

Agenda Item 4

NR 115 Nonconforming Use (NU) and Structure (NS) Summary Sheet – Shore Setback

*2015 law changes shown in red & superseded NR 115 language change shown with a ~~strike through~~.

Nonconforming Use (NU) provisions (115.05(1)(g))

1. An Ordinance may not prohibit the continuation of the lawful use of a building, structure, or property that exists when an ordinance or ordinance amendment takes effect, which is not in conformity with the provisions of the ordinance or amendment.
2. The continuance of the NU of a temporary structure may be prohibited.
3. If a NU is discontinued for a period of 12 months, any future use of the building, structure, or property shall conform to the Ordinance.

Nonconforming Structure (NS) provisions (115.05(1)(g)):

Meaning. An existing principal structure that was lawfully placed when constructed but that does not comply with the required *shore setback* (75 ft. or through averaging).

4. *Maintenance.* A principal NS may be replaced, restored, rebuilt, remodeled, maintained and repaired within its existing building envelope. Mitigation is not required. A County shall not require any approval or impose a fee.
5. *Expansion.* A principal NS may be expanded laterally and vertically provided the following requirements are met:
 - a. The use of the NS has not been discontinued for 12 months (if NU).
 - b. The NS is at least 35 ft. from the OHWM of the waterway for a lateral expansion only.
 - c. Vertical expansions are limited to 35 ft. in height.
 - d. Lateral expansions are limited to a max. 200 sq. ft. over the life of the structure.
 - e. No portion of the expansion may be closer to the OHWM than the existing structure.
 - f. Mitigation is required for lateral expansions only.
 - g. All other Ordinance requirements shall be met.
 - h. A County shall not require any approval or impose a fee for a vertical expansion.
- 5m. *Expansion beyond setback.* A principal NS may be expanded laterally or vertically provided the expanded area meets the shore setback requirements and all other Ordinance provisions are met. Mitigation is not required.
6. ~~Replacement or relocation.~~ A principal NS may be replaced or relocated provided the following requirements are met:
 - a. The use of the NS has not been discontinued for 12 months (if NU).
 - b. The NS is at least 35 ft. from the OHWM of the waterway.
 - c. No portion of the new structure is located closer to the OHWM than the closest point of the existing structure.
 - d. The County determines that no other location is available to build a comparable sized structure that will result in compliance with the shore setback standard.
 - e. Mitigation is required.
 - f. All other Ordinance requirements shall be met.

***Note: NS's must comply with all other Ordinance requirements. Therefore, all structural improvements require an approval, permit and fee from Waukesha County.**

Existing Waukesha County Nonconforming Use (NU) and Structure (NS) Provisions

Legal Nonconforming Uses: Structural repairs or alterations are limited to less than 50% of the equalized assessed value of the structure over the lifetime of the structure.

Legal Nonconforming Structures: Exterior structural repair or improvements are limited to less than 50% of the exterior structural members being removed or replaced over the lifetime of the structure. Exterior structural members include foundations, rafters, trusses, exterior walls, or similar structural members.

Non-conforming Structure Improvements

The SZAC supported additional flexibility for improvements to structures that are non-conforming for reasons other than shore setback (road setback, offset, wetland setback, floodplain setback, building footprint, building height). The recommended scheme would replace the existing code provisions that limit improvements (remodeling/repair) to all nonconforming structures to 50% or less of the exterior structural members. The recommended scheme is a tiered approach that provides additional flexibility as the severity of the nonconforming structure decreases. The approach is similar to the tiered system that NR 115 sets forth for structures nonconforming to shore setback. The committee recommendations are as follows:

***Structures nonconforming to shore setback only must comply with NR 115 and S. 59.692 Wis. Statutes and the below options are not applicable to said structures.**

Structures nonconforming to wetland and floodplain setback

- Within 35 ft. of a wetland or floodplain:
 - Limit structures to interior and exterior remodeling and the replacement of less than 50% of the existing exterior structural members over the lifetime of the structure.
- 35 ft. and greater. In addition to the above:
 - Allow vertical expansions that meet the height requirements
 - Allow horizontal expansions (principal structures only) that do not exceed 200 sq. ft. in area over the life of the structure.
 - Allow the replacement or relocation of a structure of equal or less size if no other conforming location is available as determined by the Zoning Administrator and provided the structure is no closer to the wetland or floodplain than the existing structure.
 - Mitigation is required to offset the impacts of any horizontal expansion (wetland only).

Note: Structures that are permitted by right through wetland and floodplain setback averaging are not subject to the above provisions.

Structures nonconforming to road setback

- Within 20 ft. of base setback line:
 - Limit structures to interior and exterior remodeling and the replacement of less than 50% of the existing exterior structural members over the lifetime of the structure.
- 20 to < 35 ft. In addition to the above:
 - Allow vertical expansions that meet the height requirements.
 - Allow horizontal expansions (principal structures only) that do not exceed 200 sq. ft. in area over the life of the structure provided the expansion is no closer to the road than the existing structure.
 - Allow the replacement or relocation of a structure of equal or less size if no other conforming location is available as determined by the Zoning Administrator and provided the structure is no closer to the road than the existing structure
- 35 ft. and greater. In addition to the above:
 - Allow horizontal expansions (principal structures only) provided the expansion is no closer to the road than the existing structure.

Note: Structures that are permitted by right through road setback averaging are not subject to the above provisions.

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Structures nonconforming to offset

- *Within 5 ft. of lot line*
 - Limit structures to interior and exterior remodeling and the replacement of less than 50% of the existing exterior structural members over the lifetime of the structure.
- *5-10 ft. In addition to the above:*
 - Expansions require a special exception, provided the expansion is no closer to the offset than the existing structure and provided the area of the expansion does not exceed 50% of the footprint of the existing structure, cumulatively over the lifetime of the structure from the effective date of the revised ordinance.
- *Greater than 10 ft. In addition to the above:*
 - Expansions are permitted by right, provided the expansion is no closer to the offset than the existing structure and provided the area of the expansion does not exceed 50% of the footprint of the existing structure, cumulatively over the lifetime of the structure from the effective date of the revised ordinance.
 - Expansions that exceed 50% of the footprint of the existing structure require a special exception provided the area of the expansion is no closer to the offset than the existing structure.

Nonconforming boathouses

- Per Act 55 and Act 167, if a boathouse is nonconforming to shore setback only, it can be replaced within the same footprint and is limited to the 3-D envelope of the existing boathouse.
- If a boathouse is nonconforming for any other reason (such as offset, max. footprint, # of stories, side-wall height) limit improvements to interior and exterior remodeling and the replacement of less than 50% of the existing exterior structural members over the lifetime of the structure.

Structures nonconforming to footprint standards

- Limit structures that exceed the footprint standards to interior and exterior remodeling and the replacement of less than 50% of the existing exterior structural members over the lifetime of the structure.
- No horizontal expansions are permitted.
- Vertical expansions are limited to the area of allowable footprint for the structure (i.e. if the structure currently has a 3,000 sq. ft. footprint and 2,000 sq. ft. is allowed, the proposed 2nd story shall not exceed 2,000 sq. ft).
- Existing structures that do not comply with the minimum floor area requirements shall not be reduced in size.

Flexibility provided for structures that cannot meet the above standards: Minimum Building Footprint

- The Zoning Administrator may administratively approve a building footprint not to exceed 1,100 sq. ft. when offsets and setbacks cannot otherwise provide a 1,100 sq. ft. building footprint. The Zoning Administrator is limited to providing road setback and floodplain and wetland setback relief only. The footprint shall not extend into the established road right-of-way or within the floodplain or wetland.

Structures nonconforming to height

- Any vertical expansion must comply with the height regulations. 50% provision does not apply.

Principal and accessory structures - nonconforming uses

- 50% value provision still applies to structures that contain nonconforming uses.