

ARTICLE D

Non-conforming Uses, Structures and Lots

SEC. 13-1-43 PURPOSE

- (a) The purpose of this Article is to establish regulations for the following nonconforming situations legally created prior to the effective date of this Article: nonconforming uses, nonconforming structures, and nonconforming and substandard lots.

SEC. 13-1-44 NONCONFORMING USES

- (a) **DEFINITION.** Any use of a lot or structure legally permitted or existing at the time of adoption of this Article which now does not comply with all the regulations of the Menasha Code of Ordinances or any amendments hereto governing the zoning district in which such use is located.
- (b) **CONTINUANCE OF A NONCONFORMING USE.**
- (1) Any nonconforming use which existed lawfully at the time of the adoption of this Article or amendment thereto may be continued at the size and manner of operation except as provided herein although such use does not conform with the provisions of the Menasha Code of Ordinances.
 - (2) If a lot contains an existing nonconforming use, the addition of a new conforming use on that lot shall require a Special Use Permit, subject to the standards, criteria, and procedures prescribed by Section 13-1-11, in order to ensure compatibility with the existing nonconforming use.
 - (3) In the absence of a Special Use Permit, a nonconforming use shall be discontinued before a new conforming use may be added to a lot.
- (c) **LIMITATIONS ON NONCONFORMING USES.**
- (1) Public Nuisance. Any nonconforming use which constitutes a public nuisance, as outlined in Title 11, Chapter 7 of the Menasha Code of Ordinances, shall not be permitted to continue as a legal nonconforming use.
 - (2) Modification of a Nonconforming Use. A structure containing a nonconforming use shall not be enlarged or increased to occupy a greater area of lot, parcel, site, and/or structure than was occupied at the time of the effective date of this Article.
 - (3) Relocation of a Nonconforming Use. A nonconforming use shall not be moved in whole or in part to any other portion of the lot, parcel, site and/or structure than was occupied upon the effective date of this Article.
 - (4) Termination of a Nonconforming Use. If a nonconforming use is discontinued or terminated for a period of twelve (12) months or a structure or lot containing a nonconforming use remains vacant for a period of twelve (12) months, any future use of the lot and/or structure shall conform to all applicable requirements of the Menasha Code of Ordinances.
 - a. The property owner has the burden to prove that the nonconforming use has been continuously maintained over time. Potential forms of documentation include but are not limited to utility bills; tax records;

business licenses; advertisements in dated publications; building permits; insurance policies; or leases.

(d) **MAINTENANCE OF STRUCTURES ON LOTS CONTAINING NONCONFORMING USES.**

- (1) Ordinary maintenance and repairs made to a structure on lots containing a nonconforming use is permitted. Ordinary maintenance and repairs are defined as:
 - a. The repair or replacement of doors, windows, nonbearing walls, fixtures, heating and air conditioning components, wiring, plumbing, siding, roofing, or other nonstructural components.
 - b. Refreshing existing parking stall paint, cleaning, routine seal coating, and/or crack sealing of parking facilities provided nonconforming aspects of the parking facility are not increased as a result of maintenance efforts.
- (2) In no instance shall said maintenance and repairs exceed, over the life of the structure, 50 percent of the present equalized assessed value of said structure or property prior to said repairs, in accordance with Wis. Stats. 62.23(7)(h).

SEC. 13-1-45 NONCONFORMING STRUCTURES

(a) **DEFINITION.** A structure existing lawfully prior to the adoption or any amendment of this Article which does not now conform to one or more of the development regulations of the Menasha Code of Ordinances. “Development regulations” means the parts of this the Menasha Code of Ordinances that apply to elements including but not limited to setback, heights and lot coverages.

(b) **EXISTING NONCONFORMING STRUCTURES.**

- (1) Continuation of a Nonconforming Structure. A lawful nonconforming structure existing at the time of the adoption or amendment of this Article may be continued although its size or location does not conform to the development regulations of the Menasha Code of Ordinances. However, it shall not be extended, enlarged, or structurally altered except as provided for in this Article.
- (2) Relocation of a Nonconforming Structure. The lawful nonconforming structure existing at the time of the adoption or amendment of this Article shall not be moved or relocated in whole or in part to any other location on the same or any other site unless the structure complies with all of the provisions of the Menasha Code of Ordinances.
- (3) Unsafe Conditions. Nothing in this Article shall preclude the City from remedial or enforcement actions when said structure or building is declared unsafe.

(c) **ALTERATIONS TO NONCONFORMING STRUCTURES.**

- (1) Nonconforming structures in the A-1, R-1, R-1A, R-2 OR R-2A zoning districts existing at the time of the adoption of this Article or amendment thereto may be expanded, enlarged, or improved provided that such addition or alteration shall not increase the degree of nonconformity of the existing structure.
- (2) Nonconforming structures in the R-3, R-4, C-1, C-2, C-3, C-4, I-1, I-2, R-MH, TND or GU zoning districts existing at the time of the adoption of this Article may be expanded, enlarged, or improved upon application and approval of a Special Use Permit pursuant to Sec. 13-1-11. Any addition or alteration shall not increase the

degree of nonconformity of the existing structure.

- (3) Alterations to nonconforming structures shall meet all other provisions of the Menasha Code of Ordinances including but not limited to maximum lot coverage, off-street parking and loading, lighting, and landscape standards.

(d) **EXCEPTIONS FOR ACCESSORY STRUCTURES.**

- (1) New garages and accessory structures may be constructed in conformance with all applicable requirements of the Menasha Code of Ordinances as follows:
 - a. On lots legally created prior to the adoption of this Article that do not meet the minimum requirements for area and width;
 - b. On lots legally created prior to the adoption of this Article where the existing principal structure does not meet the dimensional requirements; and
 - c. On lots legally created prior to the adoption of this Article maintaining a nonconforming use.
- (2) Nonconforming detached garages and accessory structures may be expanded, enlarged, or improved provided that the existing side or rear yard setback dimensions are within fifty percent (50%) of the applicable zoning requirements. Such alteration or enlargement shall be made in conformance with all other applicable zoning requirements.

(e) **MAINTENANCE ON NONCONFORMING STRUCTURES.** The ordinary maintenance and repairs made to a nonconforming structure is permitted. Ordinary maintenance and repairs are defined as follows:

- (1) The repair or replacement of doors, windows, nonbearing walls, fixtures, heating and air conditioning components, wiring, plumbing, siding, roofing, or other nonstructural components.
- (2) Refreshing existing parking stall paint, cleaning, routine seal coating, and/or crack sealing of parking facilities provided nonconforming aspects of the parking facility are not increased as a result of maintenance efforts.

(f) **DESTRUCTION AND RECONSTRUCTION OF NONCONFORMING STRUCTURES.**

- (1) Any nonconforming structure damaged or destroyed by violent wind, vandalism, fire, flood, ice, snow, mold, infestation, or other act identified by Wis. Stats. 62.23(7) on or after March 2, 2006 may be restored to, or replaced at, the size, location, and use that it had immediately before sustaining damage or destruction without any limits on the costs of the repair, reconstruction, or improvement.
 - a. The structure may be restored or replaced at a larger size than it was immediately before the damage or destruction if necessary for the structure to comply with applicable state or federal requirements.
- (2) The burden of proof in regard to the location, dimensions, configuration, and exterior building materials of the damaged or removed structure shall be upon the property owner to demonstrate prior to the issuance of a building permit.

SEC. 13-1-46 NONCONFORMING AND SUBSTANDARD LOTS

- (a) **DEFINITION.** Any legally established lot established prior to the effective date of this Article or subsequent applicable amendments thereto which would not be permitted under

the current terms of the Menasha Code of Ordinances.

- (b) **USE OF NONCONFORMING AND SUBSTANDARD LOTS.** This Subsection ensures that lots legally created prior to the adoption of this Article do not encounter difficulty because the lots would otherwise be considered nonconforming or substandard.
 - (1) Lot Use. Any lot legally created prior to the adoption of this Article which does not meet the minimum zoning requirements as to area or lot dimensions may be utilized for uses permitted within the applicable zoning district provided that such development complies with all of the development regulations for that zoning district.

- (c) **ALTERATIONS TO NONCONFORMING AND SUBSTANDARD LOTS.** After the effective date of this Article, no lot shall be altered or new lot created which does not meet the development regulations of the Menasha Code of Ordinances.
 - (1) Lot Reductions. No lot legally created prior to the adoption of this Article shall be so reduced that the dimensional and setback requirements of the applicable zoning district cannot be met.
 - (2) Lot Divisions. No lot legally created prior to the adoption of this Article shall be divided unless the lots resulting from said division conform to all applicable zoning requirements.

SEC. 13-1-47 CHANGES AND SUBSTITUTIONS TO NONCONFORMING USES, STRUCTURES, OR LOTS.

- (a) Once a nonconforming use, structure, or lot has been changed to a conforming use, structure, or lot, it shall not revert back to a nonconforming use, structure, or lot.

- (b) If the Board of Zoning Appeals has permitted the substitution of a more restrictive nonconforming use for an existing nonconforming use, the substituted use shall lose its status as a legal nonconforming use and become subject to all the conditions required by the Board of Zoning Appeals.

SEC. 13-1-48 THROUGH 13-1-49 RESERVED FOR FUTURE USE.