

ARTICLE 26 NONCONFORMITIES

490-3100 Legislative findings

The Common Council makes the following legislative findings relating to nonconformities:

- (1) There may be existing lots, buildings, uses, and signs in the City that were lawfully established but that do not now comply with one or more provisions of the zoning district in which they are located.
- (2) It is not the intent of this chapter to perpetuate and/or encourage the long-term continuance of nonconformities because they are inconsistent with the requirements and character of the zoning districts involved, or to permit nonconformities to be enlarged, expanded, or extended except as allowed in this division.
- (3) State law permits the reconstruction of nonconforming structures under certain circumstances.

490-3101 Registry of nonconforming lots, buildings, and land uses

- A. Content of registry.** The Zoning Administrator may develop and maintain a registry of (1) nonconforming lots, (2) nonconforming buildings, (3) nonconforming land uses, and (4) any other nonconformity.
- B. Form of registry.** At the discretion of the Zoning Administrator, the registry may consist of either a written list or digital records.
- C. Disclaimer.** Given the nature of the registry, the City does not warrant that such information is complete and/or accurate in all respects.

490-3102 Nonconforming lots

- A. Generally.** A nonconforming lot may be used for any conforming use provided all other dimensional lot standards can be satisfied.
- B. Alteration of property boundary lines.** A property boundary line of a nonconforming lot may not be modified by any means, except to make the lot less nonconforming.
- C. Survey gaps.** A gap between surveyed lots does not constitute a nonconforming lot.
- D. Annexation.** The City may annex a property that will be classified as a nonconforming lot, provided the zoning classification that is applied to the property creates the most compliant lot as determined by the Common Council.

490-3103 Nonconforming buildings

- A. Generally.** A legal nonconforming building may be used for any conforming use.
- B. Enlargement.** A nonconforming building that is used for a conforming use may be enlarged provided the building addition complies with all requirements and the Plan Commission authorizes the enlargement pursuant to the requirements in Article 5.
- C. Building addition within setback.** If a building is nonconforming due only to setbacks, it may be expanded within the existing building setbacks provided (1) the established nonconforming setback line is not less than 50 percent of the required setback; (2) the addition does not extend beyond the established nonconforming setback line; and (3) the addition is no greater than the area of the existing building. *(this is optional – verify if needed)*

- D. New foundation/basement.** The placement of a new foundation or basement under an existing nonconforming building that is not located in the 100-year floodplain is permitted provided the foundation or basement does not extend beyond the vertical extent of the existing exterior wall.
- E. Unsafe conditions.** Nothing in this article prevents the building inspector or any other City official from initiating remedial or enforcement actions when a nonconforming building is declared unsafe or presents a danger to the public health, safety, or welfare; constitutes a public nuisance; or is in violation of any licensing regulation.
- F. Ordinary repair and maintenance, and remodeling.** Nothing in this division prohibits or limits, based on cost, the repair, maintenance, renovation, or remodeling of a nonconforming building.
- G. Reconstruction following damage.** A nonconforming building that is damaged by violent wind, vandalism, fire, flood, ice, snow, mold, or infestation on or after March 2, 2006, may be restored to its condition (e.g., size, location, and use) prior to the damage, except the building may be larger when necessary to comply with state or federal requirements.^[1] The work to restore the damaged building must commence and be completed within 365 days of the event.
- H. Relocation.** A nonconforming building may not be moved or relocated to any other location on the lot unless the building is made to conform to all regulations of the zoning district in which it is located.

Editorial notes:

[1] See § 62.23(7)(h), Wis. Stats.

490-3104 Nonconforming uses

- A. Generally.** A legal nonconforming use may continue to exist so long as it remains otherwise lawful, subject to the provisions in this section.
- B. Cessation of use.** If a nonconforming use ceases for any reason, whether intentional or otherwise, for more than 12 consecutive months, or for 18 accumulative months during any 3-year period, the use may not thereafter be reestablished.^[1] When a business operation is of a seasonal nature (e.g., marinas, summer camps), the periods when the business is not normally active are excluded from the 12-month period mentioned above. If the Zoning Administrator determines that a nonconforming use has ceased to operate for more than the aforementioned time period, they are authorized to initiate the process established under Article 5 to terminate the nonconforming use.
- C. Change in extent.** Except as allowed in this subsection, a nonconforming use may not be enlarged, increased, or expanded and may not occupy a greater area than what existed on the effective date of this chapter or any amendment thereto that created the nonconforming use. *A single family dwelling and a two-family dwelling unit which is a nonconforming use may be enlarged one time up to a total of 150 square feet of gross floor area. (Discuss – if last sentence is desired or not)*
- D. Limitation on structural alterations to building housing nonconforming use.** Structural alterations to a building housing a nonconforming use may not exceed, on an accumulative percentage basis, 50 percent of the equalized assessed value of the structure.^[2] For example, if a property owner makes structural alterations, the cost of which equals 40 percent of the current equalized assessed value of the building, any additional structural alterations are limited to 10 percent of the equalized assessed value at the time of the work.
- E. Damage to structure housing nonconforming use.** Except as allowed in this subsection, a building housing a nonconforming use that is damaged beyond 50 percent of its present equalized assessed value, the nonconforming use may not be reestablished.
- F. Change of location.** A nonconforming use may not be moved in whole or in part to any other part of the lot or to another structure than what was occupied on the effective date of this chapter or any amendment that created the nonconforming use.

- G. Casual, occasional, accessory, or incidental use.** Casual, occasional, accessory, or incidental use after the primary nonconforming use has terminated, does not perpetuate a nonconforming use.^[3]
- H. Change of production.** A change in the method or quantity of production and the incorporation of new technology into a nonconforming use is permitted provided the original character of the use remains the same.^[4]
- I. Termination due to effects on public health, safety, and welfare.** In the event the Zoning Administrator determines that a nonconforming use, regardless of its duration, is harmful to the public health, safety, or welfare, they should follow the procedure outlined in Article 5 relating to termination of a use.^[5]
- J. Unsafe conditions.** Nothing in this chapter prevents the strengthening or restoring to a safe condition of any structure or part thereof, provided the work conforms to the provisions in this chapter.
- K. Licensing.** The operator of a nonconforming use must obtain any licenses required by the state of Wisconsin, or its designated agent; Ozaukee County; or the City, and maintain the licenses for the life of the use or until the entity no longer requires the license.
- L. Conversion to another nonconforming use.** Subject to the requirements in Article 5, a nonconforming use may be converted to a different nonconforming use provided the new use is less nonconforming. Any nonconforming use that has been converted continues to be subject to all applicable provisions related to nonconforming uses and to the conversion order as approved by the Plan Commission.
- M. Permissible accessory residential uses.** If an existing single-family dwelling unit is classified as a nonconforming use, the establishment of accessory residential uses normally incidental to a single-family dwelling is not considered to be an expansion of a nonconforming use and is permitted provided the accessory use is otherwise allowed by the zoning code and in the case of a detached building does not exceed 576 square feet. (this is optional - verify if needed)
- N. Multiple residences on a single lot.** An existing residential lot with more than one principal building built prior to [redacted] may be divided to accommodate the placing of the existing principal buildings onto [redacted] separate lots or, the reduction of existing buildings to one-to-a-parcel, if, in the judgment of the Plan Commission, the resulting lots or parcels or the resulting zoning is not detrimental to the neighborhood nor to the spirit and intent of this code, and, further, taking into account the need to continue conformity to zoning district classification regulations, if possible. (this is optional - verify if needed)

Editorial notes:



[1] See § 62.23 (7)(h), Wis. Stats
 [2] See § 62.23 (7)(h), Wis. Stats
 [3] See *Village of Menominee Falls v. Veirstahler*, 183 Wis. 2d 96, 515 N.W.2d 290 (Ct. App. 1994)
 [4] See *Racine County v. Cape*, 2002 WI App 19, 250 Wis. 2d 44, 639 N.W.2d 782, 01-0740
 [5] See § 62.23 (7)(h), Wis. Stats.

490-3105 Nonconforming signs

- A. Generally.** Signs lawfully existing at the time of the adoption or amendment of this article may be continued even though the use, size or location may not conform to the provisions of this article.
- B. Normal repair.** Nonconforming signs may be repaired provided they are not relocated, expanded, enlarged, repositioned, or raised in height.
- C. Damaged sign.** If a nonconforming sign, including its support structure, is damaged or altered to an extent exceeding 50 percent of the replacement cost of the sign, or is removed by any means, including an act of God, such sign when restored, reconstructed, altered, repaired, or replaced must conform to the requirements of this chapter, except where restoration is authorized by § 62.23(7)(hc), Wis. Stats. If restoration of a damaged sign is not completed within

3 months of the date damage occurred, such sign shall be removed or replaced in a manner as will conform to all specifications of this article.

- D. If a nonconforming sign is to be replaced with a compliant sign in a specific case where owing to special conditions a literal application of the standards set forth in § 490-400 (485-130) would result in practical difficulty or unnecessary hardship in the location of the replacement sign, the Plan Commission may recommend to the Zoning Board of Appeals the granting of a variance or special exception to allow a reduction of the offset and setback requirements of that section, provided that such variance or special exception is not contrary to the public interest, safety or welfare.

Bob - Here is a rewrite of this provision for your review. If a sign is nonconforming with respect to height, area, illumination, or another design feature, it may be removed and replaced with a sign that complies with current standards even if the existing location does not conform to applicable setback requirements. The replacement sign may not increase the degree of setback nonconformity and remains a legal nonconforming sign and is subject to all provisions of this chapter related to nonconformities.

- E. Any change in wording of the sign shall require that the sign be brought into conformity with the requirements of this article. **(Bob – this provision is probably not legal. Also, it would be hard to enforce, unless the city has photo of the signs when they became nonconforming.)**
- F. **Removal.** A nonconforming sign or sign structure shall be removed within 30 days of the date the building containing the use to which the sign is accessory is demolished or destroyed to an extent exceeding 50 percent of the building's appraised value.
- G. **Changes requiring compliance.** At any such as the owner of any building, structure or lot on which a nonconforming sign is located requests Plan Commission approval of any proposed change to the use, building, structure or lot, the Plan Commission may, as a condition of building or site plan approval, require that such nonconforming sign be removed or made to conform to this chapter.

490-3106 Special provisions for manufactured home communities

A mobile home or a manufactured home not located in a mobile home park is considered a nonconforming use.

490-3107 Special provisions for nonconforming bathhouses

The ordinary maintenance and repair of a nonconforming bathhouse that extends beyond the ordinary high-water mark must comply with § 30.121, Wis. Stats.

490-3108 Special provisions related to the shoreland-wetland overlay district

The shoreland-wetland provisions of this chapter authorized by § 62.231, Wis. Stats., do not limit the repair, reconstruction, renovation, remodeling, or expansion of a nonconforming structure in existence on the effective date of the shoreland wetland provisions, or of any environmental control facility in existence on May 7, 1982 related to such a structure. All other modifications to nonconforming structures are subject to § 62.23 (7)(h), Wis. Stats., which limits total lifetime structural repairs and alterations to 50 percent of current fair market value.

490-3109 through 490-3199 reserved