

## **Title 16 – Chapter 8**

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## **NONCONFORMITIES**

**CHAPTER 8: NONCONFORMING USES, STRUCTURES AND LOTS (NON-SHORELAND AREAS (Chapter 8 reference Winnebago County Chapter 23. Article 13 Nonconformities)**

### **16-8-1 LEGISLATIVE FINDINGS.**

The Town of Oshkosh Town Board makes the following legislative findings:

- (a) There may exist lots, structures, and uses in the unincorporated area of the Town that were lawfully established but that do not now comply with one or more provisions of the district in which they are located.
- (b) It is reasonable to generally allow, but not encourage, nonconforming uses to continue until such time as they are removed or discontinued.
- (c) A nonconformity that is removed, discontinued, changed, extended, or enlarged shall be made to conform with the regulations that apply to the district in which it is located.
- (d) State law permits the reconstruction of nonconforming structures under certain circumstances.
- (e) There is a substantial public benefit of reducing the number of existing off-premise billboards that exceed the size limitations established in this chapter.

## **16-8-2 OFFICIAL REGISTRY OF NONCONFORMING LOTS, STRUCTURES, SIGNS, AND USES.**

**RESERVED**

## **16-8-3 NONCONFORMING LOTS.**

- (a) Generally. A nonconforming lot may be used for an allowable use, provided such use complies with all other development standards of the zoning district in which the lot is located.
- (b) Alteration of property boundary lines. The location of a property boundary line of a nonconforming lot shall not be moved, except when the adjoining lot being made smaller and development on such lot comply with all dimensional requirements of the district in which it is located and the new property boundary line location will make the nonconforming lot to be conforming or lessen the nonconformity.

## **16-8-4 NONCONFORMING STRUCTURES.**

- (a) Reconstruction. A nonconforming structure containing a conforming use may be rebuilt, in whole or in part, if the reconstructed structure is not located on more than one parcel and is identical in all respects to its size, shape, height, and footprint at the time of reconstruction. Prior to the issuance of a zoning permit, the applicant shall provide a survey, conducted by a licensed land surveyor, verifying all setbacks of the existing non-conforming structure, as well as the structure's footprint and square footage.
- (b) Enlargement. A nonconforming structure shall not be enlarged or altered, except as permitted in this subsection. In those instances where a nonconforming structure is used for residential purposes, the structure may be enlarged provided the portion of the structure being added complies with all applicable dimensional standards, including setback and building height standards.
- (c) Reconstruction following damage. A nonconforming structure 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 (size, location, and use) to the damage, except the structure may be larger when necessary to comply with state or federal requirements.<sup>1</sup>
- (d) Unsafe conditions, ordinary maintenance, and remodeling. Nothing in this article shall be deemed to prevent the strengthening or restoring to a safe condition of any structure or part thereof, ordinary repair and maintenance, or remodeling

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<sup>1</sup> Commentary: See s. 59.69(10m), Wis. Stats.

provided that the work conforms to the provisions in this chapter.

### **16-8-5 NONCONFORMING USES.**

- (a) Generally. A 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 continuous months, such use shall not be reestablished.<sup>2</sup> A business of a seasonal nature shall not be deemed discontinued during periods which it is normally inactive (i.e., marinas, ski hills, campgrounds). If the zoning administrator determines that a nonconforming use has ceased to operate for more than the aforementioned time period, he or she shall initiate the process established under division 7 of article 7. However, if a temporary structure houses a nonconforming use, such use shall terminate upon cessation of such use.<sup>3</sup>
- (c) Change in extent. Except as may be provided in this article or in state law, a nonconforming use shall not be enlarged, increased, or expanded and shall not occupy a greater area than what existed on the effective date of this chapter or any amendment thereto that created the nonconforming use.
- (d) Limitation on structural alterations. Structural alterations to a structure housing a nonconforming use shall not exceed, on an accumulative percentage basis, 50 percent of the equalized assessed value of such structure. For example, if a property owner makes structural alterations, the cost of which equals 40 percent of the current equalized assessed value of the structure, 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. If a structure housing a nonconforming use is damaged beyond 50 percent of its present equalized assessed value, such use shall not be reestablished.
- (f) Change of location. A nonconforming use shall not be moved in whole or in part to any other portion of the lot or to another structure than what was occupied on the effective date of this chapter or any amendment thereto 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, shall not be deemed to perpetuate a nonconforming use.<sup>4</sup>

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<sup>2</sup> Commentary: See s. 59.69(10)(a), Wis. Stats.

<sup>3</sup> Commentary: See s. 59.69(10)(a), Wis. Stats.

<sup>4</sup> Commentary: See *Village of Menominee Falls v. Veirstahler*, 183 Wis. 2d 96, 515 N.W.2d 290 (Ct. App. 1994)

- (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.<sup>5</sup>
- (i) Nonconforming use as a public nuisance. A nonconforming use, regardless of its duration, may be prohibited or restricted if it constitutes a public nuisance or is harmful to the public health, safety, or welfare.<sup>6</sup>
- (j) Unsafe conditions. Nothing in this chapter shall be deemed to prevent the strengthening or restoring to a safe condition of any structure or part thereof, provided that such work conforms to the provisions in this chapter.
- (k) Licensing. The operator of a nonconforming use shall obtain such licenses as may be required by the state of Wisconsin, or its designated agent; or the Town in which the use is located, and maintain such licenses for the life of the use or until the entity no longer requires such license.

## **16-8-6 NONCONFORMING CONDITIONAL USES.**

- (a) Generally. Subject to the requirements in division 5 of article 7, except as modified in this section, a nonconforming use may be determined to be a conditional use.
- (b) Special review criteria. In addition to the review criteria in division 5 of article 7, the town board and town plan commission of the town in which the nonconforming use is located in making their recommendation and the Planning and Zoning Committee in making its decision shall make the following determinations:
  - (1) The nonconforming use will not be adverse to the public health, safety, or welfare.
  - (2) The nonconforming use is in keeping with the spirit and intent of this chapter.
  - (3) The nonconforming use would not be otherwise detrimental to the area and in particular the surrounding properties.
- (c) Expansion and change in a nonconforming conditional use. If a nonconforming use is approved as a conditional use, it is not subject to the restrictions contained in this article. Any proposed expansion or change in a nonconforming conditional use shall be reviewed as an amendment to the initial approval.

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<sup>5</sup> Commentary: See *Racine County v. Cape*, 2002 WI App 19, 250 Wis. 2d 44, 639 N.W.2d 782, 01-0740

<sup>6</sup> Commentary: See *Town of Delafield v. Sharpley*, 212 Wis. 2d 332, 568 N.W.2d 779 (Ct. App. 1997, 96-2458)

### **16-8-7 SPECIAL PROVISIONS FOR NONCONFORMING BOATHOUSES.**

The ordinary maintenance and repair of a nonconforming boathouse which extends beyond the ordinary high-water mark shall comply with s. 30.121, Wis. Stats.

### **16-8-8 SPECIAL PROVISIONS FOR NONCONFORMING SIGNS.**

- (a) Changes to copy. The copy of a nonconforming sign may be changed.
- (b) Off-premise sign. A nonconforming off-premise sign that exceeds the maximum sign area allowed in this chapter and that has a static message display shall not be converted, in whole or in part, to an electronic message display, unless the sign owner agrees to remove 5 existing nonconforming off-premise signs in the Town of Oshkosh that exceed the maximum sign area provided (1) the sign area of the sign to be removed is at least 80 percent of the area of the sign to be converted, (2) the sign to be removed is located within 3-miles of the sign to be converted, (3) the sign to be removed is completely removed before work commences on the sign to be converted, and (4) the site of the removed sign is restored to the satisfaction of the zoning administrator.

### **16-8-9 SPECIAL PROVISIONS FOR NONCONFORMING OUTDOOR SHOOTING RANGES.**

An outdoor shooting range that is a nonconforming use in the zoning district in which it is located may be expanded only if the Town Board determines that such expansion would not impact public health or safety.<sup>7</sup>

### **16-8-10 SPECIAL PROVISIONS FOR NONCONFORMING MOBILE HOMES AND MANUFACTURED HOMES.**

Any mobile home on a lot of record that is not located in the R-8 zoning district may be replaced with a manufactured home. Any manufactured home on a lot of record that is not located in the R-8 zoning district may be replaced with a manufactured home.

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<sup>7</sup> Commentary: See s. 66.0409(4)(c), Wis. Stats.