the Zoning Administrator shall determine when modifications to nonconforming uses and their structures are equal to 50 percent. Statutory Reference Sec. 62.23(7)(h), Wis. Stat.
- (e) Substitution of New Equipment may be permitted by the Zoning Board of Appeals if such equipment will reduce the incompatibility of the nonconforming use with neighboring uses.

### **SEC. 16-8-3 CONFORMING STRUCTURES ON NONCONFORMING LOTS**

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

- (a) Additions and Enlargements to such structures are permitted provided they conform to the established yard/setback, height, parking, loading, access provisions, and other Development Regulations of this Ordinance, other than minimum lot dimensional requirements.
- (b) Existing Structures on Nonconforming Lots that are damaged or destroyed by violent wind, vandalism, fire, flood, ice, snow, mold, infestation, or other calamity may be reconstructed provided they conform to the established yard/setback, height, parking, loading, access provisions, and other Development Regulations of this Ordinance, other than minimum lot dimensional requirements. Statutory Reference Sec. 62.23(7)(hc), Wis. Stat.

### **SEC. 16-8-4 NONCONFORMING STRUCTURES ON CONFORMING OR NONCONFORMING LOTS**

- (a) A Nonconforming Structure with a conforming use lawfully existing at the time of the adoption or amendment of this Ordinance may be continued although the structure's size or location does not conform to the Development Regulations of this Ordinance.
- (b) Nonconforming Structures with a conforming use may be repaired, maintained, renovated, rebuilt, or remodeled, subject to building code and other applicable requirements. No prohibition or limits based on cost may be imposed on the repair, maintenance, renovation, or remodeling of such structures.
- (c) Additions and Enlargements to existing encroachment. The provisions of this Subsection with respect to additions or enlargements are applicable only if the lot is served by public sanitary sewer or, if relevant, conforms with existing sanitary code requirements for private onsite sewage treatment systems (POWTS).
- (d) Existing Nonconforming Structures may be moved and shall conform to the established yard/setback, height, parking, loading, and access provisions of this Ordinance.

- (e) A Nonconforming Structure with a Conforming Use that is damaged or destroyed by violent wind, vandalism, fire, flood, ice, snow, mold, infestation, or other calamity may be restored or replaced to the size, location, and use that it had immediately before the damage or destruction occurred, subject to building code and other applicable requirements.. No limits may be imposed on the costs of the repair, reconstruction, or improvement of said structure. The size of the structure may be larger than the size immediately before the damage or destruction occurred if necessary for the structure to comply with applicable State or Federal requirements. Any reconstruction shall conform to the Development Regulations of this Ordinance, to the extent practicable, and existing sanitary code requirements, and shall commence within 24 months of the date of damage or destruction, unless an extension is granted by the government agency having authority.

#### **SEC. 16-8-5 VACANT NONCONFORMING LOTS**

- (a) Development. The Zoning Administrator may issue a building permit for development of a vacant lot which does not contain sufficient area to conform to the lot dimensional requirements of this Ordinance to be used as a building site provided that the use is allowed in the zoning district in which it is located; the lot is of record in the County Register of Deeds Office prior to the effective date of this Ordinance or amendment thereof; and development is compatible with the character of the surrounding area. Nonconforming (substandard) lots to be served by public sanitary sewer shall be at least 50 feet wide and 7,200 square feet in area. Nonconforming lots to be served by POWTS shall be at least 100 feet wide and 40,000 square feet in area. Lots with smaller dimensions than mentioned above shall not be developed unless a variance is granted by the Board of Zoning Appeals.
- (b) Compliance. Development of vacant nonconforming lots granted permits under this Section shall be required to meet the yard/setback, height, parking, loading, access provisions, and other Development Regulations, except lot size requirements unless otherwise specified, of this Ordinance. A building permit for the improvement of a lot with lesser dimensions and requisites than those stated above may be issued only after a variance is granted by the Zoning Board of Appeals.
- (c) Statutory Provisions. In accordance with Section 66.10015(2)(e) of the Wisconsin Statutes, a property owner of a legal nonconforming (substandard) lot may:
1. Convey an ownership interest in a substandard lot.
  2. Use the substandard lot as a building site if all of the following apply:
    - a. The substandard lot or parcel has never been developed with one or more of its structures placed partly upon an adjacent lot or parcel.
    - b. The substandard lot or parcel is developed to comply with all other requirements of this Ordinance, except the minimum lot dimensional requirement unless otherwise specified.
- (d) Merging. In accordance with Section 66.10015(4) of the Statutes, the Village/City may not require one or more lots to be merged with another lot, for any purpose, without the consent of the owners of the lots that are to be merged.

**SEC. 16-8-6 SHORELAND-WETLAND NONCONFORMING STRUCTURES**

The repair, reconstruction, renovation, remodeling, restoration, or expansion of a legal nonconforming structure, or any environmental control facility related to such structure located in shoreland-wetlands [*of five acres or more in size*] and in existence at the time of adoption or subsequent amendment of this Ordinance may be permitted in accordance with the provisions of Section 61.351(5) and (5m) of the Wisconsin Statutes.

**SEC. 16-8-7 FLOODPLAIN NONCONFORMING USES AND STRUCTURES**

Modifications or additions to nonconforming uses and structures in floodplains shall comply with the nonconforming regulations in Ch. 13 of Title 16 of the Village's floodplain ordinance. Modifications and additions include, but are not limited to, any alteration, addition, modification, structural repair, rebuilding, or replacement of any such existing use or structure. Maintenance is allowed and is not considered a modification, which includes painting, decorating, paneling, and other nonstructural components and the maintenance, repair, or replacements of existing private sewage or water supply systems or connections to public utilities. Any costs associated with the repair of a damaged structure are not considered maintenance.

**SEC. 16-8-8 CHANGES AND SUBSTITUTIONS**

Once a nonconforming use or structure has been changed to conform to the requirements of this Ordinance, it shall not revert back to a nonconforming use or structure. The Zoning Board of Appeals may permit the substitution of a more restrictive nonconforming use for an existing nonconforming use. Once the Board of Zoning Appeals has permitted the substitution of a more restrictive nonconforming use, the prior existing use shall lose its status as a legal nonconforming use and the substituted more restrictive nonconforming use shall be subject to all the conditions required by the Board of Zoning Appeals.

**Figure No. 1****(only applies to structures on nonconforming uses under Sec. 62.23(7)(h), Wis. Stats.)****IS IT 50 PERCENT YET?**

**Sample Problem:** Let's assume that the owner of a house with a nonconforming use (i.e., nonconforming institutional use in a residential zoned home) wishes to add a room to the house. If the house had an equalized assessed value of \$100,000 in 1997, the property owner would be able to make improvements valued at up to 50 percent of the present (1997) equalized assessed value of the house, or \$50,000 at that time. The improvement would have to be built to zoning standards. Any further additions or structural alterations could not be allowed unless the use of the structure is permanently changed to a conforming use.

Additions and modifications are based upon a given time over the life of a structure. If, in the example above, the property owner constructed a \$50,000 addition in 1997, no further additions could be allowed because the 50 percent improvement limit had been reached. However, let's assume that the addition was valued at \$20,000 or 20 percent of the 1997 equalized assessed value of the structure (\$100,000). Ten years later, the property owner again comes in, wishing to add an attached storage room. In the meantime, the equalized assessed value of the house has increased from \$100,000 in 1997 to \$150,000 in 2007. The value of the storage room is \$15,000 in 2007. The property owner has now accumulated modifications totaling 30 percent of the equalized assessed values from 1997 and 2007.

Finally, ten years later, when the equalized assessed value of the house is \$200,000, the property owner again comes in wishing to modify his house to the extent of \$40,000. The cumulative percentage of the modifications totals 50 percent, based on the cumulative percentage of each modification in relation to the equalized assessed value of the house in the year the modification was made.

This example is further clarified in the following table:

(NOTE – the base for calculation is **not** the **original** value of the house at the time the Zoning Ordinance was enacted, but is the equalized assessed value of the house at each time the house is modified.)

Year	Equalized Assessed Value of Home	Value of Modification	Modification as a Percentage of Assessed Value	Cumulative Percentage
1997	\$ 100,000	\$20,000	20	20
2007	\$ 150,000	\$ 15,000	10	30
2017	\$200,000	\$40,000	20	50

**Definition: Equalized Assessed Value** is the value of a structure and/or lot of property as determined by the local assessor with any adjustments made to account for an assessment that does not reflect “full” (100%) value. Full assessed value of the structure and/or lot is usually equivalent to “full” (100%) fair market value at the time assessment is made.