

Chapter 10 - Nonconformities

10.1 GENERAL

10.1.1 Applicability

The regulations of this chapter govern uses, structures, lots, and other situations that came into existence legally, but that do not comply with one or more requirements of this Code.

10.1.2 Purpose and Intent

It is the general policy of the County to allow uses, structures, and lots that came into existence legally in conformance with then-applicable requirements to continue to exist and be put to productive use, but to require eventual compliance with the Code. The regulations of this chapter are intended to:

10.1.2.A Recognize the interests of property owners in continuing to use their property;

10.1.2.B Promote reuse and rehabilitation of existing buildings; and

10.1.2.C Place reasonable limits on the expansion and alteration of nonconformities that have the potential to adversely affect surrounding properties or the community as a whole.

10.1.3 Determination of Nonconforming Status

The burden of establishing that any nonconformity is a legal nonconformity shall in all cases be upon the owner of such nonconformity.

10.1.4 Change of Tenancy or Ownership

The status of a nonconformity is not affected by changes of tenancy, ownership, or management.

10.2 NONCONFORMING USES

10.2.1 Existing Nonconforming Uses

The lawful nonconforming use of a structure, land, or water existing at the time of the adoption or amendment of this Code may be continued although the use does not conform with the provisions of this Code. However, only the portion of the structure, land or water in actual use may be so continued, and the structure, land, water or area within which the use is contained may not be extended, enlarged, modified, added to, repaired, reconstructed, substituted, moved, or structurally altered except when required to do so by law or order, so as to comply with the provisions of this Code, or in accord with Sec. 10.2.4.

10.2.2 Inventory of Nonconforming Uses

An inventory of nonconforming uses shall be prepared and updated, as such uses are identified, by the Land Use Administrator listing the following: owner's name and address; use of the structure, land or water; parcel identification number, their present equalized assessed value at the time of its becoming a nonconforming use, the cost of all modifications or additions which have been permitted, and the percentage of the structures total current value those modifications or additions represent.

10.2.3 Change of Use

10.2.3.A Change to Conforming Use

A nonconforming use may be changed to any use that is allowed in the zoning district in which it is located, subject to all standards and requirements applicable to the new use. Once a nonconforming use is converted to a conforming use it may not be changed back to a nonconforming use.

10.2.3.B Change to Other Nonconforming Use

The Board of Adjustment shall be authorized to approve a change of use to a use not otherwise allowed in the underlying zoning districts if the Board of Adjustment finds that the new proposed use will be no more injurious

than the previous use or will decrease the extent of the nonconformity. If the Board of Adjustment approves such a change of use, it shall be authorized to impose conditions it deems necessary to reduce or minimize any potentially adverse effect upon other property in the neighborhood, and to carry out the general purpose and intent of this Code. Any condition imposed must relate to a situation created or aggravated by the proposed use and must be roughly proportional to its impact.

10.2.3.C Substitution of New Equipment

Substitution of new equipment may be permitted by the Board of Adjustment if such equipment will reduce the incompatibility of the nonconforming use with neighboring uses.

10.2.4 Expansion

Existing nonconforming uses may not be expanded if the expansion would increase the degree of nonconformity. For purposes of this section, the construction or the placement of a principal or accessory structure on a lot which contains a nonconforming use shall be considered an expansion of the nonconforming use of the property. The construction or the placement of a fence on a lot which contains a legal nonconforming use shall not be considered an expansion of the use of the property.

10.2.5 Abolishment or Replacement

If such nonconforming use is discontinued or terminated for a period of 12 months, any future use of the structure, land, or water, shall conform to the provisions of this Code.

10.2.6 Damages or Destruction of Structure, Land or Water which Contains a Nonconforming Use

Except as provided for in s.10.1.4, when any structure, land or water which contains a nonconforming use is damaged by fire, explosion, flood, public enemy, or other calamity to the extent of more than 50 percent of its current assessed value, it shall not be restored except so as to comply with the use provisions of this Code.

10.2.7 Total Lifetime Repairs

Except as provided for in s. 10.1.4, the total lifetime structural repairs, modifications, additions or alterations of the structure, land or water which contains a nonconforming use shall not exceed 50 percent of the County's current assessed value of the structure, land or water which contains the nonconforming use unless the use of said structure, land or water is permanently changed to conform to the use provisions of this Code.

10.2.8 Nonconforming Uses in a Floodplain Overlay District

Within the Floodplain Overlay District, the provisions of s.10.4 shall apply in addition to the other requirements of this Code.

10.3 NONCONFORMING STRUCTURES

10.3.1 Existing Nonconforming Structures

Lawfully existing nonconforming structures existing at the time of the adoption or amendment of this Code may be continued, although their size or location does not conform with the provisions of this Code.

10.3.2 Repairs, Building, Maintenance, Additions and Enlargements to Legal Existing Nonconforming Structures

The following repairs, rebuilding, maintenance, additions and enlargements to legal existing nonconforming structures are permitted by this code:

10.3.2.A Incidental Repairs and Normal Maintenance

Incidental repairs and normal maintenance of nonconforming structures shall be allowed without a County Land Use Permit unless such repairs or maintenance increase the extent of nonconformity or are otherwise expressly prohibited by this Code. For purposes of this section, "incidental repairs" shall mean repairs that are subordinate and minor in significance. Incidental repairs and normal maintenance repairs are not considered a modification or addition and are not considered an increase in the extent of the nonconformity; Incidental repairs and normal maintenance include painting, decorating, paneling, re-roofing or re-shingling a roof, replacing siding, replacement of doors, windows and other non-structural components and the maintenance, repair or replacement of existing private onsite wastewater treatment systems (POWTS) or water supply systems or

connections to public utilities. Incidental repairs and ordinary maintenance repairs do not include any costs associated with the repair of a damaged structure. Nothing in this section shall be construed to prevent structures from being structurally strengthened or restored to a safe condition, in accordance with an official order of a public official.

10.3.2.B. Rebuilding, Additions and Modifications

No new basements, additional stories, lateral expansion or accessory construction outside of the perimeter of existing structure or building, except as allowed under this subsection, shall be permitted unless the proposed construction complies with all applicable provisions of this Code;

10.3.2.B.1 Rebuilding, repair or remodeling of a legal existing nonconforming structure is permitted provided the rebuilt, remodeled or repaired structure is confined to the existing three dimensional footprint of the legal existing nonconforming structure;

10.3.2.B.2 The replacement of an existing roof is permitted provided the replacement roof is confined to the footprint of the existing structure. A flat roof may be replaced with a pitched roof provided the pitched replacement roof does not exceed the height requirements of this Code and provided no additional stories are added to the structure or building;

10.3.2.B.3 Additions and modifications to legal existing nonconforming structures that comply with the applicable setback and other applicable dimensional requirements of this Code are permitted.

10.3.3 Movement

If a legal existing nonconforming building or structure is moved either horizontally or vertically for any reason, for any distance or height, it shall thereafter conform to the provisions of this Code except as allowed under Section 10.3.2.

10.3.4 Reconstruction of Damaged Nonconforming Structures

10.3.4.A Except as allowed under Sections 10.3.2.A and 10.3.2.B, if a nonconforming structure was damaged or destroyed prior to March 2, 2006 by any means the structure shall not be reconstructed except in compliance with all regulations applicable to the zoning district in which it is located. No repairs, replacement or reconstruction shall be undertaken unless commenced within one year of the date of the damage or destruction and diligently carried on to its completion.

The burden of determining the date the damage occurred shall in all cases fall upon the owner of such nonconforming structure.

10.3.4.B If a nonconforming structure was damaged or destroyed to any extent by violent wind, vandalism, fire, flood, ice, snow, mold, or infestation or other casualty not intentionally caused by the owner, on or after March 2, 2006, the structure shall be allowed to be restored to the size, subject to 10.3.4.C, location, and use that it had immediately before the damage or destruction occurred.

10.3.4.C The restoration of a structure allowed under 10.3.4.B shall allow for the size of the structure to be larger than the size it was immediately before the damage or destruction if necessary for the structure to comply with applicable state or federal requirements.

10.3.4.D Voluntary demolition of nonconforming structures.

Except as allowed under Sections 10.3.2, 10.3.4.A, 10.3.4.B and 10.3.4.C, following the abatement or the voluntary demolition of a nonconforming structure or portion thereof, by the owner or the owner's agent, the structure shall not be reconstructed except in compliance with all applicable regulations of this Code.

10.3.5 Compliance with Sanitary Requirements

The provisions of this section with respect to additions or enlargements, movement, and reconstruction are applicable only if the lot or parcel conforms with sanitary requirements.

10.3.6 Nonconforming Boathouses

The maintenance and repair of nonconforming boathouses which are located below the ordinary highwater mark of any navigable waters shall comply with the requirements of Section 30.121 of the Wisconsin Statutes.

10.4 NONCONFORMING STRUCTURES AND USES WITHIN THE FLOODPLAIN OVERLAY DISTRICT

Deleted on January 19, 2010; See Dodge County Floodplain Ordinance

10.5 NONCONFORMING LOTS

In this subsection, a “substandard lot” means a legally created lot or parcel of record that met any applicable lot size requirements when it was created, but does not meet current lot size requirements.

10.5.1 Substandard lots that do not meet the lot size requirements of the Code.

A legally created lot or parcel of record that met any applicable lot size requirements when it was created, but does not meet current lot size requirements may be used as a building site if all of the following apply:

10.5.1.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.

10.5.1.B The substandard lot or parcel is developed to comply with all other codes and ordinances of the political subdivision.

10.5.2 Substandard Lots with Two or More Existing Dwellings

If a lot is occupied by 2 or more residential dwelling units and if the dwellings were constructed prior to the effective date or amendment of this Code, and if the size of such lot prevents the creation of conforming lots for each dwelling unit, then the owner of such lot may create a substandard lot for each residential dwelling unit. Such substandard lots need not comply with the lot size requirements of this Code, provided the following conditions are met:

10.5.2.A Such lots are at least 50 feet wide and 7,500 square feet in area.

10.5.2.B Each proposed substandard lot contains a pre-existing residential dwelling unit conforming to the Code in all respects other than those specifically stated in this section.

10.5.2.C Each proposed substandard lot is served by public sewer, contains a functioning septic system or meets the requirements of the Wisconsin Administrative Code for the creation of new lots.

10.5.3 Lots That Do Not Abut a Public Road

A single-family dwelling and its accessory structures may be constructed on a legal lot or parcel of record recorded in the County Register of Deeds Office before the effective date or amendment of this Code, which has frontage along the platted private roads listed in Section 10.5.3.D subject to the requirements set forth in this subsection.

10.5.3.A Such lot must be at least 50 feet wide and 7,500 square feet in area.

10.5.3.B All other dimensional requirements of this Code shall be complied with;

10.5.3.C Each lot is served by public sewer, contains a functioning septic system or contains an area of soil suitable for any type of private sewage system other than a holding tank permitted under Comm. 83, Wisconsin Administrative Code.

10.5.3.D Lower Howard Avenue located in Sections 21 and 28, Town of Fox Lake; Howard Drive West located in Section 27, between Howard Dr. and Chief Kuno Trail, Town of Fox Lake, E Water Street – Section 31, Town of Hubbard – Beginning at the intersection of E Water Street and Butternut Trail, thence south along E Water Street a distance of 624 feet; E Water Street – Section 31, Town of Hubbard – Beginning at the intersection of E Water Street and Butternut Trail, thence north along E Water Street a distance of 1000 feet;