

SEWRPC Model Zoning Ordinance

ZONING REGULATIONS FOR NONCONFORMING USES, STRUCTURES, AND LOTS

The following regulations are intended to update existing zoning regulations that may not incorporate relatively recent changes to State law related to nonconforming structures. **These regulations have not been reviewed by an attorney.** Review by the municipal attorney is strongly recommended before adopting these regulations as part of a city, village, town, or county zoning ordinance. The Legislature's actions limit the requirements a county or local zoning ordinance can impose on the repair or replacement of nonconforming structures and prohibits restrictions on prohibiting the sale or development of vacant legal nonconforming lots. Limits on the repair, replacement, or discontinuance of nonconforming uses (including structures housing a nonconforming use) were not affected. Major changes include:

- 2011 Wisconsin Act 170, which prohibits a county or local zoning ordinance from limiting the repair or maintenance of a nonconforming structure based on the cost of the repair. The Act included definitions of "Development Regulations" and "Nonconforming Structure," which are reflected in this model. Note that Statutory provisions limiting repair or maintenance of a structure containing a nonconforming use to 50 percent of assessed value, and providing that discontinuance of a nonconforming use for 12 months causes the nonconforming use to lose its legal status, are still in effect (see Section 62.23(7)(h) of the *Wisconsin Statutes* for limits on nonconforming uses).
- 2005 Wisconsin Act 112, which allows nonconforming structures damaged or destroyed by specified natural causes on or after March 2, 2006, to be rebuilt. The replacement structure may be larger than the one destroyed if necessary for the structure to comply with applicable State or Federal requirement. Note that even though the Statutes specify that nonconforming structures destroyed by flooding may be rebuilt, any rebuilding in a floodplain must comply with the applicable county, city, or village floodplain zoning ordinance.
- 2017 Wisconsin Act 67, which prohibits a county or local zoning ordinance from prohibiting the conveyance (i.e., selling or transfer of ownership) or development of legal nonconforming lots or requiring merger of adjacent nonconforming lots owned by the same property owner without the property owner's permission. The Act also prohibits requiring a variance for the repair, maintenance, renovation, rebuilding, or remodeling of a legal nonconforming structure or parts thereof, if a county or town zoning ordinance was adopted, respectively, under Sections 59.69 and 60.61 of the Wisconsin Statutes.

In the following model regulations, additional text a community may wish to include are shown in [*brackets and italics*]. These regulations are intended to be adopted as a section in an existing zoning ordinance. As such, they do not include provision for appeals, variances, severability, and similar considerations which would typically be addressed in other sections of a full zoning ordinance. Please contact SEWRPC if you would like examples of other zoning ordinance sections.

Please contact SEWRPC at (262) 547-6721 or sewrpc@sewrpc.org if you have any questions or would like a Word version of this model section.

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SECTION 8.00 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/City floodplain, shoreland, and shoreland-wetland regulations, whichever is more restrictive.

(Note: For counties and towns, the following should be substituted for the above, if applicable:

“Existing lawful nonconforming uses, structures, and lots shall meet the provisions of this Section, and those located within floodplains and shorelands shall comply with the (Name) County floodplain and shoreland regulations, whichever is more restrictive.”)

8.01 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. **Discontinuance.** 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. **Abolishment or Destruction.** When a nonconforming use or 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 structure, fixture, or premise containing a nonconforming use shall not exceed 50 percent of the equalized assessed value of the structure, fixture, or premise at the time its use become nonconforming unless it is permanently changed to a conforming use in accordance with the use provisions of this Ordinance. Ordinary

maintenance repairs are not considered structural repairs, modifications, or additions. Some examples of such repairs include painting, caulking, 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.

- E. **Substitution of New Equipment** may be permitted by the Board of Zoning Appeals if such equipment will reduce the incompatibility of the nonconforming use with neighboring uses.

8.02 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.

8.03 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.

(Note: County zoning ordinances adopted under Section 59.69 of the Statutes and town zoning ordinances adopted under Section 60.61 (not towns that adopted village power and zoning authority under Section 60.62) should substitute the following for the above provisions:

“Nonconforming Structures with a conforming use may be repaired, maintained, renovated, rebuilt, or remodeled, subject to building code and other applicable requirements. No prohibition, limits based on cost, or requiring a variance may be imposed on the repair, maintenance, renovation, rebuilding, or remodeling of such structures or any part thereof.”)

- C. **Additions and Enlargements** to existing nonconforming structures with a conforming use are permitted and shall conform to the established yard/setback, height, parking, loading, and access provisions of this Ordinance. Existing buildings and their additions shall not be permitted to encroach further upon established yard/setback and height requirements than the

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.

8.04 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.

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 Board of Zoning Appeals.

- B. **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.

C. **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.

8.05 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.

(Note: The above referenced Statutory Sections pertain to villages. City zoning ordinances should cite Sections 62.231(5) and (5m).)

8.06 FLOODPLAIN NONCONFORMING USES AND STRUCTURES

Modifications or additions to nonconforming uses and structures in floodplains shall comply with the nonconforming regulations in Section _____ of the Village/City 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.

(Note: Many communities have adopted as a separate ordinance the model floodplain ordinance prepared by the Wisconsin Department of Natural Resources.)

8.07 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 Board of Zoning 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.

RELATED DEFINITIONS

(Include in the "Definitions" section of the zoning ordinance.)

Development Regulations. Those portions of this Ordinance pertaining to lot area, lot width, structure size, yard/setback, frontage, height, parking, loading, or separation distance requirements.

Floodplain. Those lands, including the floodplains, floodways, and channels, subject to inundation by the one-percent-annual-probability (100-year recurrence interval) flood, or, where such data is not available, the maximum flood of record.

Nonconforming Lot. A lot, the area, dimensions, or location that existed at the time of the effective date of this Ordinance or an amendment thereto that does not conform to current regulations of this Ordinance. Such nonconforming lots are also referred to as substandard lots.

Nonconforming Use. A use of structure (including buildings), fixture, or premises (land or water) that existed at the time of the effective date of this Ordinance or an amendment thereto that does not conform to the current use restrictions of this Ordinance.

Nonconforming Structure. A dwelling, building, or other structure that existed lawfully at the time of the effective date of this Ordinance or an amendment thereto that does not conform to one or more of the Development Regulations of this Ordinance. Any such structure conforming with respect to use (containing a conforming use) but not in respect to Development Regulations shall be considered a nonconforming structure and not a nonconforming use.

Shoreland. The land lying within the following distances: 1,000 feet from the ordinary high water mark or elevation of navigable lakes, ponds, or flowages; or 300 feet from the ordinary high water mark or elevation of navigable streams, or to the landward edge of the floodplain, whichever is greater. Shorelands shall not include lands adjacent to farm drainage ditches where (a) such lands are not adjacent to a natural navigable stream or river; (b) those parts of such drainage ditches adjacent to such lands were not navigable streams before ditching; and (c) such lands are maintained in nonstructural agricultural use.

Wetland. An area where water is at, near, or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which has soils indicative of wet conditions.

(Note: A community may wish to include the following definitions for “lot” and “parcel” to clarify if lands dedicated to the public or reserved for roadway purposes may be allowed to count towards meeting minimum lot or parcel size requirements:

*“**Lot.** An area of land having frontage on a public street, occupied or intended to be occupied by a principal structure or use, and sufficient in size to meet the lot width, lot frontage, lot area, and other open space provisions of this Ordinance. No lands dedicated to the public or reserved for roadway purposes shall be included in the computation for meeting minimum lot size requirements, except in the _____ Agricultural Districts. The term “lot” is used in all district regulations other than the _____ Agricultural Districts, where the term “parcel” is used. See also “Parcel.”*

***Parcel.** A land ownership upon which one or more rural structures, including farm residences, barns, and other farm structures, are placed, together with the required yards/setbacks or open spaces. The term “parcel” is used in the _____ Agricultural District regulations and unlike the term “lot,” as defined in this Section, may include lands dedicated or reserved of no more than 30 feet from the section line or centerline of the road for roadway purposes in the computation of meeting the minimum parcel size requirement.”*

In the definition for “parcel,” a community may select certain Agricultural Zoning Districts that require large minimum parcel sizes, such as 35 acres or greater, to be allowed to include a portion of dedicated or reserved street right-of-way in the computation. A community may also wish to increase the extent of dedicated or reserved right-of-way that may be included in the computation such as 33 feet wide for establishing town roads (See Section 82.50 of the Wisconsin Statutes for minimum street cross-sections for Town roads) or 40 to 60 feet wide for establishing County or State Trunk Highways.)

Figure No. 1

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.