

ARTICLE XII. NONCONFORMING LOTS, BUILDINGS AND USES

Sec. 95.201. Intent.

(a) *Previously lawful conditions.* Within the districts established and mapped by this chapter or amendments to this chapter, there may exist lots, buildings, structures, or uses of lands or buildings, which were lawful before this chapter or amendments were enacted, but which do not now conform to the regulations in this chapter. As set forth in Wis. Stats. § 62.23(7)(h), such nonconforming conditions may be continued, but may not be extended, repaired or altered beyond the limitations set forth in that statute and as enumerated in this article. It is the intent of this chapter to permit such nonconformities to continue in accordance with Wis. Stats. § 62.23(7)(h) and the provisions under this article, until the nonconformities are removed or corrected by economic forces or otherwise, except that structures that are not buildings may be required to conform if provided for in this chapter.

(b) *Nonprecedent status of nonconformities.* It is not the intent of this chapter to encourage the undue survival of nonconformities since it has been determined that they are incompatible with the character of the district in which they are located. In particular, existing nonconformities shall not be used as the basis for justifying deviations from district regulations on other properties.

Sec. 95.202. Classification and regulation.

For the purpose of equitable administration of Wis. Stats. § 62.23(7)(h), nonconforming conditions are classified and separately regulated as follows:

(1) Nonconforming lots.

- a. Lots of record that are nonconforming (also called "substandard lots") as to the minimum numerical regulations of the district in which they are placed may be built upon so long as the regulations relating to location and minimum sizes of buildings and uses will still be met, and the required open space is not reduced by a ratio more than the ratio which the lot area fails to meet the district regulation for minimum lot size.
- b. Vacant lots in common ownership that do not meet the minimum numerical requirements as to area or width shall not be conveyed separately to others except in conformity with the applicable provisions of the subdivision ordinance. Any such lots that fail to meet the following minimum criteria shall be denied a zoning permit until the lots are resubdivided to conform, or more nearly conform, to the district requirements:

Area, square feet	5,000
Average width:	
Sewered, feet	50
Unsewered, feet	65
Depth, feet	100
Rear yard, feet	15

Side yard, feet (noncommon wall construction) 5

Setback:

To building, feet 15

To garage, feet 20

Street access, feet of frontage width 10

- c. Wetland or floodplain lots of record shall not be issued zoning permits that would require destruction of the wetland or invasion of the floodplain unless in conformance with the terms of the WPD and OFP districts or an action by the board of zoning appeals granted in the spirit of those districts.
- d. Buildings on substandard lots, which buildings otherwise conform to all the locational, open space, floor area and parking regulations of the district, shall not be considered nonconforming buildings for purposes of Wis. Stats. § 62.23(7)(h).

(2) Nonconforming use of land.

- a. No such use shall be expanded or enlarged. Expansion or enlargement examples include:
 - 1. Greater primary floor area;
 - 2. Longer hours of operation;
 - 3. More employees;
 - 4. More output of emissions that adversely affects surrounding land uses, such as dust, odor, noise, traffic volume, etc., as listed in article IV of this chapter;
 - 5. More trucking volume per unit of time; and
 - 6. Similar evidences.
- b. Upon petition to and approval of the ETZ Committee, such use may be changed to another use provided the board determines that the new use would result in the same or less degree of nonconformity as the previous use; provided further that if the new use is less nonconforming, such new use shall thereafter determine the degree of legal nonconformity.
- c. Where any such use is discontinued for a period of 12 consecutive or for 18 cumulative months during any three-year period, any future use of the land shall conform to the regulations of the district in which it is located.

(3) *Nonconforming buildings* include buildings that contain too little or too much floor area, buildings that encroach upon floodplains or upon required setbacks and yards and buildings which have too much height.

- a. No such building shall be repaired or altered during its lifetime to an extent, including the cost of floodproofing, that exceeds 50 percent of its full market value at the time it became nonconforming. If such a building is damaged to more than 50 percent of its full market value, it shall be razed unless the reconstruction would bring the building into compliance with the district regulations.
 - b. Alterations or extensions allowable within the limits of subsection (3)a. of this section shall not increase the degree of nonconformity, for example, making an extension farther into an inadequate yard, adding more fill to the floodplain, adding floor area to a building that already exceeds the floor to land area ratio, converting more space to primary floor area without increasing already inadequate parking space, etc.
 - c. Alterations that tend to reduce the degree of nonconformity, for example enlarging buildings that are too small, reducing buildings that are too large, removing portions which encroach upon floodplains or required yard spaces, may be approved by the ETZ Committee if the board first finds that the alteration makes a substantial reduction in the degree of nonconformity; does not prolong an overall nonconformity that would best be discouraged from survival; and as part of the alteration improves other shortcomings of the building or premises as enumerated in article V of this chapter. Where the board is inclined to make such a finding involving article V of this chapter, it shall condition its approval upon receipt from the ETZ Committee of a favorable recommendation on the alterations as reviewed under article V of this chapter.
- (4) Nonconforming use of buildings that may or may not be nonconforming as defined in subsection (3) of this section, but which contain uses which do not conform to the use regulations of the district in which the property is located, for example, an improper commercial use in a building designed for and located within a residence district and otherwise conforming to the district numerical regulations.
- a. No such use shall be expanded or enlarged. Expansion or enlargement of use shall be defined as described in subsection (2)a of this section. Exception: Single-family homes in R-3 zoning (R-3 setbacks must be used).
 - b. Structural repairs or alterations to a building containing a nonconforming use shall not, as long as such use continues, exceed 50 percent of the full market value of the building; and if the building is damaged to more than 50 percent of value, the building shall not be restored unless the nonconforming use is removed. Exception: Single-family homes in R-3 zoning.
 - c. Repairs or alterations allowable within the limits of subsection (4)b. shall not increase the degree of nonconformity, for example devoting more floor space to the nonconforming use, changing the appearance and function of the building away from a conforming use or toward the nonconforming use, or other changes such as enumerated in subsection (2)a.
 - d. Alterations that tend to reduce the degree of nonconformity, for example reducing the floor space devoted to a nonconforming use in a mixed use building, may be approved by the ETZ Committee if they first find that the alteration makes a substantial reduction in the degree of nonconformity; does not prolong an overall nonconformity that would best be discouraged from survival; and as part of the alteration improves other shortcomings of the building or premises as enumerated in article V of this chapter. Where the board is inclined

to make such a finding involving article V of this chapter, it shall condition its approval upon receipt from the ETZ Committee of a favorable recommendation on the alterations as reviewed under article V of this chapter.

- e. Upon petition to and approval of the ETZ Committee, such use may be changed to another use provided the board determines that the new use would result in the same or less degree of nonconformity as the present use, and provided further that such new use shall thereafter determine the degree of legal nonconformity.
- f. Where any such use is discontinued for a period of 12 consecutive or for 18 cumulative months during any three-year period, any future use of the building shall conform to the regulations of the district in which it is located.

(5) *Nonconforming structures other than buildings* includes signs, fences, lightpoles, buried or aboveground tanks, and similar facilities that do not conform to the regulations of the district in which the property is located, or are accessory to a principal building or use that is nonconforming. Such structures shall not be repaired or altered to an extent exceeding 50 percent of their individual full market value, and if damaged to more than 50 percent of their value shall be removed or replaced with a facility that conforms to the district regulations. Notwithstanding these provisions and in conformance with section 95.201(a), if the district regulations or other sections of this chapter so provide, a nonconforming structure that is not a building may be required to be removed or made to conform before the 50 percent level of repair, alterations or damage has been reached, for example a fence that blocks a vision corner, a lightpole fixture that causes glare to traffic on public streets, a tank that is leaking, etc.

Sec. 95.203. Removal of hazards.

Where, upon complaint to the zoning administrator, any nonconforming building, structure or use shall be found by the board of appeals as a matter of fact to be a detriment to the public health, safety or general welfare, especially as defined by one or more of the performance standards of article IV of this chapter, the hazardous aspect shall be ordered to be corrected or such aspect to be discontinued within such time as the board may deem reasonable. Upon failure to carry out such order, the village may take such steps as are necessary to remove such hazardous aspect or discontinue such use and assess the cost against the property owner.

Sec. 95.204. Conditional use status.

Subject to the procedures set forth in article VI of this chapter, nonconforming uses of land or of buildings, as classified in this chapter, may petition to achieve conforming status by becoming a use permitted by conditional grant, notwithstanding the use regulations of the district in which the property is located. The ETZ Committee in processing such a petition shall conclude that the existing nonconforming status is very unlikely to become conforming for the foreseeable future, that with the imposition of conditions the most deleterious aspects of the use which make it nonconforming in its circumstances can be largely ameliorated, and that deterioration of the use that may result from imposition of the 50 percent limit on repair or alterations imposed by Wis. Stats. § 62.23(7)(h) over time may cause more damage to adjacent properties or the neighborhood than granting conforming conditional use status.