

## ARTICLE VI. - SHORELANDS

Sec. 58-901. - State review and amendments within shorelands.

A copy of the applications for conditional use permits, variances and amendments within the shorelands and floodplain shall be forwarded to the state department of natural resources at least ten days prior to hearings on proposed shoreland variances, conditional use permits, appeals for map or text interpretation and map or text amendments. Copies of decisions on these matters shall also be submitted to the state department of natural resources within ten days after they are granted or denied.

(Ord. No. 76, § 24.03, 3-13-1984)

Sec. 58-902. - Jurisdictional area.

- (a) *Application of provisions in unincorporated areas of county.* All provisions of this chapter shall apply to the shoreland of navigable waters, as navigable waters are defined in Wis. Stats. § 281.31, in the unincorporated areas of the county, which are:
- (1) Within 1,000 feet of the ordinary high-water mark of navigable lakes, ponds or flowages. Lakes, ponds or flowages in the county shall be presumed to be navigable if they are listed in the state department of natural resources publication "Surface Water Resources of Waushara County," or are shown on the United States Geological Survey Quadrangle Maps or other zoning base maps which have been incorporated by reference and made a part of this article.
  - (2) Within 300 feet of the ordinary high-water mark of navigable rivers or streams, or the landward side of the floodplain, whichever distance is greater. Rivers and streams in the county shall be presumed to be navigable if they are designated as either continuous or intermittent waterways on the United States Geological Survey Quadrangle Maps or other zoning base maps which have been incorporated by reference and made a part of this article. Flood hazard boundary maps, or flood insurance study maps (or soil maps or other existing county maps used to delineate floodplain areas), which have been adopted by the county, shall be used to determine the extent of the floodplain of navigable rivers or streams in the county.
- (b) *Determination of navigability and ordinary high-water mark.* The county zoning administrator shall make the initial determination whether or not a body of water is navigable under the laws of the state. The county zoning administrator shall also make the initial determination of the location of the ordinary high-water mark. When questions arise, the zoning administrator shall contact the appropriate district department of natural resources office for a determination of navigability or ordinary high-water mark. When such determination is made, the department of natural resources shall submit a copy of the findings to the county zoning administrator who shall maintain a file on such determinations in the county zoning office. The zoning administrator may also work with a professional land surveyor as outlined in Wis. Stats. § 59.692(1h).
- (c) *Municipalities and state agencies regulated* Unless specifically exempted by law, all cities, towns, villages, and counties are required to comply with this article and obtain all necessary permits. State agencies are required to comply if Wis. Stats. § 1 3.48(13) applies. The construction, reconstruction, maintenance and repair of state highways and bridges by the state department of transportation are exempt when Wis. Stats. § 30.12(4)(a) applies.

(Ord. No. 76, § 3.01, 3-13-1984; Ord. No. 610, 4-18-2017)

Sec. 58-903. - General shoreland zoning provisions.

- (a) *Generally.* The zoning provisions of this chapter apply to the shoreland jurisdictional area as defined by subsections 58-902(a)(1) and (2). Additional restrictions may apply in the shoreland/wetland zone as provided in divisions 5 and 6, article IV of this chapter.
- (b) *Lot size regulations.* The following minimum lot sizes shall apply only if more restrictive than those established for the underlying zone:
  - (1) Lots served by public sanitary sewer shall have a minimum average width of 65 feet and a minimum width of 65 feet at the building line and at the ordinary high-water mark. The minimum lot area shall be 10,000 square feet.
  - (2) Lots not served by public sanitary sewer shall have a minimum average width of 100 feet and a minimum width of 100 feet at the building line and at the ordinary high-water mark. The minimum lot area shall be 20,000 square feet.
  - (3) A legally created lot within the shoreland area 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 code requirements.
- (c) *Substandard lots.* Substandard lots shall meet the requirements of subsection (b)(3) above if in any unzoned town, and subsection 58-823(c) where general zoning standards apply.
- (d) *Water setback.* All buildings and structures, except those enumerated in this subsection (d), shall be set back at least 75 feet from the ordinary high-water mark of navigable waters, unless there is at least one principal structure on either side of the applicant's lot, within 250 feet of the proposed site built to less than the required setback. In such case, the setback shall be the average of the nearest principal structure on each side of the proposed site. If there is no principal structure on one side of the proposed building site that lies within 250 feet, then the required setback of 75 feet shall be used to compute the average setback on that side. In no case shall averaging allow a setback of less than 35 feet from the ordinary high-water mark.
  - (1) All boathouses shall be set back a minimum of ten feet from the ordinary high-water mark or on steep slopes where a ten-foot lateral setback is more than two feet above the ordinary high-water mark, the point on the slope where it is also two feet above the ordinary high-water mark may be used as the closest setback point.
  - (2) Patios must be 75 feet from the ordinary high-water mark, whether poured-in-place, prefabricated patio block, brick or stone. The exact replacement of attached open decks and patios within the water setback may be permitted if in compliance with subsection 58-235(b)(3).
  - (3) Stairs and elevated walkways landward of the ordinary high-water mark are allowed within the required setback only when necessary to access the shoreline because of steep slopes, rocky or wet unstable soils, or other natural features, and only if the following conditions apply:
    - a. A maximum width of 60 inches (outside dimensions) is allowed. Maximum allowable width shall be measured perpendicular to the direction of travel.
    - b. Attached benches, seats, tables, etc., are prohibited.
    - c. Canopies and/or roofs are prohibited.
    - d. Stairways constructed of any material, including but not limited to, concrete, paver block, stone, or timbers that are at or below grade are prohibited. Stairways, shall be elevated

above the ground surface rather than being excavated. Sidewalks and walkways may be constructed of any material at or below grade provided no stairs are necessary to traverse the slope. Stairways, walkways and sidewalks established for the purposes of accessing boathouses, gazebos or other permitted buildings, or that are parallel with the water rather than perpendicular to the water shall be set back at least ten feet from the ordinary high-water mark.

- e. Landings are allowed when required for safety purposes and shall not exceed 40 square feet. A maximum width of 60 inches (outside dimensions) is allowed. Maximum allowable width shall be measured perpendicular to the direction of travel.
- (4) Sidewalks, filled paths and elevated stairs and walkways may be allowed within the 75-foot setback for access to buildings meeting the setback. A maximum width of 60 inches (outside dimensions) is allowed. Maximum allowable width shall be measured perpendicular to the direction of travel.
  - (5) Any stairs, sidewalks or elevated walkways landward of the ordinary high-water mark shall be constructed in such fashion and located so that the least amount of land disturbance and soil erosion shall occur, the least amount of vegetation removal is necessary and be no greater in length than the shortest distance necessary to gain direct access to the water or permitted or existing nonconforming structure. Such stairs, sidewalks, elevated walkways or filled paths, shall terminate once it reaches the ordinary high-watermark or the entrance to the permitted or existing nonconforming structure. A pier may extend from the stairs or elevated walkways beyond the ordinary high-water mark, provided that it meets the standards required by the state department of natural resources.
  - (6) Open structures in the shoreland setback area shall be as required by Wis. Stats. § 59.692(1v), and as described below:
    - a. The part of the structure that is nearest to the water is located at least 35 feet landward from the ordinary high-watermark.
    - b. The structure shall be located within the view corridor described in subsection 58-903(n).
    - c. The total floor area of all structures in the shoreland setback area on the property will not exceed 200 square feet. This calculation shall not include the area of any permitted or conforming boathouse, walkway or stairs.
    - d. The structure that is the subject of the request for a permit has no sides or has open or screened sides. The structure shall not be attached to any other structure unless the side of such structure at the point of attachment is open or screened.
    - e. The side yard shall be the minimum required in the specific zoning district.
    - f. Height of any structure allowed under this section shall comply with any restriction of the general zoning code (if applicable) in addition to the height limits under shoreland zoning.
    - g. Prior to issuance of a zoning permit for such structure, a vegetative buffer zone shall be established that covers at least 70 percent of the half of the shoreland setback area that is nearest the water. The definition of a vegetative buffer zone is an area along, and parallel to, the ordinary high-water mark, one-half of the distance from the water's edge landward to the building setback line, that is either undisturbed or restored with native vegetation that provides natural features and functions for fish and wildlife habitat, water quality protection, and natural scenic beauty. For the purposes of administering the provisions of this subsection, the standards contained in "NRCS Standard 643 A and Wisconsin Biology Technical Note #1 - Shoreland Habitat", shall be used as a guide in determining if such natural features and functions are sufficient. In addition to such provisions, the vegetative buffer zone shall provide the following:
      - 1. The vegetative buffer zone shall preserve or establish a full range of water quality, habitat and natural shoreline beauty protection functions and shall specifically provide measures

- i. To screen from view from the water all other structures within 300 feet of the ordinary high-water mark to the extent feasible; and
      - ii. To detain or infiltrate all runoff prior to leaving the buffer area.
    2. All vegetative buffer zones shall provide a tree canopy, shrub layer and groundcover.
    3. The buffer area shall be a no disturbance area as described in subsection 59-903(n).
    4. Placement of the structure is not authorized until the vegetative buffer zone has been established for at least three months.
    5. Any permit issued under this section shall not be valid until notice of its conditions is recorded by affidavit with the county register of deeds.
    6. Structures that, in the opinion of the land conservation and zoning department, are necessary to control shoreline erosion caused by wave or ice action on navigable waters are allowed within the required water setback. The design and construction techniques of said structures shall be approved by the land conservation and zoning department.
  - (7) All of the structures listed in subsections (d)(1) through (5) of this section located within 35 feet of the ordinary high-water mark shall be located within the view corridor described in subsection (n) of this section.
  - (8) Repairs, modifications or replacement of any of the structures listed in subsections (d)(6)a. through g. of this section, which existed lawfully at the time of the adoption of this Code and are located within 35 feet of the ordinary high-water mark, but located outside of the view corridor shall conform to subsection (s) of this section.
  - (9) In the case of a property that does not have a clearly defined view corridor, one may be established and identified based primarily on existing vegetation, but may also be based on the location of any existing structures within 35 feet of the ordinary high-water mark. All future structures and disturbances within 35 feet of the ordinary high-water mark shall be limited to that corridor.
  - (10) Broadcast signal receivers and satellite antenna dishes that are six feet or less in diameter are permitted within the required water setback.
  - (11) Utility transmission and distribution lines, pole, towers, water towers, pumping stations, well pumphouse covers, private on-site wastewater treatment systems that comply with Ch. SPS 383, devices or systems used to capture and treat runoff from impervious surfaces, and other utility structures that have no feasible alternative location outside of the minimum setback and that employ best management practices to infiltrate or to otherwise control stormwater runoff from the structure.
  - (12) Paths or roads that are necessary for public access or to carry out any other permitted activity of this Code, including but not limited to, wildlife habitat enhancement, or approved horticultural or silvicultural practices shall be permitted as necessary.
  - (13) Buildings and structures to be constructed or placed in a floodplain shall comply with the applicable requirements of chapter 18 of the Waushara County Floods Code.
  - (14) Existing structures that are exempt from the water setback as noted above, may be maintained, repaired, replaced, restored, rebuilt and remodeled provided the construction does not expand the footprint and does not go beyond the three-dimensional building envelope of the existing structure. Expansion beyond the existing footprint may be allowed if the expansion is necessary to comply with applicable state or federal requirements.
- (e) *Building elevation.* All structures intended for human habitation or occupancy shall have the lowest inhabitable floor constructed not less than two feet above the ordinary high-water mark or the regional flood elevation, whichever elevation is higher.

- (f) *Boathouses.* A single boathouse may be allowed for each buildable lot of record; provided that, such boathouse shall not contain plumbing or be used for human habitation. In addition, the following standards apply:
- (1) All boathouses shall be no more than one story. The wall height of any boathouse shall be a minimum of six feet and a maximum of ten feet in height.
  - (2) No decks, patio doors, fireplaces, or other structures associated with human habitation shall be attached to or made part of a boathouse
  - (3) All boathouses shall have pitched roofs ranging in pitch from a minimum of 4:12 (rise to run) to a maximum of 6:12 (rise to run).
  - (4) No boathouse shall exceed 180 square feet in area. Any overhang of a boathouse that exceeds 24 inches from the exterior wall shall be included in calculating this square footage requirement.
  - (5) All boathouses shall be set back a minimum of ten feet from the ordinary high-water mark, or on steep slopes where a ten-foot lateral setback is more than two feet above the ordinary high-water mark, the point on the slope where it is two feet above the ordinary high-water mark may be used as the setback point. Any stairway, walkway or sidewalk that accesses a boathouse shall also be set back at least ten feet from the ordinary high-watermark.
  - (6) No boathouse shall have any wall, door or access opening be more than one-third transparent. No transparent doors, windows or other openings are permitted on the water side of the boathouse.
  - (7) No boathouse shall have interior walls, insulation or plumbing
  - (8) Prior to the issuance of a land use permit for a boathouse, the landowner shall be required to execute a verified affidavit and restrictive covenant running with the land regarding the use of the accessory building for living purposes, meeting the standards described in section 58-231.
  - (9) Boathouses shall be contained entirely within the access and view corridor for a riparian parcel.
  - (10) The construction of any boathouse which extends wholly or in part beyond the ordinary high-water mark of any navigable waters is prohibited by this chapter.
  - (11) All boathouses shall comply with any other codes including all general zoning, and floodplain codes.
- (g) *Houseboats.* Houseboats stored above the ordinary high-water mark shall not be used for human habitation.
- (h) *Piers, docks, wharves, boat shelters and boat hoists.* Piers, docks, wharves, boat shelters and boat hoists extending below the ordinary high-water mark shall comply with Wis. Admin. Code ch. NR 326, and other applicable state or federal regulations.
- (i) *Obstructions of navigable waters.* No watercraft or float shall be anchored, moored, or attached to the shore in any manner that will obstruct or interfere with:
- (1) Ingress and egress to or from public boat launching sites, docks, parks, swimming beaches, or other public access points.
  - (2) The ingress or egress of adjacent riparian property owners to and from navigable waters.
  - (3) The free navigation of any river, canal, water channel or slip.
- U) *Dumps and sanitary landfills.* Dumps, sanitary landfills, junkyards and salvage yards are prohibited within the shorelands.
- (k) *Burning of sawdust.* The depositing or burning of sawdust is prohibited within 300 feet of navigable waters. All areas used for the burning of sawdust shall be surrounded by an unobstructed plowed firebreak 16 feet wide.

- (l) *Dumping and disposal.* The dumping or disposal of any fluid or viscous materials that are toxic, or in any manner would create a human health hazard including surface irrigation, lagooning or burial of sewage or other similar waste effluents or materials, is prohibited within 300 feet of navigable waters or within the floodplain or natural resource prevention zone. This provision does not include the spreading of fertilizer or the proper application of farm chemicals.
- (m) *Livestock housing.* Buildings, pens and structures used for the housing, sheltering or feeding of livestock shall be located, designed and constructed so as to prevent animal waste material from entering watercourses, waterways, or other navigable waters, and shall be located not less than 100 feet from navigable waters.
- (n) *Removal of shore cover.*
  - (1) The cutting or removal of woody perennial vegetation within the shorelands shall be carried out in a manner that will maintain or tend to improve water quality and preserve scenic beauty. Soil conservation and timber harvesting practices which are effective in controlling erosion and in preventing pollutants from entering navigable waters shall be used. These provisions shall not apply to the removal of shore cover for the sole purpose of improving trout habitat in designated Class I, II and III trout waters. Vegetation may not be removed outside of the view corridor, except for the removal of exotic or invasive species, damaged vegetation, vegetation that must be removed to control disease, or vegetation possessing an imminent safety hazard. Any removed vegetation shall be replaced by planting a comparable noninvasive species of vegetation in the same area.
  - (2) Slash material shall be disposed of in accordance with Wis. Stats. §§ 26.12(6) and (7).
  - (3) The cutting or removal of woody perennial vegetation within 35 feet of the ordinary high-water mark shall be prohibited, except as follows:
    - a. View corridor. The establishment of a view corridor is exempted from the provisions of removal of shore cover, providing that the combined width of all access and viewing corridors on all riparian lots or parcels under the same ownership does not exceed 35 percent of the shoreline frontage, as measured at the ordinary high-water mark. No filling, grading, lagooning, dredging, ditching or excavating is allowed within 35 feet of the ordinary high-water mark, except within this view corridor, and in accordance with subsection 58-903(p) herein.
    - b. Timber harvest is exempted from the provisions of this subsection (n)(3) if:
      - 1. Such activity complies with Wisconsin's Forestry Best Management Practices for Water Quality described in the field manual, published by the state department of natural resources (DNR);
      - 2. The lands on which such activity takes place are enrolled in a forest management plan approved by the DNR; and
      - 3. Such lands are located in a district which allows commercial timber harvest as a permitted use.
    - c. Agricultural cultivation is exempted from the provisions of this subsection (n) if:
      - 1. Such activity complies with best management practices for agriculture described in the field manual, published by the state department of agriculture;
      - 2. The lands on which such activity takes place are enrolled in a farm plan approved by the county land conservation and zoning department; and
      - 3. Such lands are located in a district which allows commercial agriculture as a permitted use.
  - (4) Any paths or roads permitted within the shoreland area shall be constructed to be effective in controlling erosion, and shall comply with the filling, grading, lagooning, dredging, ditching and excavating sections of this article. Any path, road or access constructed shall be constructed in

such a fashion and located so that the least amount of vegetation removal is necessary and be no greater in length than the shortest distance necessary to gain direct access to the water. Such path, road or access shall terminate once it reaches the ordinary high-water mark. A pier may extend from the path, road or access beyond the ordinary high-water mark; provided that, it meets the standards required by the state department of natural resources.

- (5) If any of the standards of this section are violated, the county shall seek, in addition to other penalties provided by this article, restoration of all the natural functions of the shoreline vegetation protection area in accordance with the standards contained in "NRCS Standard 643 A and Wisconsin Biology Technical Note #1 - Shoreland Habitat", and this Code as it pertains to the maximum access and viewing corridor width; or at a minimum restoration of the shoreline vegetation to the level that existed prior to the violation, in compliance with a plan prepared by a qualified professional and approved by the land conservation and zoning department. In reviewing the plan the land conservation and zoning department shall determine if such plan adequately screens uses from the water, maintains a stable bank, retards the flow of pollutants and protects aesthetic values. As part of restoration that may be required under this section because of a violation of these standards, or that may be required in other parts of this Code, or as a result of a condition of a decision of the planning and zoning committee, board of adjustments or the zoning administrator, a verified affidavit and restrictive covenant running with the land regarding this vegetation protection area shall be executed. Such affidavit and restrictive covenant running with the land shall be recorded in the register of deeds office for the county and shall be considered a restrictive covenant running with the land and shall inure to the benefit of the county, all abutting and contiguous properties to that of the subject property, as well as the residents of the county.
  - (6) If a principal building setback line is less than 75 feet from the ordinary high-water mark, then a vegetative buffer zone shall be established as described, but shall not be required closer than 15 feet to the principal structure.
  - (7) A land use permit is required for any cutting, removal or replacement of shoreline vegetation outside of the access and viewing corridor that is not specifically listed as an exemption in subsections (1) through (6) as noted above.
- (o) *Storage.* In addition to the other provisions of this code, storage within the shoreland area shall meet the following requirements unless otherwise specified:
- (1) *Accessory use.* All storage facilities shall be permitted only as an accessory use.
  - (2) *Grade.* Storage facilities shall not be less than two feet above the ordinary high-watermark except underground tanks.
  - (3) *Bulk materials.* Bulk materials, such as coal, sand, gravel, limestone or similar materials subject to erosion, shall be enclosed on three sides by a retaining wall in such manner to prevent erosion, and it shall be drained away from navigable water.
  - (4) *Indoor storage.* Petroleum products, chemicals and chemical compounds packaged in paper, cardboard, glass or metal which do not require outdoor storage, and plaster, lime and cement or similar products packaged in paper or cardboard containers shall be stored in an enclosed building when located within 300 feet of navigable waters.
  - (5) *Outdoor storage.* Petroleum products, chemicals, chemical compounds and inflammables packaged in any type of container or delivered in bulk which may not be stored indoors by reason of fire codes, insurance or bulk, when stored above the ground must have protective measures installed to prevent any spillage or leakage of the materials from entering any body of water or watercourse or must be stored in an underground tank.
- (p) *Filling, grading, lagooning, dredging, ditching and excavating.*
- (1) *General standards.* All filling, grading, lagooning, dredging, ditching and excavating within the required water setback, except for riprap and other waterline protection measures approved by the state department of natural resources and U.S. Army Corps of Engineers (regardless of

size) shall be reclaimed by revegetation. Earth disturbances within the required water setback shall not be allowed where the resulting slope would be too steep to be stabilized with vegetation. Earth disturbances within 35 feet of the ordinary high-water mark shall also conform to subsection 58-903(n), and shall be permitted only in association with a permitted structure, use or exemption listed herein. In calculating the square feet in area of any filling, grading, lagooning, dredging, ditching or excavating, areas that have been stabilized by adequate vegetation to the extent that the area is not subject to erosion and impervious areas that have adequate stormwater management practices installed shall not be included in these calculations. If a question arises, the land conservation and zoning department shall determine the adequacy of such vegetation or stormwater management practices. Filling, grading, lagooning dredging ditching or excavating which does not require a permit under subsections (p)(2) or (p)(3) is permitted in the shorelands, provided that:

- a. It is done in a manner designed to minimize erosion, sedimentation and impairment of fish and wildlife habitat.
  - b. Filling, grading, lagooning dredging ditching or excavating in the O-SW shoreland/wetland zone meets the requirements of section 58-393.
  - c. A state or federal permit has been obtained for any filling, grading lagooning dredging, ditching or excavating for which a state or federal permit is required and such activities are in full compliance with the terms of this article.
  - d. Such filling, grading, lagooning dredging, ditching or excavating is less than 2,000 square feet in area.
  - e. Such filling and grading done within the O-SW zone is done in accordance with the applicable sections of that zone.
- (2) *Land use permit required.* A land use permit is required for filling, grading, lagooning, dredging, ditching and excavating in the shoreland where such activity involves any filling or grading of any area which is within 300 feet of the ordinary high-water mark of a navigable water has both of the following:
- a. Surface drainage towards the navigable body of water; and
  - b. Involves a total area of between 2,000 and 10,000 square feet.
- (3) *Conditional use permit required.* A conditional use permit is required for filling, grading, lagooning, dredging, ditching and excavating in the shoreland where such activity involves any filling or grading of any area which is within 300 feet of the ordinary high-water mark and has both of the following:
- a. Surface drainage towards the navigable body of water; and
  - b. Involves a total area of greater than 10,000 square feet.
  - c. If the application for a conditional use permit includes area within the shorelands or floodplain, the department of natural resources shall be notified at least ten days prior to the date of such hearing.
  - d. The standards set forth in Wis. Stats. chs. 281 and 283, particularly as they relate to the avoidance or control of pollution, shall apply.
  - e. A copy of all decisions granting or denying applications for conditional use permits for property located in a floodplain or shoreland area shall be transmitted to the state department of natural resources within ten days after a conditional use permit decision has been made.
- (4) *Permit conditions.* Upon receipt of permit application under subsections (p)(2) or (p)(3) of this section, the zoning administrator shall submit such application to the county land conservation and zoning department technical staff for review and recommendations. Based upon the recommendations of the land conservation and zoning department technical staff and other



relevant information, the zoning administrator or planning and zoning committee may attach such conditions to the permit as it deems necessary to protect water quality and preserve floodplain storage capacity.

- (q) *Impervious surfaces.* Impervious surface standards are established to protect water quality and fish and wildlife habitat and protect against pollution of navigable waters. These impervious surface standards shall apply to the construction, reconstruction, expansion, replacement or relocation of any impervious surface within 300 feet of the ordinary high-water mark of any navigable waterway, and shall require all of the following:

- (1) *"Calculation of percentage of impervious surface."* Percentage of impervious surface shall be calculated by dividing the surface area of existing and proposed impervious surfaces on the portion of a lot or parcel that is within 300 feet of the ordinary high-water mark by the total area of the lot or parcel and multiplied by 100. All impervious surfaces on the lot or parcel that are deemed to be a public road or sidewalk shall be excluded from these calculations. All calculations shall be done by the landowner or their representative on forms furnished by the land conservation and zoning department, and shall be submitted to the land conservation and zoning department along with a copy of a survey or plat which clearly shows the total square footage of the parcel. If such a survey or plat cannot be furnished, or if all of the property irons on said survey or plat are not found, then it is the landowner's responsibility to have a survey done which clearly shows the total square footage of the parcel and all of the property irons clearly shown, and provide a copy of the survey to the land conservation and zoning department.

Impervious surfaces that are documented as meeting either of the following subsections (q)(1)a. and b. below, shall be excluded from the impervious calculations under this section:

- a. The impervious surface is treated by devices such as stormwater retention ponds, constructed wetlands, infiltration basins, rain gardens, bio-swales or other engineered systems approved by the land conservation and zoning department, and that have a verified maintenance agreement recorded with the deed to the property.
- 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, and this discharge is determined to be adequate and does not require maintenance as determined by the land conservation and zoning department. A permanent easement shall be recorded with the deed to the property to secure the area for infiltration of the runoff for the life of the impervious surface.
- (2) *"Impervious surface standard."* Up to 15 percent impervious surface is allowed on that portion of the lot or parcel that is within 300 feet of the ordinary high-water mark.
- (3) *"Maximum impervious surface."* Greater than 15 percent impervious surface, but less than 30 percent impervious surface on the portion of a lot or parcel that is within 300 feet of the ordinary high-water mark is allowed; providing that, a land use or conditional use permit is issued that requires a mitigation plan meeting the requirements of subsection (r) of this section.
- (4) *"Existing impervious surfaces."* For existing impervious surfaces that were lawfully placed when constructed but that do not comply with the standards in subsections (2) and (3) above, the property owner may do any of the following:
- a. Maintenance and repair of all impervious surfaces;
- b. Replacement of existing impervious surfaces with similar surfaces within the existing building envelope, providing all other provisions and setbacks of this Code are complied with;
- c. Relocation or modification of existing impervious surfaces with similar or different impervious surfaces; provided that, the relocation or modification does not result in an increase in the percentage of impervious surface that existed on January 1, 2012, and the

construction meets the applicable setback requirements in NR 115.05(1)(b), Wisconsin Administrative Code and all the provisions of chapter 58, Waushara County Zoning Code.

(r) *Mitigation plans.* Mitigation plans shall include all of the following:

- (1) Mitigation plans shall be approved by the county and implemented by the property owner within the life of the land use permit.
- (2) Mitigation plans shall include enforceable obligations of the property owner to establish and/or maintain measures that the county determines adequate to offset the impacts of the proposal on water quality, near shore aquatic habitat, upland wildlife habitat and natural scenic beauty.
- (3) The measures contained within the mitigation plan shall be proportional to the amount and impacts of the proposal being permitted.
- (4) The obligations of the property owner under the mitigation plan shall be evidenced by an instrument recorded in the office of the register of deeds.
- (5) For purposes of administration, and in order to meet the requirements of subsections (r)(2) and (3) above:
  - a. Mitigation plans for sites that have greater than 15 percent impervious surface, but less than 30 percent impervious surface on the portion of a lot or parcel that is within 300 feet of the ordinary high-water mark shall meet the requirements specified in appendix "A" of this Code, which is on file with the county zoning office.

(s) *Nonconforming structures.*

- (1) The following general provisions shall apply to all nonconforming structures within the shoreland area that do not meet the required water setback:
  - a. *"Continued use."* Any nonconforming structure which existed lawfully at the time of the adoption of the ordinance from which this chapter is derived or amendment thereto may be continued although such structure does not conform with the provisions of this chapter.
  - b. *"Maintenance repair, replacement and vertical expansion."* An existing structure that was lawfully placed when constructed but that does not comply with the required shoreland setback may be maintained, repaired, replaced, restored, rebuilt or remodeled 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 unless the vertical expansion would extend more than 35 feet in height as defined in this chapter. Expansion of the footprint may be allowed if the expansion is necessary to comply with state or federal requirements. All other requirements of this chapter must be complied with, and the use shall not be allowed to change with the expansion.
- (2) In addition to the general provisions listed in subsection (1) above, the following provisions shall also apply to all nonconforming structures within the shoreland area that do not meet required water setbacks:
  - a. *"Maintenance repair or replacement of nonconforming principal structure."* An existing principal structure that was lawfully placed when constructed but that is less than the required water setback may be maintained, repaired or replaced within its existing building footprint. Expansion of the footprint may be allowed if necessary to comply with applicable state or federal requirements.
  - b. *"Expansion of nonconforming principal structure within the setback."* An existing principal structure that was lawfully placed when constructed but that does not comply with the required water setbacks may be expanded laterally, provided that all of the following requirements are met:
    1. The use of the structure has not been discontinued for a period of 12 months or more if a nonconforming use.

2. The existing principal structure is at least 35 feet from the ordinary high-water mark.
  3. Lateral expansions are limited to a maximum of 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 structure. Proper verification of the size, location, height, use and dimensions of the nonconforming principal structure shall be made by department staff prior to commencement of the maintenance, repair or replacement, and those verified dimensions strictly adhered to as required by this Code.
  4. The county shall issue a permit that requires a mitigation plan that shall be approved by the county and implemented by the property owner within the life of the land use permit. The mitigation plan shall include enforceable obligations of the property owner to establish and/or maintain measures that the county determines adequate to offset the impacts of the proposal on water quality, near shore aquatic habitat, upland wildlife habitat and natural scenic beauty. The measures contained within the mitigation plan shall be proportional to the amount and impacts of the proposal being permitted. The obligations of the property owner under the mitigation plan shall be evidenced by an instrument recorded in the office of the register of deeds. For purposes of administration, and in order to meet the above requirements the mitigation plan shall meet the requirements specified in appendix "A" of this Code, which is on file with the county zoning office.
  5. All other provisions of applicable Waushara County Codes, including but not limited to, floodplain, sanitary, shoreland and zoning codes, shall be met.
- c. *"Expansion of nonconforming principal structures where all new construction will meet required setbacks, including the water setback."* An existing principal structure that was lawfully placed when constructed, and that does not comply with the required water setback, may be expanded horizontally, landward or vertically, provided that the expanded area meets all required setbacks, and provided that all of the following requirements are met:
1. The use of the structure has not been discontinued for a period of 12 months or more if a nonconforming use.
  2. All other provisions of applicable Waushara County Codes, including but not limited to, floodplain, sanitary, shoreland and zoning codes, shall be met.
- d. *"Relocation of nonconforming principal structure."* An existing principal structure that was lawfully placed when constructed but that does not comply with the required water setback 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 12 months or more if a nonconforming use.
  2. The existing principal structure is at least 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. Proper verification of the size, location, height, use and dimensions of the nonconforming principal structure shall be made by department staff prior to commencement of the replacement, and those verified dimensions shall be strictly adhered to as required by this Code.
  4. The relocated structure is limited to its existing building footprint and no increase in impervious surfaces is permitted, unless the increase in impervious surface complies with the provisions of subsection 58-903(q).
  5. The county determines that no other location is available on the property to construct a principal structure that can be contained within the existing building envelope and that will result in compliance with the required water setback.

6. The county shall issue a permit that requires a mitigation plan that shall be approved by the county and implemented by the property owner within the life of the land use permit. The mitigation plans shall include enforceable obligations of the property owner to establish and/or maintain measures that the county determines adequate to offset the impacts of the proposal on water quality, near shore aquatic habitat, upland wildlife habitat and natural scenic beauty. The measures contained within the mitigation plan shall be proportional to the amount and impacts of the proposal being permitted. The obligations of the property owner under the mitigation plan shall be evidenced by an instrument recorded in the office of the register of deeds. For purposes of administration and in order to meet the above requirements the mitigation plan shall meet the requirements specified in appendix "A" of this Code, which is on file with the county zoning office.
  7. All other provisions of applicable Waushara County Codes, including but not limited to, floodplain, sanitary, shoreland and zoning codes, shall be met.
- e. *"Replacement and/or vertical expansion of nonconforming principal structure within the setback."* An existing principal structure that was lawfully placed when constructed but that does not comply with the required water setback may be replaced and/or expanded vertically, provided that all of the following requirements are met:
1. The use of the structure has not been discontinued for a period of 12 months or more if a nonconforming use.
  2. No portion of the replaced and/or vertically expanded structure may be located any closer to the ordinary high-water mark than the closest point of the existing principal structure, and proper verification of the size, location, use and dimensions of the nonconforming principal structure is made by department staff prior to commencement of the vertical expansion, and those verified dimensions are strictly adhered to.
  3. Replacement and/or vertical expansion is limited to the existing building footprint with no increase in impervious surfaces, and to the height limitations in subsection 58- 903(1.)
  4. All other provisions of applicable Waushara County Codes, including but not limited to, floodplain, sanitary, shoreland and zoning codes, shall be met.
- f. *"Boathouses."* The maintenance and repair of nonconforming boathouses which extend beyond the ordinary high-water mark of any navigable waters shall be required to comply with Wis. Stats. § 30.121. If an existing boathouse has a flat roof, the flat roof may be used as a deck provided the roof area has no side walls or roof. A railing that meets DSPS standards may be installed for safety purposes
- g. Any structural alteration or repair to any nonconforming use or structure located within the floodplain shall comply with chapter 18 of this Code.
- h. An existing accessory building or structure that was lawfully placed when constructed but that does not comply with the required water setbacks of this Code may be maintained and repaired within its existing building envelope.
- i. Vertical expansion of structures granted a shoreland variance prior to July 13, 2015, shall be allowed to expand vertically provided all other provisions of this Code are complied with.
- (t) *Height limitations.* No construction is permitted which results in any structure or building taller than 35 feet within 75 feet of the ordinary high-water mark of any navigable waters.

(Ord. No. 76, § 3.02, 3-13-1984; Ord. No. 159, §§ 9-12, 6-9-1992; Ord. No. 183, § 1(3.02), 3-8-1994; Ord. No. 269, § 1(15, 16), 3-9-1999; Ord. No. 320, 5-8-2001; Ord. No. 396, 3-9-2004; Ord. No. 421, 4-12-2005; Ord. No. 438, 3-14-2006; Ord. No. 490, 2-12-2008; Ord. No. 532, 3-8-2011; Ord. No. 535, § 1, 10-18-2011; Ord. No. 541, 3-20-2012; Ord. No. 544, § 1, 4-17-2012; Ord. No. 583, 3-17-2015; Ord. No. 591, 3-15-2016; Ord. No. 610, 4-18-2017; Ord. No. 624, 3-20-2018)