

SECTION 28. NONCONFORMING USES, STRUCTURES AND LOTS

28.010 Purpose.

- A. Within the districts established by this ordinance or amendments thereto, there exists uses, structures or lots which were lawful prior to the adoption of this ordinance but would be prohibited or more greatly restricted under terms of this ordinance. These uses, structures, and lots are declared legal nonconforming.
- B. It is the intent of this section to permit legal nonconformities until they are removed, but not to encourage their continuation. Such uses, structures and lots are declared by this ordinance to be incompatible with permitted uses in the district in which they are located.

28.020 Nonconforming Uses. A nonconforming use of land or structure which existed at the time of adoption of this ordinance, or amendments thereto, may be continued, but shall comply with the following provisions:

- A. Only that portion of the land in use may be continued to be used. The nonconforming use shall not be extended, enlarged, substituted, or moved in a manner to increase the nonconformity, except when required by law or to bring the use into conformity with the provisions of this ordinance.
- B. Once a nonconforming use has been changed to a conforming use, it shall not revert to a nonconforming status.
- C. If a nonconforming use has been discontinued for a period of twelve (12) months, it shall be considered abandoned. Any future use shall conform with the provisions of this ordinance.
- D. Uses which are nuisances shall not be permitted to continue as a nonconforming use.
- E. No nonconforming use in the floodplain shall not be modified or added to unless they are made in conformance with Section 23 (Floodplain Overlay District). For the purpose of Section 23, the words “modify” and “added to” shall include, but not limited to, any alteration, addition, modification, rebuilding, or replacement of any such existing structure or accessory use. Ordinary maintenance repairs are not considered structural repairs, modifications, or additions; such ordinary maintenance repairs include internal and external painting, decorating, paneling, and the replacement of doors, windows, and other such repairs.

28.030 Legal Nonconforming Structures. A structure which does not conform to the yard, height, parking, loading, and access requirements of this ordinance may be continued to be used but shall comply to the following provisions:

- A. Normal maintenance is allowed.
- B. Structural repairs, alterations, and expansions are allowed to structures outside shoreland setback areas, provided that they do not create a nonconforming nature of the structure or property pursuant to the Menominee County Shoreland Protection Ordinance (#68).

- C. Nonconforming structures to the Menominee County Shoreland Protection Ordinance (#68), that were legally constructed prior to adoption of this Ordinance, shall be subject to the provisions within Section 11 of the Shoreland Protection Ordinance (#68).
- D. Nonconforming structures which are damaged or destroyed by fire, flood, explosion, wind, vandalism, ice, snow, mold infestation, or other acts of God are exempt from the provisions of this ordinance, provided:
 - 1. Reconstruction does not increase the structures' previous nonconformity
 - 2. The structure is restored to the size, location and use that it had immediately prior to the damage or destruction occurred. A larger size may be allowed if necessary to comply with this Ordinance, or State and Federal regulations.
 - 3. The nonconforming structure was damaged or destroyed after October 14, 1997.
- E. Once a nonconforming structure has been moved or altered to comply with the provisions of this ordinance, it shall not revert to nonconforming status.
- F. Nonconforming structures within the floodway district shall not be modified or added to unless they meet the requirements of Section 28.020(E). Also; in the floodway district, any modification or addition shall meet the following requirements:
 - 1. The modification or addition will not increase the amount of obstruction to the floodway pursuant to Section 23.050 (Floodplain Overlay District; Special Provisions Applicable to all Floodplain Districts).
 - 2. Any addition to a structure shall be floodproofed, pursuant to Section 23.100 (Floodplain Overlay District; Floodproofing) by means other than the use of fill to the flood protection elevation.
 - 3. No structure repairs, modifications, or additions to a structure, which exceeds, over the life of the structure, fifty percent (50%) of its present market value, shall be allowed unless the entire structure is permanently changed to a conforming use.
 - 4. If any nonconforming structure is destroyed or so seriously damaged that it cannot be practically restored, it cannot be replaced, reconstructed, or rebuilt unless the entire structure meets the provisions of Section 23.100 (Floodplain Overlay District; Floodproofing).
 - 5. Has been granted a permit or a variance.
 - 6. No new on-site sewage disposal system, or addition to an existing on-site sewage disposal system, except where an addition has been ordered by a government agency to correct a hazard to public health, shall be allowed in a floodway area. Any replacement, repair, or maintenance of an existing on-site sewage disposal system in a floodway area shall meet the requirements of all applicable federal, state and local ordinances.
 - 7. No potable water shall be allowed in a floodway area. Any replacement, repair, or maintenance of an existing well in a floodway area shall meet the requirements of all federal, state and local ordinances.
- G. In the flood fringe district, any modification or addition shall meet the following conditions:
 - 1. Any additions or modifications which do not exceed fifty percent (50%) of its present market value shall be protected by floodproofing measures pursuant to Section 23.100 (Floodplain Overlay District; Floodproofing).

2. When compliance with the above paragraph would result in an unnecessary hardship, and only where the structure is not designed for human habitation or is associated with high flood potential, the Board of Adjustment may grant a variance using the following criteria:
 - a. Human lives are not in danger,
 - b. Public facilities, such as water or sewer, are not installed,
 - c. Flood depths shall not exceed four (4) feet,
 - d. Flood velocities will not exceed two (2) feet per second,
 - e. The structure will not be used for storage of materials described in subsection 23.080(C)(5),
 - f. No floor is allowed below the regional flood elevation.
3. Flood depth and velocities under subsection 23.080(C)(3) shall be determined by standards established by the U.S. Army Corps of Engineers.
4. Any addition or modification which exceeds fifty percent (50%) of a structures present market value shall require the entire structure to be floodproofed pursuant to Section 23.080 (Floodplain Overlay District; Floodfringe District) and Section 23.100 (Floodplain Overlay District; Floodproofing).
5. If neither the provisions of Section 28.030(G)(1&2) can be met, an addition to an existing room in a nonconforming building or a building with a nonconforming use may be allowed in the floodfringe on a one-time basis only, if the addition:
 - a. Meets all other ordinances and will be granted by permit or variance,
 - b. Does not exceed sixty (60) square feet in area, and
 - c. In combination with other previous modifications or additions to the building, does not exceed fifty percent (50%) of the present market value of the building.
6. All new private sewage disposal systems, or additions to, replacement, repair or maintenance of a private sewage disposal system shall meet all the applicable federal, state and local ordinances.
7. All new wells, or additions to, replacement, repair, or maintenance of a well shall meet the applicable provisions of all federal, state, and local ordinances.

28.040 Nonconforming Lots. A lot of record may be used for any use or structure allowed in the district in which it is located, provided it complies with the following:

- A. All structures shall meet the setback, yard, height, parking, loading, and access requirements of this ordinance.
- B. No structure may be constructed on a lot which has less than fifty percent (50%) of the required width or area without the granting of a variance by the Board of Adjustment.

28.050 Existing Conditional Uses. Existing conditional uses shall be treated in the following manner:

- A. An existing conditional use which, under the terms of this ordinance, is a permitted use in the district in which it is located, shall be deemed a permitted use, provided the use and structures meet the regulations of the district in which it is located.

- B. An existing conditional use which, under the terms of this ordinance, is a conditional use in the district in which it is located, may be continued, provided the terms of the conditional use permit are being followed.
- C. An existing conditional use which is listed as neither a permitted use nor a conditional use, under the terms of this ordinance, shall be deemed to be a nonconforming use and shall be subject to the provisions of this chapter.

28.060 Record of Nonconforming Uses. A current file of all nonconforming uses shall be kept by the zoning office, listing the owners name, address, property description, nature and extent of the nonconforming use, and the date that the use was established or became nonconforming. The file shall be used by the zoning office to document changes or expansions of such uses for documentation, as may be needed for the enforcement of this ordinance.