

## Chapter 3-A Shoreland Zoning Regulations

### 3A.01 Purpose and construction.

(1) This chapter is enacted to accomplish the purposes and objectives of s. 281.31(1), Wis. Stats. Such purposes and objectives include:

- (a) Protection of navigable waters;
- (b) Promote public health, safety and general welfare;
- (c) The efficient use, conservation, development and protection of this state's water resources;
- (d) Further the maintenance of safe and healthful conditions, and prevent and control water pollution through:
  - 1. Limiting structures to those areas where soil and geologic conditions will provide a safe foundation.
  - 2. Establishing minimum lot sizes to provide adequate area for private onsite wastewater treatment systems.
  - 3. Controlling filling and grading to prevent serious erosion.
  - 4. Limiting impervious surfaces to control runoff which carries pollutants.
- (e) Protect spawning grounds, fish, and aquatic life:
  - 1. Preserving wetlands and other fish and aquatic habitat.
  - 2. Regulating pollution sources.
  - 3. Controlling shoreline alterations, dredging, and lagooning.
  - 4. Establishing minimum lot sizes and shoreland buffer standards to limit cumulative impacts to aquatic life habitat.
- (f) Control building sites, placement of structures, and land uses through:
  - 1. Separating conflicting land uses.
  - 2. Prohibiting certain uses detrimental to the shoreland-wetland areas.

3. Setting minimum lot sizes and widths.
4. Establishing minimum building setbacks from roadways and waterways.
5. Setting the maximum height of near-shore structures.

(g) Preserve shore cover and natural beauty:

1. Restricting the removal of natural shoreland cover.
2. Preventing shoreline encroachment by structures, including signs.
3. Controlling shoreland excavation and other earth-moving activities.
4. Regulating the use and placement of boathouses and other structures.
5. Establishing minimum lot sizes and shoreland buffer standards to limit cumulative impacts to natural beauty and shore cover.

(2) This chapter is applicable to “shorelands,” as that term is defined in s. 281.31(2)(f), Wis. Stats. Per s. 59.692(1)(b), Wis. Stats., “shorelands” includes the area within the following distances from the ordinary high water mark of navigable waters (as defined under s. 281.31(2)(d), Wis. Stats.):

(a) One thousand feet from a lake, pond, or flowage.

1. If the navigable water is a glacial pothole lake, this distance shall be measured from the high-water mark of the lake.
2. Lakes, ponds, or flowages in Door County shall be presumed to be navigable if they are listed in the Wisconsin Department of Natural Resources publication “Surface Water Resources of Door County”, are shown on the United States Geological Survey quadrangle maps, or have been field verified.

(b) Three hundred feet from a river or stream or to the landward side of the floodplain, whichever distance is greater.

1. Rivers or streams in Door County shall be presumed to be navigable if they are designated as continuous waterways, perennial waterways, or intermittent waterways on the United States Geological Survey quadrangle maps, or have been field verified.

2. Flood hazard boundary maps, flood insurance rate maps, flood boundary-floodway maps, county soil survey maps, or other existing county floodplain zoning maps shall be used to delineate floodplain areas.

- (3) This chapter is not affected or superseded by the remaining provisions of the zoning ordinance, and vice versa. Rather this chapter and the remainder of the zoning ordinance shall be construed together to accomplish the purposes and objectives of both. Therefore, to the extent that a provision of this chapter and another provision of the zoning ordinance are applicable, the more restrictive provision shall apply. However, as required by 2011 WI Act 170, the nonconforming lot regulations found in s. 3A.05(9) shall supersede s. 3.04(5)(b) and s. 9.04(1) of the ordinance.

### **3A.02 Jurisdiction.**

- (1) The jurisdiction of this chapter includes all shorelands in Door County's unincorporated areas.
- (2) This chapter also applies to any shoreland annexed by a village or city or incorporated as provided and permitted by law, including ss. 61.353 & 62.233, Wis. Stats.
- (3) Unless specifically exempted by law, all cities, villages, towns, counties and, when s. 13.48 (13), Wis. Stats. applies, state agencies are required to comply with, and obtain all necessary permits under, local shoreland ordinances, including this chapter.

### **3A.03 Determination of navigability and ordinary high water mark.**

Determinations of navigability and ordinary high water mark location shall be made by the Zoning Administrator. If questions arise, the Zoning Administrator shall contact the appropriate district office of the Department of Natural Resources for a final determination of navigability or ordinary high water mark location.

### **3A.04 Shoreland setback from navigable water.**

- (1) Except as provided in subs. (2) and (3), the required setback from all navigable water shall be 75 feet from the ordinary high water mark. The setback shall be measured from the nearest portion of a structure.
- (2) Setback reduction for principal buildings.
  - (a) Where each side of the proposed principal building location is occupied by adjacent principal buildings which are located both within 100 feet of the proposed principal building footprint and less than 75 feet from the ordinary high water mark, the required setback from the ordinary high water mark shall be the average of the setbacks of the adjacent principal buildings, but in no case shall the setback be less than 40 feet. For the purpose of setback averaging, the measurements shall be made from the walls of the adjacent principal buildings. (Amended: 17 December 1996; Ord. 38-96)

(b) Where one side of the proposed principal building location is occupied by an adjacent principal building which is located within 100 feet of the proposed principal building footprint and which is located less than 75 feet from the ordinary high water mark, the required setback shall be the average of the setback of the adjacent principal building and 75 feet, but in no case shall the setback be less than 40 feet. For the purpose of setback averaging, the measurement shall be made from the wall of the adjacent principal building. (Amended: 17 December 1996; Ord. 38-96)

(3) Exemptions. The following structures are permitted within the required setback from navigable water, provided they do not violate any other provision of this Ordinance:

(a) (Deleted: October 7, 1996, Ord. 23-96)

(b) (Deleted: October 7, 1996, Ord. 23-96)

(c) Stairways, elevated walkways, and lifts which are essential to access the shoreline, provided such items contain no canopies, roofs, or closed railings and do not exceed 4 feet in width. Landings shall be allowed, provided such landings shall not exceed 32 square feet in area.

(d) Boathouses, provided that they shall not be placed waterward of the ordinary high water mark.

(e) Open fences.

(f) (Deleted: 18 April, 2000, Ord. 07-00)

(g) One mailbox, one flagpole, and one security light pole. (Amended: 7 October, 1996, Ord. 23-96)

(h) (Deleted: 7 October, 1996, Ord. 23-96)

(i) Utility poles, lines, and related equipment which are without permanent foundations.

(j) Piers and boat hoists.

(k) Structures such as ramps and landings, lifts, or elevator housing, which are designed and intended to comply with the Americans with Disabilities Act requirements or fair housing laws to make existing buildings accessible to disabled people, and where no feasible alternative locations exist.

(l) Open or screened structure. Consistent with s. 59.692(1v), Wis. Stats. the construction or placement of certain structures within the shoreland setback area is permitted provided:

1. The part of such structure nearest to the ordinary high water mark is located at least 35 feet landward of the ordinary high water mark.

2. The square footage of the footprint of all structures located in the shoreland setback area of the lot will not exceed 200 square feet. In calculating this square footage, boathouses shall be excluded.
3. The structure has no sides or has open or screened sides.
4. The planning department has approved a plan that shall be implemented by the property owner to preserve or establish a shoreland vegetative buffer zone that covers at least 70% of the half of the shoreland setback area that is nearest to the water. The provisions of s. 3A.07(4) shall apply to this shoreland vegetative buffer zone. (Added: 18 April 2000, Ord. 07-00)

### **3A.05 Nonconforming uses, structures and lots.**

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

(2) General rules for nonconforming uses and structures. (NR 115.05(1)(g))

Pursuant to s. 59.692(1s), Wis. Stats.:

(a) Restrictions that are applicable to damaged or destroyed nonconforming structures and that are contained herein shall not prohibit the restoration of a nonconforming structure if the structure will be restored to the size, subject to par. (b), 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. (Note: Floodplain regulations under s. 87.3, Wis. Stats. , NR116, 44.CFR part 60, and the Door County Floodplain Zoning Ordinance provide for additional restrictions and limitations regarding repair or reconstruction of damaged or substantially damaged structures due to flood.)
3. A landowner has demonstrated by a permit application and approval the scope, nature, extent of the damage done as well as the dimensions of the damaged structure and proposed restoration.

(b) 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 state or federal requirements.

(3) Discontinued nonconforming use. (NR 115.05(1)(g)3.)

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

(4) Maintenance of nonconforming principal structure (NR 115.05(1)(g)4.)

An existing principal structure that was lawfully placed when constructed but that does not comply with the required ordinary high water mark setback may be maintained and repaired within its existing building envelope. Maintenance and repair includes such activities as interior remodeling, plumbing, insulation, and replacement of similar sized windows and doors, siding, roof, and nonstructural components.

(5) Vertical expansion of nonconforming principal structure. (NR 115.05(1)(g)5.)

An existing principal structure that was lawfully placed when constructed but that does not comply with the required ordinary high water mark setback 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 twelve (12) months or more.

(b) The existing principal structure is at least thirty-five feet (35') from the ordinary high water mark.

(c) Vertical expansion is limited to 35' in height.

(d) A mitigation permit shall be issued by the County which includes an approved mitigation plan to be implemented by the property owner by the date specified in the permit. The mitigation plan shall meet the standards found in s. 3A.08 and the Door County Mitigation Handbook. The plan shall include enforceable obligations of the property owner to establish or maintain measures that the County determines are adequate to offset the impacts of the permitted construction 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 approved by the County and recorded by the owner in the office of the Register of Deeds.

(e) All other provisions of this Ordinance shall be met.

(6) Expansion of a nonconforming principal structure beyond setback. (NR 115.05(1)(g)5m.)

An existing principal structure that was lawfully placed when constructed but that does not comply with the required setback from the ordinary high water mark, may be expanded horizontally, landward, or vertically provided that the expanded area meets the building setback requirements of s. 3A.04 and that all other provisions of this Ordinance are met

(7) Replacement or relocation of nonconforming principal structure. (NR 115.05(1)(g)6.)

An existing principal structure that was lawfully placed when constructed but that does not comply with the required ordinary high water mark setback, 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 twelve (12) months or more.

(b) The existing principal structure is at least thirty-five feet (35') 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 rebuild a similar principal structure. A similar principal structure is considered to be within ten (10) percent of the square footage of the original structure that will result in compliance with the shoreland setback requirement per s. 3A.04.

(e) The mitigation permit shall be issued by the County which includes an approved mitigation plan to be implemented by the property owner by the date specified in the permit. The mitigation plan shall meet the standards found in s. 3A.08 and the Door County Mitigation Handbook. The plan shall include enforceable obligations of the property owner to establish or maintain measures that the County determines are adequate to offset the impacts of the permitted construction 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 approved by the County and recorded by the owner in the office of the Register of Deeds.

- (f) The permit shall require that all other structures on the lot or parcel that do not comply with the shoreland setback requirement and are not exempt per s. 3A.04(3) shall be removed by the date specified in the permit.
- (g) All other provisions of this Ordinance shall be met.

(8) Maintenance of nonconforming accessory structures.

Accessory structures that were legally constructed before the adoption of this Ordinance may be maintained and repaired but may not be expanded or rebuilt unless authorized by s. 59.692(1s), Wis. Stats., or unless they are made to conform to the provisions of this Ordinance.

(9) Nonconforming lots. (NR 115.05(1)(a)3.)

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 provided a variance has been granted by the Board of Adjustment or if all of the following apply:

- (a) 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 (1) parcel;
- (b) The substandard lot or parcel has never been developed with one (1) or more of its structures placed partly upon an adjacent lot or parcel; and
- (c) The substandard lot or parcel is developed to comply with all other ordinance requirements.

**3A.06 Filling and grading.**

Filling, grading, lagooning, dredging, excavating, and ditching may be authorized under this section in any zoning district, except the Wetland district, subject to the following:

- (1) Navigable water protection. A regular zoning permit shall be required for any filling, grading, lagooning, dredging, ditching, or excavating of any area within 300 feet horizontal distance of navigable water if:
  - (a) The filling, grading, lagooning, dredging, ditching, or excavating exceeds 2,000 square feet on slopes of less than 12 percent, or
  - (b) The filling, grading, lagooning, dredging, ditching, or excavating exceeds 1,000 square feet on slopes of 12 to 20 percent, or
  - (c) The filling, grading, lagooning, dredging, ditching, or excavating is on slopes of 20 percent or more.

(2) Permit. If a regular zoning permit is required by subs. (2) or (3) for the filling, grading, lagooning, dredging, ditching, excavating, or land disturbance, the permit shall be granted only upon finding that the proposed activity would not result in detriment to navigable water by reason of erosion, sedimentation, or impairment of fish and aquatic life nor alter any wetland, and would be designed and constructed in accordance with standards contained in the *United States Department of Agriculture/ Soil Conservation Service/ Wisconsin Section IV Technical Guide*. (Amended: 8 August 2000, Ord. 15-00)

### **3A.07 Shoreland vegetation.**

(1) Purpose. The purposes of these requirements are to preserve shoreland vegetation in order to:

- (a) Protect the scenic beauty of the shoreland in Door County.
- (b) Abate soil erosion along the shoreline.
- (c) Reduce the flow of effluent, sediments, and nutrients from the shoreland to surface water.

(2) These requirements apply to any cutting of trees and shrubbery in shorelands.

(3) Requirements.

(a) Cutting less than 35 feet inland. Except as provided in par. (c), tree and shrubbery cutting in an area parallel to the ordinary high water mark and extending 35 feet inland from all points along the ordinary high water mark shall be in accordance with the following provisions:

- 1. No more than 30% of the length of this 35-foot wide strip on any lot shall be cleared to the depth of the strip. Such clearing shall not result in openings of more than 30 feet in any 100 feet nor create a cleared opening in this strip greater than 30 feet wide and no clearing shall be allowed within 10 feet of the neighbor's lot line.
- 2. In the remaining 70% length of this 35-foot wide strip, cutting shall leave sufficient cover to screen vehicles, buildings, and structures as seen from the water; and to control erosion.

(b) Cutting more than 35 feet inland. Except as provided in par. (c), in shorelands which are more than 35 feet inland as defined in NR 46.02 or NR 46.15, Wis. Admin. Code.

(c) Alternative cutting plan. As an alternative to pars. (a) and (b), a special cutting plan allowing greater cutting may be permitted by the Resource Planning Committee upon issuance of a conditional use permit. The application for such a permit shall include: a sketch of the lot, location of parking, topography of the land, existing vegetation, proposed cutting, and proposed replanting. The Resource Planning Committee may grant such permit only if it finds that such special cutting plans:

1. Will not cause undue erosion or destruction of scenic beauty.
2. Will provide substantial visual screening from navigable water of buildings, structures, and parking areas. Where the plan calls for replacement of plantings, the Resource Planning Committee may require the submission of a bond which guarantees the performance of the planned tree or shrubbery replacement by the lot owner.

(4) Shoreland vegetative buffer zone. To qualify for an exemption from the ordinary high water mark as provided in s. 3A.04(3)(l), a shoreland vegetative buffer plan shall be established.

(a) Plan. The shoreland vegetative buffer zone plan shall include the following:

1. A description of how the landowner intends to carry out the project, including methods, materials, and equipment that will be used.
2. A proposed schedule and sequence of work activities.
3. The names and descriptions of native species to be utilized in the shoreland vegetative buffer zone.
4. A description of the site before the project begins and a description of the site once the shoreland vegetative buffer is completed.
5. The erosion control measures that will be used during construction of the permitted structure to control sediment runoff and protect water quality.

(b) Implementation. Upon approval of the shoreland vegetative buffer plan by the planning department, the shoreland vegetative buffer plan shall be completed before the planning department will grant the regular zoning permit for the structure. The shoreland vegetative buffer shall be established for a least one growing season before the permit to build the structure is granted. No mowing shall be allowed in the shoreland vegetative buffer zone so as to maximize the growth of grasses and shrubs.

(c) Standards. Shoreland vegetative buffer plant materials shall be required so as to accumulate 100 landscape points per 100 sq. ft. of shoreland vegetative buffer zone. Landscape points shall be accumulated according the table "LANDSCAPE POINTS" of s. 7.03(2)(b) of this ordinance. One canopy tree with a caliper of at least 2 inches shall be required for each 100 square feet of shoreland vegetative buffer zone and shall be spaced no more than 10 feet apart. (Added: 18 April 2000; Ord. 07-00)

**3A.08 Mitigation. (s. 59.692(1v), Wis. Stats.; NR115.05(1)(3)3., (g)5.,(g)6.)**

When the zoning administrator issues a permit requiring mitigation under s. 3A.05, the property owner shall submit a separate completed mitigation permit application and plan that complies with the Door County Shoreland Mitigation Handbook as adopted by the Resource Planning Committee and which may be modified from time to time. The application shall be reviewed and approved by the county and shall include the following:

- (1) A site plan that describes the proposed mitigation measures.
  - (a) The site plan shall be designed and implemented to restore natural functions lost through development and human activities.
  - (b) 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.
- (2) An implementation schedule and enforceable obligation on the property owner to establish and maintain the mitigation measures. The enforceable obligations shall be evidenced by an instrument approved by the County and recorded by the owner in the office of the Register of Deeds prior to issuance of the permit.