

Comprehensive Revision of Chapter 10

Proposed Language for Nonconforming Uses, Including Mineral Extraction

REVISED WORK GROUP DRAFT 6/9/2017 REVIEWED BY CORPORATION COUNSEL

10.04 Definitions

(1) Abandoned or discontinued use.

- (a)** Except as described in (b) below, when the nonconforming use of a property has ceased for twelve months or longer, a use shall be considered abandoned and discontinued.
- (b)** Mineral extraction uses shall be considered abandoned or discontinued if the use ceases for twelve months or longer, unless the landowner or operator complies with all of the following:
1. Within twelve months of the effective date of this ordinance has submitted and received approval of a reclamation plan under Chapter 74, Dane County Code;
 2. By January 31 of each year after submitting a reclamation plan, submits an annual report **indicating that the site was active during the previous year**, and that meets all the requirements of s.74.251, Dane County Code.
 3. Within twelve months of the effective date of this ordinance record a deed notice document, that: indicates the presence of a nonconforming mineral extraction site; describes the boundaries of the nonconforming mineral extraction site, and; is signed by the landowner and the zoning administrator
 - ~~4. By January 31 of each year, provide to the zoning administrator **evidence, subject to inspection**, documentation of use within the previous twelve months, including that all of the following conditions are met: but not limited to:~~
 - ~~(a) Bill of sales of mineral materials within the previous calendar year~~
 - ~~(b) Verification of property ownership or an active mineral lease, as recorded with the Dane County Register of Deeds, between the landowner and a mineral extraction operator~~
 - (c) The driveway accessing the subject site shall either be paved or covered with crushed asphalt for a minimum distance of 100 feet from the public right-of-way. The operator shall maintain the driveway in a dust free manner in accordance with local, state, and federal regulations, and shall clean any dust or mud tracked onto public roads.**
 - (d) There shall be a safety fence around the entire extraction area at all times. That safety fence shall be a minimum of 4 feet in height.**
 - (e) The access to the driveway shall have gates securely locked when the extraction site is not in operation. The site shall be signed "no trespassing."**
 - (f) The operator shall post clearly visible signage indicating the presence of mineral extraction activity.**

- (g) The owner or operator shall register the site under NR 135, Wisconsin Administrative Code as an economically viable mineral deposit.
- (h) Maintain an active stockpile of at least 5,000 cubic yards on the premises berms, equipment and other accessory uses typically associated with a mineral extraction operation.

(21) Building envelope.

The three dimensional space within which a building is constructed.

(86) Mineral extraction.

(a) Quarrying, excavation or removal of sand, gravel, limestone, earth, soil or other mineral resources.

(b) Mineral extraction does not include:

1. Site preparation for residential or commercial plats,
2. Construction or landscaping projects,
3. Soil conservation practices
4. Stream, lake or shoreline protection projects
5. Agricultural land leveling projects conducted in accordance with ATCP 50, Wisconsin Administrative Code, provided materials are not removed from the site.
6. Composting, storage or processing of materials that meet the definition of an agriculture-related use.
7. Solid waste disposal operations.

(87) Mineral extraction accessory uses.

(a) When conducted entirely within the boundaries of an approved Conditional Use Permit for a mineral extraction site, the following are considered permitted accessory uses:

1. washing, crushing, screening and other processing of extracted mineral materials,
2. stockpiling and processing concrete and asphalt pavements for the purpose of recycling for reuse in asphalt or concrete mixtures or base course products
3. importing and dumping of clean fill materials
4. the erection of structures and the installation or storage, or both, of the necessary machinery and equipment used in the mineral extraction operation
5. soil blending for production of bioretention products
6. activities associated with an approved erosion control or stormwater management plan under Chapter 14, Dane County Code.
7. activities associated with site reclamation under an approved reclamation plan under Chapter 74, Dane County Code.

(b) At their own initiative or at the applicant's request, town boards and the committee may further limit or prohibit any of the above accessory uses on a particular mineral extraction site, as part of the conditions on an individual Conditional Use Permit.

(91) Nonconforming use.

A use of land, a dwelling, or a building that existed lawfully before the current zoning ordinance was enacted or amended, but that does not conform with the use restrictions in the current ordinance.

10.102. General Provisions Applicable to All Uses in All Zoning Districts

(5) Nonconforming Uses and Structures

(a) Certificate of Compliance for Nonconforming Uses and Structures

1. Any person having a legal or equitable interest in a property which is nonconforming as to use or building location may make written application to the zoning administrator for a certificate of compliance.
2. The applicant shall present adequate evidence showing that said use was a permitted use at the time it originated or that the building has been erected prior to the adoption of this ordinance and was made nonconforming by the adoption of this ordinance or by a subsequent amendment.
3. After determining that the use of the building or land is in fact nonconforming the zoning administrator shall issue a certificate of compliance stating the use in question or the location of buildings and the zoning of the property are legally nonconforming.

(b) Nonconforming Uses.

1. Continuation of a Legal, Nonconforming Use.
The lawful principal use of a building or premises existing at the time of adoption of this ordinance may be continued as a nonconforming use.
2. Notification of Nonconformity.
Within 30 days of the effective date of this ordinance in any town, the zoning administrator will send a notice via certified mail, return receipt requested, to all legally established, nonconforming mineral extraction operations which existed prior to 1969, and were registered with and approved by the Dane County Zoning Administrator at the time. The notice shall inform the landowner that registered nonconforming mineral extraction sites are subject to the provisions of this section.
3. Abandonment or Discontinuation of a Nonconforming Use.
 - a. Any nonconforming use that is discontinued or abandoned shall be considered terminated and shall lose its nonconforming status. Any future use or reestablishment of a previously nonconforming use on the premises must conform to the provisions of this ordinance, except as specifically exempted below.
 - b. The relocation or expansion of any nonconforming use beyond areas where such use was originally established shall conform to all standards and requirements of this ordinance and **except as otherwise provided by law.**
4. Expansion of building or structure housing a nonconforming use.
 - a. Except as specifically exempted below, no building or premises used as a nonconforming use shall be added to or structurally altered so as to increase the facilities for such nonconforming use.
 - b. Exceptions. Alteration, restoration or repair of any legal structure occupied by a nonconforming use at the effective date of this ordinance is

permitted; provided that the value of the structure is not increased by more than 50%, compared with the assessed value of the structure at the time it became nonconforming.

(c) Nonconforming structures.

- 1. Continued use of nonconforming structures.**
 - a.** Except as exempted below, any nonconforming structure may be continued in use.
 - b.** Exceptions. Nothing herein contained shall require any change in the plans, construction or intended use of a structure or premises for which plans have been prepared heretofore, and the construction of which shall have been diligently pursued within three (3) months after the effective date of this ordinance.
- 2. Demolition or destruction of nonconforming structures.**
 - a.** Except as exempted in d. below, a structure is considered to be demolished and nonexistent if more than 50% of the pre-existing structure is removed or must be replaced to maintain structural integrity.
 - b.** A structure subject to sub. a shall comply with the provisions of this ordinance.
 - c.** Any variance that may have been issued for said building or structure shall be null and void and any zoning permits shall be rescinded pending verification of compliance.
 - d.** Exceptions. Nothing contained in this section shall prevent the restoration of a nonconforming structure damaged or destroyed by wind, vandalism, fire, flood, ice, snow, mold, or infestation, if the structure is restored to the size, location, and use that it had immediately before the damage or destruction occurred. Such restoration shall occur within 2 years of the damage or destruction.
 - i.** A structure to which sub. d. applies may be larger than the size it was immediately before the damage or destruction if necessary to comply with applicable state or federal requirements, but no larger than necessary to comply with said requirements.
- 3. Repair, maintenance and renovation of nonconforming structures.**
 - a.** A nonconforming principal structure may be maintained and repaired within its existing building envelope.
 - b.** Maintenance and repair also includes such activities as interior remodeling, exterior remodeling, and the replacement or enhancement of plumbing or electrical systems, insulation, windows, doors, siding, or roof within the existing building envelope.
- 4. Additions or alterations to nonconforming structures.**

Any future additions to, or any other alterations that expand the building envelope of, a nonconforming structure shall conform to the provisions of this ordinance.