Using Shoreland Zoning to Protect Waterfront Property
Enjoying healthy lakes & rivers: Part of who we are in WI
1. Introductions
2. Shoreland zoning 101
3. Does shoreland zoning work? Lake quality in states with and without shoreland zoning
4. Recent research: How impervious surfaces impact fish, wildlife & waterfront property values
5. Shoreland zoning policy at the state level
6. Shoreland zoning ordinances and implementation at the county level
Shoreland zoning applies near lakes & rivers

Required in unincorporated areas
Optional in cities and villages
purposes of shoreland zoning include...

- Prevent and control water pollution
- Protect spawning grounds, fish and aquatic life
- Reserve shore cover and natural beauty
SHORELAND ZONING is in place to protect our lakes and rivers.

- Wisconsin Administrative Code NR 115 provides minimum standards for shoreland zoning.
Minimum WI shoreland standards (NR 115)

- Adopted in 1968
- Lot size
- Vegetation protection area (buffer)
- Shoreline setback
Does shoreland zoning work?

Statewide standards (Maine)

Maine requires that towns adopt a shoreland zoning ordinance at least as restrictive as the model ordinance developed by lake scientists with the State of Maine. This model ordinance includes: a 100 foot setback for buildings, and keeping trees and low growing plants and shrubs in place between buildings and the lake.

No statewide standards (Vermont)

Vermont has no minimum shoreland standards, leaving the responsibility to craft an ordinance to town officials. Often all of the trees, shrubs and groundcover is removed near the water’s edge, the lot is leveled, and buildings, driveways, and patios are built close to the shoreline. Seawalls are sometimes installed to stabilize the banks that were destabilized by the removal of the natural trees and shrubs.
Does shoreland zoning work?

- From 2005 – 2008 in Vermont studied:
  - 234 undeveloped reference sites
  - 151 unbuffered developed lakeshore sites

- In 2011 in Maine studied:
  - 13 undeveloped reference sites
  - 36 developed sites that met shoreland zoning standards
Can we develop a lakeshore and protect the lake?

<table>
<thead>
<tr>
<th>9 measures of lake health</th>
<th>Statewide shoreland zoning standards (Maine)</th>
<th>No statewide shoreland zoning standards (Vermont)</th>
<th>Why are these measures important?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shoreline trees</td>
<td>✔</td>
<td></td>
<td>Trees, shrubs and ground cover near the shoreline provide:</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>- Erosion control</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>- Shade in water near shore</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>- Food for deer and other wildlife</td>
</tr>
<tr>
<td>Large woody structure</td>
<td>✔</td>
<td></td>
<td>Fallen trees in the water (woody structure) provide:</td>
</tr>
<tr>
<td>Medium woody structure</td>
<td>✔</td>
<td></td>
<td>- Cover for fish to hide from birds and bigger fish</td>
</tr>
<tr>
<td>Small woody structure</td>
<td>✔</td>
<td></td>
<td>- Places for turtles to bask in the sun to digest their food</td>
</tr>
<tr>
<td>Leaves in the water</td>
<td>✔</td>
<td></td>
<td>- Structure where frogs attach their eggs</td>
</tr>
<tr>
<td>Variety of lake bottom types, not covered in sand</td>
<td>✔</td>
<td></td>
<td>Lake bottoms not covered in sand &amp; sediment provide:</td>
</tr>
<tr>
<td>Structure not covered in sediment</td>
<td>✔</td>
<td></td>
<td>- Valuable nesting sites for fish, where their eggs aren’t buried</td>
</tr>
<tr>
<td>Small animals and plants growing on structures</td>
<td>✔</td>
<td></td>
<td>- Habitat for water insects (fish food)</td>
</tr>
<tr>
<td>Dragonflies &amp; damselflies</td>
<td></td>
<td></td>
<td>Dragonflies &amp; damselflies rely on healthy shorelines &amp; lakes and are voracious predators of mosquitoes</td>
</tr>
</tbody>
</table>


*In the table, a checked box means there was no significant difference (α = 0.05) between the developed and reference (undeveloped) lake sites, while an unchecked box means there was a significant difference between the developed and reference (undeveloped) lake sites.*
Can we develop a lakeshore and protect the lake?

- In Vermont, lakefront sites developed without statewide shoreland zoning standards harmed the lakes in nine ways, as shown in the table.

- In Maine, statewide shoreland standards make it possible to both develop a lakeshore and protect the lake.
Ways to get or stay involved

Individual
- Learn about protecting lakes, including shoreland zoning
- Set a great example of how to protect the lake with your own waterfront property
- Help others learn how they can help

Lake organization
- Join a lake organization
Ways to get or stay involved

State government

- Talk with your legislators about your feelings about NR 115 revisions - state rule about shoreland zoning
- Vote for representatives and senators in Fall 2014 who share your views about shoreland zoning
- Members of the Senate and Assembly natural resource committees + JCRAR will have a chance to change the NR 115 proposal in Spring 2015
Ways to get or stay involved

County government
- Meet zoning staff
- Attend county meetings about shoreland zoning: county board meetings, planning and zoning committee meetings and/or zoning board of adjustment meetings
- Run for county board and request to serve on the county planning and zoning committee.
- Ask the county board chair or zoning staff to be appointed to the county board of adjustment
- Get involved as a citizen when the shoreland zoning ordinance is being revised
Recent Research

How impervious surfaces impact fish, wildlife and waterfront property values
Impervious surfaces
IMPACT
1. Fishing
2. Wildlife
3. Waterfront property values
Impervious surfaces
A 2008 study of 164 WI lakes found the same trend:

<table>
<thead>
<tr>
<th>Less than 8%</th>
<th>8 - 12%</th>
<th>Greater than 12%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Iowa darter</td>
<td>Golden shiner</td>
<td>Creek chub</td>
</tr>
<tr>
<td>Black crappie</td>
<td>Northern pike</td>
<td>Fathead minnow</td>
</tr>
<tr>
<td>Channel catfish</td>
<td>Largemouth bass</td>
<td>Green sunfish</td>
</tr>
<tr>
<td>Yellow perch</td>
<td>Bluntnose minnow</td>
<td>White sucker</td>
</tr>
<tr>
<td>Rock bass</td>
<td>Johnny darter</td>
<td>Brook stickleback</td>
</tr>
<tr>
<td>Hornyhead chub</td>
<td>Common shiner</td>
<td></td>
</tr>
<tr>
<td>Sand shiner</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Southern redbelly dace</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

2008 study of 164 WI lakes found the same trend: fewer species of fish.
12% impervious on a half-acre lot = 2,600 square feet
More Impervious Surface = Less Fish

More impervious surface

- Larger and more frequent floods
- Less groundwater leads to lower stream flows & warmer water temperatures during dry periods
More Impervious Surface = Less Fish

- **More runoff** from hot pavement and shingles makes the water hotter

- **More nutrients** from soil and fertilizers result in less oxygen in the water, which fish need to survive

*Trout are gone above 11% impervious
Northern pike are gone above 12% impervious*
More sediments and algae growth make it difficult for some predator species that hunt by sight to find their food.

More sediments cover spawning beds of fish such as walleye and smallmouth bass, depriving eggs of oxygen.

More Impervious Surface = Less Fish
Walleye prefer to spawn on gravel- and cobble-covered bottoms. They typically spawn between mid-April and early May in Wisconsin when spring runoff is highest.

The runoff from impervious surfaces can cause soil erosion. When the spaces between the rocks and gravel become blanketed with silt, walleye eggs can die quickly due to lack of oxygen.
Common Loon

- Loons have been pushed northward, in part due to the effects of shoreland development.

- Loons nest at the water’s edge where they share incubation duties for 30 days. The presence of a safe, secure, undisturbed location to nest along the lake shoreline or on an island is a critical requirement for breeding loons in Wisconsin.
Wisconsin Loons More Likely Found on Lakes with Clearer Water

Photo credit
Doug Killian
Lake quality & economics: Is there a connection?

“More polluted lakes have less valuable property than do cleaner lakes.”

Water quality & economics

- A study of over 1200 waterfront properties in Minnesota found when water clarity changed by 3 feet changes in property prices for these lakes are in the magnitude of tens of thousands to millions of dollars.

Healthy shorelands make healthy lakes and higher property values.
Impervious surfaces impact:

1. Fish
   - When water runs over asphalt or shingles and into a lake or stream, it gets warmer. Some fish can’t take the heat.
     - Northern pike are gone above 12% impervious
     - Trout are gone above 11% impervious

2. Wildlife

3. Water quality and property values
Shoreland zoning policy at the state and county level in WI
Counties led...

- Counties recognized inadequacies in 1968 state SL zoning law
- Starting in 1990s, counties adopted higher standards
- Lincoln County ZA, Dan Miller: “We’re failing” (with our current SL zoning)

Map by Wisconsin Lakes
Higher standards adopted by counties...

- Larger lot sizes
- Larger shoreland setbacks
- Larger shoreland buffer sizes
- Impervious surface standards (16 counties)
- NC structures
- Mitigation (27 counties)
From 2002-2010 statewide process to try to upgrade statewide standards/rule

No changes to 1968 standards on
- Lot sizes
- Setbacks
- Buffer size

But some changes to statewide standards were made in 2010 after years of discussion and agreement from lake, river, realtor and builder groups.
Minimum buffer size stayed at 35 feet

Recommended Shoreline Buffer Widths
A Research Summary

Range of recommended buffer widths in feet based on (x) studies

- Nutrient control: 13-141
- Stormwater runoff control: 49-148
- Fecal bacteria: 76-302
- Sediment control: 10-401
- Wildlife habitat: 33-657

Review of 52 U.S. studies by Aquatic Resource Consultants, Seattle WA
Stronger buffer definition because

- Greater understanding of buffers/native plants and what they do...compared to lawns. Bluegrass circled.
## Shoreline buffers

<table>
<thead>
<tr>
<th>1968 law</th>
<th>2010 law</th>
</tr>
</thead>
<tbody>
<tr>
<td>First 35 foot no clear-cut zone</td>
<td>First 35 feet, no vegetation removal except</td>
</tr>
<tr>
<td>No definition for clear-cut</td>
<td>Access and viewing corridors</td>
</tr>
<tr>
<td></td>
<td>Shoreline restoration activities &amp; invasive species control</td>
</tr>
<tr>
<td></td>
<td>Dead, dying or diseased when replaced with native vegetation</td>
</tr>
<tr>
<td></td>
<td>Sound forestry practices on larger tracts of land</td>
</tr>
<tr>
<td></td>
<td>Where mowing currently occurs counties may allow “keep what you have”</td>
</tr>
</tbody>
</table>
Effects of impervious surfaces

- Erosion
- More pollutants entering water
- Increased algae growth
- Fewer fish & insect species
Runoff Volume
Phosphorus Inputs
Sediment Inputs

Adapted From: Wisconsin DNR
A 2008 study of 164 Wisconsin lakes found the same trend:

**More Impervious Surface = Less Fish**

Fish found in streams when impervious surface in the watershed was:

- **Less than 8%**
  - Iowa darter
  - Black crappie
  - Channel catfish
  - Yellow perch
  - Rock bass
  - Horneyhead chub
  - Sand shiner
  - Southern redbelly dace
  - Golden shiner
  - Northern pike
  - Largemouth bass
  - Bluntnose minnow
  - Johnny darter
  - Common shiner
  - Creek chub
  - Fathead minnow
  - Green sunfish
  - White sucker
  - Brook stickleback

- **8 - 12%**
  - Golden shiner
  - Northern pike
  - Largemouth bass
  - Bluntnose minnow
  - Johnny darter
  - Common shiner
  - Creek chub
  - Fathead minnow
  - Green sunfish
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  - Brook stickleback

- **Greater than 12%**
  - Creek chub
  - Fathead minnow
  - Green sunfish
  - White sucker
  - Brook stickleback

2008 study of 164 WI lakes found the same trend:

**Fewer species of fish**
2010 Impervious surface standards

- **What is an impervious surface?**
  - An area that releases all or a majority of the precipitation that falls on it.
  - Includes rooftops, sidewalks, driveways, parking lots, etc.

- **What are the geographical boundaries of this standard?**
  - Applies to property within 300-feet of any waterway

- **What is the standard?**
  - Keep what you have
  - Up to 15% impervious no permit is needed
  - Between 15% - 30% ok with a permit and mitigation

**NRB proposal -> Legislature**

- Limit application of impervious surface standards to only riparian lots or non-riparian lots that are entirely within 300 feet of the OHWM
  - Eliminates application to portions of parcels

- Impervious surfaces that do not drain directly or drain to treatment system prior to discharge are not counted towards impervious surface limits.
2010: Impervious Surface Example

15% of 20,000 sq. ft. lot

1500 sq. ft. house footprint
740 sq. ft. garage
660 sq. ft. driveway
100 sq. ft. sidewalk
3000 sq. ft. total

NRB proposal -> Legislature
Counties could create “highly developed shorelines”
• Urbanized Areas or Urbanized Clusters in 2010 US Census
• Commercial, Industrial or Business land use
• Counties could add additional areas if all of the following meet the standards.
  • At least 500 feet of shoreline
  • Majority of lots exceed 30% impervious OR
  • Lots are located on a lake that is sewered
NRB proposal -> WI Legislature

Impervious Surface Standards

- For Highly Developed Shorelines
  - Impervious surface standard (IS):
    - No permit needed for
      - residential land use with less than 30% IS
      - commercial, industrial or business land use with under 40% IS
    - Permit with mitigation for expansion over the standard

- Maximum impervious surface standard:
  - 40% IS for residential land use
  - 60% IS for commercial, industrial or business land use
2010: Nonconforming Principal Structures

Nonconforming structure is:
- An existing structure that was lawfully placed when constructed but that does not comply with the required water setback
- Known in some counties as “legal, pre-existing structures”

NR 115 provides increased flexibility for nonconforming structures in exchange for mitigation:
- Vertical expansion
- Horizontal and/or vertical expansion beyond the shoreline setback
- Replacement or relocation
- Counties may be more restrictive

2012: Act 170 goes into effect
For NC structures, counties, cities or villages may NOT be more restrictive than state standards.

This is the first time that state shoreland zoning standards became a cap or upper limit, instead of a lower limit for protection, which they had been since 1968.
NRB proposal -> WI Legislature

Nonconforming Principal Structures

- Clarify that maintenance and repair includes exterior remodeling, replacement or enhancement of plumbing, electrical, windows etc…
- **One-time lateral expansion within setback**
  - 200 sq. ft. expansion no closer to OHWM.
  - Could still do vertical expansion
- Clarify discontinuance language
  - Only structures with a nonconforming use
- Eliminate
  - Requirement to remove NC accessory structures for replacement/relocation of NC principal structure.
  - Provision about wet boathouses to clarify that county may regulate dry boathouses
2010: Shoreland mitigation

- **Definition**
  - “balancing measures that are designed, implemented and function to restore natural functions and values that are otherwise lost through human activities

- **What natural functions?**
  - Water quality, near-shore aquatic habitat, upland wildlife habitat and natural scenic beauty

- **Mitigation is triggered by**
  - Increasing impervious surfaces over 15%
  - Expanding nonconforming structures

**NRB proposal -> Legislature**
Mitigation only applies on highly developed shorelines when:
- IS increases above 30% for residential land use
- IS increases above 40% for commercial, industrial or business land use
Shoreland mitigation

- A menu approach is common in 21 counties with mitigation
- Example

<table>
<thead>
<tr>
<th>Mitigation practice</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Buffer restoration 35 feet from OHWM</td>
<td>3 points</td>
</tr>
<tr>
<td>Buffer restoration 10 feet from OHWM</td>
<td>1 point</td>
</tr>
<tr>
<td>Rain garden to capture runoff</td>
<td>1 point</td>
</tr>
<tr>
<td>Removing accessory structures less than 75’ from OHWM</td>
<td>1-3 points</td>
</tr>
<tr>
<td>Narrowing viewing corridor</td>
<td>1 point</td>
</tr>
<tr>
<td>Reducing shoreland lighting</td>
<td>1 point</td>
</tr>
<tr>
<td>Removing shoreline structures such as firepits, beaches</td>
<td>1 point</td>
</tr>
<tr>
<td>Other practices agreed to by zoning administrator</td>
<td>Up to 2 points</td>
</tr>
</tbody>
</table>
Phase I. INITIATION

1. Form 1000-006 (pink sheet) and scope statement (scope) completed, and approved by the Secretary.
2. Scope submitted to and approved by Governor.
3. Scope submitted to LRB for publication in the Administrative Register.
4. Form 1100-001A (yellow sheet) for NRB scope approval completed and approved by the Secretary.
5. Form 1100-001 (green sheet) for NRB scope approval completed and approved by the Secretary.
6. NRB meeting requesting approval of the scope.

Phase II. RULE DEVELOPMENT AND HEARINGS

7. Proposed rule language prepared in Board order format, including analysis.
8. Solicitation notice for information and advice on the economic impact of the proposed rule prepared.
9. Board order and solicitation notice from steps 7. and 8. approved by the Secretary.
10. NRB notified of Department intent to solicit information with Board order and solicitation notice attached.
11. Board order and solicitation notice sent to affected businesses, et. al., and posted on web sites. (30-day response time assumed)
12. FE/EIA prepared based on information received in step 11, while satisfying coordination requirements.
13. Yellow sheet for NRB hearing authorization and public hearing notice approval completed and approved by the Secretary.
14. Green sheet package for NRB hearing authorization and public hearing notice approval completed and approved by the Secretary.
15. NRB meeting requesting hearing authorization and approval of public hearing notice.
16. Rule and FE/EIA submitted to the Legislative Council, et.al.

Phase III. RULE ADOPTION

17. Public hearing notice submitted to LRB and to the Wisconsin State Journal for publication.
18. Report from the Legislative Council received.
19. Public hearings held.
20. Rule and FE/EIA modified as necessary based on public comments received.
21. Yellow sheet for NRB adoption completed and approved by Secretary.
22. Green sheet package for NRB adoption finalized and approved by Secretary.
23. NRB meeting requesting adoption.
24. Rule submitted to and approved by the Governor.

Phase IV. GOVERNOR AND LEGISLATIVE REVIEW

25. Report to the legislature and notice of submittal completed.
26. Report and notice from step 23 submitted to the chief clerks of each house of the Legislature, and notice submitted to LRB.
27. Report and notice referred to Legislative standing committees in each house of the Legislature.
28. Standing committees’ review completed.
29. Rule referred to the Joint Committee for Review of Administrative Rules (JCRAR).
30. JCRAR review completed.

Phase V. PROMULGATION

31. Rule signed by the Secretary and filed with LRB.
32. Rule proof received from LRB, reviewed and returned.
33. Rule is published and becomes effective.
To learn more...

- NR 115 proposal at Dec 2013 NRB meeting
  - Agenda and webcasts
    dnr.wi.gov/About/NRB/2013/Dec/Dec-2013-NRB-agenda.html
  - Groups that testified at the Dec 2013 NRB meeting
    - WI Wildlife Federation
    - River Alliance of WI
    - Clean WI
    - WCCA
Ways to get or stay involved

State government

- Talk with your legislators about your feelings about NR 115 revisions - state rule about shoreland zoning
- Vote for representatives and senators in Fall 2014 who share your views about shoreland zoning
- Members of the Senate and Assembly natural resource committees + JCRAR will have a chance to change the NR 115 proposal in Spring 2015
Local Government Structure

Governing Body

- County/Town Board
  - Chairperson
    - Appoint
    - Supervise

Boards and Commissions

- Plan Commission
- Zoning Committee
- Zoning Board of Adjustment/Appeals

Staff

- Planning Director
- Zoning Administrator
- Legal Counsel
Governing Body

Role – Law makers

- Adopt and amend plans and ordinances
- Appoint plan commission and zoning board
- Supervise planning and zoning staff
- Administer public funds
- May decide conditional use permits
- May review/approve land divisions
Plan Commission/Zoning Committee

*Role – Land use advisors*

- Prepare and recommend plans, policies and ordinances for adoption by governing body
- Monitor plan implementation and consistency
- Review amendments to zoning map or text
- May decide conditional use permits
- May review/approve land divisions
Zoning Board

Role – Judge

• Review and decide zoning cases where there is an alleged error or a relaxation of the zoning ordinance is sought

• 3 types of decisions:
  1) Administrative Appeal
  2) Variance
  3) Conditional Use/
     Special Exception
Staff

Role – Administrator, Enforcer, Technical advisor

- Administer and enforce code – grant simple permits
- Help public understand rationale for regulations and navigate application process
- Provide technical data, maps
- May provide staff reports/recommendations
- Schedule hearings, prepare notice, may take minutes
Let’s Review: who does what?

**Governing Body**
- Plans, ordinances, amendments
- Conditional use permits?
- Plat review?

**Plan Commission**
- Policy Recommendations
- Conditional use permits?
- Plat review?

**Zoning Administrator**
- Simple zoning permits

**Zoning Board**
- Conditional use permits?
- Variances
- Administrative appeals
If you want to change the county shoreland zoning ordinance

- Talk to your county board member about your views on shoreland zoning. Do they agree with you? What’s their track record?

- Run to be on county board; request to be on planning and zoning committee
The zoning board functions like a court...

1) Decision-making criteria are outlined in state statutes, case law, and local ordinances.
2) The board applies these laws to particular fact situations (quasi-judicial decisions).

- BOA decisions can be appealed to higher courts.
- Decisions will generally be upheld if proper decision making standards and procedures are followed.
Role of the zoning board

- Review and decide cases

- 3 types of decisions:
  1) Administrative appeal
  2) Variance
  3) Special exception/conditional use
An **applicant** has burden of proof to show that all three statutory tests are met:

1. unnecessary hardship*
2. due to conditions unique to the property &
3. no harm to public interests
Variances

Conditions unique to the property test

Conditions unique to the property include physical limitations of the property, such as steep slopes or wetlands, which prevent compliance with the ordinance.

Does every small, steep or irregularly shaped parcel qualify for a variance?

To avoid unbordable lots, Bayfield County now requires 3000 sf of buildable area to create a shoreland lot.
Variances

Conditions unique to the property test

- Limitations that prevent ordinance compliance & are common to a number of properties should be addressed by ordinance amendment.

- Circumstances of an applicant such as a growing family or need for a larger garage, are not a factor in deciding variances.
Variance
Public interest test

- A variance granted may not harm public interests but is not required to advance them.

- “Public interests” are the purpose and intent of the ordinance that were agreed upon by the county board, representing the community. Those who provide testimony may try to convince you other factors are the “public interests.”

- Short-term, long-term and cumulative impacts of variance requests must be considered. Zoning staff should provide an impact analysis.
What does unnecessary hardship mean for area variances?
Ziervogel & area variances...

- House located 26 feet from the OHWM of Big Cedar Lake in Washington County

- Owners wanted a 10-foot vertical expansion of their house to add two bedrooms, two bathrooms, and an office to the house

- Washington County’s Ordinance prohibited expanding any structure within 50 feet of the OHWM of a lake

- Washington County BOA denied variance request
- Circuit Court & Court of Appeals affirmed
- Supreme Court changed standard
Unnecessary hardship test for area variances...

- Unnecessary hardship = when compliance with the ordinance would:
  - unreasonably prevent the owner from using the property for a permitted purpose, or
  - be unnecessarily burdensome in view of ordinance purposes

Ziervogel v. Washington County Board of Adjustment, 2004 WI Supreme Ct.
What does “unnecessarily burdensome” mean??

- Should an after-the-fact variance be granted for the red porch because its removal would be “unnecessarily burdensome”?

- The WI Supreme Court said NO because the “hardship was self-created and the porch no more than a personal convenience”.

*Snyder v. Waukesha County Zoning Board, 1976*
Unnecessary hardship

- Building inspector missed a setback violation for 2 duplexes

- The duplexes were built and the developer then applied for an after-the-fact variance, which the zoning board granted

- Hardship cannot be self-created or created by a prior owner

Accent Developers, LLC v. City of Menomonie BOA and Timber Ridge Homes LLC, 2007 WI Court of Appeals
Unnecessary hardship

- The court noted there was ample evidence of external causes of the hardship and affirmed BOA’s grant of a variance because the hardship of removing the duplexes was not solely self-created.

- A zoning board may consider an error of local government staff when deciding whether to grant a variance.

Accent Developers, LLC v. City of Menomonie BOA and Timber Ridge Homes LLC, 2007 WI Court of Appeals
Is the hardship...

- A personal inconvenience?
- A hardship that is necessary to achieve ordinance purposes?

If yes to either question, deny variance.

- A hardship that is not necessary to achieve ordinance purposes?

If yes and other 2 variance standards are met, then grant variance.
Variances...

- Loss of profit or financial difficulty do not constitute hardship

- A variance runs with the property.

- A variance does not create a nonconforming structure.

- Lack of objections from neighbors does not justify a variance.

- Nor do nearby ordinance violations.
Would you grant the variance?
Would you grant a variance for the red addition?

- Steep slope under deck
- Other lake properties also have steep slopes
- High value house
- Owners want to enclose the deck closest to water and add on a garage (G)
**Town shoreland zoning**

- Statutes exclude towns from having shoreland zoning authority except under Wis. Stat. § 59.692(2)(b) which applies to town ordinances in existence prior to county shoreland zoning. As a result, a town had no jurisdiction to deny a zoning variance.

- We don’t know yet whether the WI Supreme Court will take this case

*Hegwood v. Town of Eagle Zoning Board of Appeals, 2013 Wis. App 118*
Ways to get or stay involved

County government

- Meet zoning staff
- Attend county meetings about shoreland zoning: county board meetings, planning and zoning committee meetings and/or zoning board of adjustment meetings
- Run for county board and request to serve on the county planning and zoning committee.
- Ask the county board chair or zoning staff to be appointed to the county board of adjustment
- Get involved as a citizen when the shoreland zoning ordinance is being revised
Conclusions

- The quality of a lake or river depends on what’s happening on the land around it.
- Shoreland zoning is an effective tool to protect lake health and fisheries.
- When impervious surfaces exceed 12% of a river’s watershed, northern pike and trout are eliminated.
- NR 115 was updated in 2010 to include impervious surface standards; a current NRB proposal to weaken the impervious surface standards may go to the legislature this session or next.
Natural shorelands provide some of the most effective protection for the lakes and streams of Wisconsin.
Collaborators

- WI DNR
- WI County Code Administrators
- WI Land and Water Conservation Assn
- University of Wisconsin Extension
  - UWEX Lakes
  - Natural Resource Educators
  - Environmental Resource Center
  - County educators
- Center for Watershed Science and Education
- Wisconsin Lakes (900+ lake groups)
- River Alliance of WI
- WI Wetlands Association
- Wild Ones
- WI Wildlife Federation
If you’re a history buff…

Comments, questions??

Lynn Markham
Land Use Specialist
lmarkham@uwsp.edu
715.346.3879
Proposed Changes:

– Impervious Surface Limits
– Nonconforming Structure Standards
– Vegetative Management Standards
– Reporting Standards
Impervious Surface Standards

• Limit application of impervious surface standards to only riparian lots or non-riparian lots that are entirely within 300 feet of the OHWM
  – Eliminates application to portions of parcels
• Impervious surfaces that do not drain directly or drain to treatment system prior to discharge are not counted towards impervious surface limits.
Impervious Surface Standards

• Would allow counties to create a higher impervious surface standard for already highly developed areas
  – Proposed definition
    • Urbanized Areas or Urbanized Clusters in 2010 US Census
    • Commercial, Industrial or Business land use
    • Counties could add additional areas if all of the following meet the standards.
      – At least 500 feet of shoreline
      – Majority of lots exceed 30% impervious OR
      – Lots are located on a lake that is sewered
Impervious Surface Standards

• For Highly Developed Shorelines
  – Impervious surface standard (IS):
    • No permit needed for
      – residential land use with less than 30% IS
      – commercial, industrial or business land use with under 40% IS
    • Permit with mitigation for expansion over the standard
  – Maximum impervious surface standard:
    • Residential land use exceeds 40% IS
    • Commercial, industrial or business land use exceeds 60% IS
Nonconforming Structures

• Clarify that maintenance and repair includes exterior remodeling, replacement or enhancement of plumbing, electrical, windows etc...

• One-time lateral expansion within setback
  – 200 sq. ft. expansion no closer to OHWM.
  – Could still do vertical expansion

• Clarify discontinuance language
  – Only structures with a nonconforming use

• Eliminate
  – Requirement to remove NC accessory structures for replacement/relocation of NC principal structure.
  – Provision about wet boathouses to clarify that county may regulate dry boathouses
Other Proposed Changes

• Vegetative Management
  – Clarify that permit is not required to remove invasive, damaged or diseased vegetation, or vegetation that poses a safety hazard.

• Reporting standards
  – Eliminates a requirement that counties submit nonconforming structure permits to the department
  – Reporting requirements would then reflect what has been required since 1968.
2013 Wis. Act 80 repealed the provisions in Wis. Stat. § 59.692(7) which provided for the application of county shoreland zoning to areas that were annexed into a city or village after May 7, 1982 or incorporated into a city or village after April 30, 1994. The new law has created separate requirements for cities (Wis. Stat. § 62.233) and villages (Wis. Stat. § 61.353) to enact more limited shoreland zoning ordinances for areas annexed or incorporated after May 7, 1982 or April 30, 1994.

Under the new law shoreland zoning for annexed or incorporated areas is only required to: (1) impose a shoreland setback for structures within 50 feet of the OHWM (which can be reduced to 35 feet under certain development conditions) and (2) require the maintenance of a vegetative buffer zone within 35 feet of the OHWM subject to an access corridor of 30 feet for every 100 feet. The other provisions of NR 115 are not required, although the law allows cities and villages to be more restrictive. The law also provides that the new ordinances do not apply to lands adjacent to an artificially constructed drainage ditch, pond, or stormwater retention basin if they are not hydrologically connected to a naturally navigable water body.

The law is effective December 14, 2013 and requires new ordinances be enacted by July 2014.
Diagram A:
Nonconforming Principal Structure Located Greater than 35 feet from the OHWM.
Vertical Expansion within the Existing Building Envelope.

NR115.05(1)(g)(5)
- Has not been discontinued for > 12 months
- Limited to height NR115.05(1)(f)
- Mitigation required
- All other provisions (IS) must be met
Diagram D:
Nonconforming Principal Structure Located greater than 35 feet from the OHWM. Horizontal Expansion at a setback greater than 75 feet from the OHWM.

115.05(1)(g)5m

- Use has not been discontinued for a period of 12 months or more
- All other provisions apply
Diagram E:
Nonconforming Principal Structure Located greater than 35 feet from the OHWM. Replacement within the Existing Building Envelope.

NR115.05(1)(g)(6)
Permitted replacement @ 50’. No other compliant location for a principal structure of comparable size.

- Was not been discontinued > 12 months
- No portion of replacement can be closer than existing setback
- County must look @ options
- Mitigation required
- Removal of all accessory structures < 75’