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Legal Update

A WRA Publication Exclusively for the Designated REALTOR®

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County Shoreland Zoning Rules

Wisconsin lakes and rivers are public resources, owned in common by all Wisconsin citizens under the state's Public Trust Doctrine. The public has the right to boat, fish, hunt, skate and swim on navigable waters and to enjoy the quality and quantity of the state's navigable waters and their natural scenic beauty. Wisconsin's Public Trust Doctrine requires the state to intervene to protect public rights in the commercial or recreational use of navigable waters. Accordingly the state, acting through the Wisconsin Department of Natural Resources, establishes permitting requirements for projects impacting the state's waters and local zoning requirements that limit development along navigable waterways, such as the shoreland development rules in Wis. Admin. Code ch. NR 115.

The shoreland zoning regulations in NR 115, first enacted in 1980, have been updated and rewritten to reflect today's lifestyles. After a long and challenging revision process that spanned seven years, 30 public hearings and more than 50,000 comments from interested citizens, the new rules are now designed to help protect Wisconsin's beautiful lakes and rivers, improve fish and wildlife habitat, enhance water quality, and promote sustainable development now and in future years. Over the years, the Wisconsin REALTORS® Association has been actively involved in the rulemaking process and has worked closely with the DNR to make sure the proposed changes protect the rights of property owners as well as the water quality and scenic beauty of our waterways.

The new shoreland development rules in NR 115 have been designed to better protect lakes and rivers while allowing property owners more flexibility on their land. Property owners can keep the homes and buildings that they have now and do not need to do anything different unless they decide to expand their home or pave or cover more natural surfaces. At that point a property owner may have to offset any increased water runoff, loss of plants or impacts on scenic views that result from the home improvement or development activities. Under the new NR 155 standards, the counties will decide what mitigation is necessary to restore any lost natural functions.

The revised rules went into effect in February 2010. The counties have two years from that time to adopt shoreland zoning ordinances that meet or exceed the minimum requirements established in NR 115.

This *Legal Update* reviews the requirements stated in the new Wis. Admin. Code ch. NR 115, looking at what standards are new, what regulations have been modified and what standards have remained the same. The *Update* highlights the new regulatory requirements relating to impervious surfaces, mitigation plans, buffer zones and disclosure of mitigation plans.

New Shoreland Zoning – Overview

Under Wisconsin law, all 72 counties in the state must amend their shoreland and subdivision ordinances to meet or

Contacts

EDITORIAL STAFF

Author
Debbi Conrad

Production
Emily Zampardi
Tom Larson

ASSOCIATION MANAGEMENT

Chairman
John R. Flor, ABR, CRS, GRI, e-PRO

President
William E. Malkasian, CAE

ADDRESS/PHONE

Wisconsin REALTORS® Association,
4801 Forest Run Road,
Suite 201
Madison, WI 53704-7337
(608) 241-2047
(800) 279-1972

LEGAL HOTLINE:

Ph (608) 242-2296
Fax (608) 242-2279
Web: www.wra.org

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exceed the minimum standards in Ch. NR 115 by February 1, 2012. The shoreland zoning ordinances must be applied to all land in unincorporated areas within 1,000 feet of a navigable lake, pond or flowage, and within 300 feet of a navigable river or stream. The standards largely apply to unincorporated areas outside cities and villages. (Note: shoreland zoning standards also apply to land annexed by a city or village after May 7, 1982.) Counties may adopt more restrictive or protective standards, so property owners must keep an eye on what happens locally in their counties.

The new NR 115 standards include the following important changes to the prior rules:

Nonconforming Structures and Lots

- The "50 percent rule," which limited any repairs, alterations and additions to nonconforming structures to a total amount equal to 50 percent of the structure's equalized value is eliminated.
- Maintenance and repair of a nonconforming principal structure is no longer limited.
- Principal nonconforming structures may be expanded behind the 75-foot setback line.
- Principal nonconforming structures between the 35-foot and the 75-foot setback may be expanded if the expansion is no closer to water and local mitigation requirements are satisfied.
- Existing nonconforming lots are grandfathered if the property owner has never combined them with other lots or used them as the site of a structure straddling the common lot line between the lots.
- Nonconforming principal structures may be replaced if an existing principal structure is located at least 35 feet from the ordinary high water mark and mitigation requirements are met.

Other Highlights

- New impervious surface standards are established that limit the amount of solid surfaces (house, driveway, sidewalks, etc.) on a lot to 15 percent of the total lot area, and allow solid surfaces on up to 30 percent of the total lot area if mitigation requirements are met.
- Current minimum lot size requirements remain the same (sewered lots: 65 feet average width and minimum area of 10,000 square feet; unsewered lots: 100 feet average width and minimum area of 20,000 square feet).
- Current 75-foot building setback requirement stays the same.
- A 35-foot height limit on all structures located between the 75-foot setback line and the water is imposed
- A viewing access corridor of up to 30 percent of the shoreline frontage is allowed, but not in excess of 200 feet.

Key Shoreland Development Rule Provisions – New Standards

Impervious Surfaces

Impervious surfaces are surfaces that do not allow water to infiltrate the soil; they prevent rainwater and snowmelt from soaking into the ground. These impervious surfaces include rooftops and asphalt or concrete roads, parking lots and sidewalks. Impervious surfaces do not cause many problems when they occur in isolated spots. When they are connected to one another (e.g., rooftops drain onto driveways, sidewalks and parking lots that connect to paved streets), there is greater cause for concern. Water typically flows downhill until it reaches an area where it is absorbed into the surface or enters a wetland or water body. As water travels it may

pick up potentially toxic substances (like oil, gasoline or fertilizer) and carry these materials into the water.

Impervious surfaces can be separated into two components: people habitat where we live and work, and car habitat where we drive and park our vehicles. Studies show that up to 75 percent of impervious surfaces are car habitat.

Most any development includes impervious surfaces such as roads, rooftops, driveways, sidewalks and parking areas. The gradual addition of impervious surfaces usually is a cumulative process; new houses and buildings, roads and parking lots are built over time and have an increasingly significant impact on local waters as the volume of runoff rises. Increased runoff results in more erosion, greater delivery of pollutants to lakes and streams, and less groundwater restoration.

In a natural system approximately 10 percent of the rainwater flows over the land surface directly to lakes and rivers while 50 percent filters into the ground and is stored as groundwater or slowly makes its way back into rivers and lakes. The remaining 40 percent evaporates. An unintended result of development is that impervious surfaces cause more water to run off the landscape and less to infiltrate to groundwater. This water bypasses the natural water filter provided by soil and vegetation and carries additional pollutants directly to surface waters. See the illustrations at www.uwsp.edu/cnr/landcenter/tracker/winter2002/RainandSnow.htm and www.uwsp.edu/cnr/landcenter/pdffiles/EnvironmentalIndicatorFactSheet.pdf.

Existing Impervious Surfaces

Under the new Ch. NR115, property owners may maintain and repair all existing impervious surfaces; replace existing impervious surfaces with similar surfaces within the existing building envelope and relocate or modify existing impervious surfaces with similar or different impervious surfaces. However, any relocation or modification cannot increase the percentage of impervious surfaces that existed on the effective date of the county shoreland ordinance, and must conform with the applicable 75-foot setback requirement. For example, this provision would allow an existing at-grade patio to be removed and replaced with a new building, if the new building meets the shoreland setback requirements.

The 15 Percent Impervious Surface Rule

Counties shall establish impervious surface standards to protect water quality, safeguard fish and wildlife habitat, and guard against pollution of navigable waters. A county may allow up to 15 percent impervious surface on the portion of a lot or parcel that is within 300 feet of the ordinary high-water mark of a navigable waterway.

The percentage of impervious surfaces on the portion of a lot or parcel that is within 300 feet of the ordinary high-water mark is calculated by dividing the surface area of existing and proposed impervious surfaces by the total surface area. That result is then multiplied by 100.

The 15 percent rule does not affect existing property owners unless they make major changes that cover more land with impervious surfaces. The rule is triggered when an owner engages in new construction, reconstruction, expansion, replacement or relocation of any impervious surface within 300 feet of the ordinary high-water mark of navigable water. No limitations would exist for additions or new buildings where the lot's impervious surfaces do not exceed 15 percent of the total lot size

Impervious Surface – 30 Percent Maximum

Where the sum total of impervious surfaces in a property owner's proposed improvements is between 15 percent and 30 percent of the portion of the lot or parcel within 300 feet of the ordinary high-water mark, the property owner would be required to take measures to offset the environmental impact of the proposed project. A mitigation plan would be required to control and manage water runoff.

Under Ch. NR 115, a county may allow up to 30 percent impervious surface on the portion of a lot or parcel that is within 300 feet of the ordinary high-water mark, provided that the county issues a permit that requires a mitigation plan approved by the county. The permit will specify a deadline for he property owner's implementation of the plan. The obligations of the property owner under the mitigation plan shall be evidenced by a document recorded in the office of the county register of deeds.

To envision what this 30 percent maximum impervious surfaces standard entails, consider the following example. On a 10,000-square-foot lot (65 feet by 154 feet), no more than 30 percent of the lot can be covered with impervious surfaces (with mitigation). This means that only 3,000 square feet of impervious surface is allowed. If the average driveway is 200 square feet (25 feet by 8 feet), 2,800 square feet remain for the house, garage, patio and other structures with impervious surfaces. A driveway, patio and sidewalk can be pervious if designed using the appropriate materials, but these materials can be very expensive. In other words, the size of homes and remodeling projects will be limited within 300 feet of the shoreline.

Mitigation Plans

The county will set the terms and conditions of the mitigation warranted under the circumstances. A mitigation plan will specify the property owner's obligations to establish

or maintain measures that the county determines adequate to offset the impacts of the the property owner's additional impervious surface on water quality, near-shore aquatic habitat, upland wildlife habitat and natural scenic beauty. The mitigation measures shall be proportional to the amount and impacts of the impervious surface being permitted.

Some examples of mitigation activities that a county might require of a property owner include:

- Evaluate and upgrade the owner's private onsite wastewater treatment system (POWTS) to bring it into compliance with current POWTS standards under Wis. Admin. Code ch. Comm. 83.
- Restore native vegetation and water quality protection functions of the shore buffer area. Property owners may be required to duplicate or mimic the undisturbed vegetative habitat that exists around the particular water body to fill in areas where the vegetation is too thin or missing. This would include all ground cover (grasses, etc.), shrub under-story and any tree canopy.
- Remove nonconforming accessory structures within the shore setback area.
- Blend in exterior building materials with the natural ground cover in the vicinity of the construction.
- Increase the depth of the buffer zone beyond 35 feet.
- Reduce the width of the viewing/access corridor.
- Remove a sanitary privy.
- Create a side lot buffer zone including trees, shrubbery, underbrush and other natural vegetation.
- Prohibit any mowing, clearing or other disturbance of the buffer zone.
- Implement storm water management plan activities such as erosion and storm water runoff control measures or structures or construction of a storm water detention basin.
- Replace seawalls with bio-engineered structures or remove artificial sand beaches.
- Install rain gardens.

Mitigation plans may be developed with the help of a landscape consultant and may show the location and dimensions of the buffer zone, viewing corridor and pathway, structures, etc. The obligations of the property owner under the mitigation plan shall be evidenced by a document recorded with the county register of deeds. This document will be binding on all heirs and assigns of the property owner who first committed to the mitigation plan; in other words, all future owners of the property must comply with the obligations the property owner agreed to in exchange for the right to expand the home or make other iimprovements on the property.

How Does a Rain Garden Work?

Rain gardens are just what they sound like: areas that soak up rain water during wet times and serve as a beautiful garden all the time. They are landscaped areas planted with wildflowers and other native vegetation to replace areas of lawn. The gardens fill with a few inches of water and allow the water to slowly filter into the ground. The plants in the rain garden act as filters for the rain water, helping to slow the runoff and allowing it to soak into the ground rather than flowing out into storm sewers, ditches or drainage ways on the way to lakes and streams. See http://cleanwater.uwex.edu/pubs/pdf/home.rgmanual.pdf for more information.

NR 115 Definitions

- **Access and viewing corridor:** a strip of vegetated land that allows safe pedestrian access to the shore through the vegetative buffer zone.
- **Boathouse:** a permanent structure used for the storage of watercraft and associated materials that includes all structures that are totally enclosed, have roofs or walls or have any combination of these structural parts.
- **Building envelope:** the three-dimensional space within which a structure is built.
- **County zoning agency:** the committee or commission created or designated by the county board to act in all matters pertaining to county planning and zoning.
- **Existing development pattern:** when principal structures exist within 250 feet of a proposed principal structure in both directions along the shoreline, the setbacks of the existing buildings permit variations from the standard 75-foot setback.
- **Floodplain:** the land that has been or may be hereafter covered by floodwater during the regional flood. The floodplain includes the floodway and the flood fringe as those terms are defined in Wis. Admin. Code ch. NR 116.
- **Impervious surface:** an area that releases as runoff all or a majority of the precipitation that falls on it. Impervious surface excludes frozen soil but includes rooftops, sidewalks, driveways, parking lots and streets unless specifically designed, constructed and maintained to be pervious.
- **Mitigation:** balancing measures that are designed, implemented and function to restore natural functions and values that are otherwise lost through development and human activities.

Disclosure of Recorded Shoreland Mitigation Plans

Property owners must agree to perform some type of mitigation (determined by the county) in exchange for (a) exceeding impervious surface limits or (b) expanding a nonconforming structure between 35 and 75 feet from the water. Any such mitigation plan must be recorded with the register of deeds to make sure subsequent property owners are aware of it and will continue to follow the plan, if applicable (e.g., don't mow the grass within 35 feet of water). Because this information could have a significant impact on a buyer's decision to purchase the property or the price he or she is willing to pay for it, this information should be disclosed. Thus Wis. Stat. § 709.03 has been amended to include a new item C.26m starting January 1, 2011. This will prompt the property owner to disclose whether the property is subject to a shoreland zoning mitigation plan required by the county.

Primary Buffer Activities

One goal of shoreland zoning is to control the intensity of development around water. One way this is accomplished is by creating a buffer. A buffer is a vegetated strip of land along the shoreline that protects water from the impacts of nearby development, provides wildlife habitat and screens buildings when viewing from the water. Many buffer zones will include three vegetative layers: ground cover (grasses, etc.), shrub under-story and tree canopy. If properly designed and maintained, a buffer can help protect shorelands and adjacent lakes and rivers from physical, chemical, hydrological and visual impacts.

Under Ch. NR 115, each county shoreland zoning ordinance shall designate land that extends from the ordinary high-water mark to a minimum of 35 feet inland as a vegetative buffer zone and prohibit removal of vegetation in that zone. A county may, however, allow the following activities in the 35-foot buffer zone:

- Routine maintenance of vegetation.
- Removal of trees and shrubs to create access and viewing corridors, provided that the combined width of all access and viewing corridors on a riparian lot or parcel may not exceed the lesser of 30 percent of the shoreline frontage or 200 feet.
- Removal of trees and shrubs on a parcel with 10 or more acres of forested land consistent with "generally accepted forestry management practices" as described in the DNR publication *Wisconsin Forest Management Guidelines*, online at http://dnr.wi.gov/forestry/Publications/Guidelines/toc.htm. Chapter 5 regarding Riparian Areas and Wetlands is particularly helpful. See http://dnr.wi.gov/forestry/Publications/Guidelines/PDF/chapter5.pdf.
- Removal of vegetation to manage exotic or invasive species, damaged vegetation, vegetation that must be removed to control disease or vegetation creating an imminent safety hazard, provided that any vegetation removed be replaced in the same area as soon as practicable. Information regarding native plants, shoreland and habitat management is available from the University of Wisconsin-Extension publications website at http://clean-water.uwex.edu/pubs.
- Additional vegetation management activities authorized by a permit. All management activities must comply with detailed plans approved by the county and be designed to control erosion by limiting sedimentation into the water, improve the plant community by replanting in the same area, and maintain and monitor the newly restored area. The permit also shall require an enforceable restriction to preserve the newly restored area.

Key Shoreland Development Rule Provisions – Changed Standards

Nonconforming Structures

A county shoreland zoning ordinance cannot prohibit the continuation of the lawful use of a nonconforming building, structure or property that exists when the ordinance takes effect. A nonconforming structure is an existing principal structure that was lawfully placed when constructed, but that does not comply with the current building setback required under Ch. NR 115. However, the nonconforming use of a temporary structure may be prohibited. So may a nonconforming use that has been discontinued for a period of 12 months – any future use must conform to the present ordinance.

Expansion of Nonconforming Structures Requires Mitigation

Property owners expanding the physical footprint of a nonconforming structure will be required to offset the environmental impact of the expansion by choosing from a number of options. Examples include reducing the amount of mowing next to the water, installing rain-gardens to absorb storm runoff or replanting native vegetation near the shoreline. Counties will set the specific mitigation requirements as they update their ordinances. Mitigation plans are required, as described below, for the vertical expansion, replacement or relocation of a nonconforming structure.

Unlimited Maintenance and Repairs Allowed

A significant change to Ch. NR 115

is the repeal of the 50 percent rule limiting cumulative structural repairs, alterations or other modifications to nonconforming structures. Spending limits on maintenance and repairs to existing nonconforming residences located within 75 feet of the water's edge have been eliminated, allowing many property owners to repair and maintain their properties without having to worry about budgets and costs.

A nonconforming principal structure may be maintained and repaired within its existing building envelope. Maintenance and repair includes such activities as interior remodeling, plumbing, insulation and replacement of the windows, doors, siding or roof.

Expansion of Home

Expansion of an existing home within 75 feet of the water is now allowed in some cases; a property owner can build a second story or otherwise add on vertically if the existing house is at least 35 feet from the water. Expansion of an existing home that is more than 75 feet from the water is still allowed.

Vertical Expansion

To protect and preserve wildlife habitat and natural scenic beauty, a county may not permit any construction that results in a structure taller than 35 feet within 75 feet of the ordinary high-water mark of any navigable waters, effective February 2010. A nonconforming principal structure may be expanded vertically, provided that all of the following conditions are met:

(a) The use of the structure has not been discontinued for a period of 12 months or more,

(b) The existing principal structure is at least 35 feet from the ordinary high-water mark,

(c) The resulting structure is no taller than 35 feet,

(d) All provisions of the shoreland ordinance, such as the impervious surface limitations, are met, and

(e) A permit issued by the county that requires a county-approved mitigation plan is implemented by the property owner by the date specified in the permit. The mitigation plan shall include enforceable obligations of the property owner to establish or maintain measures to offset the impacts of the permitted expansion on water quality, near-shore aquatic habitat, upland wildlife habitat and natural scenic beauty. The mitigation measures shall be proportional to the amount and impacts of the expansion being permitted. The obligations of

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the property owner under the mitigation plan shall be evidenced by a document recorded with the county register of deeds.

Any Way but Toward the Water

A nonconforming principal structure that does not comply with the 75-foot setback may be expanded horizontally, landward or vertically. The expanded area must be at least 75 feet from the water or comply with the applicable average shoreland setback, if any. All other provisions of the shoreland ordinance, including the impervious surface requirements, also must be met. A mitigation plan is not required for this expansion, but may be required under the impervious surfaces standards.

Replacement or Relocation of Nonconforming Principal Structure

Complete reconstruction of a nonconforming structure within 35 to 75 feet of the ordinary high-water mark is allowed if no portion of the house is closer than 35 feet, no other buildable location exists on the lot, mitigation measures are provided and vertical expansion goes no higher than 35 feet. Specifically, an existing nonconforming principal structure may be replaced or relocated on the property if:

(a) The use of the structure has not been discontinued for a period of 12 months or more.

(b) The existing principal structure is at least 35 feet from the ordinary high-water mark.

(c) No portion of the replaced or relocated structure is located any closer to the ordinary high-water mark than the closest point of the existing principal structure.

(d) The county determines that no other location is available on the property to build a principal structure of a comparable size that will result in compliance with the 75-foot building setback or the applicable average shoreland setback, if any.

(e) A permit issued by the county that requires a county-approved mitigation plan is implemented by the property owner by the date specified in the permit. The mitigation plan shall include enforceable obligations of the property owner to establish or maintain measures to offset the impacts of the permitted expansion on water quality, near-shore aquatic habitat, upland wildlife habitat and natural scenic beauty. The mitigation measures shall be proportional to the amount and impacts of the expansion being permitted. The obligations of the property owner under the mitigation plan shall be evidenced by a document recorded in the office of the county register of deeds.

(f) All other structures on the lot or parcel that do not comply with the 75-foot building setback or the applicable average shoreland setback, if any, and are not exempt are removed by the date specified in a permit issued by the county.

(g) All other provisions of the shoreland ordinance are met.

However, there can be no expansion or complete reconstruction within zero to 35 feet of the shoreline.

Damaged or Destroyed

Per Wis. Stat. § 59.692 (1s), a damaged or destroyed nonconforming structure may be restored to the size, location and use that it had immediately before the damage or destruction, without limit on the costs of the repair, reconstruction or improvement, if the structure was damaged or destroyed by violent wind, vandalism, fire, flood, ice, snow, mold or infestation occurring after October 14, 1997. The restored structure may be larger than it was immediately before the damage or destruction if necessary for the structure to comply with applicable state or federal requirements. This provision is not superceded by Ch. NR 115.

Substandard Lots

A legally created lot or parcel that met minimum area and minimum average width requirements when created, but does not meet current lot size requirements, may be used as a building site if:

1. The substandard lot or parcel was never

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4801 Forest Run Road,
Suite 201
Madison, WI, 53704-7337

(608) 241-2047
(800) 279-1972
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reconfigured or combined with another lot or parcel by plat, survey or consolidation by the owner into one property tax parcel.

2. The substandard lot or parcel has never been developed with one or more of its structures placed partly upon an adjacent lot or parcel.

3. The substandard lot or parcel is developed to comply with all other ordinance requirements.

Planned Unit Development

A non-riparian lot that does not meet the minimum lot size requirements may be created if the county has approved and recorded a plat or certified survey map including that lot within a Planned Unit Development if:

- The PUD contains at least two acres or 200 feet of frontage, and
- The reduced non-riparian lot sizes are allowed in exchange for larger shoreland buffers and setbacks on those lots adjacent to navigable waters that are proportional to and offset the impacts of the reduced lot size on habitat, water quality and natural scenic beauty.

Key Shoreland Development Rule Provisions – Unchanged Standards

Permitted Uses in Shoreland-Wetland Zoning Districts

Counties shall adopt shoreland ordinances that include zoning regulations for shoreland-wetland zoning districts. The DNR shall transmit copies of amended wetland inventory maps for each county to the county zoning agency.

Shoreland-wetlands are wetlands that are five acres or larger and are located in the shoreland zone. The shoreland zone is land located with 1,000 feet of the ordinary high-water mark of a lake, pond or flowage; or within 300 feet of the ordinary high-water mark of a river or stream; or to the landward side of the floodplain, whichever distance is greater. Counties, cities and villages are required to adopt shoreland-wetland zoning ordinances to regulate activities in shoreland-wetlands. Communities may decide to also zone those wetlands that are smaller than five acres or outside the shoreland zone.

Permitted uses in a shoreland-wetland zoning district include:

(a) Recreational activities such as hiking, fishing, trapping, hunting, swimming and boating.

(b) The harvesting of wild crops such as marsh hay, ferns, moss, wild rice, berries, tree fruits and tree seeds in a manner that does not involve filling, flooding, draining, dredging, ditching, tiling or excavating.

(c) The practice of silviculture (the care and cultivation of forest trees), including planting, thinning and harvesting of timber, provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done except as required to construct and maintain roads necessary for silviculture activities.

(d) The pasturing of livestock and the construction and maintenance of fences, provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done.

(e) The cultivation of agricultural crops if that cultivation can be accomplished without filling, flooding or artificial drainage of the wetland. Flooding, dike and dam construction, and ditching shall be allowed for the purpose of growing and harvesting cranberries. The maintenance and repair of existing drainage systems is permitted.

(f) The construction and maintenance of duck blinds, provided that no filling,

NR 115 Definitions

- **Navigable waters:** Lake Superior, Lake Michigan and all natural inland lakes, streams, ponds, sloughs, flowages and other waters within Wisconsin. The NR 115 shoreland ordinances do not apply to lands adjacent to farm drainage ditches if (a) such lands are not adjacent to a natural navigable stream or river, (b) those parts of such drainage ditches adjacent to such lands were non-navigable streams before ditching or had no previous stream history, and (c) such lands are maintained in nonstructural agricultural use.
- **Ordinary high-water mark:** the point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation; predominance of aquatic vegetation or other easily recognized characteristic. Where the bank or shore at any particular place makes it difficult or impossible to ascertain where the point of ordinary high-water mark is, the opposite bank of a stream or other places on the shore of a lake or flowage may be used to determine whether a given stage of water is above or below the ordinary high-water mark.
- **Regional flood:** a flood determined to be representative of large floods known to have generally occurred in Wisconsin and that may be expected to occur on a particular stream because of like physical characteristics once in every 100 years. The regional flood is based upon a statistical analysis of stream flow records available for watershed and/or an analysis of rainfall and runoff characteristics in the 100 years. In any given year, there is a 1-percent chance that the regional flood may occur. During a typical 30-year mortgage period, the regional flood has a 26-percent chance of occurring.

flooding, draining, dredging, ditching, tiling or excavating is done.

(g) The construction and maintenance of nonresidential structures, not to exceed 500 square feet, used solely in conjunction with the raising of waterfowl, minnows or other wetland or aquatic animals.

(h) The construction and maintenance of piers, docks and walkways, including those built on pilings, provided that no filling, flooding, dredging, draining, ditching, tiling or excavating is done.

(i) The establishment and development of public and private parks and recreation areas, boat access sites, natural and outdoor education areas, historic and scientific areas, wildlife refuges, game preserves and private wildlife habitat areas, provided that no filling is done and that any private wildlife habitat area is used exclusively for that purpose.

(j) The construction and maintenance of electric, gas, telephone water and sewer transmission and distribution lines, and related facilities by public utilities and cooperative associations.

(k) The construction and maintenance of railroad lines.

(l) The maintenance, repair, replacement and reconstruction of existing town and county highways and bridges.

Any use not listed is prohibited in the shoreland-wetland zoning district. In addition to these zoning provisions, state or federal regulations may also apply to activities in wetlands. Be sure to get all required permits before starting any projects in a wetland.

Building Setbacks

The nearest part of a home, building or structure must still be set back 75 feet from the ordinary high-water mark of navigable waters.

Where an existing development pattern exists, the shoreland setback for a proposed principal structure may be reduced to the average shoreland setback of the principal structure on each adjacent lot, but the shoreland setback may not be reduced to less than 35 feet from the ordinary high-water mark of any navigable waters.

All of the following structures are exempt from the 75-foot shoreland setback standards:

a. Boathouses located entirely above the ordinary high-water mark and entirely within the access and viewing corridor that do not contain plumbing and are not used for human habitation.

b. Open-sided and screened structures such as gazebos, decks, patios and screen houses in the shoreland setback area that are at least 35 feet landward from the ordinary high-water mark and have a total square footage of no more than 200 square feet, provided a vegetative buffer zone is in place.

c. Fishing rafts that are authorized on the Wolf and Mississippi rivers.

d. Broadcast signal receivers, including satellite dishes or antennas that are one meter or less in diameter and satellite earth station antennas that are two meters or less in diameter.

e. Utility transmission and distribution lines, poles, towers, water towers, pumping stations, well pumphouse covers, private onsite wastewater treatment systems that comply with Wis. Admin. Code ch. Comm 83 and other utility structures that have no feasible alternative location outside of the minimum setback and that employ best management practices to infiltrate or otherwise control storm water runoff from the structure.

f. Walkways, stairways or rail systems necessary to provide pedestrian access to the shoreline and are no more than 60 inches wide.

Buildings and structures in a flood plain must comply with any applicable flood plain zoning ordinance.

NR 115 Definitions

- **Routine maintenance of vegetation:** normally accepted horticultural practices that do not result in the loss of any layer of existing vegetation and do not require earth disturbance.
- **Shorelands:** lands within the following distances from the ordinary high-water mark of navigable waters: 1,000 feet from a lake, pond or flowage; and 300 feet from a river or stream or to the landward side of the flood plain, whichever distance is greater.
- **Shoreland-wetland zoning district:** a zoning district, created as a part of a county shoreland zoning ordinance, comprised of shorelands that are designated as wetlands on the Wisconsin DNR wetland inventory maps.
- **Special exception (conditional use):** a use permitted by a shoreland zoning ordinance, provided certain conditions specified in the ordinance are met and that a permit is granted by the board of adjustment or, where appropriate, the planning and zoning committee or county board.
- **Unnecessary hardship:** a circumstance where special conditions affecting a particular property, which were not self-created, have made strict conformity with restrictions governing area, setbacks, frontage, height or density unnecessarily burdensome or unreasonable in light of the purposes of the zoning ordinance.
- **Wetlands:** those areas where water is at, near or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation, and that have soils indicative of wet conditions.

The use of boathouses for human habitation and the construction or placing of boathouses below the ordinary high-water mark of any navigable waters shall be prohibited.

Minimum Lot Sizes

Minimum lot size requirements remain at 20,000 square feet and 10,000 square feet. "Sewered lots" served by a public sanitary sewer shall have a minimum average width of 65 feet and a minimum area of 10,000 square feet. "Unsewered lots" not served by a public sanitary sewer shall have a minimum average width of 100 feet and a minimum area of 20,000 square feet.

Height Restrictions

To protect and preserve wildlife habitat and natural scenic beauty, a county may not permit any construction that results in a structure taller than 35 feet within 75 feet of the ordinary high-water mark of any navigable waters, effective February 2010.

Variances

Shoreland zoning ordinances adopted by a county must require:

- A variance procedure that authorizes the board of adjustment to grant such variance from the terms of the ordinance as will not be contrary to the public interest where, owing to special conditions and the adoption of the shoreland zoning ordinance, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, as long as the granting of a variance does not have the effect of granting or increasing any use of property prohibited in that zoning district by the shoreland zoning ordinance.
- A special exception (conditional use) procedure for uses presenting special problems.

Land Division Ordinance

Each county shall review, under Wis. Stat. § 236.45, all land divisions in shoreland areas that create three or more parcels or building sites of five acres each or less within a five-year period. The county shall consider:

(a) Hazards to the health, safety or welfare of future residents.

(b) Proper relationship to adjoining areas.

(c) Public access to navigable waters, as required by law.

(d) Adequate storm drainage facilities.

(e) Conformity to state law and administrative code provisions.

Shoreland Zoning Model Ordinance

The DNR shall provide advice and assistance to counties in the development, adoption, administration and enforcement of their shoreland zoning and land division ordinances, seeking the highest practicable degree of uniformity consistent with the shoreland protection objectives. As a part of this effort, the DNR was directed to prepare a model shoreland zoning ordinance for the counties.

This model ordinance was written collaboratively by the Wisconsin County Code Administrators, the River Alliance of Wisconsin, the Wisconsin Association of Lakes, the Wisconsin Builders Association and the WRA, with the DNR as the principal author. The model shoreland zoning ordinance can be found on the DNR's website at http://dnr.wi.gov.

Shoreland Zoning Resources

- Wis. Admin. Code ch. NR 115: Wisconsin's Shoreland Protection Program (counties): www.legis.state.wi.us/rsb/code/nr/nr115.pdf
- Mitigation calculator: http://dnr.wi.gov/org/water/wm/dsfm/shore/calc
- April 2010 *Wisconsin Natural Resources Magazine*: http://dnr.wi.gov/wnrmag/2010/04/waterfront.htm
- Rain Gardens: http://dnr.wi.gov/runoff/rg and www.uwsp.edu/cnr/uwexlakes/ecology/shorelands/mitigation/pdf_docs/dd8241_4rain_garden.pdf
- 10 Steps to Building a Rain Garden (Edgewood College): http://natsci.edgewood.edu/wingra/management/raingardens/rain_build.htm
- Shoreland Program Manager, Bureau of Watershed Management: 608-261-6430
- Wisconsin Shoreland Zoning (Local contacts by county): http://dnr.wi.gov/org/water/wm/dsfm/shore/county.htm

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