



Legislation Text

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970828
SUBSTITUTE 3

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A substitute ordinance relating to zoning regulations for nonconforming lots, structures and uses.

295-7-8.5 cr
295-7-37.5 cr
295-7-84 rc
295-7-115 rp
295-7-115 cr
295-7-115.2 cr
295-7-115.4 cr
295-7-115.6 cr
295-30 cr
295-31 rc
295-33 rc
295-35 rc
295-37 rc
295-39 rc
295-40 rp
295-41 rc
295-43 rc
295-45 cr
295-59-5-f rp
295-59-6 rn
295-59-6 cr
295-59-7 rn
295-61-3 am
295-97-1-a-4 am
- Analysis -

With regards to zoning code provisions relating to nonconforming lots, structures and uses, this ordinance defines the terms "alteration," "conforming use," "intensify," "nonconforming lot," "nonconforming prohibited use," "nonconforming special use" and "nonconforming structure." A nonconforming prohibited use is a use which was legally established but which is no longer classified as a permitted use or a special use in the zoning district in which it is located. A nonconforming special use is a use which was legally established, became classified as a special use in the zoning district in which it is located on a date after the date of such establishment, and has not received special use approval from the board of zoning appeals.

This ordinance also establishes regulations for nonconformities which can be summarized as follows:

1. Generally, nonconforming lots may be used for single-family homes and accessory structures.
2. Structural alteration or enlargement, but not reconstruction, of nonconforming structures that contain conforming uses shall be permitted.
3. Obtainment of board of zoning appeals approval for nonconforming special uses shall be encouraged, but such uses shall be allowed to continue without being subject to many of the restrictions that are customarily imposed on nonconforming uses.
4. Nonconforming prohibited uses of structures and land shall be allowed to continue, with ordinary repairs and maintenance, but eventual use of such structures and land in a conforming manner shall be encouraged.
5. The alteration, repair and maintenance of conforming uses in nonconforming structures and nonconforming special uses shall be encouraged as long as the alteration, repair or maintenance is consistent with this code and with any applicable elements of the city's comprehensive plan.

In addition, this ordinance provides that, in the case of board-approved variances and board-approved special uses (as opposed to nonconforming special uses), a permitted use may be added to, enlarged, expanded or rebuilt as part of the special use without board approval provided that certain conditions are met. Similarly, parking areas, signs, canopies, fences, awnings or similar site features associated with a board-approved special use or variance may be expanded, enlarged or rebuilt without board approval as long as certain conditions are

complied with.

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 295-7-8.5 of the code is created to read:

295-7. Definitions.

8.5. ALTERATION: Any change, addition or modification to the construction of any structure, including any alteration as this term is defined in s. 200-08-4, as well as any modification of signs, parking areas, fencing, canopies, landscaping or similar site features.

Part 2. Section 295-7-37.5 of the code is created to read:

37.5. CONFORMING USE: Any of the following shall be considered a conforming use:

- a. A use which is currently classified as a permitted use in the zoning district in which it is located.
- b. A use which is currently classified as a special use in the zoning district in which it is located and has received special use approval from the board.
- c. A use for which the board has granted a variance.

Part 3. Section 295-7-84 of the code is repealed and recreated to read:

84. INTENSIFY: To alter the character of a use to the extent that the use generates adverse impacts on the health, safety or welfare of the surrounding neighborhood, including but not limited to increases in the level or amount of traffic, noise, light, smoke, odor, vibration, outside storage and other similar conditions associated with the use.

Part 4. Section 295-7-115 of the code is repealed. (Note: The provisions being repealed read as follows:

115. NONCONFORMING: Legally established but no longer conforming with the regulations of the zoning district in which located.)

Part 5. Section 295-7-115, 115.2, 115.4 and 115.6 of the code is created to read:

115. NONCONFORMING LOT means a lot which was legally created but which no longer meets the minimum area or width requirement of the district in which the lot is located.

115.2. NONCONFORMING PROHIBITED USE means a use which was legally established but which is no longer classified as a permitted use or no longer classified as a special use in the zoning district in which it is located.

115.4. NONCONFORMING SPECIAL USE means a use which was legally established, at a later date became classified as a special use in the zoning district in which it is located, and has not received special use approval from the board.

115.6. NONCONFORMING STRUCTURE means a structure which was legally constructed but which no longer complies with the bulk requirements of the district in which it is located.

Part 6. Subchapter 3 of chapter 295 of the code is repealed and recreated to read:

SUBCHAPTER 3 NONCONFORMITIES

295-30. Purpose. The purpose of this subchapter is to establish regulations governing nonconforming lots, structures and uses and, further, to:

1. Generally allow nonconforming lots to be used for single-family homes and accessory structures.
2. Permit structural alteration or enlargement, but not reconstruction, of nonconforming structures that contain conforming uses.
3. Encourage nonconforming special uses to obtain board of zoning appeals approval, but to allow such uses to continue without being subject to many of the restrictions that are customarily imposed on nonconforming uses.
4. Allow nonconforming prohibited uses of structures and land to continue, with ordinary repairs and maintenance, but to encourage that such structures and land eventually be used in a conforming manner.
5. Encourage the alteration, repair and maintenance of conforming uses in nonconforming structures and nonconforming special uses as long as the alteration, repair or maintenance is consistent with this code and with any applicable elements of the city's comprehensive plan.

295-31. Nonconforming Special Uses. 1. ENLARGEMENT, ALTERATION OR INTENSIFICATION. No nonconforming special use, or the buildings, site features or structures associated with such use, shall be enlarged, altered or intensified without the approval of the board except

as follows:

a. Combined Use. A permitted use may be added to, enlarged, expanded or rebuilt as part of a nonconforming special use without board approval provided the hours of operation are limited to the hours specified in this code, if any, parking is provided in accordance with this chapter and the addition, enlargement, expansion or reconstruction is in conformance with all other provisions of this code and with any applicable elements of the city's comprehensive plan.

b. Site Plan Changes. Parking areas, landscaping, signs, canopies, fences, awnings or similar site features for a nonconforming special use may be expanded, enlarged or rebuilt without board approval provided that the expansion, enlargement or reconstruction is in conformance with all other provisions of this code and with any applicable elements of the city's comprehensive plan. In addition, whenever any such change to the parking area of a nonconforming special use occurs, the parking plan for such parking area shall be subject to approval by the commissioner of public works.

c. Repairs and Maintenance. The buildings, site features and structures of a nonconforming special use may be repaired and maintained in compliance with this code without board approval.

2. CHANGE OF USE. A nonconforming special use may be changed to another special use enumerated under the regulations of the district in which the use is located only with board approval.

3. DISCONTINUANCE OF USE. If the nonconforming special use of a structure, or of a structure and premises in combination, is discontinued for a period of 12 months, such use shall not be resumed thereafter except with approval of the board. Any discontinuance caused by governmental action, and without any contributing fault by the person conducting the nonconforming special use, shall not be considered when calculating the length of discontinuance.

4. DETERIORATION OR DAMAGE. If a structure occupied by a nonconforming special use has deteriorated or is damaged in excess of 50% of its assessed value, the nonconforming special use shall not be resumed except with approval of the board.

295-33. Nonconforming Prohibited Uses Occupying Structures. 1. NONCONFORMING PROHIBITED USES IN NONCONFORMING STRUCTURES. A nonconforming prohibited use located in a nonconforming structure may be continued subject to the following regulations:

a. Repair and Maintenance. Ordinary repair and maintenance within or to the structure shall be permitted provided that the bulk of the structure will not increase as a result of such repair or maintenance.

b. Enlargement, Relocation or Alteration. The structure shall not be enlarged, relocated or structurally altered.

c. Deterioration or Damage. If the structure has deteriorated or is damaged in excess of 50% of its assessed value, the nonconforming prohibited use shall cease operation and the nonconforming structure shall not be reconstructed.

d. Extension of Use. The nonconforming prohibited use shall be neither intensified nor enlarged or extended to any parts of the structure, or extended to occupy any lands outside the structure, that were not occupied by the nonconforming prohibited use on the date such use became a nonconforming prohibited use.

e. Change of Use. The nonconforming prohibited use may be changed to another use permitted in the district where the nonconforming use which presently occupies the structure is permitted, or to a use permitted in a more restrictive district, provided such change will not intensify use of the structure.

f. Discontinuance of Use. If the nonconforming prohibited use of the structure, or structure and premises in combination, is discontinued for a period of 12 months, the use shall not be resumed thereafter. Any discontinuance caused by governmental action, and without any contributing fault by the person conducting the nonconforming prohibited use, shall not be considered when calculating the length of discontinuance.

2. NONCONFORMING PROHIBITED USES IN CONFORMING STRUCTURES. A nonconforming prohibited use located in a structure which conforms with the requirements of the district in which it is located may be continued subject to the following regulations:

a. Structural Alteration. Structural alterations shall be in conformance with this code.

b. Relocation. The structure may be relocated, in whole or in part, to any other location on the same lot, provided that the structure continues to conform with the requirements of the district in which it is located.

c. Deterioration or Damage. If the structure has deteriorated or is damaged in excess of 50% of its assessed value, the nonconforming prohibited use shall cease operation and shall not be resumed thereafter.

d. Extension of Use. The nonconforming prohibited use shall be neither intensified nor enlarged or extended to any parts of the structure, or extended to occupy any lands outside the structure, that were not occupied by the nonconforming prohibited use on the date such use became a nonconforming prohibited use.

e. Change of Use. The nonconforming prohibited use may be changed to another use permitted in the district where the nonconforming use which presently occupies the structure is permitted, or to a use permitted in a more restrictive district, provided such change will not

intensify use of the structure.

f. Discontinuance of Use. If the nonconforming prohibited use of the structure, or structure and premises in combination, is discontinued for a period of 12 months, the use shall not be resumed thereafter. Any discontinuance caused by governmental action, and without any contributing fault by the person conducting the nonconforming prohibited use, shall not be considered when calculating the length of discontinuance.

295-35. Nonconforming Structures. 1. ENLARGEMENTS OR ALTERATIONS. A nonconforming structure containing a permitted use may be enlarged or structurally altered, provided that the enlargement or structural alteration conforms with the setback requirements and all other applicable regulations of the district in which it is located, and does not increase the existing structural bulk nonconformity.

2. RELOCATION. No nonconforming structure may be relocated unless, upon relocation, the structure will be in conformance with all regulations of the district into which it has been relocated.

3. DETERIORATION OR DAMAGE. A nonconforming structure which has deteriorated or is damaged by fire or other casualty may not be reconstructed if the cost of reconstruction exceeds 50% of the structure's assessed value unless such reconstruction will result in the structure conforming to all applicable regulations of the district in which it is located or will not increase the bulk nonconformity of the structure.

295-37. Nonconforming Lots. In any district in which single-family dwellings are permitted, one single-family dwelling and permitted accessory structures may be erected on any vacant, single nonconforming lot, provided that:

1. The lot has remained in individual ownership, separate from adjoining tracts of land, continuously during the entire time that the lot has been nonconforming (as shown on the 1941/1942 land use maps on file in the department).
2. The setback and lot coverage requirements of the district are complied with.
3. The lot is not less than 25 feet in width.
4. The lot complies with all other applicable regulations of the district.

295-39. Nonconforming Prohibited Use of Land. No nonconforming prohibited use of land shall be:

1. Extended beyond the area of land occupied by, or devoted to, the nonconforming prohibited use.
2. Intensified.
3. Relocated, in whole or in part, to any portion of the same lot not theretofore occupied by the nonconforming prohibited use, unless the use will thereafter conform to all applicable regulations of the district in which it is located.
4. Changed to any use other than a use that is a permitted use or special use in the district in which it is located, subject to board approval of any special use.
5. Resumed if discontinued for a period of 12 months. Any discontinuance caused by governmental action, and without any contributing fault by the person conducting the nonconforming prohibited use, shall not be considered when calculating the length of discontinuance.

295-41. Nonconforming Structures and Uses in Shoreland-Wetland Districts. 1. ENVIRONMENTAL CONTROL FACILITIES. This subchapter shall not limit the repair, reconstruction, renovation, remodeling or expansion of any environmental control facility in existence on May 7, 1982.

2. BOAT HOUSES. The maintenance and repair of boat houses which were legally constructed but which are located below the ordinary high-water mark of any navigable waters shall comply with s. 30.121, Wis. Stats.

295-43. Flood Plain Districts. This subchapter shall apply to all flood plain districts. Furthermore, any authorized enlargement, reconstruction, relocation, alteration, extension or change to a nonconforming structure, nonconforming prohibited use or nonconforming special use shall also be floodproofed.

295-45. Continuation of Nonconformities. All nonconforming lots, nonconforming structures and nonconforming prohibited uses may continue subject to the restrictions in this subchapter. However, once a nonconforming prohibited use is replaced by a conforming use, the use shall not be changed back to a nonconforming prohibited use. The regulations of this subchapter shall not apply to any change in an existing structure or any change in the use of a structure or of land for which a permit was issued prior to the amendment of this chapter which created the nonconformity.

Part 7. Section 295-59-5-f of the code is repealed. (Note: The provisions being repealed read as follows:

295-59. Board of Appeals.

5. FINDINGS.

f. Special Use Limitations. A special use shall operate in conformance with its approved plan of operation, site plans and conditions of approval. Such special use shall not be enlarged or intensified without the approval of the board.)

Part 8. Section 295-59-6 and 7 of the code is renumbered 295-59-7 and 8.

Part 9. Section 295-59-6 of the code is created to read:

6. ADDITIONAL SPECIAL USE AND VARIANCE REGULATIONS. a. General Operation. A special use or variance which has been approved by the board shall operate in conformance with its approved plan of operation, site plans and conditions of approval. Such special use or variance shall not be enlarged or intensified without the approval of the board unless otherwise permitted by this subsection.
- b. Combined Use. A permitted use may be added to, enlarged, expanded or rebuilt as part of an approved special use or variance without board approval provided the hours of operation are limited to the hours specified in this code, if any, parking is provided in accordance with this chapter and the addition, enlargement, expansion or reconstruction is in conformance with all other provisions of this code and with any applicable elements of the city's comprehensive plan.
- c. Site Plan Changes. Parking areas, landscaping, signs, canopies, fences, awnings or similar site features for an approved special use or variance may be expanded, intensified, enlarged or rebuilt without board approval provided that the expansion, intensification, enlargement or reconstruction is in conformance with all other provisions of this code and with any applicable elements of the city's comprehensive plan. In addition, whenever any such change to the parking area of an approved special use or variance occurs, the parking plan for such parking area shall be subject to approval by the commissioner of public works.
- d. Repairs and Maintenance. The buildings, site features and structures of an approved special use or variance may be repaired and maintained in compliance with this code without board approval.

Part 10. Section 295-61-3 of the code is amended to read:

295-61. Changes in Districts and Regulations.

3. NONCONFORMITIES. Any legal lot, structure or use [[in existence in an area]] which becomes a nonconforming lot, >>nonconforming<< structure [[or use]] >>, nonconforming prohibited use or nonconforming special use<< by virtue of an amendment to the boundaries or regulations of the area >>in which such lot, structure or use is located<< may continue to be a legal nonconforming lot, structure or use subject to subch. 3.

Part 11. Section 295-97-1-a-4 of the code is amended to read:

295-97. On Premise Signs. 1. RESIDENCE DISTRICTS. a. Signs Allowed.

- a-4. A sign not exceeding 40 square feet and 2 feet in height placed on any building containing a nonconforming >>prohibited<< use >>or nonconforming special use<<. Such signs shall be placed against walls of the building and shall not be illuminated. Such signs shall be used only to advertise the principal use of the building.
APPROVED AS TO FORM

Legislative Reference Bureau

Date: _____

IT IS OUR OPINION THAT THE ORDINANCE
IS LEGAL AND ENFORCEABLE

Office of the City Attorney

Date: _____

LRB94478.4
JDO
11/3/97

