

10 Things Owners of Waterfront Homes Should Know About The Proposed Changes to Wisconsin's Shoreland Zoning Regulations

The Wisconsin Department of Natural Resources (DNR) is proposing new changes to the state's shoreland zoning regulations (NR 115). These new changes attempt to protect water quality, wildlife, and natural scenic beauty around our water resources, but do so by placing stricter standards on new development and construction within 300 feet of the water. As a result, the use and value of waterfront property will be impacted (positively or negatively). Below is a list of 10 proposed changes that will have the most significant impact on owners of vacant property.

1. New impervious surface standards will limit the size of new homes and remodeling projects within 300 feet of the water. For existing homes within 300 feet of the water, no more than 15% of the lot 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 20% of the entire 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.)

Example – On a typical 10,000 sq. foot lot (65'x154'), no more than 20% of the lot can be covered with impervious surfaces (w/ mitigation). This means that only 2,000 sq. ft. of impervious surface is allowed. If you assume that the average driveway is 200 sq. ft. (25'x8'), this means that you have 1,800 sq. ft. 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. Homes located between 35 ft. and 75 ft. of OHWM (nonconforming structures) can be expanded vertically as long as the expansion does not exceed the 20% impervious surface limit. 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 20% impervious surface limit.

3. New homes and additions cannot be more than 35-feet high. All residential structures within 300 feet of the OHWM must be no taller than 35 feet. This applies only to structures constructed (or expanded) after the effective date of the rule. The rule does not specify where the height must be measured from (the road, lowest point on the lot, base of the structure), so it is seemingly left to the counties to make this determination.

4. Homes located closer than 35 ft. from the OHWM (nonconforming structures) cannot be expanded. A prohibition on expansion will limit the usability of the home and could impact the value. 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. A nonconforming structure may be completely replaced under some circumstances.

A nonconforming structure may be replaced (torn down and rebuilt), if (a) no compliant building location (behind setbacks and at least 30 feet deep) exists on the lot; (b) the structure is not located between 35 feet and the OHWM (Note – if the nonconforming structure is located between 35 feet and the OHWM, the structure can be rebuilt if it is rebuilt in the most compliant building location possible, and all other requirements are met); (c) the replacement structure has the same footprint (no bigger); and (d) mitigation requirements are met.

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

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

7. Setbacks cannot be reduced unless the lot would otherwise be unbuildable.

The 75-foot setback may be reduced (i.e., buildings can be built closer to the water than 75 feet) only if, among other things, there is no other place on the lot to build a home or building that is 30 feet deep. Under current law, the setback may be reduced if existing development pattern exists (i.e., if the surrounding properties are built closer to the water)

8. 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 impervious surface standards or expand existing nonconforming structures. 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.

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

Within 35 feet of the water, vegetation can be removed only within the “view and access corridor.” “View and access corridor” is defined as “40 ft. or 30% of lot width at OHWM (whichever is less) for lots with 200 ft. of frontage or less” or “20% of lot width at OHWM for lots with more than 200 ft of frontage.” The limits on tree removal are more restrictive than current law. Lots with less than 150 ft of frontage will have a smaller access corridor through which they can view and access the water. For example, a 65-foot wide lot, would now have only a 19.5 foot view access corridor, rather than 30 feet. (Note – this provision is triggered when nonconforming structures are expanded or when conforming structures are expanded/replaced and the impervious surface standards are exceeded).

10. Dry boathouses over 250 square feet are prohibited.

All dry boat houses above 250 square feet are prohibited. (Note – Wet boat houses are regulated by Chapter 30 of the Wisconsin Statutes, not NR 115.)