

Shoreland Zoning Standards

You Can Help Shape Your Local Ordinance

While many Wisconsinites are enjoying this winter season, counties are planning ahead for spring, summer and fall when most will undergo the public process of updating their shoreland zoning ordinance to reflect the revised standards in Chapter NR 115 Wisconsin Administrative Code. Some standards in NR 115, such as the standard for minimum lot size, have not changed. Other standards are new or have changed in an effort to reflect how waterfront owners are utilizing their property and to balance those uses with the need for healthy lake and river ecosystems.

Opportunities for Adaptation

Though some standards in the revised NR 115 are objective and leave little room for flexibility, a number of the new standards are purposely broad to reflect the wide variety of conditions and ecosystems in Wisconsin lakes, streams and rivers, and to give each county more flexibility in adapting the ordinance to their specific conditions and needs. The impervious surface and mitigation standards are examples of two new standards in NR 115 that are wide-ranging and will require resolution within a county ordinance. Although these are new concepts to NR 115, it is important to note that these concepts are not new to shoreland zoning. Seventeen Wisconsin counties already regulate impervious surfaces and thirteen require mitigation for various activities within their shoreland zoning ordinance. All counties with the exception of Milwaukee and Menominee will need to incorporate the new rule standards no later than February 2012. Grants are available from the Department of Natural Resources (WDNR) to assist counties with ordinance adoption.

Impervious Surfaces

The impervious surface standards are one of the new standards in NR 115 that allows some flexibility for counties to adapt their ordinance to the conditions and ecosystems of their shoreland zones. An impervious surface

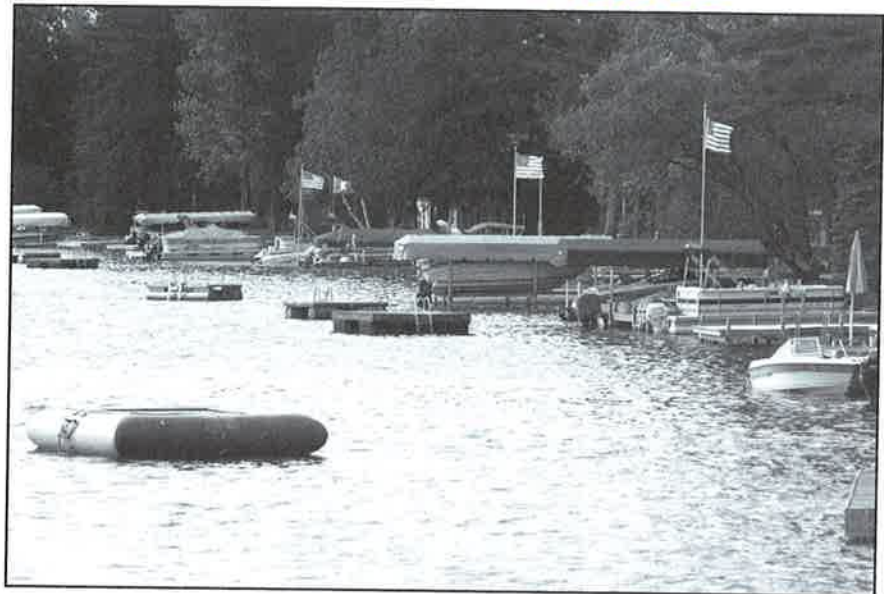


Photo by R. Korth

is defined in NR 115 as “an area that releases as runoff all or a majority of the precipitation that falls on it.” In other words, a majority of rain and snow runs off the surface rather than being absorbed into the soil beneath. The definition provides some examples of impervious surfaces as including rooftops, sidewalks, driveways, parking lots and streets, unless these areas are “designed, constructed, and maintained to be pervious.” Each county has the flexibility to identify those structures it believes are impervious, based upon the definition in NR 115, and to include standards for practices such as pervious pavers or pervious pavement systems. While some counties may choose to specify exactly what constitutes an impervious surface in their ordinance, others may choose to leave it more broad and decide on a case-by-case basis whether or not a structure meets the definition of an impervious surface.

In NR 115, properties within 300 feet of the ordinary high water mark may have up to 15% of their lot as an impervious surface. If a property currently exceeds 15% impervious surface coverage within 300 feet of the ordinary high water mark, there are no actions necessary in order to meet the standard. It is only when a property undergoes new development such as an addition, that the standard must be met. A property may exceed

How can building one garden shed or paving my driveway affect the health of my lake?

“A thing is right when it tends to preserve the integrity, stability and beauty of the biotic community. It is wrong when it tends otherwise.”

- Aldo Leopold





The intent of mitigation is to offset the impacts to water quality, near-shore aquatic habitat, upland habitat and natural scenic beauty from proposed construction projects within the shoreland zone.

15% with the new development, but not more than 30% impervious coverage within 30 feet of the ordinary high water mark. However, a plan must be developed and approved by the county that will serve to mitigate the environmental effects of the impervious surface.

Mitigation

Shoreland mitigation, which is a new requirement in NR 115, also provides some flexibility for counties to adapt their ordinance to the conditions and ecosystems of their shoreland zones. Mitigation is defined in NR 115.03 as “balancing measures that are designed, implemented and function to restore natural functions and values that are otherwise lost through development and human activities.” While NR 115 does not describe what the balancing measures should be, the intent of mitigation is to offset the impacts to water quality, near-shore aquatic habitat, upland habitat and natural scenic beauty from proposed construction projects within the shoreland zone. Further, NR 115 requires that the mitigation measures be proportional to the amount and degree of impacts from the proposed project.

Therefore, to meet the requirements under NR 115, each county will have to identify in their ordinance when mitigation is required, what mitigation measures are acceptable, the standards for each mitigation measure and how the county will determine whether the mitigation is proportional to the impacts of the proposed project. Thirteen counties already require mitigation. Here are some examples of

typical mitigation measures:

1. Restoration of the vegetative buffer zone,
2. Removal of existing nonconforming accessory structures, and
3. Implementation of stormwater management practices.

Although a county may adopt only one mitigation measure in its ordinance, the WDNR recommends that counties adopt a number of practices to create flexibility for unique situations or homeowner preferences, and to ensure that the mitigation measures are proportional to the impacts.

You Can Make A Difference!

While the WDNR will provide assistance to counties in interpreting rules and developing public outreach materials, it is important that you, as a lake and river enthusiast, get involved with your county’s ordinance amendment process. Thousands of you commented on and participated in the seven year rulemaking process for NR 115 and although finalization of the rule was a major step in protection of our natural resources, the work is not finished. Water lovers like you can influence how counties implement these impervious surface and mitigation standards of the new NR 115 by getting involved at the local level via public hearings or in local planning and zoning committees. To find out more about shoreland zoning go to <http://dnr.wi.gov/org/water/wm/dsfm/shore>. You may also want to check out the *Lake List*, a directory of Wisconsin lake organizations that can help you connect with a countywide lake organization in your area (go to <http://www.uwsp.edu/cnr/uwexlakes/lakelist/> and click on “County-wide/Regional” in the dropdown menu at the bottom of the page). Another excellent resource including ways to get involved in your county is on the Wisconsin Lakes web site at http://www.wisconsinlakes.org/local_shorelandzoning.html. Keep in mind that counties can exceed the state standards for protecting shorelands, as many currently do, to address local water resource needs. Examples of some of these innovative county codes and revision processes that effectively ensure long-term lake protection will be highlighted in the Spring 2011 edition of *Lake Tides*. 💧

By Heidi Kennedy, Shoreland Policy Coordinator, WI Dept. of Natural Resources

Water lovers like you can influence how counties implement these impervious surface and mitigation standards of the new NR 115 by getting involved at the local level via public hearings or in local planning and zoning committees.



NR 115 - Shoreland Zoning Working Our Way To Healthier Waters



The land surrounding our beautiful state waters is not only a means to an end; we don't just use it to get to the water. It's where we keep our homes – humans, animals and insects alike – it's where we picnic and walk with a friend, it's where memories are made and remembered. The shores of our lakes, rivers and streams are their security blanket, their shock absorber, and the people of Wisconsin believe it's worth keeping them healthy for the sake of our waters. One of the ways Wisconsin tries to accomplish this is through rules like NR 115 that help keep this "security blanket" strong.

Background

One of the major tools in caring for our shorelands is undergoing change. Shoreland development regulations are a major component of the state's "protect, conserve and restore" lake management strategy. While public ownership or conservation easements protect many miles of critical lake and river shorelands, private land owners (who may or may not be citizens) control what happens on the vast majority of this ecosystem. Many lake property owners are protecting and even restoring their shorelands voluntarily to ensure their lake's natural scenic beauty, minimize water quality impacts and provide important habitat. Unfortunately, not all waterfront owners share a conservation ethic regarding shorelands and many people underestimate the role shorelands play in healthy water resources. Shoreland development regulations provide a common minimum level of statewide lake protection by trying to reduce the negative environmental and aesthetic impacts associated with shoreland building and development projects.

What is going on now?

Wisconsin's Shoreland Protection Program provides the minimum requirements that counties must follow to ensure compliance with state statutes and administrative codes. After seven years of debate and public input, the key rule in this program, NR 115, was updated in 2010. Counties now have until February 2012 to modify their ordinances to comply with the new rule. In addition to the rule, the DNR has updated its model shoreland zoning

ordinance that provides an example of the language counties can use to make sure their changes are consistent with the new rule. The new language draws from existing county zoning codes that satisfy NR 115 and offers options for increased lake protection.

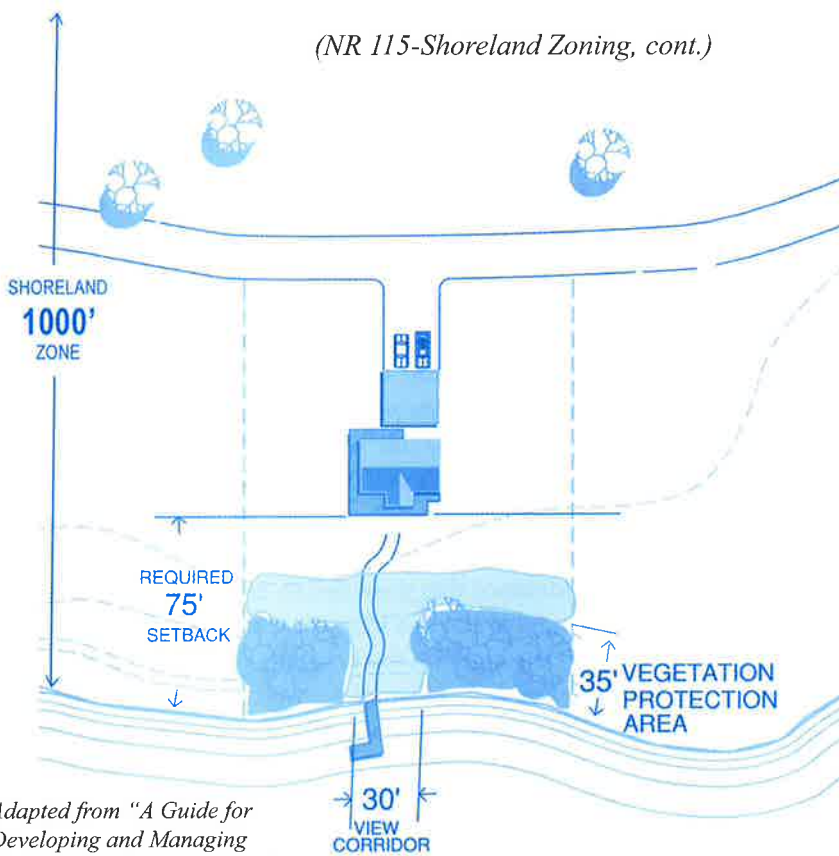
Shoreland Zoning is Required by Law

Section 281.31, of Wisconsin State Statutes, provides that shoreland subdivision and zoning regulations shall: "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 structure and land uses; and reserve shore cover and natural beauty." Other provisions of law require counties to implement these protections through shoreland zoning regulations for unincorporated areas as guided by the Department of Natural Resources. These 44-year-old laws have not changed, but the DNR has modernized its Administrative Code to guide how the law is implemented.

What exactly do counties have to do?

At a minimum, counties must revise their ordinances to meet or exceed the new standards identified in NR 115. Since the code replaces or modifies some of the old statewide standards, all current ordinances will need some modification. What counties do not need to do is simply repeal their current ordinance and adopt the new model. The fact is, since the DNR shared the original

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Adapted from "A Guide for Developing and Managing Shoreland in Burnett County"

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model ordinance with counties in the 1960s, many communities have developed their own rules to reflect a stronger local desire to protect lakes. In these cases, adoption of the model ordinance would be a step backward and inappropriate since many counties integrate shoreland development regulations with other land use, subdivision and building codes. Almost all counties have responded to requests from local people familiar with the nearby lakes and streams for some provisions in their local ordinances that are more restrictive than the state minimums. To keep their lakes healthy, counties may choose to retain their more restrictive provisions, or even use this opportunity to include more shoreland protection measures.

How does this affect homeowners?

None of the new rules immediately affect existing properties or structures, and until a county adopts a revised ordinance, their existing rules still apply. "Keep what you have" is one of the main points of the new NR 115. When a homeowner is considering a future change or expansion of their home or other structures in the shoreland zone, the new rules will likely mean more options and opportunities than are available today.

Some standards will remain the same. The shoreland zone is still 1,000 feet from lakes and 300 feet from rivers and streams. Homes must still be set back at least 75 feet from the water. Minimum lot size requirements remain at 20,000 square feet for homes with septic systems and 10,000 square feet for those served by municipal sanitary sewers.

Major changes to shoreland standards include:

Vegetation removal

There are more explicit standards limiting the removal of shoreland vegetation in new development. Previously the code allowed clearing most but not all shoreland vegetation. The new law requires the preservation of trees, shrubs and understory, eliminating existing "loopholes" that in effect allowed clearcutting.

Legal pre-existing (or nonconforming) structures

Expansion of an existing home closer than 75 feet from the water is allowable under the new NR 115 in some cases: a property owner can build a second story or otherwise add-on vertically, if their existing house is at least 35 feet back from the water. The new law also allows unlimited interior repairs and modifications. However, property owners expanding the physical footprint of a non-conforming structure will be required to offset or "mitigate" the environmental impact of the expansion.

Some shoreland standards are new:

Height restrictions

The new law limits the maximum vertical height of a shoreland structure to 35 feet. Previously there was no maximum. This provision protects the visual integrity and natural beauty of lakes and rivers.

Impervious surface restrictions

A new standard caps the total amount of hard or "impervious" surfaces such as roofs, pavement and decks allowed on shoreland property. The caps apply only to properties within 300 feet of lakes or rivers, and they do not affect existing property owners unless the owners seek to make changes that would cover up more land with hard surfaces. No limitations exist for additions or new buildings where the lot's impervious surfaces do not



exceed 15 percent of the total lot size. Where the sum total of impervious surfaces is between 15 percent and 30 percent of the lot size, property owners would be required to mitigate the environmental impact of their proposed project.

Why get involved locally?

Many counties in northern Wisconsin, and some in southern Wisconsin, have gone well above the minimum with their shoreland ordinances. In response to the building boom of the 1990s, the state supported counties with plans to protect their lakes through lake classification grants. Approximately 30 counties have participated in the program and 17 of them enacted deeper setbacks and larger minimum lot sizes than NR 115 requires for classes of smaller and more development-sensitive lakes, rivers and streams. That translates to some 8,300 smaller, lightly developed lakes, and thousands of miles of rivers and streams that are now permanently protected from over-development that could legally occur under state minimums. These waters will never see the density of development and the consequential impacts of shoreland development allowed on larger, somewhat more resilient lakes and waterways. Ideally, the new NR 115 provisions should not have any significant impact on the regulations in place for the more restrictive classifications.

The lakes need citizen advocates once again. Your ideas and points of view were crucial over the past years to fashion and revise the state standards. Now your time, talents and thoughts are needed to shape how this revised law will be implemented in your county and at your local lake. There are fears that some counties will use the guise of a new “state mandate” as an opportunity to repeal regulatory gains made through lake classification. “I don’t see that happening, though there could be a change in momentum when the issues come to the table in county committees,” says Earl Cook, President of the Wisconsin Association of Lakes who also served on the State’s NR 115 revision committee. “Hopefully, discussions will revolve around lake-healthy options as counties revise their ordinances.”

There are several different opportunities available for stakeholders to get engaged at the

What is Mitigation?

As you may have noticed, mitigation is a big deal in the new NR 115. It will be required when a lot is developed with hard impermeable or impervious surfaces (mostly roofs and pavement that sheds rather than absorbs rainfall), exceeding 15% of the property. No property may exceed 30% impervious surface. Though 30% and even 15% is high compared to what scientific research suggests to maintain healthy waters, the old rules had no limit on impervious surfaces. While 15% is the statewide minimum, counties may decide to require mitigation when a permit is required for any expansion or disturbance in the shoreland zone as long as it also clearly applies the 15% provision.

The new law requires counties to include a mitigation provision but does not prescribe the techniques or methods. Mitigation schemes already in place in some counties include planting a buffer, removing impervious surfaces in the buffer areas, like boat houses, sheds or patios, installing rain gardens and things as simple as redirecting downspouts away from the lake or toward side yard swales or wetlands.

Robert Korth



local level. The winter edition of *Lake Tides* will describe some of the specific questions that local ordinances must resolve, including a definition of what counts as impervious surface and detailed provisions for mitigation. In spring, we will be sharing examples of innovative county codes and revision processes that effectively ensure long term lake protection. In the meantime, check out the online resources available from UW-Extension Lakes (www.uwsp.edu/cnr/uwexplakes) and Wisconsin Lakes (www.wisconsinlakes.org). ♣

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- Earl Cook

By Carroll Schaal, Wisconsin Department of Natural Resources



