

**ORDINANCE No. 2013-6**

**AN ORDINANCE AMENDING THE VILLAGE OF BRISTOL ZONING CODE  
REGARDING NONCONFORMING USES, STRUCTURES & LOTS**

The Village Board of the Village of Bristol, Kenosha County, Wisconsin, do ordain as follows:

**SECTION I. REPEAL AND ADOPTION OF PROVISIONS.**

Sections 13-1-200 through 13-1-209 of the Zoning Code of the Village of Bristol Code of Ordinances are repealed and recreated to read as follows:

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**Article F: Nonconforming Uses, Structures and Lots**

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**Sec. 13-1-200 Intent – Nonconforming Uses, Lots and Structures.**

**(a) Intent; Interpretation.**

- (1) Within the zoning districts established by this Zoning Code or amendment thereof, there may exist lots, structures and uses of land which were lawful before this Zoning Code was enacted or amended, but which would be prohibited in the future under the terms of this Zoning Code or amendment thereto. Because the incorporation of the Village of Bristol in 2011 resulted in the Kenosha County Zoning Code being superceded by the Village of Bristol Zoning Code, the date of nonconformity of existing uses, lots and structures shall be that which existed under the Kenosha County Zoning Code and are carried forward under the Village of Bristol Zoning Code, or which became nonconforming as a result of the enactment of the Village of Bristol Zoning Code.
- (2) It is the intent of the Village of Bristol to permit nonconforming uses, lots and structures to remain and continue in accordance with the provisions hereinafter set forth until they are removed due to economic forces, public health or safety grounds, or otherwise. It is not the intent of this Zoning Code to perpetuate and/or encourage the long-term continuance of nonconformities because they are inconsistent with the

requirements and character of the districts involved, or to permit nonconformities to be generally enlarged upon, expanded, or extended except as provided for herein. Existing nonconformities shall not be used to justify adding structures or uses prohibited in the zoning district.

- (b) **Classification of Nonconformities.** Nonconformities are classified into three (3) categories as follows:
  - (1) Nonconforming uses.
  - (2) Nonconforming lots.
  - (3) Nonconforming structures.
- (c) **General Guidelines.** It is the intention of the Village of Bristol that standards be set forth for the purpose of determining:
  - (1) That the nonconforming use, lot or structure existed prior to the effective date of this Chapter or amendment thereto, or existed under the prior Kenosha County Zoning Code as a nonconforming use, lot or structure;
  - (2) The ways in which the right of the nonconforming use, lot or structure to remain can be preserved and the ways in which the right to continue nonconforming use, lot or structure can be lost;
  - (3) The extent of permissible variation in the nonconforming use, lot or structure; and
  - (4) The devices available for eliminating such nonconforming uses, lots or structures, where appropriate.
- (d) **Burden of Proof Regarding Nonconforming Uses.** Any property owner asserting as a defense to a charge of violating this Chapter because his/her property is a valid nonconforming use has the burden of demonstrating to reasonable certainty by the greater weight of credible evidence that:
  - (1) The nonconforming use was legally in existence at the time the zoning ordinance provision that now prohibits that use was adopted. The use must be lawful under then existing zoning regulations and cannot contravene such zoning requirements.
  - (2) That the use of the property prior to the nonconformity came into being was so active and actual that the property owner can properly assert that the property owner has acquired a vested interest in its continuance. Such use cannot be occasional or sporadic. For purposes of this Chapter, a property owner shall be deemed to have a vested right in the use of his/her property where that use at the time the nonconformity came into being is both actual and active and a substantial degree of activity or expense had been undertaken prior to the effective date the zoning provision that caused the nonconformity to come into being. Such use must be more than incidental or accessory to the principal use of the property.
  - (3) That the use is substantially the same use that existed prior to the enactment of the ordinance or amendment thereto that caused the nonconformity.

## **Sec. 13-1-201 Article Definitions.**

In addition to the definitions contained in Section 13-1-560 of Article O of this Chapter, the following definitions shall be applicable in Article; in the event of conflict, the more specific definition shall be applicable:

- (a) **Assessed Value (Lot).** The full market value placed upon the lot by the Village Assessor as of the date that the nonconformity came into being. Such valuation by the Assessor shall be prima facie evidence of an assessed value of the lot.

- (b) **Legally Existing.** A lot, structure or use existing on the date that the nonconformity came into being, was built or was established under the zoning and land use regulations in effect in the preceding Town of Bristol and/or prior to the effective date of this Chapter.
- (c) **Nonconforming Lot.** A parcel of land legally created and recorded prior to the effective date of the nonconformity came into being of such dimensions, or containing structures accessory and/or principal uses, insufficient to meet the development regulations, parking requirements, signage standards, or other open space requirements of the zoning district in which located.
- (d) **Nonconforming Structure.** [See definition in Sec. 13-1-560(a)].
- (e) **Nonconforming Use.** [See definition in Sec. 13-1-560(a)].

## Sec. 13-1-202 Existing Vacant Nonconforming Lots.

In any residential, upland conservancy or agricultural district, a one-family detached dwelling and its accessory structures may be erected on any vacant nonconforming lot provided that all requirements of applicable sanitary ordinances are met:

- (a) **Nonconforming Lots - Width, Area and Setbacks.** Nonconforming lots shall have the following minimum width, area and setback requirements:

<b>Lot</b>	<b>Width</b>	Minimum 40 feet (public sewerage) 50 feet (private sewage system)
	<b>Area</b>	Minimum 4,000 square feet (public sewerage) 6,000 square feet (private sewage system)
<b>Setbacks</b>	<b>Street</b>	The minimum required in the district except as provided in this Article
	<b>Rear</b>	Minimum 25 feet from lot line
	<b>Side</b>	Minimum 16% of the lot width on each side, but not less than 5 feet from lot line

- (b) **Nonconforming Corner Lots.** Nonconforming corner lots shall have the following minimum setback requirements:

<b>Lot Width</b>	40 feet through 49 feet
<b>Setbacks</b>	Primary street yard — minimum as required in the district Secondary street yard — 26% of the lot width Side yard — 12.5% of the lot width Rear yard — 25 feet

**Lot Width** 50 feet through 59 feet

**Setbacks** Primary street yard — minimum as required  
in the district  
Secondary street yard — 32% of the lot width  
Side yard — 16% of the lot width  
Rear yard — 25 feet

**Lot Width** 60 feet through 65 feet

**Setbacks** Primary street yard — minimum as required  
in the district  
Secondary street yard — 38% of the lot width  
Side yard — 10 feet  
Rear yard — 25 feet

- (c) **Driveways.** Driveways shall comply with the driveway standards of Title 6, Chapter 3 of the Village of Bristol Code of Ordinances.

### **Sec. 13-1-203 Common Ownership of Abutting Nonconforming Lots.**

Nonconforming lots of record owned by the same individual or other legal entity shall be combined prior to the issuance of a zoning permit.

### **Sec. 13-1-204 Nonconforming Parcels Under One Ownership, One Kenosha County Tax Key Number, and Physically Divided by an Existing Public Street Right-of-Way.**

Parcels of land under one (1) ownership, one (1) Kenosha County Tax Key Number, and which are physically divided by an existing public street right-of-way or other public roadway at the time of the adoption of this Zoning Code [but which are not legally divided into two (2) separate parcels), shall hereby be deemed as one (1) existing, legal nonconforming parcel within the zoning district within which the parcel is located. Since the physical division of these properties was created by the placement of the existing public street right-of-way or other public properties was created by the placement of the existing public street right-of-way or other public roadway, said parcels shall be allowed to be legally divided into two (2) parcels by the formal submission to the Village of a certified survey map which legally creates one (1) parcel on each side of the existing public street right-of-way or other public roadway, even if the result is two (2) nonconforming or substandard lots. Said lots or parcels so created shall each also be hereby deemed as a legal nonconforming parcel within the zoning district within which the parcel is located.

## **Sec. 13-1-205 Existing Nonconforming Structures.**

### **(a) Continuation of Nonconforming Structures.**

- (1) The use of a structure existing on the date that the nonconformity came into being may be continued although the structure's size or location does not conform with the development regulations, parking, loading, or access provisions of this Chapter.
- (2) Any lawful nonconforming structure may be extended, enlarged, reconstructed, or structurally altered, provided that said extension, enlargement, reconstruction, movement or alteration complies with the setback and building requirements of the specific zoning district. However, the nonconforming feature of said structure shall not be allowed to become more nonconforming by being extended, enlarged, reconstructed, moved, or structurally altered except under one (1) or more of the following fact situations:
  - a. As when required to do so by law, or order.
  - b. To comply with the provisions of this Chapter.
  - c. With the approval of a conditional use permit under the procedures of Article E of this Chapter for the purpose of making required alterations to maintain the structural integrity of the building.
  - d. With the approval of a variance by the Board of Appeals.

### **(b) Yard Encroachments by Nonconforming Structures.** Nonconforming structures which encroach upon the yard (setback) requirements of this Chapter, but which met yard requirements at the time the nonconformity came into being at the time of construction, may be structurally enlarged or expanded if the existing structure is located at a minimum of at least fifty percent (50%) of the minimum setback requirement and further provided that the alteration does not create a greater degree of encroachment on yard, height, parking, loading, or access requirements. Placement of a new foundation or basement under an existing nonconforming structure shall be allowed as long as no further encroachment is permitted.

### **(c) Unsafe Nonconforming Structures.** Nothing in this Chapter shall preclude the Building Inspector or any other Village official from initiating remedial or enforcement actions when a lawful nonconforming structure is declared unsafe or presents a danger to the public health, safety, or welfare, constitutes a public nuisance, or is in violation of a licensing regulation.

### **(d) Maintenance, Repair and Remodeling of Nonconforming Structures.** This Chapter does not prohibit, or limit based on cost, the repair, maintenance, renovation, or remodeling of a nonconforming structure.

### **(e) Restoration of Certain Damaged Nonconforming Structures.**

- (1) In the case of damaged or destroyed nonconforming structures, the restoration of a nonconforming structure is permitted if the structure will be restored to the size, subject to Subsection (e)(2) below, location and use that it had immediately before the damage or destruction occurred, or impose 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 March 2, 2006.
  - b. The damage or destruction was caused by violent wind, vandalism, fire, flood, ice, snow, mold, or infestation.

- (2) Where the criteria under Subsection (e)(1) above exist for a nonconforming structure to be restored, the size of the structure may be larger than the size it was immediately before the damage or destruction if necessary for the structure to comply with applicable federal or state requirements.
- (f) **Shoreland Nonconforming Structures.** Nonconforming structures in shoreland areas damaged or destroyed by violent wind, fire, flood, or vandalism may be reconstructed or repaired, as provided by state law, to the size, location, and use it had immediately before the damage occurred if the landowner can establish that the damage was not due to deliberate act by the landowner or his/her agent, or due to general deterioration or dilapidated condition. [See also Sec. 13-3-25].
- (g) **Relocation of Nonconforming Structures.** A nonconforming structure shall not be moved or relocated to any other location on the lot unless such structure is made to conform to all regulations of the zoning district in which it is located.

### **Sec. 13-1-206 Existing Nonconforming Uses.**

Pursuant to Section 62.23(7)(h), Wis. Stats., a nonconforming use may not be extended. The total structural repairs and alterations in such a nonconforming use's building, premises, structure, or fixture shall not during its life exceed fifty percent (50%) of the assessed value of the building, premises, structure, or fixture unless permanently changed to a conforming use. The nonconforming use of a structure, land, or water existing on the date that the nonconformity came into being may be continued although the use does not conform with the provisions of this Chapter, except that:

- (a) **Change to More Restrictive Use Category.** The nonconforming use of a structure may be changed to a use of the same or more restricted classification, but where the nonconforming use of a structure is hereafter changed to a use of a more restrictive classification, it shall not thereafter be changed to a use of a less restricted classification.
- (b) **Discontinuation of Nonconforming Use.** If a nonconforming use is discontinued or terminated for a period of twelve (12) months, any future use of the structure, land or water shall conform to the provisions of this Chapter.
- (c) **Maintenance of Nonconforming Use Parcels.** Parcels containing a nonconforming use of land or water may be maintained or repaired including grading, paving, and surfacing, or the repair and replacement of bumper or wheel stops, fences, screening and drainage ways, provided that the amount of land, water or storage (i.e. vehicles, equipment and/or materials) devoted to such nonconforming use as it existed prior to the date that the nonconformity came into being is not extended, enlarged or moved.

### **Sec. 13-1-207 Changes and Substitutions.**

Once a nonconforming use or structure has been changed or altered so as to comply with the provisions of this Chapter, it shall not revert back to a nonconforming use or structure. Once the Board of Appeals has permitted the substitution of a more or equally restrictive nonconforming use for an existing nonconforming use pursuant to the provisions of Article N, the existing use shall lose its status as a legal nonconforming use and become subject to all the conditions required by the Board of Appeals.



## **Sec. 13-1-208 Floodplain and Shoreland-Wetland Nonconforming Uses and Structures.**

- (a) **Nonconformities in Floodplain Zoning Areas.** Nonconformities in Floodplain Zoning areas shall be governed by the provisions of Sections 13-2-40 and 13-2-41 of the Village of Bristol Code of Ordinances and pertinent sections of the Wisconsin Statutes and Wisconsin Administrative Code.
- (b) **Nonconformities in Shoreland-Wetland Zoning Areas.** Nonconformities in Shoreland-Wetland Zoning areas shall be governed by the provisions of Section 13-3-25 of the Village of Bristol Code of Ordinances and pertinent sections of the Wisconsin Statutes and Wisconsin Administrative Code.

*State Law References:* Sec. 87.303, Wis. Stats., and NR 116.15, Wis. Adm. Code

*Cross-References:* Sections 13-2-40, 13-2-41 and 13-3-25, Bristol Code of Ordinances

## **Sec. 13-1-209 Nonconforming Performance Standards.**

The use of any lot or parcel failing to comply with the performance standards set forth in this Chapter at the time of the adoption of this Chapter shall not be expanded unless the expansion conforms with the performance standards set forth in this Chapter.

## **Sec. 13-1-210 through Sec. 13-1-239 Reserved for Future Use.**

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### **SECTION II. SEVERABILITY.**


If any provision of this Ordinance is invalid or unconstitutional or if the application of this Ordinance to any person or circumstance is invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid or unconstitutional provisions or applications.

### **SECTION III. EFFECTIVE DATE.**

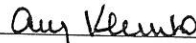
This Ordinance shall take effect upon passage and publication as provided by law.

ADOPTED this 8<sup>th</sup> day of April, 2013.

VILLAGE OF BRISTOL, WISCONSIN



Village President



Village Clerk-Treasurer

Published and Legally Posted: April 19, 2013

INTRODUCED: 4/8/13

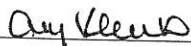
PASSED: 4/8/13

PUBLISHED: 4/19/13  
(POSTED)

State of Wisconsin:  
County of Kenosha:

I hereby certify that the foregoing ordinance is a true, correct, and complete copy of an ordinance duly and regularly adopted by the Village Board of the Village of Bristol on the 8<sup>th</sup> day of April, 2013, and that said ordinance has not been repealed or amended and is now in full force and effect.

Dated this 8<sup>th</sup> day of April, 2013.



Amy Klemko, Clerk-Treasurer