



WATERWAYS BUREAU

PROGRAM GUIDANCE

Wisconsin Department of Natural Resources  
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**ACT 175 (s. 87.30 (1d)(d) Stats.) Guidance**

DRAFT

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This document is intended solely as guidance and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. Any regulatory decisions made by the Department of Natural Resources in any matter addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.

APPROVED:

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Mike Thompson  
Waterways Bureau Director

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Date

The WDNR floodplain model ordinance includes the minimum regulatory standards required in Ch. NR116, Wis. Admin. Code and those of the National Flood Insurance program 44 CFR 59-72. The floodplain model ordinance now includes language for communities choosing to adopt changes consistent with 2019 Act 175.

Act 175 was enacted March 2020 and created § 87.30 (1d) (d), Wis. Stats. This Act changes how nonconforming structures are regulated in the floodplain. The federal requirements are unchanged by this Act, however, § 87.30 (1d) (d) creates an exception to the state's "50% rule" for structures in the floodplain. Essentially, if a nonconforming structure is altered to meet the federal minimum standards and the living quarters in the nonconforming building are elevated to be at or above the flood protection elevation, then the Department is prohibited from imposing cost-based regulation or restrictions to the structure (i.e., 50% Rule). It is important to note that structures modified to meet the requirements of § 87.30 (1d) (d) are not transformed into conforming structures and are still subject to all other non-cost-based regulations and restrictions applicable to nonconforming structures.

This Act did not change any city, village, or county floodplain ordinance authority and communities are able to maintain their current ordinance and incorporate higher standards into their floodplain zoning ordinance.

Communities should decide whether to incorporate Act 175 into the floodplain ordinance or maintain their current framework for regulating nonconforming structures based on an assessment of local flood risks. Once the local flood risks are identified and an appropriate zoning approach is determined, some communities may choose to maintain existing floodplain zoning and implement higher standards, while others may modify their ordinances to adopt this new minimum standard. (see [WDNR floodplain model ordinance.](#))

1. When Act 175 is incorporated into an ordinance there is a potential for the community to maintain existing structures in the floodplain:
  - a. Modifications, additions, maintenance, and repairs to structures in the floodplain shall not be prohibited based on cost and the building's nonconforming use shall be permitted to continue if these requirements are met:
    - i. Any living quarters in the nonconforming building are elevated to be at or above the flood protection elevation;
    - ii. The lowest floor of the nonconforming building, including the basement, is elevated to or above the regional flood elevation;
    - iii. The nonconforming building is permanently changed to conform to the applicable requirements of the general standards applicable to all floodplain districts;
    - iv. The building is permanently changed to conform to all applicable requirements in your floodplain zoning ordinance such as Hydraulic and Hydrologic Analyses (H & H), lowest floor elevations, anchoring, mechanical and utility equipment elevations, and must not obstruct flow of floodwater or cause any increase in flood levels.
    - v. NOTE: incorporating Act 175 into the local ordinance still requires the zoning administrator to carefully review and apply applicable portions of section 6 of the model ordinance because the structure is still a nonconforming structure.
2. For ordinances without Act 175 – repair/maintenance/modification of structures in the floodplain is limited by the 50% rule, without exception, which may result in removal of structures from the floodplain
  - a. No modification, addition, maintenance, or repair can be made on a structure in the floodplain if the cost exceeds 50% of the equalized assessed value of the structure;
  - b. If a structure in the floodplain is substantially damaged by a flood, it must be removed from the floodplain;
  - c. In addition, all standards for nonconforming structures in the floodplain, listed in Section 6 of the state model, must be followed.