

PETITION TO AMEND THE DODGE COUNTY SHORELAND PROTECTION ORDINANCE

We, the Dodge County Planning, Development and Parks Committee, petition to amend the Shoreland Protection Ordinance, Dodge County Wisconsin as shown in "Exhibit A"

The petition includes amendments related to the public hearing notice requirements, the criteria for issuing a conditional use permit, the criteria for establishing conditions for a conditional use permit and the expiration date for a conditional use permit. The petition includes amendments related to the clarification of the standards for granting certain variances, the burden of proof standards for the applicant and the expiration date for variance decisions. The petition also includes amendments related to the repair, rebuilding, and maintenance of certain nonconforming structures and the clarification of the regulations dealing with the enforcement of shoreland related violations that have been in place for more than 10 years. The proposed changes are necessary in order to comply with the recently amended Wisconsin State Statutes (2017 Acts 67 & 68).

Respectfully submitted this _____ day of _____, 2018




Tom Schaefer



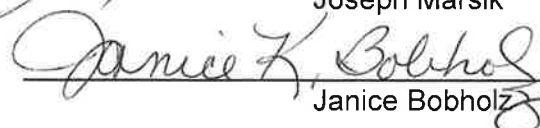
Allen Behl



William Muche



Joseph Marsik



Janice Bobholz

Planning, Development and Parks Committee

Exhibit A

Proposed changes:

Additions in text are indicated by underline; deletions by ~~single-strikethrough~~.

1. Modify Section 11.2 as follows:

11.2 (s. MAINTENANCE, REPAIR, REPLACEMENT, RESTORATION, REBUILDING, REMODELING OR VERTICAL EXPANSION OF NONCONFORMING STRUCTURES

59.692(1k)(a)2, 4 and (b) stats. (2017 Wisconsin Act 68) An existing structure that was lawfully placed when constructed but that does not comply with the required shoreland setback, or that is legally located in the shoreland setback area by operation of a variance granted before July 13, 2015, may be maintained, repaired, replaced, restored, rebuilt, or remodeled without a County Shoreland Land Use Permit if the activity does not expand the footprint of the nonconforming structure. Further, an existing structure that was lawfully placed when constructed but that does not comply with the required shoreland setback may be vertically expanded unless the vertical expansion would extend more than 35 feet above grade level. Counties shall (2015 ACT 167) allow expansion of a structure beyond the existing footprint if the expansion is necessary to comply with applicable state for federal requirements.

Note: Section 59.692(1k)(a)2, ~~4 and (b)~~ stats. prohibits counties from requiring any approval or imposing any fee or mitigation requirements for the activities ~~activates~~ specified in Section 11.2. However, it is important to note that property owners may be required to obtain permits or approvals and counties may impose fees under ordinances adopted pursuant to other statutory requirements, such as floodplain zoning, general zoning, sanitary codes, building codes or even stormwater erosion control.

Note: NR 115.05(1)(b)1m and Section 6.1(1) lists structures that are exempt from the shoreland setback. These structures are considered conforming structures and are not considered nonconforming structures. Structures that were granted variances or illegally constructed structures are not considered nonconforming structures.

2. Modify Section 14.1(3)(c)2 as follows:

(c) Powers and Duties

The powers and duties of the Dodge County Board of Adjustment under this Ordinance shall be as follows:

1. Interpretations

The Board of Adjustment shall be responsible for interpreting the regulations and boundaries of the districts, upon referral by the Land Use Administrator.

2. Variances

The Board of Adjustment shall be responsible for hearing and authorizing variances from the terms of the ordinance that will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done. ~~hearing and granting variances where, owing to special conditions, a literal enforcement of this Ordinance would result in practical difficulty or unnecessary hardship.~~

3. Modify Section 14.1 (b) as follows:

b) Review and Decision Procedure

The Land Use Administrator shall review each permit application and approve, withhold, or deny within 30 days based on the Approval Criteria of Section 14.2(1)(c) ~~13.6(1)(e)~~. Any permit issued in conflict with the provisions of this Ordinance shall be null and void.

4. Modify Section 14.1(2) through 14.1(2)(f) as follows:

(2) Conditional Use Permits

In this subsection:

"Conditional use" means a use allowed under a conditional use permit, special exception or other special zoning permission issued by a county, but does not include a variance.

"Substantial Evidence" means facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion.

The Committee shall authorize the Land Use Administrator to issue a Conditional Use Permit (CUP) for conditional uses after review and a public hearing, provided that such conditional uses are in accordance with the purpose and intent of this Ordinance and the approval criteria provided in Section 14.2(2)(c) ~~13.22(3)~~, and are found not to be hazardous, harmful, offensive, or otherwise adverse to the environment or the value of the area.

(a) Procedure

Applications for CUP's shall be made to the Land Use Administrator, upon forms provided by the Department, who shall forward them upon receipt to the Committee. The applicant must demonstrate that the application and all requirements established by the Department relating to the conditional use permit request are or will be satisfied and are supported by substantial evidence. Such applications shall include the following where applicable:

1. The names and addresses of the applicant, owner of the site, architect, professional engineer, contractor, and all property owners of record within 300 feet of the subject property boundary;
2. A description of the subject site by parcel identification number (PIN), lot, block, and recorded subdivision or by metes and bounds; address of the subject site; type of structure;
3. A scaled drawing showing dimensions of the lot and locations of all existing and proposed structures and impervious surfaces relative to the lot lines, center line of abutting highways and the ordinary highwater mark of any abutting water course; and the location of any existing or proposed on-site sewage systems and any private or public water supply systems;
4. A scaled site plan with specifications for the proposed filling, grading, lagooning or dredging project being proposed including but not limited to the area to be disturbed, the extent of the proposed project, a cross section showing the depth and width of the filling project and showing the cross section of all culverts or bridges if applicable;
5. Erosion Control plans;
6. Plans for appropriate mitigation when required;
7. The appropriate application fee;
8. A detailed narrative of the proposed project;
9. Additional information as may be required by the Committee or the Land Use Administrator.

(b) Public hearings

Public hearings on complete applications shall be scheduled within 30 days and shall receive notice in accordance with the applicable Wisconsin State Statutes and pursuant to the

general notice provisions of Section 14.5(5) 13-55. In addition, the Land Use Administrator shall notify the Department of Natural Resources at least 10 prior to any public hearing, as required under NR115(4)(h) and all property owners within 300 feet of the subject property boundary as listed by the applicant in the original application of the time, date and subject matter of the hearing. Failure to comply with this provision shall not, however, invalidate any previous or subsequent action on the application.

(c) General Approval Criteria for Conditional Use Permits

Conditional Use Permits shall be approved by the Committee if they find that all of the following criteria have been met and the applicant agrees to meet the conditions specified in the Code, and those imposed by the Committee:

1. The proposed use complies with all applicable provisions of this Ordinance;
2. Adequate assurances of continuing maintenance of safe and healthful conditions have been provided;
3. The project has been designed to prevent and control water pollution and sedimentation;
4. The project is in compliance with local floodplain zoning ordinance and the potential for damage to adjacent properties due to altered surface water drainage has been mitigated to the maximum extent possible, and to the satisfaction of the Wisconsin Department of Natural Resources;
5. The erosion potential of the site based upon degree and direction of slope, soil type and vegetative cover has been considered and any significant adverse impacts will be mitigated to the maximum practical extent;
6. Public safety, transportation and utility facilities and services will be available to serve the subject property while maintaining sufficient levels of service for existing development;
7. The need of the proposed use for a shoreland location has been considered and the proposed use will not cause substantial diminution in value of other property in the neighborhood in which it is to be located;
8. The proposed use is compatible with uses on adjacent land and the use will not be significantly detrimental to the public health, safety and welfare unless the use is a public necessity;
9. The amount of liquid and solid wastes to be generated and the adequacy of the proposed disposal systems has been considered and any potential significant adverse impacts on the natural environment will be mitigated to the maximum practical extent;
10. The following general criteria has been considered:
 - (i) Domestic uses shall be generally preferred;
 - (ii) Uses not inherently a source of pollution within an area shall be preferred over uses that are or may be a pollution source;
 - (iii) 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, may be referred to the applicable part of their ordinance.

(d) Conditions

The Committee may attach such conditions, in addition to those required elsewhere in this Ordinance, that it deems necessary in furthering the purpose of this Ordinance. Any condition imposed by the Committee must be related to the purpose of the Ordinance and be based on substantial evidence. The requirements and conditions must be reasonable and, to the extent practicable, measurable. Violation of any of these conditions shall be deemed a violation of this Ordinance. 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. Such conditions may include specifications for:

1. Type of shore cover;
2. Specific sewage disposal and water supply facilities;
3. Landscaping and planting screens;
4. Hours of operation;
5. Operational control;
6. Sureties;
7. Deed restrictions,
8. Locations of piers, docks, parking and signs; or
9. Type of construction or any other requirement necessary to fulfill the purpose and intent of this Ordinance.
10. Additional Information

In evaluating each application, the Committee may request assistance from other local, county, state or federal agencies. Also, in order 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 Conditional Use Permit, the following information:

(i) A plan of the area showing contours, soil types, highwater mark, groundwater conditions, bedrock, slope and vegetative covers;

(ii) Location of buildings, parking areas, traffic access, driveways, walkways, open space, landscaping, signs, and lighting;

(iii) Plans for buildings, sewage disposal facilities, water supply systems, and arrangement of operations;

(iv) Other pertinent information necessary to determine if the proposed use meets the requirements of this Ordinance.

11. The permits duration, transfer or renewal requirements;

12. Any other requirement necessary to fulfill the purpose and intent of this Ordinance.

(e) Expiration of Conditional Use Permits

Once granted, a conditional use permit shall remain in effect as long as the conditions upon which the permit was issued are followed, however, the County may impose conditions such as the permit's duration, transfer or renewal, in addition to any other conditions specified in the Code.

The decision of the Committee to approve or conditionally approve a Conditional Use Permit request shall expire one year after the decision is filed with the Department after its effective date or at such alternative time specified in the approval unless at least one of the following criteria has been met:

1. Construction has been diligently pursued;
2. A Certificate of Zoning Compliance has been issued;
3. The use is established;
4. The Conditional Use Permit is renewed, for a period not to exceed one year;
5. A Conditional Use Permit also shall expire upon termination of a project or if the rights granted by the permit are discontinued for 180 consecutive days.

5. Create Section 14.2(4) through 14.2(6) as follows:

(4) USE OF EXISTING REQUIREMENTS (s. 66.10015(2)(a) Wis. Stats.) Except as provided under 14.2(5), if a person has submitted an application for an approval, the Committee shall approve, deny or conditionally approve the application solely based on existing requirements, unless the applicant and the Committee agree otherwise. An application is filed under this subsection on the date that the Department receives the application.

(5) MULTIPLE APPROVALS (s. 66.10015(2)(b) Wis. Stats.) If a project requires more than one approval or approvals from one or more political subdivisions and the applicant identifies the full scope of the project at the time of filing the application for the first approval required for the project, the existing requirements applicable in each political subdivision at the time of filing the application for the first approval required for the project shall be applicable to all subsequent approvals required for the project unless the applicant and the political subdivision agree otherwise.

(6) Development Regulations (66.10015(2)(b) Wis. Stats.) - The treatment of subsections 14.2(4) and 14.2(5) of the statutes first applies to an application for an approval that is filed on or after November 28, 2017.

6. Modify Section 14.5 (2) and 14.5(5)(e) as follows:

14.5 (2) Application Completeness

An application will be considered complete if it is submitted in the required number and form, includes all mandatory information, and is accompanied by the applicable fee. The Land Use Administrator shall make a determination of application completeness within 10 days of application filing. If an application is determined to be incomplete, the Land Use Administrator shall notify the applicant of the application's deficiencies. No further processing of the application shall occur until the deficiencies are corrected. If the deficiencies are not corrected by the applicant within ~~60~~ 30 days of receiving notice of the deficiencies, the application shall be considered withdrawn.

14.5(5)(e) Timing of Notices

Unless otherwise expressly provided in state statutes or this Ordinance, notice, when required, shall be mailed or published at least 8 days prior to the hearing or action for changes or amendments to the Ordinance, rezonings, conditional use permit or appeals to the Board of Adjustment in accordance with Class II notice requirements. For all other actions requiring notice, notice shall be mailed or published at least 7 days prior to the hearing or action in accordance with Class I notice requirements.

7. Modify Section 14.7 as follows:

14.7 VARIANCES

In this subsection, an "Area Variance" means a modification to a dimensional, physical, or locational requirements such as the setback, frontage, height, bulk, or density restriction for a structure that is granted by the Board of Adjustment under this subsection.

(s. 59.694(7), Wis. Stats. The Board of Adjustment may grant upon appeal a variance from the standards of this ordinance in according with the following provisions:

(6) Approval Criteria

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

- 1) Literal enforcement of the provisions of the ordinance will result in unnecessary hardship on the applicant.
 - a. Unnecessary hardship for an "Area Variance" is when strict compliance with the provisions of this Code would unreasonably prevent the property owner from using the property owner's property for a permitted purpose or would render conformity with the Code unnecessarily burdensome.
- 2) The hardship is due to special conditions that are unique to the property, and
- 3) The variance is not contrary to the public interest.

(7) Burden of Proof

In all circumstances, a property owner bears the burden of proving that the "unnecessary hardship" as it is used in subsections 14.7(6) is present and is based on conditions that are unique to the property, rather than considerations personal to the property owner and that the unnecessary hardship was not created by the property owner.

(8 7) Conditions

In granting a variance, the board 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 board may impose any reasonable permit conditions to affect the purpose of this ordinance.

(9) Expiration of Approval

Any decision or order issued by the Board of Adjustment requiring the Land Use Administrator to issue a permit shall expire one year after the decision is filed with the Department or at such alternative time specified in the approval process unless:

- (a) The applicant or appellant has filed a land use permit application with the Department for the applicable project within such time, provided, that the time may be extended when so specified by the Board of Adjustment.
- (b) Construction has been diligently pursued;
- (c) The land use permit is renewed, for a period not to exceed one year; or
- (d) A Certificate of Zoning Compliance has been issued;

(10) A variance granted under this subsection runs with the land.

8. Modify Section 14.8 as follows:

14.8 APPEALS

Appeals from the decision of any review and decision-making body may be made by any person aggrieved or their agent, or by an officer, department, board, or bureau of the County, or by any affected town board.

(8) Appeals of a Conditional Use Permit Decision by the Land Resources and Parks Committee (2017 Wisconsin Act 67) - If the Committee denies a person's conditional use permit application, the person may appeal the decision to the circuit court under the procedures contained in s. 59.694(10) Wis. Stats.

9. Renumber Section 15.0 (1) as follows:

15.1(4) Violations

10. Create Section 15.4 (4) as follows:

(4) ENFORCEMENT OF VIOLATIONS IN PLACE FOR MORE THAN TEN YEARS (s. 59.692(1t) Wis. Stats.)

A county may not commence an enforcement action against a person who owns a building or structure that is in violation of a shoreland zoning standard or an ordinance enacted under s. 59.692 Wis. Stats. if the building or structure has been in place for more than 10 years.

11. Add the following definitions to Section 16.0 as follows:

Existing Requirements - Regulations, ordinances, rules, or other properly adopted requirements of a political subdivision that are in effect at the time the application for an approval is submitted to the political subdivision.

Political Subdivision - Political Subdivision means a city, village, town or county.

Project - Project means a specific and identifiable land development that occurs on defined and adjacent parcels of land, which includes lands separated by roads, waterways and easements.

Substandard lot - Substandard lot means a legally created lot or parcel that met any applicable lot size requirements when it was created, but does not meet current lot size requirements.