

# WAUPACA COUNTY SHORELAND PROTECTION ORDINANCE



Creation of Chapter 32 of the General Code of Ordinances, Shoreland Zoning. Repeal of all aspects of the existing Waupaca County Zoning Ordinance that relate to shorelands and creation of Shoreland Zoning Ordinance, Chapter 32 under the Waupaca County General Code of Ordinances. Adopted by the Waupaca County Board on May 20, 1997 and published on June 5, 1997.

Amend Ordinance #98-01-420 to revise selected parts of the text of the Waupaca County Shoreland Zoning Ordinance, Chapter 32, General Code of Ordinances. Adopted by the Waupaca County Board on February 17, 1998 and published on February 26, 1998.

Amend Chapter 32 to revise selected parts of the text of the Waupaca County Shoreland Zoning Ordinance. Adopted by the Waupaca County Board on April 20, 1999 and published on April 30, 1999.

Amend Chapter 32 for selected revisions to Sections 5.62, 8.32, 8.32(4) and 12.2(23) of the Waupaca County Shoreland Zoning Ordinance. Adopted by the Waupaca County Board on April 19, 2000 and published on May 11, 2000.

Amend Chapter 32 to revise selected parts of the text of the Waupaca County Shoreland Zoning Ordinance. Amended and enacted by the Waupaca County Board of Supervisors on March 19, 2002.

Amend Chapter 32 to change the lake classification of Selmer Lake from a Group 2 Lake classification to a Group 3 Lake classification in the Waupaca County Shoreland Zoning Ordinance. Amended and enacted by the Waupaca County Board of Supervisors on November 19, 2002.

Amend Chapter 32 for selected revisions to Sections 4.21, 4.4, 5.43, 6.16 and 8.32(2) of the Waupaca County Shoreland Zoning Ordinance. Amended and enacted by the Waupaca County Board on April 21, 2004.

Amend Chapter 32 to add Section 7.6 Waterfront Camp or Institution to the text of the Waupaca County Shoreland Zoning Ordinance. Amended and enacted by the Waupaca County Board of Supervisors on August 17, 2004.

Amend Chapter 32 to add Section 9.7(8) Fees: Shoreland Permit to the text of the Waupaca County Shoreland Zoning Ordinance. Amended and enacted by the Waupaca County Board of Supervisors on May 15, 2007 and published and effective as of June 7, 2007.

Amend Chapter 32 for selected revisions to Sec. 9.21 and Sec. 9.7 Fees of the Waupaca County Shoreland Zoning Ordinance. Amended and enacted by the Waupaca County Board of Supervisors on March 17, 2009. Published and effective as of April 2, 2009.

Amend Chapter 32 for selected revisions to Sec. 4.5, 8.32(2) and Sec. 9.23 of the Waupaca County Shoreland Zoning Ordinance. Amended and enacted by the Waupaca County Board of Supervisors on July 16, 2013. Published and effective as of July 25, 2013.

Amend Chapter 32 for selected revisions to the Waupaca County Shoreland Zoning Ordinance. Amended and enacted by the Waupaca County Board of Supervisors on February 18, 2014. Published and effective as of February 25, 2014.

Amend Chapter 32 for selected revisions to Sec. 4.6 and 12.1(36) of the Waupaca County Shoreland Zoning Ordinance. Amended and enacted by the Waupaca County Board of Supervisors on July 15, 2014. Published and effective as of July 22, 2014.

Amend Chapter 32 for selected revisions to the Waupaca County Shoreland Zoning Ordinance. Amended and enacted by the Waupaca County Board of Supervisors on July 21, 2015. Published and effective as of July 30, 2015.

Repeal Chapter 32 Waupaca County Shoreland Zoning Ordinance and create Chapter 32 Waupaca County Shoreland Protection Ordinance. Amended and enacted by the Waupaca County Board of Supervisors on September 20, 2016. Published and effective as of September 29, 2016.

Repeal Chapter 32 Waupaca County Shoreland Zoning Ordinance and create Chapter 32 Waupaca County Shoreland Protection Ordinance. Amended and enacted by the Waupaca County Board of Supervisors on May 15, 2018. Published and effective as of May 24, 2018.

Amend Chapter 32 Waupaca County Shoreland Zoning Ordinance and create Chapter 32 Waupaca County Shoreland Protection Ordinance. Amended and enacted by the Waupaca County Board of Supervisors on May 21, 2019. Published and effective as of May 28, 2019.

Amend Chapter 32 Waupaca County Shoreland Zoning Ordinance and create Chapter 32 Waupaca County Shoreland Protection Ordinance. Amended and enacted by the Waupaca County Board of Supervisors on June 16, 2020. Published and effective as of June 25, 2020.

Amend Chapter 32 for selected revisions to the Waupaca County Shoreland Protection Zoning Ordinance. Amended and enacted by the Waupaca County Board of Supervisors on May 18, 2021. Published and effective as of May 27, 2021.

Repeal Chapter 32 Waupaca County Shoreland Zoning Ordinance and create Chapter 32 Waupaca County Shoreland Protection Ordinance. Enacted by the Waupaca County Board of Supervisors on September 21, 2021. Published and effective as of September 30, 2021.

Amend Chapter 32 for selected revisions to the Waupaca County Shoreland Protection Zoning Ordinance. Amended and enacted by the Waupaca County Board of Supervisors on May 17, 2022. Published and effective as of May 26, 2022.

Amend Chapter 32 for selected revisions to the Waupaca County Shoreland Protection Zoning Ordinance. Amended and enacted by the Waupaca County Board of Supervisors on July 18, 2023. Published and effective as of July 27, 2023.

Amend Chapter 32 for selected revisions to the Waupaca County Shoreland Protection Zoning Ordinance. Amended and enacted by the Waupaca County Board of Supervisors on June 18, 2024. Published and effective as of July 9, 2024.

Published in the Waupaca County Code of Ordinance, Chapter 32.

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**1.0 STATUTORY AUTHORIZATION, FINDING OF FACT, STATEMENT OF PURPOSE, AND TITLE.**

**1.1 STATUTORY AUTHORIZATION.**

This ordinance is adopted pursuant to the authorization in ss. 59.692 Wis. Stats to implement 59.692, and 281.31.

**1.2 FINDING OF FACT.**

Uncontrolled use of the shorelands and pollution of the navigable waters of Waupaca County will adversely affect the public health, safety, convenience, and general welfare and impair the tax base of Waupaca County and its residents. The legislature of Wisconsin has delegated responsibility to the counties to further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses; and to preserve shore cover and natural beauty. This responsibility is hereby recognized by Waupaca County, Wisconsin.

**1.3 PURPOSE AND INTENT.**

For the purpose of promoting the public health, safety, convenience and welfare, and promoting and protecting the public trust in navigable waters this ordinance has been established to:

- (1) Further the maintenance of safe and healthful conditions and prevent and control water pollution through:
  - a. Limiting structures to those areas where soil and geological conditions will provide a safe foundation;
  - b. Establishing minimum lot sizes to provide adequate area for private on-site waste treatment systems;
  - c. Controlling filling and grading to prevent soil erosion problems;
  - d. Limiting impervious surfaces to control runoff which carries pollutants.
- (2) Protect spawning grounds, fish, and aquatic life through:
  - a. Preserving wetlands and other fish and aquatic habitat;
  - b. Regulating pollution sources;
  - c. Controlling shoreline alterations, dredging, and lagooning.
- (3) Control building sites, placement of structures, and land uses through:
  - a. Prohibiting certain uses detrimental to the shoreland-wetlands;
  - b. Setting minimum lot sizes and widths;
  - c. Setting minimum building setbacks from waterways;



- d. Setting the maximum height of near shore structures.
- (4) ~~Preserve and restore shoreland vegetation~~ Reserve shore cover and natural scenic beauty through:
  - a. Restricting the removal of natural shoreland cover;
  - b. Preventing shoreline encroachment by structures;
  - c. Controlling shoreland excavation and other earth moving activities;
  - d. Regulating the use and placement of boathouses and other structures.

#### **1.4 TITLE.**

Shoreland Protection Ordinance for Waupaca County, Wisconsin.

### **2.0 GENERAL PROVISIONS.**

#### **2.1 AREAS TO BE REGULATED.**

Areas regulated by this ordinance shall include all the lands (referred to herein as shorelands) in the unincorporated areas of Waupaca County which are:

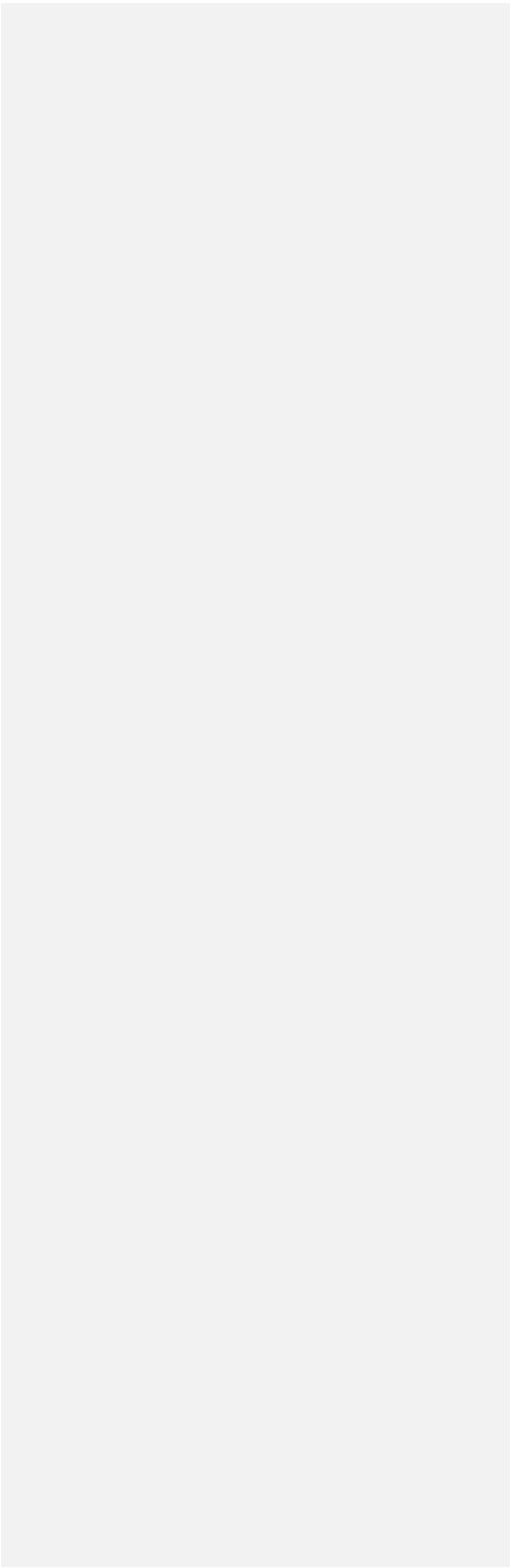
- a. Within one thousand (1,000) feet of the ordinary high-water mark of navigable lakes, ponds, or flowages. Lakes, ponds, or flowages in Waupaca County shall be presumed to be navigable if they are listed in the ~~Wisconsin Department of Natural Resources publication FH-800-2009, or successor publication, the "Wisconsin Lakes" book available electronically at the following web site:~~ <http://dnr.wi.gov/lakes/lakebook/wilakes2009bma.pdf>, ~~"Surface Water Resources of Waupaca County", the~~ Department of Natural Resources Surface Water Data Viewer, or are shown on United States Geological Survey quadrangle maps or other zoning base maps.
- b. Within three hundred (300) feet of the ordinary high-water mark of navigable rivers, bayous, or streams, or to the landward side of the floodplain, whichever distance is greater. Rivers and streams in Waupaca County shall be presumed to be navigable if they are designated as perennial waterways or intermittent waterways on United States Geological Survey quadrangle maps (1:24,000) or the Department of Natural Resources Surface Water Data Viewer. Floodplain areas regulated under this ordinance shall be delineated by flood hazard boundary maps, flood insurance rate maps, flood boundary-floodway maps, county soil survey maps, or other existing county floodplain zoning maps.

- c. Depicted as wetlands on Wisconsin Wetland Inventory Maps for Waupaca County or on the Department of Natural Resources Surface Water Data Viewer and which are ~~at least partially~~ within the shoreland area described in Sections 2.1(a) and 2.1(b). ~~Such wetlands and adjacent contiguous wetlands shall be regulated as if they were entirely within the shoreland area.~~
- (1) The provisions of this chapter apply to regulation of the use and development of unincorporated shoreland areas unless specifically exempted by law.
- (2) Determinations of navigability and ordinary high-water mark location shall initially be made by the Planning and Zoning Director. In making such decisions, the Planning and Zoning Director may work with or rely upon the work of surveyors as authorized by s. 59.692(1h) Wis. Stats. When a determination is challenged by a landowner or interested party, the Planning and Zoning Director shall contact the appropriate office of the Department for a final determination of navigability or ordinary high-water mark.
- (3) This shoreland protection ordinance does not apply to:
  - a. Lands adjacent to farm drainage ditches if:
    - (1) Such lands are not adjacent to a natural navigable stream or river;
    - (2) Those parts of such drainage ditches adjacent to such lands were not navigable streams before ditching; and
  - b. Lands adjacent to artificially constructed drainage ditches, ponds, or stormwater retention basins that are not hydrologically connected to a natural navigable water body.

## **2.2 SHORELAND-WETLAND MAPS.**

The maps and reports designated below are hereby adopted and made part of this ordinance. They are on file in the office of the Waupaca County Planning and Zoning Director.

- (1) The most recent version of the Wisconsin Wetland Inventory as depicted on the Department of Natural Resources Surface Water Data Viewer is made part of this ordinance. The maps can be viewed at:  
<http://dnrm.wisconsin.gov/SW/Vviewer.html?Viewer=SWDV&runWorkflow=Wetland>
- (2) The most recent revisions of the United States Geological Survey Quadrangle Maps for Waupaca County on file in the Planning and Zoning Office.
- (3) The most recent flood plain zoning maps are available for public review at the Waupaca County Planning and Zoning Office.



### **2.3 COMPLIANCE.**

The use of any land; the size, shape, and placement of lots; the use, size, type, and location of structures on lots; the installation and maintenance of water supply and waste disposal facilities; the filling, grading, lagooning, dredging of any shorelands; the cutting of shoreland vegetation, and the subdivision of lots, shall be in full compliance with the terms of this ordinance and other applicable local, state, or federal regulations. The placement of structures, additions to structures, and structural alterations to existing structures shall require a land use permit unless otherwise expressly excluded by a provision of this ordinance. Property owners, builders, and contractors are responsible for compliance with the terms of this ordinance.

### **2.4 MUNICIPALITIES AND STATE AGENCIES REGULATED.**

Unless specifically exempted by law, all cities, villages, towns, and counties are required to comply with this ordinance and obtain all necessary permits. ~~State agencies are required to comply when s. 13.48(13), Wis. Stats., applies.~~ The construction, reconstruction, maintenance, and repair of State highways and bridges by the Wisconsin Department of Transportation are exempt when s. 30.2022(1) Wis. Stats., applies.

### **2.5 ABROGATION AND GREATER RESTRICTIONS.**

The provisions of this ordinance supersede any provisions in a county zoning ordinance that solely relate to shorelands. In other words, if a zoning standard only applies to lands that lie within the shoreland and applies because the lands are in shoreland, then this ordinance supersedes those provisions. However, where an ordinance adopted under a statute other than s. 59.692, Wis. Stats., does not solely relate to shorelands and is more restrictive than this ordinance, for example a floodplain ordinance, that ordinance shall continue in full force and effect to the extent of the greater restrictions.

- (1) This ordinance shall not require approval or be subject to disapproval by any town or town board.
- (2) If an existing town ordinance relating to shorelands is more restrictive than this ordinance or any amendments thereto, the town ordinance continues in all respects to the extent of the greater restrictions, but not otherwise.
- (3) This ordinance is not intended to repeal, abrogate, or impair any existing deed restrictions, covenants, or easements. However, where this ordinance imposes greater restrictions, the provisions of this ordinance shall prevail.
- (4) This ordinance may establish standards to regulate matters that are not regulated in ch. NR 115 Wis. Adm Code, but that further the purposes of shoreland protection as described in Section 1.3 of this ordinance,

- (5) Nothing in this ordinance shall be construed as establishing shoreland zoning standards that require any of the following:
- a. Approval to install or maintain outdoor lighting in shorelands, impose any fee or mitigation requirement to install or maintain outdoor lighting in shorelands, or otherwise prohibit or regulate outdoor lighting in shorelands if the lighting is designed or intended for residential use.
  - b. Inspection or upgrade of a structure before the sale or other transfer of the structure may be made.
- (6) The construction and maintenance of any property or equipment of a public utility, as defined in s. 196.01(5) Wis. Stats., or a cooperative association organized under s. 185 Wis. Stats. for the purpose of producing or furnishing heat, light, or power to its members only, that is used for the transmission, delivery, or furnishing of natural gas, heat, light, or power is considered to satisfy the requirements of a shoreland zoning ordinance if:
- a. The Department has issued all required permits or approvals authorizing the construction or maintenance under s. Wis. Stats. ch. 30, 31, 281, or 283.

## **~~2.6 INTERPRETATION.~~**

~~In their interpretation and application, the provisions of this ordinance shall be liberally construed in favor of Waupaca County and shall not be deemed a limitation or repeal of any other powers granted by Wisconsin Statute. Where a provision of this ordinance is required by statute and a standard in ch. NR 115, Wis. Adm. Code, and where the ordinance provision is unclear, the provision shall be interpreted in light of the statute and ch. NR 115, Wis. Adm. Code, standards in effect on the date of the adoption of this ordinance or in effect on the date of the most recent text amendment to this ordinance. Words used in this Zoning Ordinance shall be defined first by referring to this Ordinance. If this Ordinance does not contain a definition for the word or words, then the word or words shall be as defined in a common English dictionary used by the Zoning Administrator.~~

## **~~2.7~~2.6 SEVERABILITY.**

If any portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected.

## **3.0 SHORELAND-WETLAND DISTRICT.**

### **3.1 DESIGNATION.**

This district shall include all shorelands within the jurisdiction of this ordinance which are designated as wetlands on the most recent version of the Wisconsin Wetland Inventory as depicted on the Department of Natural Resources Surface

Water Data Viewer.

- (1) **LOCATING SHORELAND-WETLAND BOUNDARIES.** Where an apparent discrepancy exists between the shoreland-wetland district boundary shown on the Wisconsin Wetland Inventory and actual field conditions, Waupaca County shall contact the Department to determine if the map is in error. If the Department determines that a particular area was incorrectly mapped as wetland or meets the wetland definition, but was not shown as wetland on the map, Waupaca County shall have the authority to immediately grant or deny a shoreland zoning land use permit in accordance with the applicable regulations based on the Department determination as to whether the area is wetland. In order to correct wetland mapping errors on the official zoning map, an official zoning map amendment must be initiated within a reasonable period of time.

### **3.2 PURPOSE.**

This district is created to maintain safe and healthful conditions, to prevent water pollution, to protect fish spawning grounds and wildlife habitat, to preserve shore cover and natural beauty and to control building and development in wetlands whenever possible. When development is permitted in a wetland, the development should occur in a manner that minimizes adverse impacts upon the wetland.

### **3.3 PERMITTED USES.**

The following uses shall be allowed, subject to general shoreland zoning regulations contained in this ordinance, the provisions of chs. 30, 31, and 281.36, Wis. Stats. and the provisions of other applicable local, state, and federal laws:

- (1) Activities and uses which do not require the issuance of a land use permit issued by the Planning and Zoning Director, but which must be carried out without any filling, flooding, draining, dredging, ditching, tiling, or excavating:
  - a. 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 is not injurious to the natural reproduction of such crops;
  - c. The pasturing of livestock;
  - d. The cultivation of agricultural crops;
  - e. The practice of silviculture, including the planting, thinning, and harvesting of timber; and
  - f. The construction or maintenance of hunting blinds, maximum size limited to thirty-two (32) square feet.

- (2) Uses which do not require the issuance of a land use permit issued by the Planning and Zoning Director and which may include filling, flooding, draining, dredging, ditching, tiling, or excavating limited to only the extent specifically provided below:
- a. Temporary water level stabilization measures necessary to alleviate abnormally wet or dry conditions that would have an adverse impact on silvicultural activities if not corrected;
  - b. The cultivation of cranberries including flooding, dike and dam construction, or ditching necessary for the growing and harvesting of cranberries,
  - c. The maintenance and repair of existing agricultural drainage systems including ditching, tiling, dredging, excavating, and filling necessary to maintain the level of drainage required to continue the existing agricultural use. This includes the minimum filling necessary for disposal of dredged spoil adjacent to the drainage system provided that dredged spoil is placed on existing spoil banks where possible;
  - d. The construction or maintenance of fences for the pasturing of livestock, including limited excavating and filling necessary for such construction or maintenance;
  - e. The construction or maintenance of piers, docks, or walkways built on pilings, including limited excavating and filling necessary for such construction and maintenance; and
  - f. The maintenance, repair, replacement, or reconstruction of existing town and county highways and bridges, including limited excavating and filling necessary for such maintenance, repair, replacement, or reconstruction.
- (3) Uses which require the issuance of a land use permit by the Planning and Zoning Director and which may include filling, flooding, draining, dredging, ditching, tiling or excavating, limited to only to extent specifically provided below:
- a. The construction and maintenance of roads which are necessary to conduct silvicultural activities or agricultural cultivation, provided that:
    - (1) The road cannot as a practical matter be located outside the wetland;
    - (2) The road is designed and constructed to minimize adverse impact upon the natural functions of the wetland enumerated in Section 3.5(2);

- (3) The road is designed and constructed with the minimum cross-sectional area practical to serve the intended use;
  - (4) Road construction activities are carried out in the immediate area of the roadbed only.
- b. The construction or maintenance of nonresidential buildings, provided that:
  - (1) The building is essential for and used solely in conjunction with the raising of waterfowl, minnows, or other wetland or aquatic animals; or some other use permitted in the shoreland-wetland district;
  - (2) The building cannot, as a practical matter, be located outside the wetland;
  - (3) Such building is not designed for human habitation and does not exceed five hundred (500) square feet in floor area; and
  - (4) Only limited filling or excavating necessary to provide structural support for the building is authorized.
- c. The establishment of public and private parks and recreation areas, natural and outdoor education areas, historic and scientific areas, wildlife refuges, game bird and animal farms, fur animal farms, fish hatcheries, and public boat launching ramps and attendant access roads, provided that:
  - (1) Any private development is used exclusively for the permitted use and the applicant has received a permit or license under ch. 29, Wis. Stats., where applicable;
  - (2) Filling or excavating necessary for the construction or maintenance of public boat launching ramps or attendant access roads is allowed only where such construction or maintenance meets the criteria in section 3.3(3)(a)(1)-(4) and;
  - (3) Ditching, excavating, dredging, or dike and dam construction in public and private parks and recreation areas, natural and outdoor education areas, historic and scientific areas, wildlife refuges, game bird and animal farms, fur animal farms, and fish hatcheries is allowed only for the purpose of improving wildlife habitat and to otherwise enhance wetland values.



- d. The construction or maintenance of electric, gas, telephone, water, and sewer transmission and distribution facilities, by public utilities and cooperative associations organized for the purpose of producing or furnishing heat, light, power, or water to their members and the construction or maintenance of railroad lines provided that:
  - (1) The transmission and distribution facilities and railroad lines cannot, as a practical matter, be located outside the wetland;
  - (2) Such construction or maintenance is done in a manner designed to minimize adverse impact upon the natural functions of the wetland enumerated in Section 3.5(2).
- e. Permits issued by the Planning and Zoning Director: Land Use permits required under this section shall be issued by the Planning and Zoning Director considering the appropriate factors set forth in this section and according to the procedure set forth in Section 11 of this ordinance.
- f. Appeal of permitting decisions: Permitting decisions made by the Planning and Zoning Director under this section are appealable according to the procedure set forth in Section 14.4 of Chapter 34 Waupaca County Zoning Ordinance.

### **3.4 PROHIBITED USES.**

Any use not listed in Sections 3.3(1), 3.3(2) or 3.3(3) is prohibited, unless the wetland or portion of the wetland has been rezoned by amendment of this ordinance in accordance with Section 3.5 of this ordinance and s. 59.69(5)(e), Wis. Stats.

### **3.5 REZONING OF LANDS IN THE SHORELAND-WETLAND DISTRICT**

- (1) For all proposed text and map amendments to the shoreland-wetland provisions of this ordinance, the appropriate office with the Department shall be provided with the following:
  - a. A copy of every petition for a text or map amendment to the shoreland-wetland provisions of this ordinance, within five (5) days of the filing of such petition with the county clerk. Such petition shall include a copy of the Wisconsin Wetland Inventory map adopted as part of this ordinance describing any proposed rezoning of a shoreland-wetland;
  - b. Written notice of the public hearing to be held on a proposed amendment at least ten (10) days prior to such hearing;
  - c. A copy of the Planning and Zoning Committee's findings and recommendations on each proposed amendment within ten (10) days after the submission of those findings and recommendations to the County Board; and

- d. Written notice of the County Board's decision on the proposed amendment within ten (10) days after it is issued.
- (2) A wetland, or a portion thereof, in the shoreland-wetland district shall not be rezoned if the proposed rezoning may result in a significant adverse impact upon any of the following:
  - a. Storm and flood water storage capacity;
  - b. Maintenance of dry season stream flow, the discharge of groundwater to a wetland, the recharge of groundwater from a wetland to another area, or the flow of groundwater through a wetland;
  - c. Filtering or storage of sediments, nutrients, heavy metals, or organic compounds that would otherwise drain into navigable waters;
  - d. Shoreline protection against soil erosion;
  - e. Fish spawning, breeding, nursery, or feeding grounds;
  - f. Wildlife habitat; or
  - g. Wetlands both within the boundary of designated areas of special natural resource interest and those wetlands which are in proximity to or have a direct hydrologic connection to such designated areas as defined in ch NR 103.04 Wis. Adm. Code which can be accessed at the following web site:  
[http://docs.legis.wisconsin.gov/code/admin\\_code/nr/100/103.pdf](http://docs.legis.wisconsin.gov/code/admin_code/nr/100/103.pdf).
- (3) If the Department notifies the Planning and Zoning Committee that a proposed text or map amendment to the shoreland-wetland provisions of this ordinance may have a significant adverse impact upon any of the criteria listed in Section 3.5(2) of this ordinance, that amendment, if approved by the County Board, shall contain the following provision:

"This amendment shall not take effect until more than thirty (30) days have elapsed after written notice of the County Board's approval of this amendment is mailed to the Department of Natural Resources. During that thirty (30) day period the Department of Natural Resources may notify the County Board that it will adopt a superseding shoreland ordinance for the County under s. 59.692(6), Wis. Stats. If the Department does so notify the County Board, the effect of this amendment shall be stayed until the s. 59.692(6), Wis. Stats., adoption procedure is completed or otherwise terminated."
- (4) Application: Applications for Rezoning under this ordinance shall be made in accordance with the procedure set forth in Section ~~15~~16.3 of this ordinance.

#### **4.0 LAND DIVISION REVIEW AND SANITARY REGULATIONS.**

##### **4.1 LAND DIVISION REVIEW.**

The County shall review, pursuant to Chapter 37 Waupaca County Subdivision Ordinance; all land divisions which create any parcel, inclusive of the parent parcel, which is twenty (20) acres or less in size. In such review of parcels located in shoreland areas all of the following factors shall be considered:

- (1) Hazards to the health, safety, or welfare of future residents;
- (2) Proper relationship to adjoining areas;
- (3) Public access to navigable waters, as required by law;
- (4) Adequate stormwater drainage facilities;
- (5) Conformity to state law and administrative code provisions.

##### **4.2 PLANNED UNIT DEVELOPMENT (PUD).**

A Planned Unit Development shall be permitted as a conditional use in areas regulated by this ordinance according to the procedure set forth in this section.

- (1) Purpose. The Planned Residential Unit Development is intended to permit smaller, non-riparian lots where the physical layout of the lots is so arranged as to better assure the control of pollution and preservation of ground cover than would be expected if the lots were developed with the normal lot sizes and setbacks and without special conditions placed upon the Planned Residential Unit Development at the time of its approval. This is often accomplished by setting lots back farther from navigable water and clustering them on one portion of the parcel. A condition of all Planned Residential Unit Development is the preservation of certain open space, preferably along the shoreline, in perpetuity.
- (2) Requirements for planned residential unit development. The Planning and Zoning Committee may at its discretion, upon petition, approve a Planned Residential Unit Development by approving first a conditional use permit, and then a plat.
  - a. Location and Area. The area proposed for the Planned Residential Unit Development is located in a zoning district which allows residential use and is at least forty (40) acres in size.
  - b. Pollution Control. The location and nature of the septic systems which will serve the home sites, individually or collectively, will assure that effluent from the septic systems will not reach the ground or surface waters in a condition which would contribute to health hazards, taste, odor, turbidity, fertility, or impair the aesthetic character of navigable waters.

- c. Open Space. At least fifty (50) percent of the gross project area shall be dedicated as permanent open space. Open space shall be deed restricted to prohibit development and may be:

- (1) dedicated to the public;
- (2) retained by the former owner;
- (3) held in common by the residents of the Planned Residential Unit Development; or
- (4) held as outlots by individual owners of the Planned Residential Unit Development.

Lands dedicated to the public must be accepted by action of the governing body of the accepting unit of government. If the land is to be held in common by owners of lots in the development, a homeowners' association or similar legally constituted body shall be created to maintain the open space land. Any restriction placed on platted land by covenant, grant of easement, or any other manner which is required by this ordinance or which names Waupaca County as grantee, promisee, or beneficiary, shall vest in Waupaca County the right to enforce the restriction, at law or in equity, against anyone who has or acquires an interest in the land subject to the restriction.

Open space shall be deed restricted to nonstructural agricultural, forestry, recreational, and environmental protection uses.

However, a sanitary waste disposal system may be located in such an area provided no suitable site is available on the lot served by the system.

- d. Density. The number of platted home sites shall not exceed one hundred and fifty (150) percent of those which would have been possible if the same land were platted in accordance with the minimum lot sizes, setbacks, and widths provided by the applicable provisions of this ordinance and Chapter 34 Waupaca County Zoning Ordinance. This figure shall be determined by dividing the total area of the subdivision, excluding streets, by the minimum lot sizes required by Section 5 of this ordinance.
- e. Lot Sizes, Widths, Setbacks, and Shoreline Buffer Area. The minimum lot size for such development shall be twenty thousand (20,000) square feet with a one hundred (100) foot minimum lot width. Shoreline buffer area and setback provisions in Section 6 and Section 7 shall apply.
- f. Design Standards. Roadways, lots, and building envelopes shall be located in areas where they will have the least effect on forests, environmentally sensitive areas, cropland, pasture, meadow, farm

buildings, and historic structures, and where they will retain or enhance the visual character of the rural landscape. However, in resolving conflicts between these interests, priority shall be given to protection of waterways and their buffers, steep slopes, regulated floodplains, and to avoidance of a fragmented landscape.

(1) Building Envelopes.

- (a) No more than twenty (20) percent of the total area classified as Class I, II, or III soils may be used for buildings and roads.
- (b) Buildings and roads shall be located as to minimize interference and land use conflicts with nearby farms and normal agricultural practices and activities.
- (c) Building envelopes shall be selected that do not permit rooflines to protrude above the crestline of hilltops.
- (d) Building envelopes shall be located on the edges of fields and woodlands.
- (e) Lots abutting the perimeter of a site must be designed to be compatible with adjacent zoning and land use.
- (f) Building envelopes shall not include wetlands, heavily wooded areas, or floodplains.
- (g) Building envelopes shall not include slopes in excess of twenty (20) percent.

(2) Roadways and Infrastructure.

- (a) Roadways and, where practicable, infrastructure shall not be located in open fields but shall be sited along forest edges and shall be designed to maximize the amount of forest in the Planned Residential Unit Development which is contiguous with adjacent forested lands.
- (b) Roadways shall follow existing contours to minimize the extent of cuts and fills.
- (c) Where sites include linear features such as existing access roads, tree lines, and fence rows, roadways shall, where practicable, follow these features to minimize their visual impact.
- (d) All driveways shall serve a minimum of two (2) units.

- (e) The maximum number of units served by a common driveway shall be four (4) unless the applicant demonstrates that a greater number will promote the objectives of the Planned Residential Unit Development District.
  - (f) Maximum length of common driveways shall be one thousand (1,000) feet.
  - (g) All lots using common driveways shall provide a driveway maintenance agreement to be approved by the County Planning & Zoning Committee.
- (3) Site Development and Land Disturbing Activities.
  - (a) Existing natural drainage ways shall be retained.
  - (b) Existing natural vegetation shall be preserved in areas where disturbance outside the building envelope is not essential.
  - (c) Where building envelopes are located in woodlands, a wooded buffer of at least thirty (30) feet shall be retained between the building envelope and the common drive or roadway.
- (3) Procedure for establishing a planned residential unit development district:
  - a. Applicant Petition: Applicants seeking to establish a Planned Residential Unit Development District shall petition the Planning and Zoning Committee for a Conditional Use Permit according to the procedure set forth in Section 165.2 of this ordinance.
  - b. Findings and Conditions for Approval: In addition to any applicable requirement under Section 165.2, the Planning and Zoning Committee shall find that the petition complies with all the requirements and that the conditional use permit contains all the conditions required by Section 4.2(2) of this ordinance prior to approval. The Planning and Zoning Committee shall specifically approve or reject the deed restrictions relating to the location, ownership, and use of dedicated open space and shall require proof of the filing of such restrictions with the County Register of Deeds prior to the issuance of a conditional use permit for the project.

- c. Planning Studies: A landowner or petitioner may at his own expense develop the facts required to establish compliance with the provisions of Section 4.2(2) or may be required to contribute funds to the County to defray all or part of the cost of such studies being undertaken by the County or any agency or person with whom the County contracts for such work.

#### **4.3 WATERFRONT CAMP OR INSTITUTION**

- (1) Purpose. This section of the Waupaca County Shoreland Protection Ordinance pertains to existing and potential future camps or institution land uses and is intended to provide flexibility for these land uses, while limiting the potential adverse impacts of such uses on the shoreland environment. The intent is to permit multiple structures per parcel where the physical layout of the parcels will assure control of pollution and preservation of vegetative cover, and to regulate the impacts of the development on the entire shoreland environment of the camp or institution.
- (2) Maximum density of multiple structures on a single parcel. Multiple principal structures may be permitted on a single parcel in the Waterfront Camp or Institution Shoreland Zone provided that the density of the parcel is twenty thousand (20,000) square feet or greater per dwelling unit. If seasonal (including existing trailers or mobile homes/manufactured homes) or year round principal structures are single family, they are limited to single family use for perpetuity.
- (3) New camp or institution waterfront standard. Any newly constructed waterfront camp or institution must also provide at least one hundred (100) feet of waterfront per dwelling unit.
- (4) Site plans. The owner or operator of the camp or institution shall submit a site plan to the Waupaca County Planning and Zoning Office for review and approval at a scale acceptable to the Planning and Zoning Office. This site plan shall include an existing map or certified survey map that has the following information drawn to scale:
  - a. Exterior parcel lines.
  - b. Location and size of footprint of all existing structures and other impervious surfaces.
  - c. Location of the Ordinary High-Water Mark (OHWM).
  - d. Interior parcel lines created by the camp or institution to divide the parcel into single-family or multiple-family land uses.
  - e. Other pertinent information as required by the Planning and Zoning Director or the Planning and Zoning Committee.

- f. The information requested above may be submitted on several different drawings to provide for greater readability. This site plan must also be submitted to the local town plan commission or committee if such a commission or committee exists.

#### **4.4 SANITARY REGULATIONS**

Waupaca County hereby enacts the following sanitary regulations for the protection of health and the preservation and enhancement of water quality in shoreline areas subject to this ordinance.

- (1) Where public water supply systems are not available, private well construction shall be required to conform to ch. NR 812, Wis. Adm. Code.
- (2) Where a public sewage collection and treatment system is not available, design and construction of private on-site waste treatment system shall, prior to July 1, 1980, be required to comply with ch. SPS 383 Wis. Adm. Code, and after June 30, 1980 be governed by Chapter 35, Waupaca County Sanitary Ordinance.

#### **5.0 MINIMUM LOT SIZE**

##### **5.1 PURPOSE.**

Minimum lot sizes in the shoreland area ~~shall be~~have been established to ~~preserve the character and aesthetics of Waupaca County, as well as~~afford protection against danger to ~~promote the~~ health, safety and welfare, and protection against pollution of the adjacent body of water. ~~of the residents of Waupaca County, and to foster the purpose and intent of this ordinance as set forth in Section 1.3 herein.~~ In calculating the minimum area or width of a lot, the beds of navigable waters shall not be included.

##### **5.2 CONFLICT.**

Where the minimum lot size requirements contained in this ordinance conflict with the provisions of Chapter 34 of the Waupaca Code of Ordinances, the provisions contained in Chapter 34 shall control to the extent allowable under Chapter 59.692 of the Wisconsin State Statutes and Chapter NR 115.05(1) of the Wisconsin Administrative Code.

##### **5.3 MINIMUM AREA AND WIDTH FOR EACH LOT.**

- (1) Sewered lots. The minimum lot area of a sewered lot shall be ten thousand (10,000) square feet and the minimum average lot width shall be sixty-five (65) feet.
  - a. The average width shall be calculated by averaging the measurements at the following locations, provided that the minimum width at the



ordinary high-water mark and the building setback line is sixty-five (65) feet:

- (1) The ordinary high-water mark,
  - (2) The building setback line,
  - (3) Lot line(s) opposite any ordinary high water mark providing the frontage for the parcel.
- (2) Unsewered lots. The minimum lot area of an unsewered lot shall be twenty thousand (20,000) square feet and the minimum average lot width shall be one hundred (100) feet with at least one hundred (100) feet of frontage at the ordinary high-water mark.
- a. The average width shall be calculated by averaging the measurements at the following locations, provided that the minimum width at the ordinary high-water mark and the building setback line is one hundred (100) feet:
    - (1) The ordinary high-water mark,
    - (2) The building setback line,
    - (3) Lot line(s) opposite any ordinary high water mark providing the frontage for the parcel.

#### 5.4 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 all of the following apply:

- a. The substandard lot or parcel was never reconfigured or combined with another lot or parcel by plat, survey, or consolidation by the owner into one property tax parcel.
  - b. The substandard lot or parcel has never been developed with one or more of its structures placed partly upon an adjacent lot or parcel.
  - c. The substandard lot or parcel is developed to comply with all other ordinance requirements.
- (1) Other substandard lots. Except for lots which meet the requirements of Section 5.4 a permit for the improvement of a lot having lesser dimensions than those stated in Sections 5.3(1) and 5.3(2) shall be issued only if a variance is granted by the Board of Adjustment.

#### 5.5 ILLEGALLY CREATED LOTS

~~(4)~~ An illegally created lot is one that was created in violation of the required minimum area and minimum average width requirements of the County's Shoreland

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Protection Ordinance at the time of creation. Illegally created lots shall not be used for construction purposes without the granting of a variance.

## **6.0 BUILDING SETBACKS.**

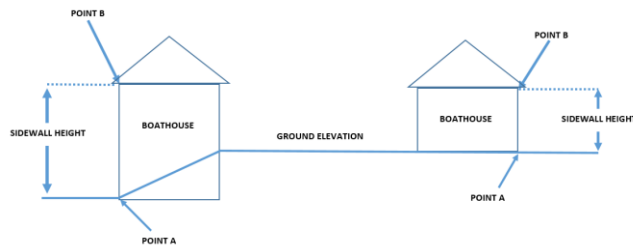
Permitted building setbacks ~~shall be~~ have been established to conform to health, safety and welfare requirements, preserve natural beauty, reduce flood hazards, ~~and avoid water pollution~~ protect against water pollution, and otherwise limit the direct and cumulative impacts of shoreland development to the adjacent water body.

## **6.1 SHORELAND SETBACKS.**

Unless exempt under Section 6.1(1) or reduced under Section 6.2, a setback of seventy-five (75) feet from the ordinary high-water mark of any navigable waters to the nearest part of a building or structure, excluding any roof overhang extending three (3) feet or less from the vertical wall of the structure, shall be required for all buildings and structures.

- (1) EXEMPT STRUCTURES All of the following structures are exempt from the shoreland setback standards in Section 6.1 and wetland and drainageway setback in Section 6.4:
  - 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. The following standards shall apply for the placement of boathouses:
    - (1) The construction or placement of boathouses below the ordinary high-water mark of any navigable waters shall be prohibited.
    - (2) The boathouse shall be located at least ten (10) feet landward from the ordinary high-water mark.
    - (3) Boathouses shall be designed and constructed solely for the storage of boats and related equipment.
    - (4) One boathouse is permitted on a lot as an accessory structure.
    - (5) Proper erosion control methods shall be implemented during and after construction of the boathouse.
    - (6) Boathouses shall be constructed in conformity with local floodplain zoning standards and any other ordinance standards applicable to the placement of structures.
    - (7) Boathouses shall not exceed four hundred (400) square feet in floor area.
    - (8) Boathouse sidewall height may not exceed ten (10) feet.

(a) Sidewall height is the measurement of the vertical line segment starting at the lowest point of any exterior exposed wall and its intersect with the ground to a line horizontal to where the lowest point of the roof structure intersects with the vertical wall of the boathouse. (The measurement from Point A to Point B in the diagrams below.)



- (9) Boathouse roofs shall have a pitch that is no flatter than 4/12 pitch.
- (10) Boathouses must be open trussed, as viewed from the floor of the structure.
- (11) Boathouses must be single story and may not have multiple stories, floors, or levels.
- (12) Boathouses may not have lofts, attics, basements, or similar ancillary spaces.
- (13) Existing legal nonconforming flat boathouse roofs may be used as a deck provided that the roof has no sidewalls or screens.
  - (a) A railing may be installed around a flat boathouse roof provided that it is consistent with the standards promulgated by the Department of Safety and Professional Services enacted under ch. DSPS 101 Wis. Ad, Code.
- (14) The main door of the boathouse shall face the water and have a minimum width of six (6) feet.
- (15) Patio doors, fireplaces, decks (not specifically allowed above), porches, walkways that are not necessary to provide access to the shoreline, overhangs exceeding three (3) feet, approaches to entrances and other features inconsistent with the use of the structure exclusively as a boathouse are not permitted.

- b. Open sided and screened structures such as gazebos, decks, patios, and screen houses in the shoreland setback area that satisfy the requirements in s. 59.692(1v), Wis. Stats.
  - (1) The part of the structure that is nearest to the water is located at least thirty-five (35) feet landward from the ordinary high water mark.
  - (2) The floor area of all the structures in the shoreland setback area will not exceed two hundred (200) square feet. In calculating this square footage, boathouses shall be excluded.
  - (3) The structure that is the subject of the request for special zoning permission has no sides or has open or screened sides.
  - (4) The Planning and Zoning Director must approve a plan that will be implemented by the owner of the property to preserve or establish a vegetative buffer zone that covers at least seventy percent (70%) of the half of the shoreland setback area that is nearest to the water.
  - (5) The structure must be free standing, located more than five (5) feet from another structure with the floor located no more than five (5) feet above grade.
  - (6) An enforceable affidavit must be filed with the register of deeds prior to construction acknowledging the limitations on vegetation.
- c. Fishing rafts that are authorized on the Wolf River under s. 30.126, Wis. Stats.
- d. Broadcast signal receivers, including satellite dishes or antennas that are one (1) meter or less in diameter and satellite earth station antennas that are two (2) meters or less in diameter.
- e. Utility transmission and distribution lines, poles, towers, water towers, pumping stations, well pumphouse covers, private on-site wastewater treatment systems that comply with ch. SPS 383 Wis. Adm. Code, 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 that are necessary to provide pedestrian access to the shoreline and are a maximum of sixty (60) inches in width and located within a defined access and viewing corridor.
- g. Devices or systems used to treat runoff from impervious surfaces.

h. A fence along a roadway that meets all of the following requirements:

- (1) is not taller than fifteen (15) feet
- (2) is located not less than two (2) feet landward of the ordinary high water mark
- (3) is located entirely outside of a highway right-of-way
- (4) is located not less than ten (10) feet from the edge of a roadway and not more than 40 feet from the edge of a roadway or highway right-of-way, whichever is greater
- (5) is generally perpendicular to the shoreline

~~g.~~i. A bridge for which the department has issued a permit under s. 30.123, Stats.

- (2) Existing exempt structures. Existing exempt structures may be maintained, repaired, replaced, restored, rebuilt and remodeled provided the activity does not expand the footprint and does not go beyond the three-dimensional building envelope of the existing structure.
- a. The expansion of a structure beyond the existing footprint is allowed if the expansion is necessary to comply with applicable state or federal regulations.
  - b. Conflict and interpretation. Section 6.1 of this ordinance does not eliminate the obligation to obtain any other permit, aside from a permit required under Section 11, which may be required to complete maintenance, repair, replacement, restoration, rebuilding, or remodeling of an existing exempt structure under this ordinance or any other applicable local, State, or Federal regulation, including, for instance, permits under Section 8.4 of this ordinance. It is the responsibility of the property owner to ensure that all other required permits are obtained and that all other ordinance standards are complied with prior to the start of construction.
  - c. The issuance of a land use permit is still required under Chapter 34 Waupaca County Zoning Ordinance and other applicable and lawfully adopted ordinances.

## **6.2 REDUCED PRINCIPAL STRUCTURE SETBACK.**

A setback less than the seventy-five (75) foot setback required under Section 6.1 from the ordinary high water mark shall only be permitted for a proposed principal structure under the following circumstances:

- a. Where there are existing principal structures in both directions along the shoreline, the setback shall equal the average of the distances the two

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existing principal structures are set back from the ordinary high water mark provided all of the following are met:

- (1) Both of the existing principal structures are located on an adjacent lot to the proposed principal structure.
  - (2) Both of the existing principal structures are located within two hundred and fifty (250) feet of the proposed structure. In the event that an adjacent lot includes more than one principal structure or there are more than two shoreline lots adjoining the lot where the proposed principal structure is to be built, the shoreland setback distance of the principal structure located nearest the proposed structure on either side of the proposed structure shall be utilized in calculating the reduced shoreland setback distance. For resort properties containing more than one dwelling unit, the main office or reception building shall be considered the principal structure in the application of this section.
  - (3) Both of the existing principal structures on adjoining waterfront lots are located less than seventy-five (75) feet from the ordinary high water mark.
  - (4) The setback shall not be reduced to less than thirty-five (35) feet from the ordinary high water mark of any navigable water in any circumstance.
- (1) Measurement. For the application of Section 6.2 the measurement for determining the average shoreland setback shall be taken from the nearest part of the existing adjoining principal structures, identified in Section 6.2, to the ordinary high water mark of the water body excluding any decks, patios, or overhang that extends three (3) feet or less from the principal structure.
  - (2) Applicability.
    - a. The following principal structures may not be utilized for the application of Section 6.2 to reduce the principal structure setback:
      - (1) A principal structure illegally placed closer than the required shoreline setback.
      - (2) A principal structure that meets the required shoreline setback.
    - b. The reduced shoreland setback may not be applied for additions, including, but not limited to, decks and patios, to existing principal structures.
    - c. The setback calculated in Section 6.2 shall apply to the proposed principal structure including any attached deck or patio which must be located outside of the average setback calculated in Section 6.2.

### **6.3 FLOODPLAIN STRUCTURES.**

Buildings and structures to be constructed or placed in a floodplain shall be required to comply with any applicable floodplain zoning ordinance.

### **6.4 DRAINAGEWAY AND WETLAND SETBACK.**

All buildings and structures shall be set back at least twenty-five (25) feet from the landward edge of non-navigable streams, drainage ways, and wetlands. Non-navigable streams and drainage ways that are hydrologically connected to a navigable waterway shall have the same setbacks applied from the ordinary high water mark as a navigable body of water. Roadways, recreational trails, and pedestrian walkways shall be permitted to cross non-navigable streams and drainage ways provided such construction allows for the free passage of waters and runoff is controlled to prevent erosion and transport of sediment and pollutants to nearby waters.

- (1) Exempt structures and uses. The following uses or structures shall be exempt from the drainageway and wetland setback described above:
  - a. Those uses described in Section 3.3, provided all applicable standards described in said section can be met.
  - b. Those exempt structures described in Section 6.1(1), provided all applicable standards described in said section can be met.

In instances where the above exemptions overlap, the more restrictive standards shall apply.

## **7.0 VEGETATION.**

### **7.1 PURPOSE.**

To protect natural scenic beauty, fish and wildlife habitat, and water quality, the removal of vegetation in shoreland areas shall be regulated consistent with sound forestry and soil conservation practices and with consideration of the effect of vegetation removal on water quality, including soil erosion, and the flow of effluents, sediments, and nutrients.

### **7.2 ACTIVITIES ALLOWED WITHIN A VEGETATIVE BUFFER ZONE.**

To protect water quality, fish and wildlife habitat, and natural scenic beauty, and to promote preservation and restoration of native vegetation, land that extends from the ordinary high water mark to a minimum of thirty-five (35) feet inland is designated as a vegetative buffer zone. The removal of vegetation in the vegetative buffer zone is prohibited except as follows:

- (1) The routine maintenance of vegetation, which means normally accepted horticultural practices that do not result in the loss of any layer of existing vegetation and do not require earth disturbance.
- (2) The removal of trees and shrubs in the vegetative buffer zone to create an access and viewing corridor providing the following requirements are met:  
~~Per s. 59.692(1f)(b), Wis. Stats. the viewing corridor may be thirty-five (35) feet wide for every one hundred (100) feet of shoreline frontage. The viewing corridor may run contiguously for the entire maximum width of shoreline frontage owned.~~
  - a. The access and viewing corridor remains a strip of vegetated land for the purpose of providing safe pedestrian access to the shore through the vegetative buffer zone.
  - b. The access and viewing corridor may be thirty-five percent (35%) of the shoreline frontage but in no case shall it be less than ten (10) feet or greater than two hundred (200) feet.
  - ~~(2)c.~~ c. The viewing corridor may run contiguously for the entire maximum width allowed based on the shoreline frontage owned.
- (3) The removal of trees and shrubs in the vegetative buffer zone on a parcel with ten (10) or more acres of forested land consistent with “generally accepted forestry management practices” as defined in ch. NR 1.25 (2) (b) Wis. Adm. Code, and described in Department publication “Wisconsin Forest Management Guidelines” (publication FR-226), provided that vegetation removal be consistent with these practices.
- (4) The removal of vegetation within the vegetative buffer zone 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 by replanting in the same area as soon as practicable.
- (5) The County may authorize by permit ~~A~~ additional vegetation management activities such as prescribed burns or other vegetation management or removal activities where there is a demonstrable need for the additional management activity. Any permit issued by the County under this section shall include an enforceable restriction to preserve the newly restored area. Prior to issuing a permit under this section, the County shall require the following information to be provided by the permittee: ~~authorized by a land use permit in the vegetative buffer zone. The land use permit application shall be consistent with the provisions set forth in Section 11. The land use permit issued under this subd. par. shall require that all management activities comply with detailed plans approved by the County and designed to~~

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~~control erosion by limiting sedimentation into the waterbody, to improve the plant community by replanting in the same area, and to maintain and monitor the newly restored area. The land use permit also shall require an enforceable restriction to preserve the newly restored area.~~

a. Detailed plans documenting the need and purpose are submitted and approved by the County.

b. Sufficient information within the plans showing that it is designed to:

(1) Control erosion by limiting sedimentation into the waterbody;

(2) improve the plant community by replanting the same area; and

~~(5)~~(3) maintain and monitor the newly restored area.

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### **7.3 CUTTING MORE THAN THIRTY-FIVE (35) FEET INLAND**

From the inland edge of the thirty-five (35) foot area to the outer limits of the shoreland, the cutting of vegetation shall be allowed when accomplished using accepted forest management and soil conservation practices which protect water quality.

### **8.0 FILLING, GRADING, LAGOONING, DREDGING, DITCHING, AND EXCAVATING.**

To protect natural scenic beauty, fish and wildlife habitat, and water quality, land disturbances including Filling, grading, lagooning, dredging, ditching and excavating may be permitted only in accordance with the provisions of ch. NR 115.04 Wis. Adm. Code, the requirements of ch. 30, Wis. Stats., and other State and Federal laws where applicable, and only if done in a manner designed to minimize erosion, sedimentation, and impairment of fish and wildlife habitat and natural scenic beauty.

#### **8.1 GENERAL STANDARDS.**

Filling, grading, lagooning, dredging, ditching, or excavating which does not require a land use permit under Section 8.2 may be allowed in the shoreland area provided that:

- (1) It is done in a manner designed to minimize erosion, sedimentation, and impairment of fish and wildlife habitat.
- (2) Filling, grading, lagooning, dredging, ditching, or excavating in a shoreland-wetland district meets the requirements of Sections 3.3(2) and 3.3(3) of this ordinance.
- (3) All applicable Federal, State and local approvals are obtained.
- (4) Any fill placed in the shoreland area is protected against erosion by the use of riprap, vegetative cover or a bulkhead.

## **8.2 LAND USE PERMIT REQUIRED.**

A land use permit is required:

- (1) For any filling or grading of any area in excess of one hundred (100) square feet which is located within seventy-five feet (75) feet landward of the ordinary high-water mark of navigable water and which has surface drainage toward the water.
  - a. Land disturbing activities located within the vegetative buffer zone described in Section 7.2 must be contained within the access and viewing corridor described in Section 7.2(2) or be associated with a permitted construction activity which shall disturb the minimum amount of land necessary for the project.
- (2) ~~For any construction or dredging commenced on any artificial waterway, canal, ditch, lagoon, pond, lake, or similar waterway which is within three hundred (300) feet landward of the ordinary high-water mark of a navigable body of water or where the purpose is the ultimate connection with a navigable body of water.~~

## **8.3 PERMIT CONDITIONS.**

In granting a land use permit under Section 8.2, the County shall attach the following conditions, where appropriate, in addition to those provisions specified in Sections 11:

- (1) The smallest amount of bare ground shall be exposed for as short a time as feasible.
- (2) Temporary ground cover, such as mulch or jute netting, shall be used and permanent vegetative cover shall be established.
- (3) Diversion berms or bales, silting basins, terraces, filter fabric fencing, and other methods shall be used to prevent erosion.
- (4) Lagoons shall be constructed to avoid fish trap conditions.
- (5) Fill shall be stabilized according to accepted engineering standards.
- (6) Filling shall comply with any local floodplain zoning ordinance and shall not restrict a floodway or destroy the flood storage capacity of a floodplain.
- (7) Channels or artificial watercourses shall be constructed with side slopes of two (2) units horizontal distance to one (1) unit vertical or flatter, which shall be promptly vegetated unless bulkheads or riprap are provided.

## **8.4 ISSUANCE OF PERMITS BY THE PLANNING AND ZONING DIRECTOR.**

Land use permits under this section shall be issued by the Planning and Zoning Director considering the appropriate factors and applying appropriate conditions

set forth in this section. Applications for permits shall be made according to the procedure set forth in Section 11 of this ordinance.

## **8.5 APPEAL OF PERMITTING DECISIONS.**

Permitting decisions made by the Planning and Zoning Director under this section are appealable according to the procedure set forth in Section 14.4 of Chapter 34 Waupaca County Zoning Ordinance.

## **9.0 IMPERVIOUS SURFACE STANDARDS.**

### **9.1 PURPOSE.**

Establish impervious surface standards to protect water quality and fish and wildlife habitat and to protect against pollution of navigable waters. Impervious surface standards shall apply to the construction, reconstruction, expansion, replacement, or relocation of any impervious surface on a riparian lot or parcel and any nonriparian lot or parcel that is located entirely within three hundred (300) feet of the ordinary high-water mark of any navigable waterway.

### **9.2 CALCULATION OF PERCENTAGE OF IMPERVIOUS SURFACE.**

Percentage of impervious surface shall be calculated by dividing the surface area of the existing and proposed impervious surfaces on the portion of a lot or parcel that is within three hundred (300) feet of the ordinary high-water mark by the total surface area of that lot or parcel, and multiplied by one hundred (100).

Impervious surfaces described in Section 9.5 shall be excluded from the calculation of impervious surface on the lot or parcel. If an outlot lies between the ordinary high-water mark and the developable lot or parcel and both are in common ownership, the lot or parcel and the outlot shall be considered one lot or parcel for the purposes of calculating the percentage of impervious surface.

- (1) For lots or parcels that include a condominium form of ownership the entire parcel included in the area defined in Section 9.2, inclusive of both impervious surfaces and lot size, shall be included in the calculation of percentage of impervious surface.

### **9.3 GENERAL IMPERVIOUS SURFACE STANDARD.**

Except as allowed in Sections 9.3(1) through 9.5, lots identified in Section 9.1 are allowed up to fifteen percent (15%) impervious surface on the portion of a lot or parcel that is within three hundred (300) feet of the ordinary high-water mark.

- (1) **IMPERVIOUS SURFACE STANDARD FOR COMMERCIAL, INDUSTRIAL, OR BUSINESS LAND USE.** Lots identified in Section 9.1 containing a commercial, industrial, or business land use may maintain up to forty percent (40%) impervious surface area provided that the land use is:
  - a. legally established;
  - b. existing as of January 31, 2013 and;
  - c. the principal use of the property.

#### **9.4 MAXIMUM IMPERVIOUS SURFACE.**

A property may exceed the impervious surface standard under Section 9.3 or 9.3(1) provided the following standards are met:

- (1) For properties where the general impervious surface standard applies under Section 9.3, a property owner may have more than fifteen percent (15%) impervious surface, but not more than thirty percent (30%) impervious surface on the portion of a lot or parcel that is within three hundred (300) feet of the ordinary high-water mark.
- (2) For properties where the impervious surface standard for properties containing commercial, industrial, or business land uses apply under Section 9.3(1), a property owner may have more than forty percent (40%) impervious surface, but not more than sixty percent (60%) impervious surface.
- (3) For properties that exceed the standard under Section 9.3 or 9.3(1) but do not exceed the maximum standard under Section 9.4(1) or 9.4(2), a land use permit can be issued for development with a mitigation plan that meets the standards found in Section 154.

#### **9.5 TREATED IMPERVIOUS SURFACES.**

Impervious surfaces that can be documented to demonstrate that they meet either of the following standards shall be excluded from the impervious surface calculations under Section 9.2.

- a. The impervious surface is treated by devices such as stormwater ponds, constructed wetlands, infiltration basins, rain gardens, bio-swales, or other engineered systems.
  - b. The runoff from the impervious surface discharges to an internally drained pervious area that retains the runoff on or off the parcel and allows infiltration into the soil.
- (1) Qualification for treated impervious surfaces. To qualify for the exemption for treated impervious surfaces found in Section 9.5, the property owner shall submit a complete land use permit application that is reviewed and approved by the County. The application shall include the following:
    - a. Calculations showing how much runoff is coming from the impervious surface area based on a one (1) inch rain event occurring over a twenty-four (24) hour period.
    - b. Documentation from a professional engineer that the runoff from the impervious surface is being treated by a proposed treatment system, treatment device, or internally drained area that retains the runoff to allow infiltration into the soil.

- (1) Documentation shall include total inputs, design, installation, and maintenance standards, where applicable, from manufacturers.
- c. An implementation schedule and enforceable obligation on the property owner to establish and maintain the treatment system, treatment devices or internally drained area.
  - (1) The enforceable obligations shall be evidenced by an instrument recorded in the office of the Register of Deeds prior to the issuance of the land use permit.
- (2) Verifications for treated impervious surfaces. To qualify for the exemption for treated impervious surfaces found in Section 9.5, the property owner shall submit documentation from a professional engineer after the construction of the treatment system, treatment device, or internally drained area stating that the treatment system, treatment device, or internally drained area has been constructed in accordance with the approved permit and will function as designed under Section 9.5(1).

## 9.6 EXISTING IMPERVIOUS SURFACES.

For existing impervious surfaces that were lawfully placed when constructed, but that do not comply with the impervious surface standard in Section 9.3 or the maximum impervious surface standard in Section 9.4, the property owner may do any of the following:

- a. Maintain and repair the existing impervious surfaces;
  - b. Replace existing impervious surfaces with similar surfaces within the existing building envelope;
  - c. Relocate or modify an existing impervious surface with similar or different impervious surface, provided that the relocation or modification does not result in an increase in the percentage of impervious surface that legally existed on the effective date of the County Shoreland Ordinance, and the impervious surface meets the applicable structural setback requirements of Section 6.0 and all other applicable ordinance's standards.
- (1) Removed impervious surface. Prior to the removal of any impervious surface, a land use permit shall be obtained for the repair, replacement, or relocation that properly documents the amount of impervious surface on the property. If the impervious surface is removed, the repair, replacement, or relocation must be completed prior to the expiration date of the land use permit. In the event that the impervious surface is removed and not repaired, replaced, or relocated by the expiration date of the land use permit, the impervious

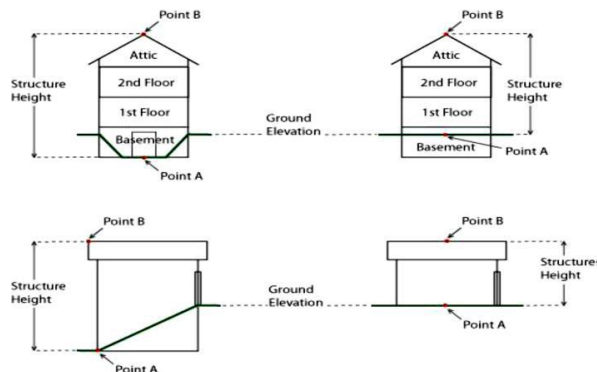
surface percentage shall be recalculated based on the current impervious surface coverage utilizing the method outlined in Section 9.2.

## 10.0 HEIGHT.

To protect and preserve wildlife habitat and natural scenic beauty, no structure taller than thirty-five (35) feet may be permitted within seventy-five (75) feet of the ordinary high-water mark of any navigable waters.

### 10.1 HEIGHT MEASUREMENT.

Structure height is the measurement of the vertical line segment starting at the lowest point of any exposed wall and its intersect with the ground (Point A in the following diagram) to a line horizontal to the highest point of a structure (Point B in the following diagram), unless specified under other sections of this code.



## 11.0 LAND USE PERMITS.

Land use permits are a form of permit issued by the Planning and Zoning Director.

### 11.1 WHEN REQUIRED.

Except where another section of this ordinance specifically exempts certain types of development from this requirement, a land use permit shall be obtained from the Planning and Zoning Director before any development or structural alteration of an existing structure or where a land use permit is specifically required by a section of this ordinance. No land use permit may be issued if the proposed land use would violate any provision of the Waupaca County Code of Ordinances. Any land use permit issued under this section shall contain all conditions required by this ordinance.

- (1) Retaining walls located greater than three hundred (300) feet from the ordinary high water mark of navigable waters are exempted.

#### **11.2 APPLICATION.**

Applications for land use permits issued by the Planning and Zoning Director shall be made upon forms furnished by the Planning and Zoning Director and shall include, for the purpose of proper enforcement of the provisions of this ordinance, the following information:

- (1) Name and address of applicant and property owner;
- (2) Tax parcel number of the property and type of proposed use;
- (3) A to scale drawing of the dimensions of the lot and location of all existing and proposed structures and impervious surfaces relative to the lot lines, center line of abutting highways and the ordinary high-water mark of any abutting waterways;
- (4) Location and description of any existing private water supply or sewage system or notification of plans for any such installation;
- (5) Location and description of any proposed filling, grading, lagooning, dredging, ditching, or excavating;
- (6) Plans for appropriate mitigation when required;
- (7) Payment of the appropriate fee;
- (8) Additional information required by the Planning and Zoning Director, including a survey if requested by the Planning and Zoning Director.

#### **11.3 REVIEW AND ISSUANCE OF LAND USE PERMITS.**

Land Use Permits under this section shall be reviewed and issued by the Planning and Zoning Director who will consider the appropriate factors and will apply appropriate conditions set forth in this ordinance.

- (1) **APPLICATION EXPIRATION.** Within ten (10) working days after the filing of an application for a land use permit required by this ordinance, the Planning and Zoning Director shall notify the applicant if the application is noncompliant with the form and content requirements of this ordinance and the date on which the application will expire if the noncompliance is not remedied. If within sixty (60) days after filing the application, the applicant does not remedy the noncompliance, the application shall expire.
- (2) **RELAXATION OF STANDARDS FOR PERSONS WITH DISABILITIES.** The Planning and Zoning Director may issue a special land use permit to relax the standards of this ordinance in order to provide reasonable accommodations as required by Federal or State law. Such relaxation shall



be the minimum necessary to be consistent with Federal guidelines for accommodation of persons with disabilities and shall, where practicable, be terminated when the facility is no longer used by the disabled person. A person applying for a land use permit for construction under this section shall establish the nature and extent of the disability and that the relaxation requested is the minimum necessary to provide reasonable use of the facility. A deed restriction or affidavit for the reasonable accommodation shall be filed with the Register of Deed.

#### 11.4 EXPIRATION OF LAND USE PERMIT.

Land use permits issued by the Planning and Zoning Director shall expire twenty-four (24) months from the date issued if the project has not progressed to the point of the exterior shell being completed.

#### 11.5 APPEAL.

Permitting decisions made by the Planning and Zoning Director under this section are appealable according to the procedure set forth in Section 14.4 of Ch 34, Waupaca County Zoning Ordinance.

#### 12.0 NONCONFORMING USES ~~AND STRUCTURES.~~

##### ~~12.1 DISCONTINUED NONCONFORMING USE.~~

~~If a nonconforming use is discontinued for a period of twelve (12) months, any future use of the building, structure, or property shall conform to this ordinance.~~

##### 12.1 APPLICABILITY.

This section applies to a use of a dwelling, building, or parcel of land that existed lawfully before the existing zoning ordinance was enacted or amended, but that does not conform to the allowed uses in the current ordinance.

##### 12.2 GENERAL RULE.

- (1) The continuance of the lawful use of any building, premises, structure, or fixture for any trade or industry for which such building, premises, structure or fixture is used at the time that the ordinance takes effect may not be prohibited.
- (2) The continuance of the nonconforming use of a temporary structure is prohibited.
- (3) If the nonconforming use is discontinued for a period of 12 months, any future use of the building, premises, structure, or fixture shall conform to the ordinance.

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(4) A manufactured home community licensed under s.101.935, Stats, that is a nonconforming use continues to be a nonconforming use notwithstanding the occurrence of any of the following activities within the community:

- a. Repair or replacement of homes.
- b. Repair or replacement of infrastructure.

NOTE: Under general zoning any change of use must meet underlying zoning provisions.

### **13.0 NONCONFORMING STRUCTURES.**

#### **~~12.2~~13.1 APPLICABILITY.**

For the purposes of this ordinance a nonconforming structure is a dwelling or other building that existed lawfully before the current Shoreland Protection Ordinance was enacted or amended, but that does not conform with one or more of the development regulations in the current Shoreland Protection Ordinance. This definition does not include exempt structures, structures placed by a variance, illegally built structures, or structures that conform with the development regulations in this ordinance.

#### **~~12.3~~13.2 MAINTENANCE, REPAIR, REPLACEMENT, OR VERTICAL EXPANSION OF NONCONFORMING STRUCTURES.**

An existing nonconforming structure that was lawfully placed when constructed, but that does not comply with the required shoreland setback and/or drainageway and wetland setback, may be maintained, repaired, replaced, restored, rebuilt, or remodeled without changing the structure's status as a nonconforming structure and without obtaining a land use permit under Section 11, if the activity does not expand the footprint of the nonconforming structure. Further, an existing structure that was lawfully placed when constructed, but that does not comply with the required shoreland setback, may be vertically expanded without changing the structure's status as a non-conforming structure and without obtaining a land use permit under Section 11, unless the vertical expansion would extend more than thirty-five (35) feet above grade level. See Section 10 for height measurement. Expansion of a structure beyond the existing footprint may be allowed if the expansion is necessary to comply with applicable State or Federal regulations. Structures qualify for the allowances above if the maintenance, repair, replacement, restoration, rebuilding, remodeling, or vertical expansion does not change the function, purpose, or use of the structure. For example a deck or patio may be replaced with a deck or patio, however, a deck or patio may not be vertically expanded so as to include a roof, screening, walls or any other

appurtenances that would alter the function, purpose, or use of the structure.

- (1) Conflict and interpretation. Section ~~13.2~~~~42.3~~ of this ordinance does not eliminate the obligation to obtain any other permit, aside from a permit required under Section 11, which may be required to complete maintenance, repair, replacement, or vertical expansion of a nonconforming structure under this ordinance or any other applicable, local, State or Federal regulation, including, for instance, permits under Section 8.4 of this ordinance. It is the responsibility of the property owner to ensure that all other required permits are obtained and that all other ordinance standards are complied with prior to the start of construction.
- (2) For the purposes of replacing or reconstructing a nonconforming structure with walls, the footprint shall not be expanded by enclosing the area that is located within the horizontal plane from the exterior wall to the eaves projected to natural grade. This constitutes a lateral expansion under ch. NR 115 Wis. Adm. Code and would need to follow Section ~~42.4~~~~13.3~~.

#### ~~42.4~~~~13.3~~ **LATERAL EXPANSION OF NONCONFORMING PRINCIPAL STRUCTURE WITHIN THE SETBACK.**

An existing nonconforming principal structure that was lawfully placed when constructed, but that does not comply with the required building setback per Sections 6.1, may be expanded laterally (expansion may include a deck or patio; however, the deck or patio may not be considered for vertical expansion allowed under Section ~~42.3~~~~13.2~~) provided that all of the following requirements are met:

- (1) The use of the structure has not been discontinued for a period of twelve (12) months or more, if a nonconforming use.
- (2) The existing principal structure is at least thirty-five (35) feet from the ordinary high-water mark.
- (3) Lateral expansions are limited to a maximum of two hundred (200) square feet over the life of the structure. No portion of the expansion may be any closer to the ordinary high-water mark than the closest point of the existing principal structure.
- (4) The County shall issue a land use permit that requires a mitigation plan that shall be approved by the County and implemented by the property owner by the date specified in the land use permit. The mitigation plan shall meet the standards found in Section ~~15~~~~4~~.
- (5) All other provisions of the Shoreland Protection Ordinance shall be met.

#### ~~42.5~~~~13.4~~ **EXPANSION OF A NONCONFORMING PRINCIPAL STRUCTURE BEYOND SETBACK.**

An existing principal structure that was lawfully placed when constructed, but that does not comply with the required building setback under Sections 6.1, may be expanded horizontally, landward, or vertically provided that the expanded area meets the building setback requirements per Section 6.1 and that all other provisions of the Shoreland Protection Ordinance are met. A mitigation plan is not required solely for expansion under this paragraph, but may be required per Section 9.

**~~42.6~~13.5 RELOCATION OF NONCONFORMING PRINCIPAL STRUCTURE.**

An existing principal structure that was lawfully placed when constructed, but that does not comply with the required building setback per Section 6.1, may be relocated on the property provided all of the following requirements are met:

- (1) The use of the structure has not been discontinued for a period of twelve (12) months or more, if a nonconforming use.
- (2) The existing principal structure is at least thirty-five (35) feet from the ordinary high-water mark.
- (3) No portion of the relocated structure is located any closer to the ordinary high-water mark than the closest point of the existing principal structure.
- (4) The County determines that no other location is available on the property to build a principal structure of the same footprint or smaller than the structure proposed for relocation that will result in compliance with the shoreland setback requirement per Section 6.1.
- (5) The County shall issue a land use permit that requires a mitigation plan that shall be approved by the County and implemented by the property owner by the date specified in the land use permit. The mitigation plan shall:
  - a. meet the standards found in Section ~~15~~4.;
  - b. include enforceable obligations of the property owner to establish or maintain measures that the County determines are adequate to offset the impacts of the permitted expansion on water quality, near-shore aquatic habitat, upland wildlife habitat and natural scenic beauty;
  - c. the mitigation measures shall be proportional to the amount and impacts of the replaced or relocated structure being permitted;
  - d. the obligations of the property owner under the mitigation plan shall be evidenced by an instrument recorded in the office of the County Register of Deeds.
- (6) All other provisions of the Shoreland Protection Ordinance shall be met.

**~~42.7~~13.6 CHANGE IN USE.**

The use of a nonconforming accessory structure may not be changed so as to convert it to the principal structure on the property unless the structure meets all applicable provisions of the ordinance for a principal structure, including, but not limited to, the shoreland setback.

#### **14.0 ~~VARIED~~-~~VARIANCED~~ AND VIOLATING STRUCTURES**

**13.0**

##### **~~13.1~~14.1 MAINTENANCE, REPAIR, REPLACEMENT, RESTORATION, REBUILDING, REMODELING, OR VERTICAL EXPANSION OF STRUCTURES THAT WERE AUTHORIZED BY VARIANCE.**

A structure, of which any part has been authorized to be located within the shoreland setback area by a variance granted before July 13, 2015, may be maintained, repaired, replaced, restored, rebuilt, or remodeled, [without obtaining a land use permit under Section 11](#), if the activity does not expand the footprint of the authorized structure. Additionally, the structure may be vertically expanded unless the vertical expansion would extend more than thirty-five (35) feet above grade level. An expansion of a structure beyond the existing footprint is permitted if the expansion is necessary to comply with applicable State or Federal requirements. Structures qualify for the allowances above if the maintenance, repair, replacement, restoration, rebuilding, remodeling, or vertical expansion does not change the function, purpose, or use of the structure. For example a deck or patio may be replaced with a deck or patio, however, a deck or patio may not be vertically expanded so as to include a roof, screening, walls, or any other appurtenances that would alter the function, purpose, or use of the structure.

- (1) Conflict and interpretation. Section ~~13.1~~14.1 of this ordinance does not eliminate the obligation to obtain any other permit, aside from a permit required under Section 11, which may be required to complete maintenance, repair, replacement, restoration, rebuilding, remodeling or vertical expansion of a structure placed by variance before July 13, 2015 under this ordinance or any other applicable local, State or Federal regulation, including, for instance, permits under Section 8.4 of this ordinance. It is the responsibility of the property owner to ensure that all other required permits are obtained and that all other ordinance standards are complied with prior to the start of construction.
- (2) For the purposes of replacing or reconstructing a structure with walls that was authorized by a variance granted before July 13, 2015, the footprint shall not be expanded by enclosing the area that is located within the horizontal plane from the exterior wall to the eaves projected to natural grade.

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~~(2)~~(3) Any conditions placed on a previously granted variance remain binding and thus may override allowances in Section 14.1 in part or in whole depending on the specific details of the condition(s).

**~~13.2~~14.2 MAINTENANCE, REPAIR, REPLACEMENT, RESTORATION, REBUILDING, OR REMODELING OF VIOLATING STRUCTURES.**

A structure that is in violation of this ordinance that has been in place for greater than ten (10) years and that the County has not commenced enforcement action against may be maintained, repaired, replaced, restored, rebuilt, or remodeled if the activity does not expand the three dimensional building envelope of the authorized structure. The property owner shall bear the burden of proof to prove that the structure has been in place for greater than ten (10) years. Structures qualify for the allowances above if the maintenance, repair, replacement, restoration, rebuilding or remodeling does not change the function, purpose, or use of the structure. For example a deck or patio may be replaced with a deck or patio, however an existing screened or open sided structure may not be enclosed as it will change the function, purpose, and use of the structure.

- (1) Conflict and interpretation. Section ~~13.2~~14.2 of this ordinance does not eliminate the obligation to obtain any other permit, aside from a permit required under Section 11, which may be required to complete maintenance, repair, replacement, restoration, rebuilding or remodeling of a structure placed in violation of this ordinance but that has been in place greater than ten (10) years and that the County has not commenced enforcement action against or any other applicable local, State or Federal regulation, including, for instance, permits under Section 8.4 of this ordinance. It is the responsibility of the property owner to ensure that all other required permits are obtained and that all other ordinance standards are complied with prior to the start of construction.
- (2) For the purposes of replacing or reconstructing a violating structure with walls, the footprint shall not be expanded by enclosing the area that is located within the horizontal plane from the exterior wall to the eaves projected to natural grade.

~~(2)~~—

**~~14.0~~15.0 MITIGATION.**

**15.1 PURPOSE.**

The purpose of mitigation is to establish and maintain measures adequate to offset the impacts of development on water quality, near-shore aquatic habitat, upland wildlife habitat, and natural scenic beauty.

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## **15.2 APPLICABILITY.**

Before a land use permit is issued that requires mitigation under Sections 6.1(1)(b), 9.4, ~~12-4~~13.3, or ~~12-6~~13.5, the property owner must submit a complete land use permit application to the Planning and Zoning Director that has been reviewed and approved by the Waupaca County Land and Water Conservation Department. The application shall include the following:

- (1) A site plan that includes and conforms with the following proposed mitigation measures;
  - a. The site plan shall be designed and implemented to restore natural functions lost through development and human activities.
  - b. The mitigation measures shall be proportional in scope to the impacts on water quality, near-shore aquatic habitat, upland wildlife habitat, and natural scenic beauty.
- (2) An implementation schedule and enforceable obligation on the property owner to establish and maintain the mitigation measures.
  - ~~a.~~ The enforceable obligations shall be evidenced by an instrument recorded in the office of the Register of Deeds.

## **14.115.3 MITIGATION PRACTICES.**

- (1) The following mitigation practices are mandatory for all projects requiring mitigation:
  - a. The associated privately owned wastewater treatment system must be evaluated and upgraded as appropriate; and
  - b. Standard erosion and storm water runoff control measures must be implemented and all mitigation activities shall comply with Section 7 and 8 regarding land disturbing activities.
- (2) For projects requiring mitigation under Sections ~~12-4~~13.3 and ~~12-6~~13.5 the property owner shall choose at least two (2) points from the following mitigation practices. For projects requiring mitigation under Section 9.4 the property owner shall choose one (1) point from the following mitigation practices. The property owner may use current equal practices to obtain the necessary points.
  - a. Restore and maintain native vegetation and water quality functions of the shore buffer area within thirty-five (35) feet of the ordinary high-water mark, one (1) point. Restoration of native vegetation shall be consistent with the standards set forth in Wisconsin Biological Technical Note 1: Shoreland Habitat, or successor publication.

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- b. Restore and maintain native vegetation and water quality functions of the shore buffer area within seventy-five (75) feet of the ordinary high-water mark, two (2) points. Restoration of native vegetation shall be consistent with the standards set forth in Wisconsin Biology Technical Note 1: Shoreland Habitat, or successor publication.
  - c. Install a rain garden designed either by a professional engineer or the Waupaca County Land & Water Conservation which is reviewed and approved by the Waupaca County Land & Water Conservation and designed to infiltrate all runoff from the applicable project area and, where applicable, all runoff from the area equivalent to the impervious surface coverage for a one (1) inch rain event occurring over a twenty-four (24) hour period, one (1) point.
    - (1) A rain garden required to serve as a mitigation practice shall meet the standards specified in the Wisconsin Department of Natural Resources' Conservation Practice Standard: Rain Garden 1009, or successor publication. Alternative designs may be approved by the Waupaca County Land & Water Conservation Department where unique site characteristics or limitations apply.
  - d. Install an infiltration system designed by a professional engineer that complies with Adm. Code SPS 382.365 which is reviewed and approved by the Waupaca County Land & Water Conservation and designed to infiltrate all runoff from the applicable project area for a one (1) inch rain event occurring over a twenty-four (24) hour period, two (2) points.
  - e. Permanent removal of all nonconforming accessory structures, if any exist on the property, one (1) point.
  - f. Implement other practices as agreed upon by the Planning and Zoning Director. Examples may include replacement of seawalls for shoreline protection with bioengineering techniques, removal of artificial sand beaches, water diversions, rain gutters and other erosion control practices.
- (3) For projects requiring mitigation under Section 6.1(1)(b), the property owner shall develop a plan that will be reviewed and approved by the Waupaca County Land and Water Conservation to preserve or establish a vegetative buffer zone that covers at least seventy percent (70%) of the half of the shoreland setback area that is nearest to the water.

~~15.0~~16.0 **ADMINISTRATIVE PROVISIONS.**

~~15.1~~16.1 **PLANNING AND ZONING DIRECTOR.**



The Planning and Zoning Director shall have the following duties and powers:

- (1) Establish a system of permits for new construction, development, reconstruction, structural alteration, or moving of buildings and structures in accordance with the provisions of this chapter. A copy of applications shall be required to be filed in the office of the Planning and Zoning Director, unless prohibited by s. 59.692(1k), Stats.
- (2) Establish regular inspection of permitted work in progress to insure conformity of the finished structures with the terms of the ordinance.
- (3) Keep a complete record of all proceedings before the Board of Adjustment and Planning and Zoning Committee.
- (4) Submit written notice to the appropriate office of the Department at least ten (10) days prior to any hearing on a proposed variance or conditional use permit, appeal for a map or text interpretation, map or text amendment, and copies of all proposed land divisions submitted to the County for review under Section 4.0.
- (5) Submit to the appropriate office of the Department, within ten (10) days after grant or denial of any decision on a variance, conditional use permit, or appeal for a map or text interpretation, and any decision to amend a map or text of an ordinance.
- (6) Maintain mapped zoning districts and the recording, on an official copy of such map, of all district boundary amendments.
- (7) Establish a procedure for the prosecution of violations of the Shoreland Protection Ordinance.
- (8) Any person may submit to the Planning & Zoning Director or designee, in writing, a request for interpretation of this Ordinance. Any written request submitted shall include the appropriate fee as may be established by the County from time to time. The Planning & Zoning Director or designee, after consulting with Corporation Counsel, shall prepare a written response to any such request within thirty (30) days of receipt of the request and present such response to the Planning & Zoning Committee for approval at its next meeting. The Planning & Zoning Committee shall act on the proposed response by either approving or modifying the response. The Planning & Zoning Committee's response shall be provided to the requesting person and, in addition, if the response relates to the allowable (permitted, conditional or prohibited) use of a parcel, a copy of the written response shall be mailed via U.S. Regular Mail to the owners of record of properties within three hundred (300) feet of the parcel involved in the written response. In interpreting this Ordinance, the Planning & Zoning Director or designee shall

give effect to the terms of this Ordinance and the intent of the provisions to be interpreted. The Planning & Zoning Director or designee shall maintain a written record of all previous interpretations that remain applicable. All interpretations provided under this section are appealable to the Board of Adjustment pursuant to the process detailed in Section 14.4 of Chapter 34 Waupaca County Zoning Ordinance provided such appeal is commenced within thirty (30) days from the date of mailing of such interpretation.

~~(8)~~(9) Submission of copies of all proposed land divisions to the appropriate department staff within 10 days after they are submitted to the county for review under Section 4.

#### ~~15.2~~16.2 **CONDITIONAL USE PERMITS DECISIONS.**

Certain uses are of such special nature and their effects are so dependent upon specific circumstances as to make impractical the determination in advance of where and when and under what conditions they should be permitted. A conditional use must be identified as a conditional use and authorized in this ordinance or as a conditional use in the applicable base zoning district as designated in Chapter 34, Waupaca County Code of Ordinances, to be permitted in areas regulated under this ordinance. Conditional uses may be permitted only upon approval by the Planning and Zoning Committee. The approval process for a Conditional Use permit shall follow the process set forth in Section 14.5 of Chapter 34 Waupaca County Zoning Ordinance.

#### ~~15.3~~16.3 **REZONE REVIEW PROCESS.**

Waupaca County's process for each amendment to the Shoreline Zoning Map (rezoning) is as directed by Wisconsin Statutes Section 59.69 and Section 14.5 of Chapter 34 Waupaca County Zoning Ordinance.

#### ~~15.4~~16.4 **GENERAL OPERATING RULES FOR THE BOARD OF ADJUSTMENT**

The general operating procedures for the Board of Adjustment shall be processed by the provisions set forth in Section 14.04 of Chapter 34 Waupaca County Zoning Ordinance.

#### ~~15.5~~16.5 **FEES**

Fees may be changed by action of the Planning and Zoning Committee and notification to the County Board. Any such change of fees is effective upon posting of the new County Fee Schedule in the Planning and Zoning Office after action by the Planning and Zoning Committee and notification to the County Board. Fees shall be established for the following:

- (1) Zoning/Land Use permits;
- (2) Mitigation;

- (3) Planned Unit Development reviews;
- (4) Public hearings;
- (5) Legal notice publications;
- (6) Conditional Use permits;
- (7) Variances;
- (8) Administrative appeals;
- (9) Treated Impervious Surface review;
- (10) Other duties as determined by the County Board.

Fees shall be doubled if work is started before the permit is issued.

#### ~~16.0~~ **17.0 CHANGES AND AMENDMENTS.**

The County Board may from time to time, alter, supplement, or change the regulations contained in this ordinance in accordance with the requirements of s. 59.69(5)(e), Wis. Stats, ch. NR 115, Wis. Adm. Code and this ordinance where applicable.

#### ~~16.1~~ **17.1 AMENDMENTS.**

Amendments to this ordinance may be made on petition of any interested party as provided in s. 59.69(5), Wis. Stats.

#### ~~16.2~~ **17.2 SHORELAND WETLAND MAP AMENDMENTS.**

Every petition for a shoreland-wetland map amendment filed with the County Clerk shall be referred to the Planning and Zoning Committee. A copy of each petition shall be provided to the appropriate office of the Department within five (5) days of the filing of the petition with the County Clerk. Written notice of the public hearing to be held on a proposed amendment shall be provided to the appropriate office of the Department at least ten (10) days prior to the hearing.

- (1) A copy of the County Board's decision on each proposed amendment shall be forwarded to the appropriate office of the Department within ten (10) days after the decision is issued.

#### ~~17.0~~ **18.0 ENFORCEMENT AND PENALTIES.**

The enforcement and penalties of any violation(s) of this ordinance shall be processed by the provisions set forth in Section 14.7 of Chapter 34, Waupaca County Zoning Ordinance.

**~~47.4~~18.1 STATUTE OF LIMITATIONS.**

An enforcement action may not be commenced against a person who owns a building or structure that is in violation of this ordinance if the building or structure has been in place for more than ten (10) years. The property owner shall bear the burden of proof to prove that the structure has been in place for greater than ten (10) years.

**~~48.0~~19.0 DEFINITIONS.**

**~~48.4~~19.1 INTERPRETATIONPURPOSE:**

For the purpose of administering and enforcing this ordinance, the terms or words used herein shall be interpreted as follows: Words used in the present tense include the future; words in the singular number include the plural number; and words in the plural number include the singular number. The word "shall" is mandatory, not permissive. Words used in this Shoreland Protection Zoning Ordinance shall be defined first by referring to this Ordinance. If this Ordinance does not contain a definition for the word or words, then the word or words shall be defined in a common English dictionary used by the Zoning Administrator. All distances, unless otherwise specified, shall be measured horizontally.

**~~48.2~~19.2 TERMS:**

The following terms used in this ordinance mean:

- (1) "Access and Viewing Corridor" means a strip of vegetated land that allows safe pedestrian access to the shore through the vegetative buffer zone.
- (2) "Boathouse" means a permanent structure used solely for the storage of watercraft and associated materials for noncommercial purposes.
- (3) "Building Envelope" means the three dimensional space within which a structure is built.
- (4) "Conditional Use" means a use which is permitted by this ordinance provided that certain conditions specified in the ordinance are met and that a permit is granted by the Planning and Zoning Committee.
- (5) "Condominium" A form of ownership combining individual unit ownership with shared use and ownership of common property or facilities, established in accordance with Wis. Stats. Chapter 703. Common areas and facilities are owned by all members of the condominium association on a proportional, undivided basis. A condominium is a legal form of ownership, and not a specific building type or style.
- (6) "Density" means square feet of land per dwelling unit.

- (7) "Department" means the Department of Natural Resources.
- (8) "Development" means any man-made change to improved or unimproved real estate, including, but not limited to, the construction or replacement of buildings, structures or accessory structures; the construction of additions or structural alterations to buildings, structures, or accessory structures; increase in impervious surface areas; alteration or replacement of impervious surface areas; the placement of mobile homes; ditching, lagooning, dredging, filling, grading, paving, excavation or drilling operations, and the deposition of earthen materials.
- (9) "Drainage System" means one or more artificial ditches, tile drains, or similar devices which collect surface runoff or groundwater and convey it to a point of discharge.
- (10) "Drainage way or Non-Navigable Stream" means an area where the presence and action of water is evident by erosion or other easily recognized characteristics during the period when the ground is not covered with snow.
- (11) "Dwelling Unit" means a group of rooms constituting all or part of a dwelling, which are arranged, designed, used, or intended to use exclusively as living quarters for one family and not more than an aggregate of two (2) roomers, and which include complete kitchen facilities permanently installed.
- (12) "Existing Development Pattern" means that principal structures exist within 250 feet of a proposed principal structure in both directions along the shoreline.
- (13) "Filling and Grading" means any activity involving the disturbance, removal, or placement of earth.
- (14) "Floodplain" means the land which has been or may be hereafter covered by flood water during the regional flood. The floodplain includes the floodway and the flood fringe as those terms are defined in ch. NR 116, Wis. Adm. Code.
- (15) "Footprint" means the land area covered by a structure at ground level measured on a horizontal plane. The footprint of a residence or building includes the horizontal plane bounded by the furthest exterior wall projected to natural grade. For structures without walls (decks, stairways, patios, carports) – a single horizontal plane bounded by the furthest portion of the structure projected to natural grade.
- (16) "Generally Accepted Forestry Management Practices" means forestry management practices that promote sound management of a forest. Generally accepted forestry management practices include those practices

contained in the most recent version of the department publication known as Wisconsin Forest Management Guidelines and identified as PUB FR-226.

- (17) "Height" means the measurement of the vertical line segment starting at the lowest point of any exposed wall and its intersect with the ground to a line horizontal to the highest point of a structure.
- (18) "Human Habitation" means the act of occupying a structure as a dwelling or sleeping place, whether intermittently or as a principal residence.
- (19) "Hunting Blind" means a shelter, thirty-two (32) square feet or less, used solely for concealing a hunter during established hunting hours.
- (20) "Impervious Surface" means an area that releases as runoff all or a majority of the precipitation that falls on it, or any area not maintained as vegetative cover. "Impervious surface" excludes frozen soil but includes rooftops, sidewalks, driveways, parking lots, and streets unless specifically designed, permitted, constructed, and maintained to be pervious. Roadways as defined in s. 340.01(54) Wis. Stats. and sidewalks as defined in s. 340.01(58) Wis. Stats., are not considered impervious.
- (21) "Interested Party" means a person or legal entity with a right, claim, or other interest in a particular matter.
- (22) "Limited" means confined or restricted.
- (23) "Lot" means a described parcel of real estate which has a unique property tax number assigned by Waupaca County.
- (24) "Maintain" means to preserve or keep in a given existing condition.
- (25) "Mitigation" means balancing measures that are designed, implemented, and function to restore natural functions and values that are otherwise lost through development and human activities.
- (26) "Navigable waters" means Lake Superior, Lake Michigan, all natural inland lakes within Wisconsin and all streams, ponds, sloughs, flowages and other waters within the territorial limits of this State, including the Wisconsin portion of boundary waters, which are navigable under the laws of this State. Under s. 281.31(2)(d), Wis. Stats, notwithstanding any other provision of law or administrative rule promulgated thereunder, shoreland ordinances required under s. 59.692, Wis. Stats, and ch. NR 115, Wis. Adm. Code, do not apply to lands adjacent to:
  - (27) Farm drainage ditches where such lands are not adjacent to a natural navigable stream or river and such lands were not navigable streams before ditching; and

- (28) Artificially constructed drainage ditches, ponds, or stormwater retention basins that are not hydrologically connected to a natural navigable water body
- (29) "Ordinary High-Water Mark" means 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 characteristics.
- (30) "Parcel" means an existing or newly created ownership parcel delineated for tax or other purposes.
- (31) "Planning and Zoning Committee" means that committee or commission created or designated by the County Board under s. 59.69(2)(a), Wis. Stats, to act in all matters pertaining to County planning and zoning.
- (32) "Previously Developed" means a lot or parcel that was developed with a structure legally placed upon it.
- (33) "Regional Flood" means a flood determined to be representative of large floods known to have generally occurred in Wisconsin and which may be expected to occur on a particular stream because of like physical characteristics, once in every one hundred (100) years.
- (34) "Rebuild" means to build a structure again.
- (35) "Repair" means to restore to sound condition.
- (36) "Replace" means to put back in a previous place or position.
- (37) "Restore" means to bring back to an original state.
- (38) "Remodel" means to restore to a former interior, or improve the interior of a structure. Renovating or remodeling does not result in a substantial change in use of the subject area.
- (39) "Routine Maintenance of Vegetation" means normally accepted horticultural practices that do not result in the loss of any layer of existing vegetation and do not require earth disturbance.
- (40) "Shorelands" means lands within the following distances from the ordinary high-water mark of navigable waters: one thousand (1,000) feet from a lake, pond, or flowage; and three hundred (300) feet from a river, bayou, or stream, or to the landward side of the floodplain, whichever distance is greater.
- (41) "Shoreland Setback" also known as the "Shoreland Setback Area" means an area in a shoreland that is within a certain distance of the ordinary high-water

mark in which the construction or placement of structures has been limited or prohibited.

- (42) "Shoreland-Wetland District" means a zoning district, created as a part of this shoreland protection ordinance, comprised of shorelands that are designated as wetlands on the Wisconsin wetland inventory maps prepared by the Department.
- (43) "Structural Alteration" means any changes to an existing layout of space that will result in a change to the dimensions of a structure; involve the reconstruction, replacement or addition of exterior walls and/or foundation; or change the pitch of the existing roof.
- (44) "Structure" means anything constructed, erected, or placed on a property that has shape, form and utility and which is temporarily or permanently attached to or resting on or in the ground, riverbed, or lakebed. The term "structure" includes, but is not limited to: a principal structure or any accessory structure including a garage, shed, boathouse, sidewalk, stairway, walkway, patio, deck, retaining wall, porch, fire pit, buildings, mobile homes, vehicles and trailers not in use for transportation purposes, above ground storage tanks, gazebos, above and below ground swimming pools, satellite dishes larger than one (1) meter in diameter, fences, and towers. The term does not include filling or grading.
- (45) "Structure or Use, Accessory" means a subordinate structure or a use which is clearly incidental to, and customarily found in conjunction with, the principal structure or use to which it is related, and which is located on the same lot as the principal structure or use. The term accessory structure includes, but is not limited to: decks, patios, porches, sheds, and structures that have open or screened sides.
- (46) "Structure, Principal" means the main structure or structures on a lot intended for primary use as permitted by the regulations of the district in which it is or they are located.
- (47) "Structure, Nonconforming" means a dwelling or other building that existed lawfully before the current Shoreland Protection Ordinance was enacted or amended, but that does not conform with one or more of the development regulations in the current Shoreland Protection Ordinance. This definition does not include exempt structures, structures placed via a granted variance, illegally built structures, or structures that conform with the required shoreland setback.
- (48) "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 for a new lot.



- (49) "Unnecessary Hardship" means that circumstance where special conditions, which were not self-created, affect a particular property and make strict conformity with restrictions governing area, setbacks, frontage, height, or density unnecessarily burdensome or unreasonable in light of the purposes of this ordinance.
- (50) "Variance" means an authorization granted by the Board of Adjustment to construct or alter a building or structure in a manner that deviates from the dimensional standards of this ordinance.
- (51) "Vegetative Buffer Area" means the area of special regulation located within thirty-five feet of the ordinary high water mark where the removal and management of vegetation is limited.
- (52) "Vegetative Cover" means trees, shrubs, groundcovers, lawns, planting beds, etc; but does not include areas covered by structures such as decks and similar structures or paving blocks with inserted vegetation.
- (53) "Wetlands" means those areas where water is at, near, or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which have soils indicative of wet conditions.