

CITY OF STOUGHTON, 381 E. Main Street, Stoughton, WI 53589

ORDINANCE OF THE COMMON COUNCIL			
Amending Zoning Code Sections 78-210, 78-015 and 78-408 of the Stoughton Municipal Code			
Committee Action:			
Fiscal Impact: None			
File Number: O- 16 -2012		Date August 28, 2012 First Reading	
		Introduced: September 11, 2012 Second Reading	

The Common Council of the City of Stoughton do ordain as follows:

1. Sec. 78-210 Nonconforming use regulations.

(1) Definition:

A nonconforming use is an active and actual use of land or structures, or both; legally established prior to the effective date of this Chapter or subsequent applicable amendment thereto which has continued the same use to the present, and which would not be permitted under the current terms of this Chapter.

(2) Continuance of a Nonconforming Use:

Any nonconforming use lawfully existing upon the effective date of this Chapter or any amendment to it may be continued at the size and in a manner of operation existing upon such date, except as specified in this Section. Any prior legal use made nonconforming by this Chapter or by an amendment to it may be granted legal conforming status **by the issuance of a conditional use permit, subject to the standards and procedures prescribed by Section 78-905.** Any prior legal use made nonconforming by a modification to the Official Zoning Map after the effective date of this Chapter may be granted legal conforming use status by changing the zoning district of the affected property to an appropriate district through a zoning map amendment. Such requested zoning amendment shall be subject to the standards and procedures prescribed by Section 78-903.

(3) Modification of a Nonconforming Use:

- (a) Except as permitted in this Section, a nonconforming use ~~(i)~~ shall not be expanded, enlarged, or extended, ~~or reconstructed~~, unless the use is changed to a use permitted in the district in which the use is located, ~~or~~ ~~(ii)~~ and shall not be changed to another nonconforming use.
- (b) A nonconforming nonresidential use not served by public sanitary sewer and/or public water may be permitted to expand without being served by public sanitary sewer and/or public water if either or both facilities are not available within 1,000 feet of the subject property, and a conditional use permit is granted for such expansion.

(4) Discontinuance of a Nonconforming Use:

When any nonconforming use of any structure or land is discontinued for a period of 12 consecutive months, or is changed into a conforming use, any future use of said structure or land shall be in complete conformity with the provisions of this Chapter.

(5) Maintenance and repair of a Structure Containing a Nonconforming Use:

The ordinary maintenance and repair of a structure containing a nonconforming use is permitted, including necessary repairs and incidental alterations which do not exacerbate the adverse impacts of the nonconforming use in relation to the purpose of this Chapter.

~~(6)~~(5) Nonconforming Lots and Structures:

See Sections ~~78-307, 78-408 and 78-409.~~

Section 78-015: Definitions

Blanket variance: A variance which is automatically granted by a provision of this Chapter in order to reduce the creation of legal nonconforming developments (see Section 78-310 and ~~or legal nonconforming residential structures (see Section 78-408 (10) (9)).~~

Section 78-408: Nonconforming Structure Regulations

- (1) Any structure lawfully existing upon the effective date of this Chapter may be continued at the size and in a manner of operation existing upon such date, except as provided in this Section.
- (2) Any lawful nonconforming structures existing at the time of the adoption or amendment of the ordinance from which this chapter is derived may be continued, although its size or location does not conform with the lot width, lot area, yard, height, parking and loading, and access provisions of this chapter. Any lawful nonconforming structures may be allowed to be extended, enlarged, reconstructed, moved or structurally altered, provided that said extension, enlargement, reconstruction, movement or alteration complies with the ~~setback~~ zoning and building requirements of the specific zoning district, except for the existing nonconformance. However, the nonconforming feature of a lawful nonconforming structure shall not be allowed to become more nonconforming by being extended, enlarged, reconstructed, moved or structurally altered except as permitted under subsection 78-408(4) or when required to do so by law, or order, or to comply with the provisions of this chapter, or with the approval of the zoning board of appeals.
- (3) A damaged or destroyed nonconforming structure may be restored to the size, location, and use that it had immediately before the damage or destruction occurred, without any limits on the costs of the repair, reconstruction, or improvement if all of the following apply:
 - (a) The nonconforming structure was damaged or destroyed on or after the effective date of this ordinance.
 - (b) The damage or destruction was caused by violent wind, vandalism, fire, flood, ice, snow, mold, or infestation.

(4) Unsafe Structures

Nothing in this Chapter shall preclude the Building Inspector or any other City official from initiating remedial or enforcement actions when a lawful nonconforming structure is declared unsafe or presents a danger the public health, safety, or welfare.

(5) Future Modification

When any lawful nonconforming structure in any district is modified so as to be in conformance with the provisions of this Chapter, any future modification of said structure shall be in conformance with the provisions of this Chapter.

(6) Substantial Improvement

Whenever a lawful nonconforming structure has been damaged by fire, flood, wind, explosion, earthquake, war, riot, unlawful act, or Act of God, it may be reconstructed and used as before. The reconstruction shall allow for the size of a structure to be larger than the size it was immediately before the damage or destruction if necessary for the structure to comply with applicable state or federal requirements. ~~if it be reconstructed within one year after such calamity, unless the cost of restoration equals or exceeds 50% of the present equalized value of the structure before the damage occurred.. In such cases, the reconstruction shall be limited to uses permitted by the provisions of this Chapter (unless the ability to re-establish a nonconforming use is specifically granted by the Common Council).~~

~~(7)~~ (6) Ordinary Maintenance

Ordinary maintenance repairs, including repairs reasonably necessary to prevent the deterioration of a structure, and remodeling of a nonconforming structure are permitted, as well as necessary nonstructural repairs and alterations which do not extend, enlarge, or intensify the nonconforming structure. Ordinary maintenance repairs and remodeling include internal and external painting, decorating, paneling, the addition of acoustical ceilings, the installation of heating, electricity, plumbing (including fixtures) or insulation, and the replacement of doors, windows, and other non-structural components.

~~(8)~~ (7) Alterations

Subject to Section 78-408(4), structural alterations may be made to a lawful non structurebuilding containing lawful nonconforming residential units, provided such alterations do not increase the number of dwelling units or the bulk of the structurebuilding. Notwithstanding the foregoing, a conforming garage may be added if none previously existed. However, after the effective date of this Chapter, such structuresbuildings shall not be enlarged, expanded or extended unless without bringing the enlargement, expansion or extension complies into compliance with the provisions of ~~the~~ this Chapter or unless a variance is granted by the Zoning Board of Appeals under Section 78-910 and except as permitted under Section 78-408(4).

(9) (8) Timing of Building Permit

Any structure for which a building permit has been lawfully granted prior to the effective date of this Chapter or an amendment to it which will become nonconforming under the provisions of this Chapter or that amendment thereto, may be completed in accordance with the approved plans, provided construction is started within 365 calendar days after issuance of the permit ~~for single and two family construction and within 365 calendar days after issuance of a permit for all other development~~, and construction is completed within 730 calendar days (2 years) after issuance of the permit, ~~the start of construction~~. If all such conditions are met, the structure shall thereafter be a legal nonconforming structure.

(10) (9) Blanket Variance

Blanket Conforming Status is hereby automatically granted to all nonconforming principle structures in their configuration existing or as finally approved as of the effective date of this Chapter. However, after the effective date of this Chapter, such structures may not be enlarged, expanded or extended unless the enlargement, expansion or extension complies with the provisions of ~~the Article~~ this Chapter or unless a variance is granted by the Zoning Board of Appeals under Section 78-910.

Rationale: The "blanket conforming status" specified in Subsection ~~(10) (9)~~ is intended to eliminate the continued classification and/or creation of certain principle structures as non-conforming. This provision addresses two different situations. First: prior to the provision of full-time inspection services, a number of structures were approved in the City that did not meet setback requirements. Second: this Chapter requires greater side yard setback requirements for certain lot sizes than did previous regulations for similar sized lots. Subsection ~~(10) (9)~~ therefore ensures that owners of such structures approved prior to the adoption of this Chapter do not encounter difficulty in transferring ownership because the structures would otherwise be considered nonconforming.

2. This ordinance shall be in full force and effect from and after its date of publication.

Dates

Council Adopted: _____

Mayor Approved: _____

Published: _____

Attest: _____

Donna Olson, Mayor

Nick Probst, City Clerk