



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 03-091

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 2002.]

2. Form, Style and Placement in Administrative Code

The rule amends s. NR 116.15 (1) (a). However, the entire text of current s. NR 116.15 (1) (a) is not reproduced in the rule.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The amendment to s. NR 116.15 (1) (a) includes the words “adjacent.” Wisconsin courts have had some difficulties interpreting this term, and it should be used with care. Courts have found this word to mean both “contiguous” and “nearby.” See *Brazeau v. DHSS*, 154 Wis. 2d 752, 454 N.W.2d 32 (Ct. App. 1990).

b. Section NR 116.03 (6m) is created to define the term “deck” to mean, in part, a “structure that is adjacent to the exterior wall of a principal structure.” Section NR 116.15 (1) (a) then is amended to provide that the construction of certain decks that are “adjacent to a principal structure” are not to be considered modifications of, or additions to, a nonconforming use or a nonconforming building. There are two difficulties with the amendment to s. NR 116.15 (1) (a). First, the notion of being adjacent is included in the definition of the term “deck.” Consequently, it is unnecessary to repeat that notion in s. NR 116.15 (1) (a). Second, the phrasing of the definition and the amendment are not the same and could lead to confusion or disputes. That is, whereas the definition of the term “deck” provides that the structure must be “adjacent to the exterior wall of a principal structure,” the amendment refers to a deck “which is adjacent to a principal structure” without mentioning the exterior wall of the principal structure. The

amendment can be clarified by restating the new sentence as follows: “For the purposes of this section, the construction of a deck that does not exceed 200 square feet is not an extension, modification, or addition.”