

Article E: Nonconforming Uses, Structures and Lots

Sec. 13-1-80 Intent – Nonconforming Uses, Lots and Structures.

(a) **Intent; Interpretation.**

- (1) Within the zoning districts established by this Zoning Code or amendment thereof, there may exist lots, structures and uses of land which were lawful before this Zoning Code was enacted or amended, but which would be prohibited in the future under the terms of this Zoning Code or amendment thereto.
- (2) It is the intent of the Village of Elk Mound to permit nonconforming uses, lots and structures to remain and continue in accordance with the provisions hereinafter set forth until they are removed due to economic forces, public health or safety grounds, or otherwise. It is not the intent of this Zoning Code to perpetuate and/or encourage the long-term continuance of nonconformities because they are inconsistent with the requirements and character of the districts involved, or to permit nonconformities to be generally enlarged upon, expanded, or extended except as provided for herein. Existing nonconformities shall not be used to justify adding structures or uses prohibited in the zoning district.

(b) **Classification of Nonconformities.** Zoning nonconformities are classified into three (3) categories as follows:

- (1) Nonconforming uses.
- (2) Nonconforming lots.
- (3) Nonconforming structures.

(c) **General Guidelines.** It is the intention of the Village of Elk Mound that standards be set forth for the purpose of determining:

- (1) That the nonconforming use, lot or structure existed prior to the effective date of this Chapter or amendment thereto;
- (2) The ways in which the right of the nonconforming use, lot or structure to remain can be preserved and the ways in which the right to continue nonconforming use, lot or structure can be lost;
- (3) The extent of permissible variation in the nonconforming use, lot or structure; and
- (4) The devices available for eliminating such nonconforming uses, lots or structures, where appropriate.

(d) **Burden of Proof Regarding Nonconforming Uses.** Any property owner asserting as a defense to a charge of violating this Chapter because his/her property is a valid nonconforming use has the burden of demonstrating to reasonable certainty by the greater weight of credible evidence that:

- (1) The nonconforming use was legally in existence at the time the zoning ordinance provision that now prohibits that use was adopted. The use must be lawful under then existing zoning regulations and cannot contravene such zoning requirements.

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- (2) That the use of the property prior to the nonconformity came into being was so active and actual that the property owner can properly assert that the property owner has acquired a vested interest in its continuance. Such use cannot be occasional or sporadic. For purposes of this Chapter, a property owner shall be deemed to have a vested right in the use of his/her property where that use at the time the nonconformity came into being is both actual and active and a substantial degree of activity or expense had been undertaken prior to the effective date the zoning provision that caused the nonconformity to come into being. Such use must be more than incidental or accessory to the principal use of the property.
- (3) That the use is substantially the same use that existed prior to the enactment of the ordinance or amendment thereto that caused the nonconformity.

Sec. 13-1-81 Article Definitions.

In addition to the definitions contained in Section 13-1-8(a) of this Chapter, the following definitions shall be applicable in Article; in the event of conflict, the more specific definition shall be applicable:

- (a) **Assessed Value (Lot).** The full market value placed upon the lot by the Village Assessor as of the date that the nonconformity came into being. Such valuation by the Assessor shall be prima facie evidence of an assessed value of the lot.
- (b) **Nonconforming Lot.** [See definition in Sec. 13-1-8(a)].
- (c) **Nonconforming Structure.** [See definition in Sec. 13-1-8(a)].
- (d) **Nonconforming Use.** [See definition in Sec. 13-1-8(a)].

Sec. 13-1-82 Common Ownership of Abutting Nonconforming Lots.

Nonconforming lots of record owned by the same individual or other legal entity shall be combined prior to the issuance of a zoning permit.

Sec. 13-1-83 Existing Nonconforming Structures.

- (a) **Continuation of Nonconforming Structures.**
 - (1) The use of a structure existing on the date that the nonconformity came into being may be continued although the structure's size or location does not conform with the development regulations, parking, loading, or access provisions of this Chapter.
 - (2) Any lawful nonconforming structure may be extended, enlarged, reconstructed, or structurally altered, provided that said extension, enlargement, reconstruction,

- movement or alteration complies with the setback and building requirements of the specific zoning district. However, the nonconforming feature of said structure shall not be allowed to become more nonconforming by being extended, enlarged, reconstructed, moved, or structurally altered except under one (1) or more of the following fact situations:
- a. As when required to do so by law, or order.
 - b. To comply with the provisions of this Chapter.
 - c. With the approval of a conditional use permit under the procedures of Article D of this Chapter for the purpose of making required alterations to maintain the structural integrity of the building.
 - d. With the approval of a variance by the Zoning Board of Appeals.
- (b) **Yard Encroachments by Nonconforming Structures.** Nonconforming structures which encroach upon the yard (setback) requirements of this Chapter, but which met yard requirements at the time the nonconformity came into being at the time of construction, may be structurally enlarged or expanded if the existing structure is located at a minimum of at least fifty percent (50%) of the minimum setback requirement(s) and further provided that the alteration does not create a greater degree of encroachment on yard, height, parking, loading, or access requirements. Placement of a new foundation or basement under an existing nonconforming structure shall be allowed as long as no further encroachment is permitted. The setbacks of the zoning district in which the structure is located shall be met if the lot size and existing location of the structure permits the setbacks to be met.
- (c) **Unsafe Nonconforming Structures.** Nothing in this Chapter shall preclude the Building Inspector or any other Village official from initiating remedial or enforcement actions when a lawful nonconforming structure is declared unsafe or presents a danger to the public health, safety, or welfare, constitutes a public nuisance, or is in violation of a licensing regulation.
- (d) **Maintenance, Repair and Remodeling of Nonconforming Structures.** This Chapter does not prohibit, or limit based on cost, the repair, maintenance, renovation, or remodeling of a nonconforming structure.
- (e) **Restoration of Certain Damaged Nonconforming Structures.**
- (1) In the case of damaged or destroyed nonconforming structures, the restoration of a nonconforming structure is permitted if the structure will be restored to the size, subject to Subsection (e)(2) below, location and use that it had immediately before the damage or destruction occurred, or impose any limits on the costs of the repair, reconstruction, or improvement if all of the following apply:
 - a. The nonconforming structure was damaged or destroyed on or after March 2, 2006.
 - b. The damage or destruction was caused by violent wind, vandalism, fire, flood, ice, snow, mold, or infestation.

- (2) Where the criteria under Subsection (e)(1) above exist for a nonconforming structure to be restored, the size of the structure may be larger than the size it was immediately before the damage or destruction if necessary for the structure to comply with applicable federal or state requirements.
- (f) **Shoreland Nonconforming Structures.** Nonconforming structures in shoreland areas damaged or destroyed by violent wind, fire, flood, or vandalism may be reconstructed or repaired, as provided by state law, to the size, location, and use it had immediately before the damage occurred if the landowner can establish that the damage was not due to deliberate act by the landowner or his/her agent, or due to general deterioration or dilapidated condition.
- (g) **Relocation of Nonconforming Structures.** A nonconforming structure shall not be moved or relocated to any other location on the lot unless such structure is made to conform to all regulations of the zoning district in which it is located.

Sec. 13-1-84 Existing Nonconforming Uses.

Pursuant to Section 62.23(7)(h), Wis. Stats., a nonconforming use may not be extended. The total structural repairs and alterations in such a nonconforming use's building, premises, structure, or fixtures shall not during its life exceed fifty percent (50%) of the assessed value of the building, premises, structure, or fixture unless permanently changed to a conforming use. The nonconforming use of a structure, land, or water existing on the date that the nonconformity came into being may be continued although the use does not conform with the provisions of this Chapter, except that:

- (a) **Change to More Restrictive Use Category.** The nonconforming use of a structure may be changed to a use of the same or more restricted classification, but where the nonconforming use of a structure is hereafter changed to a use of a more restrictive classification, it shall not thereafter be changed to a use of a less restricted classification.
- (b) **Discontinuation of Nonconforming Use.** If a nonconforming use is discontinued or terminated for a period of twelve (12) months, any future use of the structure, land or water shall conform to the provisions of this Chapter.
- (c) **Maintenance of Nonconforming Use Parcels.** Parcels containing a nonconforming use of land or water may be maintained or repaired including grading, paving, and surfacing, or the repair and replacement of bumper or wheel stops, fences, screening and drainage ways, provided that the amount of land, water or storage (i.e. vehicles, equipment and/or materials) devoted to such nonconforming use as it existed prior to the date that the nonconformity came into being is not extended, enlarged or moved.

Sec. 13-1-85 Changes and Substitutions.

Once a nonconforming use or structure has been changed or altered so as to comply with the pertinent district provisions of this Chapter, it shall not revert back to a nonconforming use or structure. Once the Zoning Board of Appeals has permitted the substitution of a more or equally

restrictive nonconforming use for an existing nonconforming use pursuant to the provisions of Article N, the existing use shall lose its status as a legal nonconforming use and become subject to all the conditions required by the Zoning Board of Appeals and pertinent zoning district. Substitution of new equipment may be permitted by the Zoning Board of Appeals if such equipment will reduce the incompatibility of the nonconforming use with the neighboring uses.

Sec. 13-1-86 Floodplain and Shoreland-Wetland Nonconforming Uses and Structures.

- (a) **Nonconformities in Floodplain Zoning Areas.** Nonconformities in Floodplain Zoning areas shall be governed by the provisions of the Village of Elk Mound Code of Ordinances regulating floodplain zoning (if adopted by the Village), and pertinent sections of the Wisconsin Statutes and Wisconsin Administrative Code.
- (b) **Nonconformities in Shoreland-Wetland Zoning Areas.** Nonconformities in Shoreland-Wetland Zoning areas shall be governed by the provisions of the Village of Elk Mound Code of Ordinances regulating shoreland-wetland zoning (if adopted by the Village), and pertinent sections of the Wisconsin Statutes and Wisconsin Administrative Code.

State Law References: Sec. 87.303, Wis. Stats., and NR 116.15, Wis. Adm. Code

Sec. 13-1-87 Nonconforming Performance Standards.

The use of any lot or parcel failing to comply with the performance standards set forth in this Chapter at the time of the adoption of this Chapter shall not be expanded unless the expansion conforms with the performance standards set forth in this Chapter.

Sec. 13-1-88 Pre-Existing Substandard Lots.

In any residential district, structures may be erected on any legal lot of record prior to the effective date of this Code of Ordinances provided that the area, width and depth of such existing lot shall be no less than seventy-five percent (75%) of the required minimums set forth in this Chapter. No lot, yard, parking area, building area, or other space shall be reduced in area or dimension so as not to meet the provisions of this Chapter.

Sec. 13-1-89 Reserved for Future Use.

