

Village Of Ashwaubenon

Municipal Code Book

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Article 14-6

Municipal Code Book

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Chapter 14 - Floodplain
Article 6 - Nonconforming Uses

14-6-1 General

- (A) *Applicability.*
- (1) The standards in this section shall apply to all uses and buildings that do not conform to the provisions contained within a floodplain zoning ordinance or with Wis. Stats. Sec. 87.30 and Secs. NR 116.12-14, Wis. Adm. Code and 44 CFR 59-72. These standards 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 the passage of this ordinance or any amendment thereto. A party asserting existence of a lawfully established nonconforming use or structure has the burden of proving that the use or structure was compliant with the floodplain zoning ordinance in effect at the time the use or structure was created.
 - (2) As permit applications are received for additions, modifications, or substantial improvements to nonconforming buildings in the floodplain, the Village shall develop a list of those nonconforming buildings, their present equalized assessed value, and a list of the costs of those activities associated with changes to those buildings.
- (B) 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:
- (1) 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. Maintenance is not considered modification; this includes painting, decorating, paneling and other nonstructural components and the maintenance, repair or replacement of existing private sewage or water supply systems or connections to public utilities. Any costs associated with the repair of a damaged structure are not considered maintenance.
 - (a) The construction of a deck that does not exceed 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.
 - (2) If a nonconforming use or the use of a nonconforming structure is discontinued for 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.
 - (3) The Village 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.

- (4) No modification or addition to any nonconforming structure or any structure with a nonconforming use, which over the life of the structure would equal or exceed 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 14-4-3(A). The costs of elevating the lowest floor of a nonconforming building or a building with a nonconforming use to the flood protection elevation are excluded from the 50 percent provisions of this subsection.
- (5) No maintenance on a per event basis to any nonconforming structure or any structure with a nonconforming use, the cost of which would equal or exceed 50% 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 14-4-3(A). Maintenance to any nonconforming structure, which does not exceed 50 percent of its present equalized value on a per event basis, does not count against the cumulative calculations over the life of the structure for substantial improvement calculations.
- (6) If on a per event basis the total value of the work being done under subsecs. (4) and (5) equals or exceeds 50% of the present equalized assessed value the work shall not be permitted 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 14-4-3(A).
- (7) Except as provided in section 14-6-1(B)(8), 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 equals or exceeds 50% of the structure's present equalized assessed value.
- (8) For non-conforming buildings that are substantially damaged or destroyed by a nonflood disaster, the repair or reconstruction of any such nonconforming building shall be permitted in order to restore it to the size and use in effect prior to the damage event, provided that the following minimum requirements below are met and all required permits have been granted prior to the start of construction.
 - (a) Residential Structures:
 - (i) Shall have the lowest floor, including basement, elevated to or above the flood protection elevation using fill, pilings, columns, posts, or perimeter walls. Perimeter walls must meet the requirements of Section 14-7-7(B).
 - (ii) Shall be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, and shall be constructed with methods and materials resistant to flood damage.

- (iii) Shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or elevated so as to prevent water from entering or accumulating within the components during conditions of flooding. In A Zones, obtain, review, and utilize any flood data available from a federal, state, or other source.
 - (iv) In AO Zones with no elevations specified, shall have the lowest floor including basement, meet the standards in section 14-5-4.
 - (v) In AO Zones, shall have adequate drainage paths around structures on slopes to guide floodwaters around and away from the structure.
- (b) Nonresidential Structures:
- (i) Shall meet the requirements of section(s) 14-6-1(B)(8)(a)(i-vi).
 - (ii) Shall either have the lowest floor, including basement, elevated to or above the regional flood elevation; or, together with attendant utility and sanitary facilities, shall meet the standards in section 14-7-7 (A) or (B).
 - (iii) In AO Zones with no elevations specified, shall have the lowest floor, including basement, meet the standards in section 14-6-1(A).
- (C) A nonconforming historic structure may be altered if the alteration will not preclude the structure's continued designation as a historic structure, the alteration will comply with section 14-3-3(A), flood resistant materials are used, and construction practices and floodproofing methods that comply with Section 14-8-7 are used. Repair or rehabilitation of historic structures shall be exempt from the development standards of section 14-6-1(B)(8)(a) if it is determined that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and is the minimum necessary to preserve the historic character and design of the structure.
- (D) Notwithstanding anything in this chapter to the contrary, modifications, additions, maintenance, and repairs to a nonconforming building shall not be prohibited based on cost and the building's nonconforming use shall be permitted to continue if:
- (1) Any living quarters in the nonconforming building are elevated to be at or above the flood protection elevation.
 - (2) The lowest floor of the nonconforming building, including the basement, is elevated to or above the regional flood elevation.
 - (3) The nonconforming building is permanently changed to conform to the applicable requirements of Section 14-2-1.

- (4) If the nonconforming building is in the floodway, the building is permanently changed to conform to the applicable requirements of sections 14-3-3(A), 14-3-3(B)(2) through (5), 14-3-3(C), 14-3-3(D), and 14-6-2. Any development that adds additional fill or creates an encroachment in the floodplain from beyond the original nonconforming structure's three-dimensional building envelope must determine the floodway in accordance with Section 14-5-5. If the encroachment is in the floodway, it must meet the standards in Section 14-3-3(D).
- (5) If the nonconforming building is in the floodfringe, the building is permanently changed to conform to the applicable requirements of sections 14-4-3 and 14-6-3.
- (6) Repair or reconstruction of nonconforming structures and substantial improvements of residential buildings in Zones A1-30, AE, and AH must have the lowest floor (including basement) elevated to or above the base flood elevation.
- (7) Repair or reconstruction of nonconforming structures and substantial improvements of non-residential buildings in Zones A1-30, AE, and AH must have the lowest floor (including basement) elevated to or above the base flood elevation, or (together with attendant utility and sanitary facilities) be designed so that below the base flood elevation the building is watertight with walls substantially impermeable to the passage of water and with structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy:
 - (a) Where a non-residential structure is intended to be made watertight below the base flood elevation, a registered professional engineer or architect must develop and/or review structural design, specifications, and plans for the construction, and must certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of Section 14-6-1(D)(7) above.
 - (b) The Village must maintain a record of such certification including the specific elevation to which each such structure is floodproofed.
- (8) Fully enclosed areas below the lowest floor or reconstruction of nonconforming structures and substantial improvements in Zones A1-30, AE, and AH that are usable solely for parking of vehicles, building access, or storage, must be designed to adequately equalize hydrostatic forces on exterior walls by allowing for the entry and exit of floodwaters. Subsequent improvements to repaired or reconstructed nonconforming structures must not increase the degree of their nonconformity. Designs for meeting this requirement must either be certified by a registered professional engineer or architect, or meet the following criteria:
 - (a) A minimum of two openings into each enclosed area must be located below the base flood elevation and provide a total net area of not less than one square inch for every square foot of enclosed area.
 - (b) The bottom of all opening must be no higher than one foot above the adjacent grade.
 - (c) Openings may be equipped with screens, louvres, valves, or other coverings if they permit the automatic entry and exit of floodwaters.

- (9) Manufactured homes that are placed or substantially improved within zones A1- 30, AE, and AH outside of a manufactured home park or subdivision, in a new manufactured home park or subdivision, in an expansion to an existing manufactured home park or subdivision, or in an existing manufactured home park or subdivision on which a manufactured home has incurred substantial damage as a result of flood, must be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood elevation, and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.
- (10) Manufactured homes that are placed or substantially improved within zones A1- 30, AE, and AH on existing sites in an existing manufactured home park that is not undergoing expansion and on which a manufactured home has not incurred substantial damage as a result of flood must be elevated so that either the lowest floor of the manufactured home is at or above the base flood elevation, or the manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade, and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.
- (11) Recreational vehicles placed on sites within zones A1-30, AH, and AE must either:
- (a) Be on site for fewer than 180 consecutive days; or
 - (b) Be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions); or
 - (c) Meet the elevation and anchoring requirements for manufactured homes in Section 14-6-1(D)(10) above.
- (12) In a regulatory floodway that has been delineated on the FIRM in zone A1-30 or AE, encroachments, including repair or reconstruction of nonconforming structures, substantial improvement, or other development (including fill) must be prohibited unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment will not result in any increase in flood levels within the community during the occurrence of the base flood discharge. Subsequent improvements to repair or reconstructed nonconforming structures must not increase the degree of their nonconformity.
- (13) In zone A, the Village must obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state, or other source as criteria for requiring repair or reconstruction of nonconforming structures, substantial improvement, and other development to meet section(s) 14-6-1(D)(6) through (12) above. Any development that adds additional fill or creates an encroachment in the floodplain from beyond the original nonconforming structure's 3-D building envelope must determine the floodway in accordance with section 14-5-5. If the encroachment is in the floodway, it must meet the standards in section 14-3-3(D). Subsequent improvements to repair or reconstructed nonconforming structures must not increase the degree of their nonconformity.

- (14) In zones A1-30 or AE where a regulatory floodway has not been delineated on the FIRM, repair or reconstruction of nonconforming structures, substantial improvement, or any development that adds additional fill or creates an encroachment in the floodplain from beyond the original nonconforming structure's 3-D building envelope must determine the floodway in accordance with section 14-5-5. If the encroachment is in the floodway, it must meet the standards in section 14-3-3(D). Subsequent improvements to repair or reconstructed nonconforming structures must not increase the degree of their nonconformity.
- (15) In zone AO, repair or reconstruction of nonconforming structures and substantial improvements of residential structures must have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the FIRM (at least two feet if no depth number is specified). Subsequent improvements to repair or reconstructed nonconforming structures must not increase the degree of their nonconformity.
- (16) In zone AO, repair or reconstruction of nonconforming structures and substantial improvements of nonresidential structures must have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the FIRM (at least two feet if no depth number is specified), or (together with attendant utility and sanitary facilities) be structurally dry-floodproofed to that level according to the standard specified in Section 14-6-1(D)(7) above. Subsequent improvements to repair or reconstructed nonconforming structures must not increase the degree of their nonconformity.

Ord. No 2-2-23, 2-28-2023

14-6-2 Floodway District

- (A) No modification or addition shall be allowed to any nonconforming structure or any structure with a nonconforming use in the Floodway District, unless such modification or addition:
 - (1) Has been granted a permit or variance which meets all ordinance requirements.
 - (2) Meets the requirements of section 14-6-1.
 - (3) Shall not increase the obstruction to flood flows or regional flood height.
 - (4) Any addition to the existing structure shall be floodproofed, pursuant to section 14-7-7, by means other than the use of fill, to the flood protection elevation; and
 - (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 exit of flood waters without human intervention. A minimum of two 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 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; and
 - (d) The use must be limited to parking, building access, or limited storage.
- (6) No new well or modification to an existing well used to obtain potable water shall be allowed in the Floodway District. Any replacement, repair, or maintenance of an existing well in the Floodway District shall meet the applicable requirements of all Village ordinances, Section 14-7-7(C) and chpts. NR 811 and NR 812, Wis. Adm. Code.
- (B) 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 the Floodway District. Any replacement, repair, or maintenance of an existing on-site sewage disposal system in a floodway area shall meet the applicable requirements of all municipal ordinances, section 14-7-7(C) and Ch. SPS 383, Wis. Adm. Code.
- (C) No new well or modification to an existing well used to obtain potable water shall be allowed in the Floodway District. Any replacement, repair, or maintenance of an existing well in the Floodway District shall meet the applicable requirements of all Village ordinances, Section 14-7-7(C) and chpts. NR 811 and NR 812, Wis. Adm. Code.

Ord. No 2-2-23, 2-28-2023

14-6-3 Floodfringe District

- (A) 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 Village and meets the requirements of section 14-4-3 except where section 14-6-3(B) is applicable.
- (B) Where compliance with the provisions of section 14-6-3(A) 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 Appeals, using the procedures established in section 14-7-5, may grant a variance from those provisions of section 14-6-3(A) 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:
 - (1) No floor is allowed below the regional flood elevation for residential or commercial structures.
 - (2) Human lives are not endangered.
 - (3) Public facilities, such as water or sewer, shall not be installed.
 - (4) Flood depths shall not exceed two feet.

- (5) Flood velocities shall not exceed two feet per second; and
- (6) The structure shall not be used for storage of materials as described in Section 14-4- 3(E).
- (C) 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 local ordinances, section 14-7-7(C) and Ch. SPS 383 Wis. Adm. Code.
- (D) All new wells, or addition to, replacement, repair, or maintenance of a well shall meet the applicable provisions of this ordinance section 14-7-7(C) and Wis. Admin. Code chpts. NR 811 and 812.

Ord. No 2-2-23, 2-28-2023