

by Tom Larson

In December, the Wisconsin Department of Natural Resources (DNR) adopted new changes to the state's shoreland zoning regulations (NR 115). Counties have until January 1, 2012, to update their local shoreland zoning ordinances to bring them into compliance with these new standards.

These new changes attempt to better protect water quality, wildlife and natural scenic beauty around our water resources by placing stricter standards on new development and construction near our waterways. Because these new changes could impact a prospective buyer's ability to improve or expand waterfront property, REALTORS® should familiarize themselves with the changes.

Background

In 1966, Wisconsin adopted shoreland zoning regulations to control development along lakes and rivers in unincorporated areas and any area annexed or incorporated after 1982. Generally, these state regulations provide minimum standards for lot sizes, how far structures are set back from the water's edge, and limits on removing trees and plants near the shoreline. Each county in Wisconsin (except Milwaukee County) is required to adopt and enforce shoreland zoning regulations that meet or exceed the state standards.

While many people believe that shoreland zoning regulations apply only to property adjacent to waterways, the regulations actually apply to all land within 1,000 feet of a lake, pond or flowage, and land within 300 feet of a stream or river. This means that all property within this shoreland zone is subject to the regulations even if the property is separated from the water by land, buildings or roadways.

Because the state shoreland regulations had not been updated in over 25 years, the DNR believed it was necessary to modify them due to increased development in shoreland areas and growing complaints about existing standards from both property owners and local governments. The revision process took over 7 years, with the DNR conducting approximately 30 public hearings and receiving over 50,000 public comments.

The final version of the regulations contains significant changes to the prior version. Counties have until January 2012 to update their shoreland zoning ordinances to meet or exceed the new state standards. Over the next two years, almost every county in the state will be revising their shoreland zoning ordinances. Accordingly, REALTORS® should work closely with their local counties to make sure the new shoreland zoning ordinances balance the need to protect our natural resources and the rights of property owners.



zoning regulations

The **Top 10** Changes to the State Shoreland Zoning Regulations

The revised shoreland zoning regulations contain many new provisions. Again, it is important to remember that these are only minimum standards and counties have the authority to adopt more restrictive standards if they wish. Here are the 10 new changes to shoreland zoning that will likely have the biggest impact on property owners and REALTORS®:

1. New impervious surface standards will limit the size of new homes and remodeling projects within 300 feet of the water.

For new construction and existing homes looking to expand within 300 feet of the water, no more than 15% of the lot (within 300 feet of the water) can be covered in impervious surfaces (concrete, black top, footprint of structure, etc.). This includes roof tops, sidewalks, driveways, patios, and any other surface that will not allow water to infiltrate the ground. The impervious surface limit is raised to 30% of the lot if the property owner meets mitigation standards established by the county. (Note: this provision is triggered only when an existing structure is expanded or replaced.) Any mitigation measures must be proportional to the amount and impacts of the impervious surface being permitted.

If an existing home exceeds the 15% or 30% impervious surface standards, the home is effectively grandfathered and will not be required to be brought into compliance with the new standards. In addition, a property owner may reconfigure existing impervious surfaces (e.g., move a sidewalk from the east side to the west side of the house) without performing mitigation.

Example - On a typical 10,000-square-foot lot (65'x154'), no more than 30% of the lot can be covered with impervious surfaces (with mitigation). This means that only 3,000 square feet of impervious surface is allowed. If you assume that the average driveway is 200 square feet (25'x8'), this means that you have 2,800 square feet to build a house, garage, driveway, patio and other impervious surfaces. (Note: a driveway, patio and sidewalk can be pervious if designed using the appropriate materials. However, these materials can be expensive.)

2. Unlimited maintenance and repair of ALL nonconforming structures is allowed.

The new regulations eliminate the 50% rule, which limited repairs and expansions of nonconforming structures to 50% of the assessed value of the property during the life of the property. (A nonconforming structure is a structure that is not in compliance with one or more current zoning regulations (e.g., the seventy-five-foot building set back from the water)). This is a very important change for property owners who were often prevented from performing routine maintenance or minor expansions under the old regulations. Under the new regulations, nonconforming

structures are allowed to be maintained and repaired without any limits on the amount or value of maintenance and repair work.

3. Homes located between 35 feet and 75 feet from the water can be expanded.

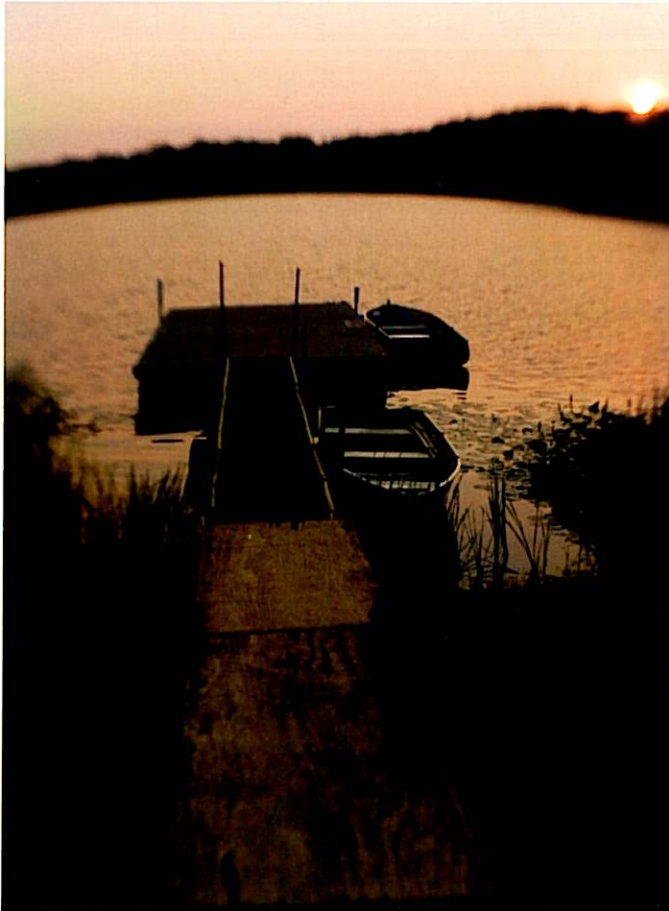
The new regulations also allow nonconforming structures located between 35 feet and 75 feet of the ordinary high water mark (OHWM) to be expanded if they meet certain requirements. If the property owner wants to expand the structure behind a 75-foot setback, the property owner may do so as long as he/she satisfies the impervious surface limit requirements. In addition, these homes may be expanded vertically (not horizontally) if the following requirements are met: (a) the vertical expansion is no higher than 35 feet; (b) the expansion is no closer to the water; (c) the expansion does not exceed the 30% impervious surface limit; and (d) the property owner agrees to perform mitigation, as determined by the county. Also, these homes may be expanded horizontally if: (a) there is not a "compliant building location" (at least 30 feet deep and meets setback requirements) on the property; (b) the expansion is no closer to the water; (c) mitigation requirements are met; and (d) the expansion does not exceed 30% impervious surface limit.

4. Homes located closer than 35 feet from the water cannot be expanded.

The new rule prohibits any expansion (vertical or horizontal) if the home or structure is located within 35 feet of the water. By prohibiting any expansion of these structures, the rule effectively requires the house to be torn down and rebuilt behind the setback if the property owner wants to increase the size of the home.

5. New mitigation requirements are triggered when setback and impervious surface standards are not met.

Property owners must perform mitigation if they want to exceed the 15 percent impervious surface standard or expand nonconforming structures closer than 75 feet from the water. (See above.) All mitigation must be proportional to the anticipated impacts of the project. Mitigation standards will be established by the counties, but must meet goals established by the DNR including controlling rainfall runoff to the maximum extent practicable. Mitigation activities may include restoring a natural vegetative buffer along the shoreline, removing an accessory structure near the water, etc.



6. Mitigation plans must be recorded with the local register of deeds and disclosed.

Property owners who agree to perform mitigation must record the mitigation plan with the local register of deeds. This means that the mitigation requirements will run with the land and will be applicable to future property owners as well. Because the mitigation requirements could impact a prospective buyer's decision to purchase the property, a seller who has agreed to mitigation should disclose this information to prospective buyers. To assist in this disclosure effort, the real estate condition report will be amended to include this information.

7. New vegetation and removal requirements will create smaller views to water for some larger lots.

Within 35 feet of the water, vegetation can be selectively removed or pruned only within a designated "view and access corridor." Property owners may have a "view and access corridor" equal to 30 feet for every 100 feet of frontage, with a maximum of 200 feet. The limits on tree removal are very similar to current law, but will be more restrictive for large lots with more than 660 feet of frontage. (Note: this provision is triggered when nonconforming structures are expanded or when conforming structures are expanded/replaced and the impervious surface standards are exceeded). Vegetation cannot be removed outside the view access corridor, except in cases where exotic or invasive species need to be removed. Also, the law does not place any restrictions on vegetation removal further than 35 feet from the water.

8. Most existing substandard lots are grandfathered.

The new law grandfathers most existing substandard lots as long as the lots (a) met the lot-size requirements at the time the lots were recorded, and (b) have not been replatted, merged or combined in any way with adjacent lots. (Note: the lots must still meet all other applicable requirements in the county's ordinance (e.g., impervious surface standards)). This is a very important provision because some counties have treated small waterfront lots as unbuildable if the lots do not meet the current lot-size requirements in the existing ordinance.

9. A nonconforming structure may be completely replaced or relocated under some circumstances.

A nonconforming structure may be replaced (torn down and rebuilt), if (a) no other compliant building location is available on the property to build a house of comparable size; (b) the structure is at least 35 feet from the water; (c) the replacement structure is no closer to the water; (d) mitigation requirements are met; and (e) all other requirements in the ordinance are met.

10. Setbacks may be reduced under certain circumstances.

The 75-foot setback may be reduced (i.e., buildings can be built closer than 75 feet to the water) if "an existing development pattern exists." The new law defines "existing development pattern" as the location of "existing principle structures within 250 feet of the proposed structure in both directions." This is an important provision to protect the views for properties located on developed lakes and rivers, where neighboring houses are already built closer to the water.

For more information on the new shoreland zoning regulations, please visit the DNR's website at <http://dnr.wi.gov/org/water/wm/dsfm/shore/news.htm> or contact Tom Larson (tlarson@wra.org) at (608) 240-8254.

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