

ZONING ORDINANCE FOR THE CITY OF KENOSHA, WISCONSIN

SECTION 7.0 NONCONFORMING BUILDINGS OR STRUCTURES AND NONCONFORMING USES OF LAND

7.01 INTENT

Within the Zoning Districts established by this Ordinance, there may exist buildings or structures, uses of buildings or structures, or uses of land which do not conform to the provisions of this Ordinance. The purpose of this Section is to provide regulation of nonconforming buildings, structures and uses and to specify those circumstances and conditions under which those nonconforming buildings, structures and uses shall be permitted to continue.

7.02 NONCONFORMING BUILDINGS AND STRUCTURES

A nonconforming building or structure existing on the effective date of this Ordinance may be maintained although it does not conform with the area, height, yard, open space or visual clearance provisions of this Ordinance, except as otherwise provided below in this Section:

A. Repairs and Nonstructural Alterations.

Repairs and nonstructural alterations may be made to a nonconforming building or structure, for ordinary maintenance repairs including internal and external painting, decorating, paneling, and the repair or replacement of doors, windows, nonbearing walls, fixtures, heating components, wiring, plumbing, roofing or other nonstructural components provided that the cubic content of the building or structure as it existed prior to the effective date of this Ordinance is not increased.

B. Structural Alterations and Additions.

A nonconforming building or structure shall not be structurally altered or enlarged in any manner except when such structural alteration or addition conforms to all of the regulations of the District in which it is located.

Additions or alterations to existing nonconforming buildings, structures or residential uses are permitted provided that the value of such addition or alteration does not exceed fifty (50%) percent of the total assessed value of the existing building, and provided that the addition or alteration conforms with all other provisions of this Ordinance.

C. Relocation.

A nonconforming building or structure shall not be moved in whole or in any part to any other location on the lot unless every portion of such building or structure is made to conform to all

the regulations of the District in which it is located.

D. Exceptions For Nonconforming Multi-Family Residential Buildings and Structures. A multi-family residential building or structure which exceeds the number of units permitted by the Zoning Ordinance, and which is damaged or destroyed by a catastrophe or act of God, may be reconstructed to the same number of units if all of the following conditions are met:

1. A Building Permit for the reconstruction is obtained within eighteen (18) months of the date of the catastrophe.

2. Reconstruction will not increase any dimensional nonconformity of the building or structure.

3. The site is zoned for multi-family residential use.

4. The new building(s) comply with all other City and State Codes and Ordinances existing at the time of reconstruction.

E. Exceptions For NonConforming Residential Structures Located in the RS-3, RG-1 and RG-2 Zoning Districts. A residential building or structure which does not comply with any or all of the following:

- Sections 3.06 G., 3.08 G. or 3.09 G. of the Zoning Ordinance, regarding Primary Entrance;
- Sections 3.06 H., 3.08 H. or 3.09 H. of the Zoning Ordinance, regarding Windows;
- Sections 3.06 I., 3.08 I. or 3.09 I. of the Zoning Ordinance, regarding Compatibility With Existing Structures; and,

which is damaged or destroyed by a catastrophe or act of God, may be reconstructed to its original construction prior to such damage if all of the following conditions are met:

1. A Building Permit for the reconstruction is obtained within twelve (12) months of the date of the catastrophe or act of God.

2. Reconstruction will not increase any dimensional nonconformity of the building or structure.

3. The reconstructed building or structure complies with all other City and State Codes and Ordinances existing at the time of reconstruction.

F. Exceptions For NonConforming Residential Structures Located in the RS-1, RS-2, RR-1, RR-2, RR-3 or RD Zoning Districts. A residential building or structure which does not comply with any or all of the following:

ZONING ORDINANCE FOR THE CITY OF KENOSHA, WISCONSIN

- Sections **3.031 H.**, **3.032 H.**, **3.033 G.**, **3.04 G.**, **3.05 G.** or **3.07 G.** of the Zoning Ordinance, regarding Attached Garages;
- Sections **3.031 I.**, **3.032 I.**, **3.033 H.**, **3.04 H.**, **3.05 H.** or **3.07 H.** of the Zoning Ordinance, regarding Garage Door Placement;
- Sections **3.031 J.**, **3.032 J.**, **3.033 I.**, **3.04 I.**, **3.05 I.** or **3.07 I.** of the Zoning Ordinance, regarding Building Composition and Character;
- Sections **3.031 K.**, **3.032 K.**, **3.033 J.**, **3.04 J.**, **3.05 J.** or **3.07 J.** of the Zoning Ordinance, regarding Compatibility with Existing Structures; and,

which is damaged or destroyed by a catastrophe or act of God, may be reconstructed to its original construction prior to such damage if all of the following conditions are met:

1. A Building Permit for the reconstruction is obtained within twelve (12) months of the date of the catastrophe or act of God.
2. Reconstruction will not increase any dimensional nonconformity of the building or structure.
3. The reconstructed building or structure complies with all other City and State Codes and Ordinances existing at the time of reconstruction.

7.03 NONCONFORMING USES OF BUILDINGS OR STRUCTURES

The nonconforming use of a building or structure existing on the effective date of this Ordinance may be continued although it does not conform with the use provisions of this Ordinance, except as otherwise provided in this Section:

A. Repairs and Nonstructural Alterations.

Repairs and nonstructural alterations may be made to a building or structure which contains a nonconforming use for ordinary maintenance repairs, including internal and external painting, decorating, paneling, and the repair or replacement of doors, windows, nonbearing walls, fixtures, heating components, wiring, plumbing, roofing or other nonstructural components to a value of which does not exceed fifty (50%) percent of the total assessed value of the building or structure, provided that the cubic content of the building or structure as it existed prior to the effective date of this Ordinance is not increased.

B. Structural Alterations and Additions.

When a building or structure contains a nonconforming use, structural alterations and additions are only permitted when the use of the entire building or structure is changed to a use which conforms to all of the regulations of the District in

which it is located.

C. Expansion, Extension or Relocation. A building or structure containing a nonconforming use shall not, in any manner, be expanded or extended or be relocated in whole or in part to any location on the lot or onto any adjacent lot, unless the use of the entire building or structure is changed to a use which conforms to all of the regulations of the District in which it is located.

D. One Year Vacancy. A building or structure or portion thereof nonconforming as to use which is or hereafter becomes vacant and remains unoccupied for a continuous period of one year, or more, shall not hereafter be occupied except by a use which conforms to the use regulations of the District in which it is located.

7.04 NONCONFORMING USES OF LAND

A nonconforming use of land where no building is involved, existing on the effective date of this Ordinance, may be continued although it does not conform with the use provisions of this Ordinance, except as otherwise provided below in this Section:

A. Maintenance. Lots containing a nonconforming use of land, which do not have a building or structure thereon, may be maintained or repaired including grading, paving, and surfacing, or the repair and replacement of bumper or wheel stops, fences, screening and drainageways, provided that the amount of land devoted to such use as it existed prior to the effective date of this Ordinance is not increased.

B. Expansion, Extension or Relocation. A nonconforming use of land shall not, in any manner, be expanded, extended or be relocated on the same lot.

C. Discontinuance or Change of Use. If a nonconforming use of land or any portion thereof is discontinued or is proposed to be changed, any future or proposed use of such land shall be in conformance with the provisions of this Ordinance.

7.05 GENERAL

A. Reconstruction.

1. Nonconforming Buildings and Structures.

Where a nonconforming building or structure is damaged or destroyed by a catastrophe, or act of God, it shall not be reconstructed except in conformance with the regulations of Section **7.02** of this Ordinance and Section 62.23(7)(hc), Wisconsin

ZONING ORDINANCE FOR THE CITY OF KENOSHA, WISCONSIN

Statutes.

2. Building or Structure Containing a Nonconforming Use. Where a building or structure containing a nonconforming use is damaged by a catastrophe or act of God to the extent equaling more than fifty (50%) percent of its total assessed value, it shall not be reconstructed except as to comply with the height, yard, open space and use regulations of the District in which it is located. A building or structure containing a nonconforming use damaged to the extent equaling fifty (50%) percent or less of its total assessed value, may be reconstructed provided that the nonconforming use as it existed prior to the damage is not increased or enlarged.

3. Buildings or Structures Nonconforming to Visual Clearance, Excluding Fences. Where a building or structure, nonconforming as to visual clearance, is damaged by a catastrophe or act of God, to the extent equaling more than fifty (50%) percent of its total assessed value, it shall not be reconstructed except as to comply with the visual clearance regulations of **§2.06 B.** of this Ordinance. Where such a building or structure is damaged by a catastrophe or act of God, to the extent equaling fifty (50%) percent or less of its total assessed value, it may be reconstructed provided that the building or structure meets the following regulations:

a. No such building or structure shall be permitted in any District between the heights of three and one-half (3-1/2') feet and eight (8') feet above the triangular space formed by any two existing or proposed intersecting street right-of-way lines and a line joining points on such lines located a minimum of eight (8') feet from their intersection.

b. No such building or structure shall be permitted in any Residential District between the heights of three and one-half (3-1/2') feet and eight (8') feet above the triangular space formed by the intersection of any existing or proposed street right-of-way line with any existing or proposed alley right-of-way line, or the line formed by the edge of a driveway, and a line joining points on such lines located a minimum of fifteen (15') feet from their intersection.

Any fence, nonconforming as to visual clearance, which is damaged or destroyed by a catastrophe or act of God, shall not be reconstructed except as to comply with the visual clearance regulations of **§2.06 B.** of this Ordinance.

4. Flood Damage. Where buildings or structures have been flood damaged, the cost of any floodproofing required under **Section 7.05 B.** of this Ordinance, shall not be included in the calculation of

reconstruction costs as outlined in **§§7.05 A.2.** and **7.05 A.3.** of this Ordinance.

B. Floodproofing. Within the Floodland Zoning Districts established by this Ordinance, the FW and FFO Districts, there may exist buildings or structures which do not conform to the floodproofing provisions of these Districts. Nonstructural alterations, structural alterations, additions and reconstructions permitted under the provisions of this Ordinance to such buildings and structures located on floodlands shall include floodproofing to those portions of the building or structure involved in such alterations, additions or reconstructions. Certification of floodproofing shall be made to the Administrator and shall consist of a plan or document certified by a registered professional engineer that the floodproofing measures are consistent with the flood velocities, forces, depths, and other factors associated with the one hundred (100) year recurrence interval flood level for the particular area.

C. Orders of Repair. Nothing in this Ordinance shall be deemed to prevent the strengthening or restoring to a safe condition any building, structure or part thereof declared to be unsafe by the Administrator.

D. Shoreland-Wetlands. Within the Shoreland Wetland Overlay (SWO) District established by the Ordinance, the lawful use of a building, structure or property which existed at the time this Ordinance, or an applicable amendment to this Ordinance, took effect and which is not in conformity with the provisions of the Ordinance, including the routine maintenance of such a building or structure, may be continued, subject to the following conditions:

Notwithstanding §62.23 (7)(h), Wisconsin Statutes, the repair, reconstruction, renovation, remodeling or expansion of a legal nonconforming structure in existence at the time of adoption or subsequent amendment of this Ordinance adopted under §62.231, Wisconsin Statutes, or of an environmental control facility in existence on May 7, 1982, related to that structure, is permitted under §62.231(5), Wisconsin Statutes, §62.23(7)(h), Wisconsin Statutes, applies to any environmental control facility that was not in existence on May 7, 1982, but was in existence on the effective date of this Ordinance or amendment.

The maintenance and repair of nonconforming bathhouses which are located below the ordinary mark of any navigable waters shall comply with the requirements of §30.121, Wisconsin Statutes.

7.06 NONCONFORMANCE DUE TO THE

ZONING ORDINANCE FOR THE CITY OF KENOSHA, WISCONSIN

ADOPTION OF THIS ORDINANCE, AMENDMENTS OR REZONINGS

The provisions of **§7.0** shall also apply to buildings, structures, uses of buildings or structures or uses of land which hereafter become nonconforming due to the adoption of this Ordinance, amendments thereto, or rezonings.

7.07 NONCONFORMING USES AND STRUCTURES WITHIN THE FLOODWAY AND/OR FLOODPLAIN

A. General.

1. Applicability. If these standards conform with Section 62.23(7)(h), Wisconsin Statutes, for cities and villages, they shall apply to all modifications or additions to any nonconforming use or structure, and to the use of any structure or premises which was lawful before passage of this Ordinance or any amendment thereto.

2. Conditions For Existing Use of Structure To Continue When Not In Conformity With Ordinance. The existing lawful use of a structure or its accessory use which is not in conformity with the provisions of this Ordinance may continue subject to the following conditions:

a. No modifications or additions to a nonconforming use or structure shall be permitted unless they comply with this Ordinance. The words "modification" and "addition" include, but are not limited to, any alteration, addition, modification, structural repair, rebuilding or replacement of any such existing use, structure or accessory structure or use. Ordinary maintenance repairs are not considered an extension, modification or addition. These include painting, decorating, paneling and the replacement of doors, windows and other nonstructural components, and the maintenance, repair or replacement of existing private sewage or water supply systems or connections to public utilities. Ordinary maintenance repairs do not include any costs associated with the repair of a damaged structure.

The construction of a deck that does not exceed two hundred (200) square feet and that is adjacent to the exterior wall of a principal structure is not an extension, modification or addition. The roof of the structure may extend over a portion of the deck in order to provide safe ingress and egress to the principal structure.

b. If a nonconforming use or the use of a nonconforming structure is discontinued for twelve (12) consecutive months, it is no longer permitted and any future use of the property, and any structure or

building thereon, shall conform to the applicable requirements of this Ordinance.

c. The City shall keep a record which lists all nonconforming uses and nonconforming structures, their present equalized assessed value, the cost of all modifications or additions which have been permitted, and the percentage of the structure's total current value those modifications represent.

d. No modification or addition to any nonconforming structure or any structure with a nonconforming use, which over the life of the structure would exceed fifty (50%) percent of its present equalized assessed value, shall be allowed unless the entire structure is permanently changed to a conforming structure with a conforming use in compliance with the applicable requirements of this Ordinance. Contiguous dry land access must be provided for residential and commercial uses in compliance with **Section 17.02 C.1**. The costs of elevating a nonconforming building or a building with a nonconforming use to the flood protection elevation are excluded from the fifty (50%) percent provisions of this Section.

e. (1) Except as provided in subsection e.(2), if any nonconforming structure or any structure with a nonconforming use is destroyed or is substantially damaged, it cannot be replaced, reconstructed or rebuilt unless the use and the structure meet the current Ordinance requirements. A structure is considered substantially damaged if the total cost to restore the structure to its pre-damaged condition exceeds fifty (50%) percent of the structure's present equalized assessed value.

(2) For nonconforming buildings that are damaged or destroyed by a nonflood disaster, the repair or reconstruction of any such nonconforming building may be permitted in order to restore if after the nonflood disaster, provided that the nonconforming building will meet all of the minimum requirements under applicable FEMA regulations (44 CFR Part 60), or the regulations promulgated thereunder.

B. Floodway Areas. No modification or addition shall be allowed to any nonconforming structure or any structure with a nonconforming use in a floodway area, unless such modification or addition:

1. Has been granted a permit or variance which meets all Ordinance requirements.
2. Meets the requirements of **Section 7.0**.
3. Will not increase the obstruction to flood flows or regional flood height.
4. Any addition to the existing structure shall be

ZONING ORDINANCE FOR THE CITY OF KENOSHA, WISCONSIN

floodproofed pursuant to **Section 4.03 B.6.** and **Section 7.05 B.**, by means other than the use of fill, to the flood protection elevation.

5. If any part of the foundation below the flood protection elevation is enclosed, the following standards shall apply:

a. The enclosed area shall be designed by a registered architect or engineer to allow for the efficient entry and exist of flood waters without human intervention. A minimum of two (2) openings must be provided with a minimum net area of at least one square inch for every one square foot of the enclosed area. The lowest part of the opening can be no more than twelve (12") inches above the adjacent grade.

b. The parts of the foundation located below the flood protection elevation must be constructed of flood-resistant materials.

c. Mechanical and utility equipment must be elevated or floodproofed to or above the flood protection elevation.

d. The use must be limited to parking or limited storage.

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 applicable requirements of all City Ordinances and Chapter 83, Wisconsin Administrative Code.

7. No new well or modification to an existing well used to obtain 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 applicable requirements of all City Ordinances and Chapters NR 811 and NR 812, Wisconsin Administrative Code.

C. Floodfringe Areas.

1. No modification or addition shall be allowed to any nonconforming structure or any structure with a nonconforming use unless such modification or addition has been granted a permit or variance by the City, and the modification or addition shall be placed on fill or floodproofed to the flood protection elevation in compliance with the standards for that particular use in **Section 17.0**, except where **Section 7.0** is applicable.

2. Where compliance with the provisions of **Section C.1.** above would result in unnecessary

hardship, and only where the structure will not be used for human habitation or be associated with a high flood damage potential, the Board of Zoning Appeals, using the procedures established in Section 9.0, may grant a variance from those provisions of **Section C.1.** for modifications or additions using the criteria listed below.

Modifications or additions which are protected to elevations lower than the flood protection elevation may be permitted if:

- a. No floor is allowed below the regional flood elevation for residential or commercial structures;
- b. Human lives are not endangered;
- c. Public facilities, such as water or sewer, will not be installed;
- d. Flood depths will not exceed two (2') feet;
- e. Flood velocities will not exceed two (2') feet per second; and,
- f. The structure will not be used for storage of materials as described in **Section 17.0**.

3. If neither the provisions of **Sections C.1.** and **2.** Above can be met, one addition to an existing room in a nonconforming building or a building with a nonconforming use may be allowed in the floodfringe if the addition:

- a. Meets all other regulations 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 (50%) percent of the present equalized assessed value of the building.

4. All new private sewage disposal systems, or addition to, replacement, repair or maintenance of a private sewage disposal system, shall meet all the applicable provisions of all City Ordinances and Chapter COMM 83, Wisconsin Administrative Code.

5. All new wells, or addition to, replacement, repair or maintenance of a well shall meet the applicable provisions of this Ordinance and Chapters NR 811 and NR 812, Wisconsin Administrative Code.