

## **Part 2 – Zoning of Shorelands and County-Owned Lands**

### **Subpart 1: Zoning of Shorelands**

#### **4.201 Statutory Authorization, Finding of Fact, Statement of Purpose And Title**

(1) Statutory Authorization. This ordinance is adopted pursuant to the authorization in ss. 59.692 Wis. Stats to implement 59.69, 59.692, 59.694, 87.30, 236.45, and 281.31.

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

(3) Purpose and Intent. For the purpose of promoting the public health, safety, convenience and welfare, and promote and protect the public trust in navigable waters this ordinance has been established to:

- (A) Further the Maintenance of Safe and Healthful Conditions and Prevent and Control Water Pollution Through:
  - 1. Limiting structures to those areas where soil and geological conditions will provide a safe foundation.
  - 2. Establishing minimum lot sizes to provide adequate area for private on-site waste treatment systems.
  - 3. Controlling filling and grading to prevent soil erosion problems.
  - 4. Limiting impervious surfaces to control runoff which carries pollutants.
- (B) Protect Spawning Grounds, Fish and Aquatic Life Through:
  - 1. Preserving wetlands and other fish and aquatic habitat.
  - 2. Regulating pollution sources.
  - 3. Controlling shoreline alterations, dredging and lagooning.
- (C) Control Building Sites, Placement of Structures and Land Uses Through:
  - 1. Prohibiting certain uses detrimental to the shoreland-wetlands.
  - 2. Setting minimum lot sizes and widths.
  - 3. Setting minimum building setbacks from waterways.
  - 4. Setting the maximum height of near shore structures.
- (D) Preserve and Restore Shoreland Vegetation and Natural Scenic Beauty Through:
  - 1. Restricting the removal of natural shoreland cover.
  - 2. Preventing shoreline encroachment by structures.

3. Controlling shoreland excavation and other earth moving activities.
4. Regulating the use and placement of boathouses and other structures.

(4) Title. The Rock County Shoreland Zoning Ordinance.

#### **4.202 General Provisions**

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

- (A) Within one thousand (1,000) feet of the ordinary high-water mark of navigable lakes, ponds or flowages.
- (B) Within three hundred (300) feet of the ordinary high-water mark of navigable rivers or streams, or to the landward side of the floodplain, whichever distance is greater.
- (C) The provisions of this chapter apply to regulation of the use and development of unincorporated shoreland areas, and to annexed or incorporated areas as provided in s. 59.692 (7), Stats. Unless specifically exempted by law, all cities, villages, towns, counties and, when s. 13.48 (13), Stats., applies, state agencies are required to comply with, and obtain all necessary permits under, local shoreland ordinances. The construction, reconstruction, maintenance or repair of state highways and bridges carried out under the direction and supervision of the Wisconsin Department of Transportation is not subject to local shoreland zoning ordinances if s. 30.2022 (1), Stats., applies.
- (D) Determinations of navigability and ordinary high-water mark location shall initially be made by the Zoning Administrator. When questions arise, the Zoning Administrator shall contact the appropriate office of the Department for a final determination of navigability or ordinary high-water mark.
- (E) Under s. 281.31(2m) Wis. Stats., notwithstanding any other provision of law or administrative rule promulgated thereunder, this shoreland zoning ordinance does not apply to lands adjacent to farm drainage ditches if:
  1. Such lands are not adjacent to a natural navigable stream or river;
  2. Those parts of such drainage ditches adjacent to such lands were not navigable streams before ditching; and
  3. Such lands are maintained in nonstructural agricultural use.

(2) Shoreland-Wetland Maps. The most recent version of the Wisconsin Wetland Inventory maps (available at <http://dnr.wi.gov/wetlands/mapping.html> ) are made part of this ordinance along with other maps and images that can be readily used to help the Zoning Administrator and landowners evaluate the presence or absence and likely extent of wetlands on the property, as further defined in section 4.203(1)(A) of this ordinance.

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

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

(5) Abrogation and Greater Restrictions. The provisions of this ordinance supersede all the provisions of any county zoning ordinance adopted under s. 59.692, Wis. Stats., which relate to shorelands. However, where an ordinance adopted under a statute other than s. 59.692, Wis. Stats., is more restrictive than this ordinance, that ordinance shall continue in full force and effect to the extent of the greater restrictions, but not otherwise.

(A) Pursuant to s. 59.692(2)(a), Wis. Stats., this ordinance shall not require approval or be subject to disapproval by any town or town board.

(B) Pursuant to s. 59.692(2)(b), Wis. Stats., if an existing town ordinance relating to shorelands is more restrictive than this ordinance or any amendments thereto, the town ordinance continues in all respects to the extent of the greater restrictions but not otherwise.

(C) This ordinance is not intended to repeal, abrogate or impair any existing deed restrictions, covenants or easements. However, where this ordinance imposes greater restrictions, the provisions of this ordinance shall prevail.

(6) Interpretation. In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the County of Rock and shall not be deemed a limitation or repeal of any other powers granted by Wisconsin Statutes. Where a provision of this ordinance is required by a standard in ch. NR 115, Wis. Adm. Code, and where the ordinance provision is unclear, the provision shall be interpreted in light of the ch. NR 115 standards in effect on the date of the adoption of this ordinance or in effect on the date of the most recent text amendment to this ordinance.

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

#### **4.203 Shoreland-Wetland District**

(1) Designation. This district shall include all shorelands within the jurisdiction of this ordinance which are designated as wetlands on the Wisconsin Wetland Inventory maps that are adopted and made a part of this ordinance.

(2) Locating Shoreland-Wetland Boundaries. Where an apparent discrepancy exists between the shoreland-wetland district boundary shown on the Wisconsin Wetland Inventory maps and actual field conditions, the County shall contact the Department to determine if the map is in error. If the Department determines that a particular area was incorrectly mapped as wetland or meets the wetland definition but was not shown as wetland on the map, the county shall have the authority to immediately grant or deny a shoreland zoning permit in accordance with the applicable regulations based on the Department determination as to whether the area is wetland. Depending on the scope of the proposed activity, a third-party wetland delineation may be required by the Department or the County and all costs shall be assumed by the applicant. Maps do not represent the definitive presence and boundaries of wetlands and cannot serve as a substitute for a delineation of wetland boundaries. In order to correct wetland mapping errors on the official zoning map, an official zoning map amendment must be initiated within a reasonable period of time.

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

(4) Permitted Uses. The following uses shall be allowed, subject to general shoreland zoning regulations contained in this ordinance, the provisions of chs. 30, 31, 281.36 and 281.37, Wis. Stats. and the provisions of other applicable local, state and federal laws:

- (A) Activities and uses which do not require the issuance of a zoning permit, but which must be carried out without any filling, flooding, draining, dredging, ditching, tiling or excavating except as allowed under sections 4.208(3)(A) or (B).
  - 1. Hiking, fishing, trapping, hunting, swimming, and boating;
  - 2. The harvesting of wild crops, such as marsh hay, ferns, moss, wild rice, berries, tree fruits, and tree seeds, in a manner that is not injurious to the natural reproduction of such crops;
  - 3. The pasturing of livestock;
  - 4. The cultivation of agricultural crops;
  - 5. The practice of silviculture, including the planting, thinning, and harvesting of timber; and
  - 6. The construction or maintenance of duck blinds.

- (B) Uses which do not require the issuance of a zoning permit and which may include limited filling, flooding, draining, dredging, ditching, tiling, or excavating but only to the extent specifically provided below:
1. Temporary water level stabilization measures necessary to alleviate abnormally wet or dry conditions that would have an adverse impact on silvicultural activities if not corrected;
  2. The cultivation of cranberries including flooding, dike and dam construction or ditching necessary for the growing and harvesting of cranberries,
  3. The maintenance and repair of existing agricultural drainage systems including ditching, tiling, dredging, excavating and filling necessary to maintain the level of drainage required to continue the existing agricultural use. This includes the minimum filling necessary for disposal of dredged spoil adjacent to the drainage system provided that dredged spoil is placed on existing spoil banks where possible;
  4. The construction or maintenance of fences for the pasturing of livestock, including limited excavating and filling necessary for such construction or maintenance; and
  5. The maintenance, repair, replacement or reconstruction of existing town and county highways and bridges, including limited excavating and filling necessary for such maintenance, repair, replacement or reconstruction.
- (C) Uses which require the issuance of a zoning permit and which may include limited filling, flooding, draining, dredging, ditching, tiling or excavating, but only to the extent specifically provided below. These uses may also require a Shoreland Conditional Use Permit under this ordinance.
1. The construction and maintenance of roads which are necessary to conduct silvicultural activities or agricultural cultivation, provided that:
    - (a) The road cannot as a practical matter be located outside the wetland;
    - (b) The road is designed and constructed to minimize adverse impact upon the natural functions of the wetland enumerated in section 4.203(5)(B);
    - (c) The road is designed and constructed with the minimum cross-sectional area practical to serve the intended use;
    - (d) Road construction activities are carried out in the immediate area of the roadbed only.
  2. The construction or maintenance of nonresidential buildings, provided that:
    - (a) The building is essential for and used solely in conjunction with the raising of waterfowl, minnows or other wetland or aquatic animals; or some other use permitted in the shoreland-wetland district;
    - (b) The building cannot, as a practical matter, be located outside the wetland;
    - (c) Such building is not designed for human habitation and does not exceed 500 sq. ft. in floor area; and

- (d) Only limited filling or excavating necessary to provide structural support for the building is authorized.
- 3. The establishment of public and private parks and recreation areas, natural and outdoor education areas, historic and scientific areas, wildlife refuges, game bird and animal farms, fur animal farms, fish hatcheries, and public boat launching ramps and attendant access roads, provided that:
  - (a) Any private development is used exclusively for the permitted use and the applicant has received a permit or license under ch. 29, Wis. Stats., where applicable;
  - (b) Filling or excavating necessary for the construction or maintenance of public boat launching ramps or attendant access roads is allowed only where such construction or maintenance meets the criteria in section 4.203(3)(C)1. (a)-(d) and;
  - (c) Ditching, excavating, dredging, or dike and dam construction in public and private parks and recreation areas, natural and outdoor education areas, historic and scientific areas, wildlife refuges, game bird and animal farms, fur animal farms, and fish hatcheries is allowed only for the purpose of improving wildlife habitat and to otherwise enhance wetland values.
- 4. The construction or maintenance of electric, gas, telephone, water and sewer transmission and distribution facilities, by public utilities and cooperative associations organized for the purpose of producing or furnishing heat, light, power or water to their members and the construction or maintenance of railroad lines provided that:
  - (a) The transmission and distribution facilities and railroad lines cannot, as a practical matter, be located outside the wetland;
  - (b) Such construction or maintenance is done in a manner designed to minimize adverse impact upon the natural functions of the wetland enumerated in section 4.203(5)(B).
- 5. The construction or maintenance of piers, docks or walkways built on pilings, including limited excavating and filling necessary for such construction and maintenance.

(5) Prohibited Uses. Any use not listed in sections 4.203(3)(A),(B) or (C) is prohibited, unless the wetland or portion of the wetland has been rezoned by amendment of this ordinance in accordance with section 4.203(5) of this ordinance and s. 59.69(5)(e), Wis. Stats.

(6) Rezoning of Lands in the Shoreland-Wetland District.

(A) For all proposed text and map amendments to the shoreland-wetland provisions of this ordinance, the appropriate office with the Department shall be provided with the following:

- 1. A copy of every petition for a text or map amendment to the shoreland-wetland provisions of this ordinance, within 5 days of the filing

of such petition with the county clerk. Such petition shall include a copy of the Wisconsin Wetland Inventory map adopted as part of this ordinance describing any proposed rezoning of a shoreland-wetland;

2. Written notice of the public hearing to be held on a proposed amendment at least 10 days prior to such hearing;
  3. A copy of the Rock County Planning and Development Agency's findings and recommendations on each proposed amendment within 10 days after the submission of those findings and recommendations to the Rock County Board of Supervisors (County Board); and
  4. Written notice of the County Board's decision on the proposed amendment within 10 days after it is issued.
- (B) A wetland, or a portion thereof, in the shoreland-wetland district shall not be rezoned if the proposed rezoning may result in a significant adverse impact upon any of the following:
1. Storm and flood water storage capacity;
  2. Maintenance of dry season stream flow, the discharge of groundwater to a wetland, the recharge of groundwater from a wetland to another area, or the flow of groundwater through a wetland;
  3. Filtering or storage of sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters;
  4. Shoreline protection against soil erosion;
  5. Fish spawning, breeding, nursery or feeding grounds;
  6. Wildlife habitat; or
  7. Wetlands both within the boundary of designated areas of special natural resource interest and those wetlands which are in proximity to or have a direct hydrologic connection to such designated areas as defined in NR 103.04 which can be accessed at the following web site: <http://www.legis.state.wi.us/rsb/code/nr/nr103.pdf>.
- (C) If the Department notifies the Rock County Planning And Development Agency that a proposed text or map amendment to the shoreland-wetland provisions of this ordinance may have a significant adverse impact upon any of the criteria listed in section 4.203(5)(B) of this ordinance, that amendment, if approved by the County Board, shall contain the following provision:

"This amendment shall not take effect until more than 30 days have elapsed after written notice of the County Board's approval of this amendment is mailed to the Department of Natural Resources. During that 30-day period the Department of Natural Resources may notify the County Board that it will adopt a superseding shoreland ordinance for the county under s. 59.692(6), Wis. Stats. If the Department does so notify

the County Board, the effect of this amendment shall be stayed until the s. 59.692(6) adoption procedure is completed or otherwise terminated."

#### **4.204 Land Division Review and Sanitary Regulations**

(1) Land Division Review.

(A) The county shall review, pursuant to s. 236.45, Wis. Stats., all land divisions in shoreland areas which create 3 or more parcels or building sites of 5 acres each or less within a 5-year period. In such review all of the following factors shall be considered:

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

(B) Land Division review under this section is separate from land divisions review authorized by the Rock County Land Division and Development Ordinance.

(2) Planned Residential Unit Development (PUD).

(A) Purpose. The Planned Residential Unit Development is intended to permit smaller non-riparian lots where the physical layout of the lots is so arranged as to better assure the control of pollution and preservation of ground cover than would be expected if the lots were developed with the normal lot sizes and setbacks and without special conditions placed upon the Planned Residential Unit Development at the time of its approval. A condition of all Planned Residential Unit Development is the preservation of certain open space, preferably on the shoreland, in perpetuity.

(B) Requirements for Planned Residential Unit Development. The Committee may at its discretion, upon its own motion or upon petition, approve a Planned Residential Unit Development Overlay District upon finding, after a public hearing, that all of the following facts exist:

1. Area. The area proposed for the Planned Residential Unit Development shall be at least 2 acres in size or have a minimum of 200 feet of frontage on a navigable water.
2. Lots. Any proposed lot in the Planned Residential Unit Development that does not meet the minimum size standards of Section 5.2 and 5.3 shall be a non-riparian lot.



3. Vegetative buffer zone and preservation of ground cover. The location of lots and the dedication of part of the land for use by the public or residents of the Planned Residential Unit Development shall preserve the vegetative buffer zone and ground cover of the shoreland to enhance scenic beauty of the navigable water, prevent erosion, and provide wildlife habitat. In cases where the vegetative buffer does not exist it shall be reestablished. All lands not used for lots and streets shall be dedicated in perpetuity to remain in open space. This may be accomplished by conveyance in common to each of the owners of lots in the development or to a corporation formed by them, or by dedication to the county, town or municipality. Lands dedicated to the public must be accepted by action of the governing body of the accepting unit of government. If the land is to be conveyed to owners of lots in the development, a homeowner's association or similar legally constituted body shall be created to maintain the open space land. Any restriction placed on platted land by covenant, grant of easement or any other manner which was required by a public body or which names a public body as grantee, promisee or beneficiary, shall vest in the public body the right to enforce the restriction at law or in equity against anyone who has or acquires an interest in the land subject to the restriction.
4. Density. The number of platted lots shall not exceed those which would have been possible if the same land were platted in accordance with the minimum lot sizes and widths provided by the applicable provisions of the zoning ordinance. This figure shall be determined by dividing the total developable area of the subdivision by the minimum lot size required by Section 5.0 of this ordinance.
5. Lot sizes, widths, setbacks, and vegetation removal. When considering approval of a Planned Residential Unit Development the Committee shall consider whether proposed lot sizes, widths, and setbacks are of adequate size and distance to prevent pollution or erosion along streets or other public ways and waterways. Increased shoreland setbacks shall be a condition of approval as a way of minimizing adverse impacts of development. Shore cover provisions in Section 7.2 shall apply except that maximum width of a lake frontage opening shall be 100 feet and minimum vegetative buffer depth shall be increased to offset the impact of the proposed development.
6. Consistency with other development ordinances. Planned Residential Unit Development shall be consistent with standards in other development ordinances administered by the County of Rock.

(3) Sanitary Regulations. Each county shall adopt sanitary regulations for the protection of health and the preservation and enhancement of water quality.

- (A) Where public water supply systems are not available, private well construction shall be required to conform to ch. NR 812, Wis. Adm. Code.
- (B) Where a public sewage collection and treatment system is not available, design and construction of private on-site waste treatment system shall, prior to July 1, 1980, be required to comply with ch. SPS 383, and after June 30, 1980 be governed by a private sewage system ordinance adopted by the county under s. 59.70(5), Wis. Stats.

#### **4.205 Minimum Lot Size and Setbacks**

- (1) Purpose. Minimum lot sizes and setbacks in the shoreland area shall be established to afford protection against danger to health, safety and welfare, and protection against pollution of the adjacent body of water.

In calculating the minimum area or width of a lot, the beds of navigable waters shall not be included.

- (2) Sewered Lots

- (A) Minimum Area and Width for Each New Lot. The minimum lot area shall be 15,000 sq. ft. and the minimum average lot width shall be 100 feet.

- 1. The width shall be calculated by averaging measurements at the following 4 locations:
      - (a) The ordinary high water mark.
      - (b) The building setback line.
      - (c) One other location on the lot within 300 feet of the ordinary highwater mark.
      - (d) The rear lot line

- (B) Setbacks (Applicable to New and Existing Lots)

- 1. There shall be a side yard for each principle structure or building. The minimum width of one side yard shall be 8 feet. The minimum combined width of both principle side yards shall be 20 feet. There shall be a side yard of 5 feet for accessory structures excluding fences.
    - 2. The rear yard setback for all structures shall be 25 feet.
    - 3. The front yard setback for all structures shall be 25 feet.

- (3) Unsewered Lots

(A) Minimum Area and Width for Each New Lot. The minimum lot area shall be 40,000 sq. ft. and the minimum average lot width shall be 100 feet with at least 100 feet of frontage at the ordinary high-water mark.

1. The width shall be calculated by averaging measurements at the following 4 locations:
  - (a) The ordinary high water mark.
  - (b) The building setback line.
  - (c) One other location on the lot within 300 feet of the ordinary highwater mark.
  - (d) The rear lot line

(B) Setbacks (Applicable to New and Existing Lots)

1. There shall be a side yard for each principle structure or building. The minimum width of one side yard shall be 15 feet. The minimum combined width of both principle side yards shall be 40 feet. There shall be a side yard of 5 feet for accessory structures excluding fences
2. The rear yard setback for all structures shall be 25 feet.
3. The front yard setback for all structures shall be 50 feet.

(4) Substandard Lots

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

1. 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.
2. The substandard lot or parcel has never been developed with one or more of its structures placed partly upon an adjacent lot or parcel.
3. The substandard lot or parcel is developed to comply with all other ordinance requirements, including setbacks.

(B) Other Substandard Lots. Except for lots which meet the requirements of sections 5.4 a building permit for the improvement of a lot having lesser dimensions than those stated in sections 5.2 and 5.3 shall be issued only if a variance is granted by the Rock County Board of Adjustment.

**4.206 Building Setbacks.** Permitted building setbacks shall be established to conform to health, safety and welfare requirements, preserve natural beauty, reduce flood hazards and avoid water pollution. Setback standards are established in Section 4.205 and 4.206(1) of this ordinance.

(1) Shoreland Setback. Unless exempt under 6.11, or reduced under 6.2, a setback of 75 feet from the ordinary high-water mark of any navigable waters to the nearest part of a building or structure shall be required for all buildings and structures.

(A) Exempt Structures. All of the following structures are exempt from the shoreland setback standards in subd 6.1:

1. Boathouses located entirely above the ordinary high-water mark and entirely within the access and viewing corridor that do not contain plumbing and are not used for human habitation.
  - (a) The use of boathouses for human habitation and the construction or placing of boathouses beyond the ordinary highwater mark of any navigable waters shall be prohibited.
  - (b) Boathouses shall be designed and constructed solely for the storage of boats and related equipment and shall not be used for human habitation.
  - (c) One boathouse is permitted on a lot as an accessory structure.
  - (d) Boathouses shall not be constructed where the existing slope is more than 12%.
  - (e) Boathouses shall be set back a minimum 10 feet from the ordinary highwater mark and shall be constructed in conformity with local floodplain zoning standards.
  - (f) Boathouses shall not exceed one story and 500 square feet in floor area.
  - (g) Boathouse shall have a pitched roof.
  - (h) All other ordinance requirements shall be met, including impervious surface standards.
2. Open sided and screened structures such as gazebos, decks, patios and screen houses in the shoreland setback area that satisfy the requirements in s. 59.692(1v), Stats.
  - (a) The part of the structure that is nearest to the water is located at least 35 feet landward from the ordinary-high water mark.
  - (b) The floor area of all the structures in the shoreland setback area (excluding boathouses) will not exceed 200 square feet.
  - (c) The structure that is the subject of the request for special zoning permission has no sides or has open or screened sides.
  - (d) The county must approve a plan that will be implemented by the owner of the property to preserve or establish a vegetative buffer zone that covers at least 70% of the half of the shoreland setback area that is nearest to the water.
  - (e) An enforceable affidavit must be filed with the register of deeds prior to construction acknowledging the limitations on vegetation.
3. Broadcast signal receivers, including satellite dishes or antennas that are one meter or less in diameter and satellite earth station antennas that are 2 meters or less in diameter.

4. Utility transmission and distribution lines, poles, towers, water towers, pumping stations, well pumphouse covers, private on-site wastewater treatment systems that comply with ch. SPS 383, and other utility structures that have no feasible alternative location outside of the minimum setback and that employ best management practices to infiltrate or otherwise control storm water runoff from the structure.
5. Walkways, stairways or rail systems that are necessary to provide pedestrian access to the shoreline and are a maximum of 48-inches in width.

(2) Reduced Principal Structure Setback.

- (A) Where there is an existing development pattern, the shoreland setback for a proposed principal structure may be reduced to the average shoreland setback of the principal structure on each adjacent lot within 250 feet of the proposed principle structure. Existing development pattern means that principal structures exist within 250 feet of the proposed principal structure in both directions along the shoreline. The shoreland setback may not be reduced to less than 35-feet from the ordinary high-water mark of any navigable waters.
- (B) When an existing development pattern exists the county may permit a reduced minimum setback for a new principal residential structure of not less than 35 feet if all of the following conditions are satisfied:
  1. The lot does not have a compliant building location which meets the applicable county setback, a minimum of 75 feet from the ordinary high water mark, due to unique property features.
  2. The depth of the structure is limited to 30 feet.
  3. The lot is a legal lot of record that complied with the applicable lot size standards in effect at the time that the lot was recorded at the county register of deeds office.
  4. The minimum setback shall be minimally reduced to create a compliant building location and may not be less than 35 feet from the ordinary high water mark.
  5. Soil disturbance and vegetation removal activities do not encroach into the primary shoreland buffer.
  6. All other provisions of this ordinance are met.

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

#### **4.207 Vegetation**

(1) Purpose. To protect natural scenic beauty, fish and wildlife habitat, and water quality, the county shall regulate removal of vegetation in shoreland areas, consistent

with sound forestry and soil conservation practices and considering the effect of vegetation removal on water quality, including soil erosion, and the flow of effluents, sediments and nutrients.

(2) Establishment of a Vegetative Buffer Zone. To protect water quality, fish and wildlife habitat and natural scenic beauty, and to promote preservation and restoration of native vegetation, this ordinance shall designate land that extends from the ordinary high water mark to a minimum of 35 feet inland as a vegetative buffer zone and prohibit removal of vegetation in the vegetative buffer zone except as follows.

- (A) The county may allow routine maintenance of vegetation.
- (B) The county may allow removal of trees and shrubs in the vegetative buffer zone to create access and viewing corridors, provided that the combined width of all access and viewing corridors on a riparian lot or parcel may not exceed the lesser of 30 percent of the shoreline frontage or 200 feet.
- (C) The county may allow removal of trees and shrubs in the vegetative buffer zone on a parcel with 10 or more acres of forested land consistent with “generally accepted forestry management practices” as defined in s. NR 1.25 (2) (b), and described in Department publication “Wisconsin Forest Management Guidelines” (publication FR-226), provided that vegetation removal be consistent with these practices.
- (D) The county may allow removal of vegetation within the vegetative buffer zone to manage exotic or invasive species, damaged vegetation, vegetation that must be removed to control disease, or vegetation creating an imminent safety hazard, provided that any vegetation removed under the permit be replaced by replanting in the same area as soon as practicable.
- (E) The county may authorize by permit additional vegetation management activities in the vegetative buffer zone. The permit issued under this subparagraph shall require that all management activities comply with detailed plans approved by the county and designed to control erosion by limiting sedimentation into the waterbody, to improve the plant community by replanting in the same area, and to maintain and monitor the newly restored area. The permit also shall require an enforceable restriction to preserve the newly restored area.

(3) Cutting More Than 35 Feet Inland. From the inland edge of the 35 foot area to the outer limits of the shoreland, the cutting of vegetation shall be allowed when accomplished using accepted forest management and soil conservation practices which protect water quality.

**4.208 Filling, Grading, Lagooning, Dredging, Ditching and Excavating.** Filling, grading, lagooning, dredging, ditching and excavating may be permitted only in accordance with the

provisions of s. NR 115.04, the requirements of ch. 30, Stats., and other local, state and federal laws where applicable, and only if done in a manner designed to minimize erosion, sedimentation and impairment of fish and wildlife habitat and natural scenic beauty in compliance with the standards below:

(1) General Standards. Filling, grading, lagooning, dredging, ditching or excavating which does not require a permit under section 4.208 may be permitted in the shoreland area 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 a shoreland-wetland district meets the requirements of sections 4.203(4)(B) and 4.203(4)(c) of this ordinance.
- (C) All applicable federal, state and local authority is obtained in addition to a permit under this ordinance.
- (D) Any fill placed in the shoreland area is protected against erosion by the use of riprap, vegetative cover or a bulkhead.

(2) Conditional Use Permit Required. Except as provided in section 4.208(3) conditional use permit is required:

- (A) For any filling or grading of any area which is within the Shoreland Zoning District which consists of:
  - 1. A single area of more than 1,000 sq. ft. exposed or the cumulative exposed area exceeds 1,000 sq. ft. or
  - 2. More than 40 cubic yards of fill is deposited
- (B) For any construction or dredging commenced on any existing artificial waterway, canal, ditch, lagoon, pond, lake or similar waterway which is within the jurisdiction of this ordinance or where the purpose is the ultimate connection with a navigable body of water.

(3) Soil Conservation Practices and Agricultural Drainage Maintenance.

- (A) Soil conservation practices such as tiled terraces, runoff diversions and grassed waterways used for erosion control shall not require a permit under section 4.208(2) when designed and constructed to Natural Resources Conservation Service technical standards.
- (B) The maintenance of existing agricultural drainage systems shall be allowed in conformity with the following construction standards:

1. The maintenance dredging of farm drainage ditches is limited to reestablishing the original ditch cross section unless a conditional use permit under section 8.22 is obtained.
2. Ditch banks shall be constructed at a slope of 2 horizontal to 1 vertical (50% grade) or flatter.
3. Ditch banks shall be maintained in a sod cover and free of woody vegetation.
4. A 10 foot wide buffer strip of untilled, ungrazed sod cover shall be maintained adjacent to the ditch bank.

(4) Permit Conditions. In granting a permit under section 4.208(2), the County shall attach the following conditions, where appropriate, in addition to other appropriate conditions and provisions resulting in permit review specified in sections 4.213(2) or 4.213(4).

- (A) The smallest amount of bare ground shall be exposed for as short a time as feasible.
- (B) Temporary ground cover (such as mulch or jute netting) shall be used and permanent vegetative cover shall be established.
- (C) Diversion berms or bales, silting basins, terraces, filter fabric fencing, and other methods shall be used to prevent erosion.
- (D) Lagoons shall be constructed to avoid fish trap conditions.
- (E) Fill shall be stabilized according to accepted engineering standards.
- (F) Filling shall comply with any local floodplain zoning ordinance and shall not restrict a floodway or destroy the flood storage capacity of a floodplain.
- (G) Consideration and care shall be taken to inhibit transfer of invasive species when fill material is relocated to or from a site as part of construction project.
- (H) Channels or artificial watercourses shall be constructed with side slopes of two (2) units horizontal distance to one (1) unit vertical or flatter (50% slope or less) which shall be promptly vegetated, unless bulkheads or riprap are provided.

#### **4.209 Impervious Surface Standards**

(1) Purpose. Establish impervious surface standards to protect water quality and fish and wildlife habitat and to protect against pollution of navigable waters. County impervious surface standards shall apply to the construction, reconstruction, expansion, replacement or relocation of any impervious surface within the Shoreland Zoning District of any navigable waterway, and shall require all of the following:



(2) Calculation 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 the Shoreland Zoning District by the total surface area of that portion of the lot or parcel that is within the Shoreland Zoning District, and multiplied by 100.

(3) Impervious Surface Standard. Up to 15% impervious surface on the portion of a lot or parcel that is within the Shoreland Zoning District shall be permitted with no mitigation plan.

(4) Maximum Impervious Surface. More than 15% impervious surface but not more than 30% impervious surface on the portion of a lot or parcel that is within the Shoreland Zoning District shall be permitted with a mitigation plan that meets the standards found in section 12.0.

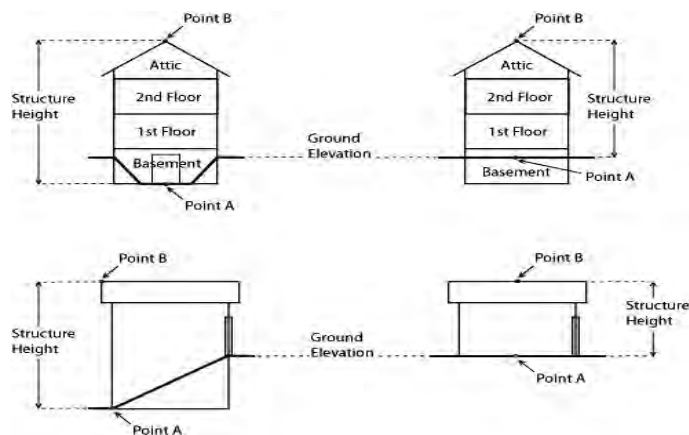
(5) Existing Impervious Surfaces. For existing impervious surfaces that were lawfully placed when constructed but that do not comply with the impervious surface standard in section 4.209(3) or the maximum impervious surface standard in section 4.209(4), the property owner may do any of the following:

- (A) maintain and repair the existing impervious surfaces;
- (B) replace existing impervious surfaces with similar surfaces within the existing building envelope;
- (C) relocate or modify an existing impervious surface with similar or different impervious surface, provided that the relocation or modification does not result in an increase in the percentage of impervious surface that existed on the effective date of the county shoreland ordinance, and the impervious surface meets the applicable setback requirements in s. Wis. Admin. Code NR 115.05 (1) (b).

(6) This section of the ordinance shall not be construed to supersede other provisions in this ordinance. Maintenance, reconstruction, relocation and expansion of existing structures must comply with other provisions including the shoreland setback standards in sections 4.206(1) or 4.206(2) and the nonconforming structure provisions of sections 4.11(1) through 4.211(8).

**4.210 Heights.** To protect and preserve wildlife habitat and natural scenic beauty, on or after February 1, 2010, no construction that results in a structure taller than 35 feet shall be permitted within the Shoreland Zoning District.

Structure height is the measurement of the vertical line segment starting at the lowest point of any exposed wall and it's intersect with the ground (Point A Below) to a line horizontal to the highest point of a structure (Point B Below) unless specified under other sections of this code. This includes partially exposed basements.



#### 4.211 Nonconforming Uses and Structures.

(1) Purpose. To protect water quality, fish and wildlife habitat, and natural scenic beauty, some control is needed over the modification and reconstruction of these structures.

(2) General Rule for Nonconforming Uses and Structures.

(A) Pursuant to s. 59.692(1s), Stats., Restrictions that are applicable to damaged or destroyed nonconforming structures may not prohibit the restoration of a nonconforming structure if the structure will be restored to the size, location, and use that it had immediately before the damage or destruction occurred, or impose any limits on the costs of the repair, reconstruction, or improvement if all of the following apply:

1. The nonconforming structure was damaged or destroyed after October 14, 1997.
2. The damage or destruction was caused by violent wind, vandalism, fire, flood, ice, snow, mold, or infestation.
3. A landowner has demonstrated by a permit application and approval the scope, nature, extent of the damage as well as the dimensions of the damaged structure and proposed restoration.

(B) Notwithstanding par. (A) above, the size of a structure may be larger than the size it was immediately before the damage or destruction if necessary for the structure to comply with applicable local, state or federal requirements.

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

(4) **Maintenance of Nonconforming Principal Structure.** An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setbacks may be maintained and repaired within its existing building envelope. Maintenance and repair includes such activities as interior remodeling, plumbing, insulation, and replacement of windows, doors, siding, or roof.

(5) **Vertical Expansion of Nonconforming Principal Structure.** An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setbacks may be expanded vertically, provided that all of the following requirements are met:

- (A) The use of the structure has not been discontinued for a period of 12 months or more.
- (B) The existing principal structure is at least 35 feet from the ordinary high-water mark.
- (C) Vertical expansion is limited to the height allowed in section 4.210.
- (D) The county shall issue a permit that requires a mitigation plan that shall be approved by the county and implemented by the property owner by the date specified in the permit. The mitigation plan shall meet the standards found in section 4.212.
- (E) All other provisions of the shoreland ordinance shall be met.

(6) **Expansion of a Nonconforming Principal Structure Beyond Setback.** An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setbacks may be expanded horizontally, landward or vertically provided that the expanded area meets the building setback requirements per sections 4.205 and 4.206(1) and that all other provisions of the shoreland ordinance are met. A mitigation plan is not required solely for expansion under this paragraph, but may be required under the impervious surface standards of this ordinance.

(7) **Replacement or Relocation of Nonconforming Principal Structure.** An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setbacks may be replaced or relocated on the property provided all of the following requirements are met:

- (A) The use of the structure has not been discontinued for a period of 12 months or more.
- (B) The existing principal structure is at least 35 feet from the ordinary high-water mark.

- (C) No portion of the replaced or relocated structure is located any closer to the ordinary high-water mark than the closest point of the existing principal structure.
  - (D) The county determines that no other location is available on the property to build a principal structure of a comparable size to the structure proposed for replacement or relocation that will result in compliance with the shoreland setback requirements.
  - (E) The county shall issue a permit that requires a mitigation plan that shall be approved by the county and implemented by the property owner by the date specified in the permit. The mitigation plan shall meet the standards found in section 12.0 including enforceable obligations of the property owner to establish or maintain measures that the county determines are adequate to offset the impacts of the permitted expansion on water quality, near-shore aquatic habitat, upland wildlife habitat and natural scenic beauty. The mitigation measures shall be proportional to the amount and impacts of the replaced or relocated structure being permitted. The obligations of the property owner under the mitigation plan shall be evidenced by an instrument recorded in the office of the County Register of Deeds.
  - (F) The county shall issue a permit that requires that all other structures on the lot or parcel that do not comply with the shoreland setback requirement per section 4.206(1) and are not exempt under section 4.206(1)(A) to be removed by the date specified in the permit.
  - (G) All other provisions of the shoreland ordinance shall be met.
- (8) Maintenance of Nonconforming Accessory Structure. Accessory structures that were legally constructed before the adoption of this chapter may be maintained and repaired but may not be expanded or rebuilt unless authorized by s.59.692(1s) Wisconsin Stats. or unless they are made to conform to all other provisions of this ordinance.
- (9) Wet 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 s. 30.121, Stats.

#### **4.212 Mitigation.**

- (1) Application for Mitigation Permit Requirements. When the county issues a permit requiring mitigation under sections 4.205(1)(A)2, 4.209(2), 4.211(5) and 4.211(7), the property owner must submit a complete permit application that is reviewed and approved by the county. The application shall include the following:
- (A) A mitigation plan shall be submitted on forms provided by the Zoning Administrator for review and approval. The mitigation measures shall be

proportional in scope to the impacts on water quality, near-shore aquatic habitat, upland wildlife habitat and natural scenic beauty. The site plan shall be designed and implemented to restore natural functions lost through development and human activities. Plan review will be based on current guidance from sources such as the Wisconsin Department of Natural Resources, the USDA-Natural Resources Conservation Service, University of Wisconsin-Extension or other appropriate sources. The plan shall be signed by the property owner and filed with the Zoning Administrator prior to issuance of the zoning permit. The plan shall include, at a minimum:

1. Name and Address of property owner
  2. Property address and legal description
  3. Extent of the shoreland buffer
  4. Scale (e.g. 1 inch = 10 feet)
  5. Existing and planned topography
  6. Ordinary high water mark (OHWM) location
  7. Location of all structures on the property including those planned as part of mitigation
  8. Viewing and access corridor
  9. Boundary of the shoreland buffer zone
  10. Existing trees, shrubs, and native ground cover
  11. Areas to be planted with trees, shrubs, and groundcovers
  12. Implementation schedule (see detail below)
  13. A plant species list and potential substitutions if availability is an issue (see restoration standards and specifications below)
  14. Erosion control practices (to be installed prior to and during buffer establishment)
  15. Water diversions and channelized flow areas
  16. Buffer Maintenance (watering, weeding, replanting, etc)
- (B) Implementation schedule. The approved mitigation plan must be started within one year from the issue date of applicable permit. All plantings and any other required activities in the mitigation plan must be completed within two years of the permit issue date.
- (C) The mitigation measures shall be maintained in perpetuity, unless the property owner receives approval of a new, approved mitigation plan meeting the same point requirements. The maintenance obligations shall be evidenced by an instrument, provided by the Agency, recorded in the office of the Register of Deeds prior to issuance of the permit.
- (D) Certification of Completion. Within two years of issuance of the related zoning permit, the property owner shall complete the mitigation practices and shall certify in writing to the Zoning Administrator that the required mitigation has been completed. As part of the certification, the property owner shall submit photos documenting the mitigation measures.

- (E) Subsequent Development. Subsequent zoning permit applications in compliance with all new development standards of this ordinance shall not require additional mitigation provided the mitigation measures are maintained.

(2) Determination of Level or Required Mitigation. A plan to mitigate for the adverse effects of construction on a waterfront property is required under other sections of this Ordinance and will be based on a point system. The number of mitigation points necessary for a zoning permit depends on the type, size and location of the construction activity. Similarly, the various mitigation practices have been assigned point values to be accumulated to an amount equal or greater than the point value of the adverse construction activity. The Zoning Administrator shall determine the number of points necessary and the landowner shall choose mitigation options in consideration the impact of the project based on the following:

- (A) Points are required for developing property under the following conditions and shall be cumulative when more than one condition applies:

1. Installation of impervious surfaces on greater than 15% (but less than 30%) of the total lot area (section 4.209(4) – 2 points.
2. Vertical expansion of a non conforming principal structure (section 4.211(5))
  - a. Less than 500 square foot addition – 1 point.
  - b. Greater than 500 square foot addition – 2 points.
  - c. If existing structure is located less than 75 feet from OHWM – 2 additional points.
3. Replacement or relocation of a non conforming principal structure (section 4.211(7) – 6 points.
4. Building or excavating on slopes greater than or equal to 20 % - 1 additional point

- (B) Approved Mitigation Practices. Property owners may choose among the following mitigation practices to achieve the number mitigation points required. Practices shall be chosen in consideration of the project impact on the purposes and intent of this ordinance.

1. The associated privately owned wastewater treatment system must be evaluated and upgraded as appropriate in compliance with SPS 383, Wis. Administrative Code. Replacement of failing septic system due to setbacks or sizing - 2 points. Replacement of failing septic system due to surface water or groundwater impacts - 3 points

2. Native vegetation and water quality protection functions of the shore buffer area must be restored to the extent practicable following the standards in Section 4.212(3). Points may be obtained for maintaining existing buffer zones or for creating and maintaining new buffer zones as set forth below.

When a shoreland buffer restoration is required as part of the mitigation plan, the buffer type shall be either woodland, prairie, wetland or a combination if the site characteristics permit. The woodland and prairie buffers shall comply with the standards set forth in Sec. 4.212(3). Wetland buffers will also be permitted where deemed appropriate by the Zoning Administrator.

- a. Primary Active Buffer Zone: Shore buffer zone within thirty-five feet (35') of the OHWM, including trees, shrubbery, underbrush and other natural vegetation, and subject to the standards in Sec. 4.212(3) - 3 points.
  - b. Secondary Active Buffer Zone: An additional fifteen feet (15') of buffer zone depth inland from the OHWM beyond the thirty-five feet (35') of buffer zone already established, providing a total of fifty feet (50') of buffer zone depth, subject to Sec. 4.212(3) - 2 points.
  - c. Increasing buffer depths - ½ point for each rounded 5 ft increment beyond the secondary active buffer zone.
  - d. Passive Buffer Zone: Shoreland vegetation buffer area within thirty-five feet (35') of the OHWM, including un-mowed, grass or other under story vegetation, but without the tree and shrub layers required to meet the three-point mitigation standard - 1 point.
  - e. Side lot Buffer Zone: A ten foot (10') wide side lot buffer zone including trees, shrubbery, underbrush and other natural vegetation extending along a side lot line for a depth of at least one hundred feet (100') from the OHWM. One point. The side lot buffer area is subject to the same standards and conditions as the active buffer zone. Points for side lot line buffers may be additive, for a maximum of two (2) points, if buffer areas exist and are maintained along both side lot lines.
3. Nonconforming structures removed from the shore setback area. Points may be obtained for the removal of structures as set forth below.
    - a. Removal of a principal structure located within seventy-five feet (75') of the OHWM to a site that meets the OHWM set back requirements for new development on that water body - 3 points.
    - b. Removal of all non-principal, accessory structures located within thirty-five feet (35') of the OHWM, with the result that all such structures, including boathouses, are set back at least thirty-five feet (35') from the ordinary high water mark - 2 points.
    - c. Removal of all non-principal, accessory structures located between thirty-five feet (35') and seventy-five feet (75') from the ordinary high

- water mark, with the result that all such structures, including boathouses, are set back at least seventy-five feet (75') from the ordinary high water mark - 1 point.
  - d. No non-principal, accessory structures are located less than seventy-five feet (75') from the ordinary high water mark. This point is not added to points awarded for removal of structures from para. ii and iii above - 1 point.
  - e. Removal of non-structural impervious surfaces - ½ point for each rounded 500 sq.ft. of pavement or hardpacked gravel.
4. Exterior building materials shall blend with the natural ground cover in the vicinity of the construction - 1 point
  5. Having percentages of the parcel in a natural state. 25-49% - 1 point. 50-74% - 2 points. >74% - 3 points
  6. Other Practices. At the discretion of the Zoning Administrator, up to three (3) additional mitigation points may be approved for restoration or protection activities that are likely to provide significant benefits to meet the objectives of this ordinance. Examples may include construction of a storm water detention basin or implementation of other storm water management plan activities, replacement of seawalls with bio-engineered structures, installation of rain barrels, compaction mitigation or removal of artificial sand beaches.

Factors to be considered in making the determination of number of points and approval of alternative mitigation practices include, but are not limited to:

- a. Cost of implementation;
- b. Runoff diversion and/or retention;
- c. Lot configuration;
- d. Parcel size;
- e. Location of impervious areas;
- f. Sensitivity and level of development of the water body; and
- g. Significance toward meeting ordinance objectives.

(3) Restoration Standards and Specifications. All shoreland restoration projects shall be designed based on the following standards and specifications:

- (A) Natural Recovery. Shoreland buffer areas that are suited for natural recovery will be allowed only after Zoning Administrator approval.
- (B) Accelerated recovery. Areas not suited to natural recovery will require plantings to establish native vegetation. Areas such as lawns or eroded sites with no seed source will require plantings following site preparation including



turf removal. Planted buffers must meet the required plant densities based on square footage of buffer area and the type of buffer (Table 1).

- (C) Planting credits will be allowed for the viewing corridor, areas of existing native vegetation, and areas suited for natural recovery.
- (D) Viewing Corridor. Sod, mulch, or other approved non-erodeable natural material is allowed in the view corridor to the minimum extent necessary for access and recreation as stipulated below:
  - 1. Wherever feasible, grass species used shall be no-mow/low-grow grasses which do not require cutting.
  - 2. One path with a maximum width of 4 feet as allowed by this ordinance.
- (E) Vegetation used in any restoration shall be native to the state of Wisconsin and shall be installed at densities that are adequate to reestablish the water quality, habitat and natural beauty protection functions of a shoreline buffer area.
- (C) Planting densities are based on the total area of the required buffer. Area credits calculated are subtracted from the total required density on an equal square footage of coverage basis. Trees must be at least 2 years old and greater than 1 foot tall to qualify as a credit or planting.
- (D) Pre-existing structures. For lots with legal pre-existing structures, restoration is not required within 15 feet of the principal structure.
- (E) Once the shoreline buffer has been reestablished, vegetation removal and land disturbing activities are generally prohibited as outlined in the recorded maintenance agreement.

<b>Woodland Buffer</b>			<b>Prairie Buffer</b>		
<b>Layer</b>	<b>Minimum number of species</b>	<b>Density per 100 square feet</b>	<b>Minimum number of species</b>	<b>Density per 100 square feet</b>	<b>Area Credits</b>
Tree Canopy	3	1	2	0.2	Existing tree canopy
Shrub Understory	4	1.5	2	0.5	Existing shrub understory
Groundcover Plant Plugs	3	70	5	70	Existing well vegetated native ground cover
Groundcover seeding	3	Varies	5	Varies	Existing well vegetated native ground cover

**Table 1**

**Table 1**

#### **4.213 Administrative Provisions.**

(1) Zoning Administrator. The Zoning Administrator shall have the following duties and powers:

- (A) System of permits for new construction, development, reconstruction, structural alteration or moving of buildings and structures. A copy of applications shall be required to be filed in the office of the county Zoning Administrator.
- (B) Regular inspection of permitted work in progress to insure conformity of the finished structures with the terms of the ordinance.
- (C) A variance procedure which authorizes the board of adjustment to grant such variance from the terms of the ordinance as will not be contrary to the public interest where, owing to special conditions and the adoption of the shoreland zoning ordinance, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship.
- (D) A conditional use procedure.
- (E) The county shall keep a complete record of all proceedings before the Board of Adjustment, and Planning and Development Agency.

- (F) Written notice to the appropriate office of the Department at least 10 days prior to any hearing on a proposed variance, special exception or conditional use permit, appeal for a map or text interpretation, map or text amendment, and copies of all proposed land divisions submitted to the county for review under section 4.204. Upon request of the Department a county shall provide to the appropriate office a copy of any permit issued under section 4.213.
  - (G) Submission to the appropriate office of the Department, within 10 days after grant or denial, copies of any permit related to a nonconforming structure, any decision on a variance, special exception or conditional use permit, or appeal for a map or text interpretation, and any decision to amend a map or text of an ordinance.
  - (H) Mapped zoning districts and the recording, on an official copy of such map, of all district boundary amendments.
  - (I) The establishment of appropriate penalties for violations of various provisions of the ordinance, including forfeitures. Compliance with the ordinance shall be enforceable by the use of injunctions to prevent or abate a violation, as provided in s. 59.69 (11), Stats.
  - (J) The prosecution of violations of the shoreland ordinance.
- (2) Permits
- (A) When Required. Except where another section of this ordinance specifically exempts certain types of development from this requirement, a permit shall be obtained from the Zoning Administrator before any new development.
  - (B) Application. An application for a permit shall be made to the Zoning Administrator upon forms furnished by the county and shall include for the purpose of proper enforcement of these regulations, the following information:
    1. Name and address of applicant and property owner.
    2. Legal description of the property and type of proposed use.
    3. A scaled drawing of the dimensions of the lot and location of all existing and proposed structures and impervious surfaces relative to the lot lines, center line of abutting highways, the ordinary high water mark and floodplain of any abutting waterways.
    4. Location and description of any existing private water supply or sewage system or notification of plans for any such installation.

5. Plans for appropriate mitigation when required.
  6. Payment of the appropriate fee established by the Rock County Board of Supervisors.
  7. Additional information required by the Zoning Administrator.
- (C) Expiration of Permit. Zoning permits shall expire 12 months from date issued.
- (D) Certificates of Compliance of Mitigation. For permitted projects that require mitigation under this ordinance, no land or building shall be occupied or used until a certificate of compliance is issued by the Zoning Administrator.
1. The certificate of compliance shall certify that the building or premises or part thereof, and the proposed use thereof, and associated mitigation practices conform to the provisions of this ordinance and the approved permit.
  2. The certificate of compliance shall be issued within 10 days after notification of the completion of the work specified in the zoning permit and mitigation plan, if the building or premises or proposed use thereof conforms with all the provisions of this ordinance.
  3. The Zoning Administrator may issue a temporary certificate of compliance for part of a building, pursuant to rules and regulations established by the County Board.
- (3) Conditional Use Permits.
- (A) Application for a Conditional Use Permit. Any use listed as a conditional use in this ordinance shall be permitted only after an application has been submitted to the Zoning Administrator and a conditional use permit has been granted by the Committee. To secure information upon which to base its determination, the Committee may require the applicant to furnish, in addition to the information required for a zoning permit, the following information:
1. Name and address of applicant and property owner.
  2. Legal description of the property and type of proposed use.
  3. A plan of the area showing surface contours, soil types, ordinary high-water marks, ground water conditions, subsurface geology and vegetative cover.
  4. A scaled drawing of the dimensions of the lot and location of all existing and proposed structures and impervious surfaces relative to the lot lines, center line of abutting highways, the ordinary high-water mark and floodplain of any abutting waterways.

5. Location and description of any existing private water supply or sewage system or notification of plans for any such installation.
  6. Plans for appropriate mitigation when required.
  7. Specifications for areas of proposed filling, grading, lagooning or dredging.
  8. Rationale for why the proposed conditional use meets all of the conditional use permit criteria listed in the ordinance
  9. Other pertinent information necessary to determine if the proposed use meets the requirements of this ordinance as required by the Zoning Administrator.
- (B) Notice, Public Hearing and Decision. Before deciding whether to grant or deny an application for a conditional use permit, the Committee shall hold a public hearing. Notice of such public hearing, specifying the time, place and matters to come before the Committee, shall be given as a Class 2 notice under ch. 985, Wis. Stats and via mail to surrounding landowners (those within 1000 feet in areas not served by sanitary sewer and those landowners within 500 feet in areas served by sanitary sewer). Such notice shall be provided to the appropriate office of the Department at least 10 days prior to the hearing. The Committee shall state in writing the grounds for granting or denying a conditional use permit.
- (C) Standards Applicable to All Conditional Uses. In deciding a conditional use permit application, the Committee shall evaluate the effect of the proposed use upon:
1. The maintenance of safe and healthful conditions.
  2. The prevention and control of water pollution including sedimentation.
  3. Compliance with local floodplain zoning ordinances and opportunity for damage to adjacent properties due to altered surface water drainage.
  4. The erosion potential of the site based upon degree and direction of slope, soil type and vegetative cover.
  5. The location of the site with respect to existing or future access roads.
  6. The need of the proposed use in a shoreland location.
  7. Its compatibility with uses on adjacent land.
  8. The amount of liquid and solid wastes to be generated and the adequacy of the proposed disposal systems.
  9. Location factors under which:
    - a. Domestic uses shall be generally preferred;
    - b. Uses not inherently a source of pollution within an area shall be preferred over uses that are or may be a pollution source;
    - c. Use locations within an area tending to minimize the possibility of pollution shall be preferred over use locations tending to increase that possibility. Additional standards such as parking, noise, etc...maybe refer to the applicable part of their ordinance.

(D) Conditions Attached to Conditional Use Permits.

1. Such conditions may include specifications for, without limitation because of specific enumeration: type of shore cover; specific sewage disposal and water supply facilities; landscaping and planting screens; period of operation; operational control; sureties; deed restrictions; location of piers, docks, parking and signs; and type of construction. Upon consideration of the factors listed above, the Committee shall attach such conditions, in addition to those required elsewhere in this ordinance, as are necessary to further the purposes of this ordinance. Violations of any of these conditions shall be deemed a violation of this ordinance.
2. In granting a conditional use permit, the Committee may not impose conditions which are more restrictive than any of the specific standards in the ordinance. Where the ordinance is silent as to the extent of restriction, the Committee may impose any reasonable permit conditions to affect the purpose of this ordinance.

(E) Recording. When a conditional use permit is approved, an appropriate record shall be made of the land use and structures permitted. Such permit shall be applicable solely to the structures, use and property so described. A copy of any decision on a conditional use permit shall be provided to the appropriate office of the Department within 10 days after it is granted or denied.

(F) Revocation. Where the conditions of a conditional use permit are violated, the permit may be revoked.

(4) Variances. The Board of Adjustment may grant upon appeal a variance from the standards of this ordinance where an applicant convincingly demonstrates that:

(A) Power to Grant.

1. literal enforcement of the provisions of the ordinance will result in unnecessary hardship on the applicant;
2. the hardship is due to special conditions unique to the property; and
3. is not contrary to the public interest.

(B) Notice, Hearing and Decision. Before deciding on an application for a variance, the Board of Adjustment shall hold a public hearing. Notice of such hearing specifying the time, place and matters of concern, shall be given a Class 2 notice under ch. 985, Wis. Stats and via mail to surrounding landowners (those within 1000 feet in areas not served by sanitary sewer and those landowners within 500 feet in areas served by sanitary sewer). Such notice shall be provided to the appropriate office of the Department at least 10 days prior to the hearing. The Board shall state in writing the reasons for

granting or refusing a variance and shall provide a copy of such decision to the appropriate Department office within 10 days of the decision.

(5) Board of Adjustment.

(A) The Rock County Board of Adjustment created by the Rock County Board of Supervisors in accordance with s. 59.694, Wis. Stats., as provided in Chapter 4 Part 12 of the Rock County Code, shall serve as the board of adjustment provided for in this ordinance and all provisions of Part 12 consistent with the terms of this ordinance shall apply to the Board of Adjustment and its proceedings under this ordinance.

(B) Powers and Duties

1. The board of adjustment shall adopt such additional rules as it deems necessary and may exercise all of the powers conferred on such boards by s. 59.694, Wis. Stats. The County Board has adopted such rules for the conduct of the business of the board of adjustment as required by s. 59.694(3), Wis. Stats known as the “Rock County Board of Adjustment Rules and Procedures.”
2. It shall hear and decide appeals where it is alleged there is error in any order, requirements, decision or determination made by an administrative official in the enforcement or administration of this ordinance.
3. It may grant a variance from the standards of this ordinance pursuant to section 4.213(4).
4. In granting a variance, the board may impose any reasonable permit conditions to effect the purpose of this ordinance.

(C) Appeals to the Board. Appeals to the board of adjustment may be made by any person aggrieved or by an officer, department, board or bureau of the county affected by any decision of the Zoning Administrator or other administrative officer. Such appeal shall be made within 30 days, as provided by the rules of the board, by filing with the officer whose decision is in question, and with the board of adjustment, a notice of appeal specifying the reasons for the appeal. The Zoning Administrator or other officer whose decision is in question shall promptly transmit to the board all the papers constituting the record concerning the matter appealed.

(D) Hearing Appeals and Applications for Variances.

1. The board of adjustment shall fix a reasonable time for a hearing on the appeal or application. The board shall give public notice thereof by publishing a Class 2 notice under ch. 985, Wis. Stats, specifying the date,

time and place of the hearing and the matters to come before the board. Notice shall be mailed to the parties in interest. Written notice shall be given to the appropriate office of the Department at least 10 days prior to hearings on proposed shoreland variances and appeals for map or text interpretations.

2. A decision regarding the appeal or application shall be made as soon as practical. Copies of all decisions on shoreland variances and appeals for map or text interpretations shall be submitted to the appropriate office of the Department within 10 days after they are granted or denied.
3. The final disposition of an appeal or application to the board of adjustment shall be in the form of a written resolution or order signed by the chairman and secretary of the board. Such resolution shall state the specific facts which are the basis of the board's determination and shall either affirm, reverse, vary or modify the order, requirement, decision or determination appealed, in whole or in part, dismiss the appeal for lack of jurisdiction or prosecution or grant the application.
4. At the public hearing, any party may appear in person or by agent or by attorney.

(6) Fees. The County Board may, by resolution, adopt fees for the following:

- (A) Zoning permits.
- (B) Certificates of compliance.
- (C) Planned Unit Development reviews.
- (D) Public hearings.
- (E) Legal notice publications.
- (F) Conditional use permits.
- (G) Variances.
- (H) Administrative appeals.
- (I) Other duties as determined by the County Board.

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

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

(2) Shoreland Wetland Map Amendments

- (A) Every petition for a shoreland-wetland map amendment shall be referred to the Rock County Planning and Development Agency. A copy of each petition



shall be provided to the appropriate office of the Department within 5 days of the filing of the petition with the Planning and Development Agency. Written notice of the public hearing to be held on a proposed amendment shall be provided to the appropriate office of the Department at least 10 days prior to the hearing.

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

#### **4.215 Enforcement and Penalties**

(1) Forfeitures. Any person, firm or corporation who fails to comply with, or violates, the provisions of this Ordinance shall, upon conviction thereof, forfeit those amounts as established by reference in Resolution 08-8A-054 and any subsequent amendments thereto. Each day a violation exists or continues shall constitute a separate offense and is considered a public nuisance.

(2) Enforcement. It shall be unlawful to construct or use any structure, land, or water in violation of any of the provisions of this Ordinance. In case of any violation, the Zoning Administrator, the County Planning and Development Committee, or any neighboring property owner may institute appropriate action or proceeding to enjoin a violation of this Ordinance or cause a structure or use to be vacated or removed.

- (A) The Planning & Development Agency Director or Zoning Administrator or their designee, are authorized to issue an ordinance citation, pursuant to Chapter 21 of the County Code of Ordinances to any person, firm, association or corporation for engaging in activities that are in violation of this ordinance. Each day of violation, and each section violated, shall be considered a separate offense and subject to additional enforcement action, including, but not limited to the issuance of additional ordinance citations. Issuing a citation shall not release the applicant from full compliance with this ordinance nor from prosecution for violation of this ordinance.
- (B) The Planning & Development Agency shall notify the landowner/permit holder by certified mail of any non-complying activity or structure. The notice shall describe the nature of the violation, remedial actions needed, a schedule for remedial action, and additional enforcement action that may be taken.
- (C) Upon receipt of written notification from the Planning & Development Agency under paragraph (2) the landowner/permit holder shall comply with the remedial actions described in the notice.
- (D) If a landowner/permit holder does not comply with the provisions of a notice of non-compliance, the Planning & Development Agency may issue a citation(s) and/or revoke the permit.

- (E) If non-compliance with this ordinance is determined by the Planning & Development Agency as likely to result in damage to adjacent property, public facilities, or waters of the state, the Planning & Development Agency may post a stop-work order at the time of notification.
- (F) If the landowner/permit holder does not comply with the provisions of a notice of non-compliance, or violates a stop-work order, the Planning & Development Agency may request the Corporation Counsel to obtain a cease and desist order in any court with jurisdiction.
- (G) Any permit revocation, stop-work order, or cease and desist order shall remain in effect unless retracted by the Planning and Development Agency, Board of Adjustment, or by a court with jurisdiction.

(3) Civil Enforcement

Appropriate actions and proceeding may be taken by Law or in equity to prevent any violation of these regulations, to prevent unlawful construction, to recover damages, to restrain, correct, or abate a violation, and to prevent illegal occupancy of a building, structure, premises or use. These remedies shall be in addition to the Penalties described above.

#### **4.216 Definitions**

(1) For the purpose of administering and enforcing this ordinance, the terms or words used herein shall be interpreted as follows: Words used in the present tense include the future; words in the singular number include the plural number; and words in the plural number include the singular number. The word "shall" is mandatory, not permissive. All distances unless otherwise specified shall be measured horizontally.

(2) The following terms used in this ordinance mean:

**ACCESS AND VIEWING CORRIDOR** means a strip of vegetated land that allows safe pedestrian access to the shore through the vegetative buffer zone.

**ACCESSORY STRUCTURE** means a detached subordinate structure which is clearly incidental to, and customarily found in connection with, the principal structure or use to which it is related, and which is located on the same lot as the principal structure or use.

**BOATHOUSE** means a permanent structure used for the storage of watercraft and associated materials and includes all structures which are totally enclosed, have roofs or walls or any combination of these structural parts.

**BUILDING ENVELOPE** means the three dimensional space within which a structure is built.

**COUNTY ZONING AGENCY** means that committee or commission created or designated by the County Board under s. 59.69(2)(a), Wis. Stats, to act in all matters pertaining to county planning and zoning. In Rock County, it is referred to as the Rock County P&D Agency.

**CONDITIONAL USE** means a use which is permitted by this ordinance provided that certain conditions specified in the ordinance are met and that a permit is granted by the Planning and Development Committee.

**DEPARTMENT** means the Department of Natural Resources.

**DEVELOPMENT** means any artificial change to improved or unimproved real estate, including but not limited to, the construction of buildings, structures or accessory structures; the construction of additions or substantial improvements to buildings, structures or accessory structures; the placement of buildings or structures; mining, dredging, filling, grading, paving, excavation, or drilling operations; and the storage, deposition or extraction of materials.

**EXISTING DEVELOPMENT PATTERN** means that principal structures exist within 250 feet of a proposed principal structure in both directions along the shoreline.

**FLOODPLAIN** means the land which has been or may be hereafter covered by flood water during the regional flood. The floodplain includes the floodway and the flood fringe as those terms are defined in ch. NR 116, Wis. Adm. Code.

**GENERALLY ACCEPTED FORESTRY MANAGEMENT PRACTICES** means forestry management practices that promote sound management of a forest. Generally accepted forestry management practices include those practices contained in the most recent version of the department publication known as Wisconsin Forest Management Guidelines and identified as PUB FR-226.

**IMPERVIOUS SURFACE** means an area that releases as runoff all or a majority of the precipitation that falls on it. "Impervious surface" excludes frozen soil but includes and is not limited by enumeration to rooftops, sidewalks, driveways, parking lots, and streets unless specifically designed, constructed, and maintained to be pervious.

**MAINTENANCE AND REPAIR** includes such activities as interior remodeling, painting, decorating, paneling, plumbing, insulation, and replacement of windows, doors, wiring, siding, roof and other nonstructural components; and the repair of cracks in foundations, sidewalks, walkways and the application of waterproof coatings to foundations.

**MITIGATION** means balancing measures that are designed, implemented and function to restore natural functions and values that are otherwise lost through development and human activities.

**NAVIGABLE WATERS** means Lake Superior, Lake Michigan, all natural inland lakes within Wisconsin and all streams, ponds, sloughs, flowages and other waters within the territorial limits of this state, including the Wisconsin portion of boundary waters, which are navigable under the laws of this state. Under s. 281.31(2)(d), Wis. Stats, notwithstanding any other provision of law or administrative rule promulgated thereunder, shoreland ordinances required under s. 59.692, Wis. Stats, and ch. NR 115, Wis. Adm. Code, do not apply to lands adjacent to farm drainage ditches if:

- (1) Such lands are not adjacent to a natural navigable stream or river.
- (2) Those parts of such drainage ditches adjacent to such lands were not navigable streams before ditching; and
- (3) Such lands are maintained in nonstructural agricultural use.

**ORDINARY HIGH-WATER MARK** means the point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristics.

**REGIONAL FLOOD** means a flood determined to be representative of large floods known to have generally occurred in Wisconsin and which may be expected to occur on a particular stream because of like physical characteristics, once in every 100 years.

**REPLACEMENT CONSTRUCTION** in which the principle building or portion thereof is torn down and replaced by a new structure or building or portion thereof.

**ROUTINE MAINTENANCE OF VEGETATION** means normally accepted horticultural practices that do not result in the loss of any layer of existing vegetation and do not require earth disturbance.

**SHORELAND** means lands within the following distances from the ordinary highwater mark of navigable waters: 1,000 feet from a lake, pond or flowage; and 300 feet from a river or stream or to the landward side of the floodplain, whichever distance is greater.

**SHORELAND SETBACK** also known as the “Shoreland setback area” in s. 59.692(1)(bn) means an area in a shoreland that is within a certain distance of the ordinary high-water mark in which the construction or placement of buildings or

structures has been limited or prohibited under an ordinance enacted under section 59.692, Wis. Stats. In this ordinance, the shoreland setback is seventy-five feet.

**SHORELAND-WETLAND DISTRICT** means the zoning district, created as a part of this shoreland zoning ordinance, comprised of shorelands that are designated as wetlands on the wetland maps which have been adopted and made a part of this ordinance.

**STRUCTURAL ALTERATIONS** means any changes in the supporting members of a structure such as foundations, bearing walls, columns, beams or girders, footing and piles or any substantial change in the roof structure, or in the exterior walls.

**STRUCTURE** means anything constructed or erected, the use of which requires permanent or temporary location on the ground, or attached to something having a permanent or temporary location on the ground, including but not limited to any building, dwelling, manufactured building, manufactured home, mobile home, house trailer, recreational vehicle, boathouse, boat shelter, advertising sign, deck, patios, driveways, fences, retaining walls, or other improvements or any part of such structure. A structure includes any permanent or temporary appurtenance attached thereto.

**STRUCTURE, PRINCIPAL** means the main structure on a lot, intended for primary use as permitted by the regulations of the district in which it is located. A lot on which more than one principal use is located may have more than one principal structure.

**STRUCTURE, TEMPORARY** A structure which is built of such materials and in such a way that it would commonly be expected to have a relatively short useful life, or is built for a purpose that would commonly be expected to be relatively short-term.

**UNNECESSARY HARDSHIP** means that circumstance where special conditions, which were not self-created, affect a particular property and make strict conformity with restrictions governing area, setbacks, frontage, height or density unnecessarily burdensome or unreasonable in light of the purposes of this ordinance.

**VARIANCE** means an authorization granted by the board of adjustment to construct, alter or use a building or structure in a manner that deviates from the dimensional standards of this ordinance.

**WETLANDS** means those areas where water is at, near or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which have soils indicative of wet conditions.

## **Subpart 2: Zoning of County-Owned Lands**

### **4.217. Statutory Provisions and Statement of County Policy**

(1) Subsection 59.69(9) of the Wisconsin Statutes provides as follows: with regard to the Zoning of County-Owned Lands.:

- (A) The County Board may by ordinance zone and rezone lands owned by the County without necessity of securing the approval of the town boards of the towns wherein such lands are situated and without following the procedure outlined in sec. 59.69(5), Wis.Stats., provided that the County Board shall give written notice to the town board of the town wherein such lands are situated of its intent to so rezone and shall hold a public hearing on the proposed rezoning ordinance and give notice of such hearing by posting in 5 public places in the town.
- (B) This subsection shall not apply to land that is subject to a town zoning ordinance which is purchased by the county for use as a solid or hazardous waste disposal facility or hazardous waste storage or treatment facility, as these terms are defined under sec. 289.01, Wis. Stats.

(2) If current land uses and Town designated zoning do not correspond on County-owned lands the Planning and Development Committee will seek to zone the property within the context of Town Zoning Authority.