

Summary of Shoreland Zoning Advisory Committee (SZAC) Decisions- 2016

The SZAC met four times between January and April of 2016 to assist in guiding the preparation of amendments to the Waukesha County Shoreland and Floodland Protection Ordinance. The discussion and recommendations of each meeting were captured in meeting minutes. This document is intended to summarize the decisions of the SZAC in a single document.

Staff will utilize this document to prepare ordinance text and will circulate draft ordinance language to the DNR, SZAC and all towns for review ahead of advancing amendments to the County Board.

Impervious Surface (IS)

Proposed Definition of Impervious Surface (IS):

An area that releases as runoff all or a majority of the precipitation that falls on it. Impervious surface includes, but is not limited to, rooftops, sidewalks, driveways, parking lots, decks, patios, sport courts, swimming pools, retaining walls and hot tubs. If these surfaces are specifically designed, built and maintained to encourage infiltration or storage of runoff, and the County determines they meet the exclusion standards of section XX of this Ordinance, they shall subsequently be excluded from the impervious surface calculations of this Ordinance. Frozen soil, public streets and sidewalks (as defined in s. 340.01 Wis. Stats.) are excluded from this definition.

Proposed IS Coverage Limitations:

- Employ the “General Standard” (15% maximum IS w/o mitigation & 30% maximum IS w/ mitigation for shorelines that do not meet Highly Developed Shoreline criteria.
- Employ the Highly Developed Shoreline option (30% maximum IS w/o mitigation & 40% w/ mitigation) if shorelines are designated as “urban” by the 2010 U.S. Census. Commercial use properties are allowed 40% maximum IS w/o mitigation & 60% w/mitigation).
- Designate seven additional Highly Developed Shorelines for lake and riverine areas (list follows) that met one of the qualifying criteria detailed below.

Qualifying Criteria: A County may (w/DNR approval) designate additional areas as highly developed shorelines so long as the area contains at least 500 ft. of shoreline and meets at least one of the following criteria:

- A majority of the lots within the area are developed with more than 30% impervious surface.
- A majority of the lots within the area are less than 20,000 square feet in area.
- The area is located on a lake and is served by a municipal sewerage system.

The proposed additional Highly Developed Shorelines are as follows:

- Beaver Lake (south side- Village limits east to Monclaire Rd.)
- Eagle Spring Lake (southerly extent of Tuohy Rd.)
- Monterey Mill Pond (both sides of Mill St.) Staff will re-evaluate based upon pending Assessor’s Plat.
- North Lake (all Town shore frontage on lake from Oconomowoc River to Chenequa boundary)

- Okauchee Lake (Road N and surroundings to bring entire lake into Highly Developed designation)
- Pretty Lake (entire shoreline)
- School Section Lake (properties along Lake Dr.)

Treated Impervious Surface

Proposed County Performance Standard

The first ½ inch of runoff from the area of impervious surface to be excluded from the IS calculation must either infiltrate or be treated according to the IS coverage standards of NR 115 and State Shoreland law.

The calculation of the runoff volume is simply the area of the IS to be excluded multiplied by the runoff depth (1/2 inch or 0.04 ft.). For example: (1,000 sq. ft.)(0.04 ft.) = 40 cubic feet

The stormwater infiltration or treatment system shall comply with an adopted County or State post-construction stormwater management technical standard or guidance document.

Proposed Exclusion Standard

The County may exclude an impervious surface from the IS calculation provided the property owner can demonstrate that one or more of the following general standards apply, and that all applicable stormwater BMP technical standards are met:

1. One half inch of runoff from the impervious surface is treated by a stormwater BMP* (defined); or
2. One half inch of runoff from the surface is discharged to an internally drained pervious area that retains the runoff on or off the parcel to allow infiltration into the soil.

Proposed County permitting standard

A County Stormwater Permit shall be issued and all technical standards of the County Stormwater Management & Erosion Control Ordinance be met. This will include application materials, financial assurance, and recorded maintenance agreement.

Building Bulk

Building Area

- Abandon existing floor area ratio and open space standards.
- Implement a maximum building footprint scheme (all roofed areas, except a 2' overhang):
 - Maximum 17.5% footprint for lots in all residential districts.
 - Amend existing floor area ratio limits to maximum footprint % for remainder of districts. (i.e., A-2 District 10% FAR becomes – 10% footprint).

Principal Building Height

- Limit overall principal building height (from lowest exposure to highest peak) to 35' for structures within 75' of the shore or for structures on lots less than 65' in width.
- Limit overall principal building height (from lowest exposure to highest peak) to 42' for buildings more than 75' from the shore that are also located on lots 65' and greater in width.
- Limit height to highest eave (from lowest exposure to the highest eave) to 32' for buildings more than 75' from the shore that are also located on lots 65' and greater in width.

Accessory Building Height

- Within 75 ft. of the OHWM, accessory buildings (including boathouses) must comply with the following:
 - One story maximum.
 - Side wall height not to exceed 10 ft. and a pitch not to exceed 8:12 rise to run.
 - Side wall height can increase to 15 ft. if certain slope requirements are met and if no roof pitch is provided. There was discussion at the 4/28/16 SZAC meeting that 2:1 or greater should qualify but we have since received a recommendation from an engineer on the SZAC that slopes 3:1 or greater should be considered for this relief mechanism. Staff will reach out to additional committee members to ensure that there is comfort with the final proposed ordinance language.
- > 75 ft. from the OHWM. The existing accessory building height limitation of 18' is proposed to remain in effect for residential districts. The rural residential districts' accessory height limit (non-farm) is proposed to increase from 15' to 18'. The existing 1' height increase provision that provides an additional foot of height for each additional foot that a structure is offset from property lines is proposed to be deleted from the residential districts (includes E-C).

Mitigation

The committee supported employing a Mitigation Handbook that was prepared by County Staff. The handbook includes 15 different types of mitigation measures and includes measures (i.e. native vegetative buffers and removal of retaining walls). The handbook also provides a point system whereby each mitigation practice achieves a specified number of points. Points are required for the following improvements:

- Exceed basic IS thresholds (see IS section of this document for more detail).
- Relocation of a similar sized structure within the shore setback (existing structure must be 35’ from shore).
- Horizontal expansion (200 sq. ft. or less) of a structure within the shore setback (existing structure must be 35’ from shore).
- Horizontal Expansion (200 sq. ft. or less) of a structure within the wetland setback (existing structure must be 35’ from wetland).

See below SZAC point recommendations:

Required Mitigation Points for Impervious Surface:

“Rural” Shorelines	Highly Developed Shorelines (Residential)	Highly Developed Shorelines (Commercial)	Number of Points Required
>15%-20% IS	>30%-35% IS	>40%-45% IS	3
>20%-25% IS	>35%-40% IS	>45%-50% IS	5
>25%-30% IS	NA	>50-55% IS	7
NA	NA	>55-60% IS	10

Required Mitigation Points for Nonconforming Structures:

Proposed Modification to Nonconforming Structure	Number of Points Required
Relocation w/in shore setback	5
Lateral expansion w/in shore setback	7

*Note- Staff will prepare a required point system for structures non-conforming to wetland setback.

Non-conforming Structure Improvements

The SZAC supported additional flexibility for improvements to structures that are non-conforming for reasons other than shore setback (road setback, offset, wetland setback, floodplain setback, building footprint, building height). The recommended scheme would replace the existing code provisions that limit improvements (remodeling/repair) to all nonconforming structures to 50% or less of the exterior structural members. The recommended scheme is a tiered approach that provides additional flexibility as the severity of the nonconforming structure decreases. The approach is similar to the tiered system that NR 115 sets forth for structures nonconforming to shore setback. The committee recommendations are as follows:

***Structures nonconforming to shore setback only must comply with NR 115 and S. 59.692 Wis. Statutes and the below options are not applicable to said structures.**

Structures nonconforming to wetland and floodplain setback

- Within 35 ft. of a wetland or floodplain:
 - Limit structures to interior and exterior remodeling and the replacement of less than 50% of the existing exterior structural members over the lifetime of the structure.
- 35 ft. and greater. In addition to the above:
 - Allow vertical expansions that meet the height requirements
 - Allow horizontal expansions (principal structures only) that do not exceed 200 sq. ft. in area over the life of the structure.
 - Allow the replacement or relocation of a structure of equal or less size if no other conforming location is available as determined by the Zoning Administrator and provided the structure is no closer to the wetland or floodplain than the existing structure.
 - Mitigation is required to offset the impacts of any horizontal expansion (wetland only).

Note: Structures that are permitted by right through wetland and floodplain setback averaging are not subject to the above provisions.

Structures nonconforming to road setback

- Within 20 ft. of base setback line:
 - Limit structures to interior and exterior remodeling and the replacement of less than 50% of the existing exterior structural members over the lifetime of the structure.
- 20 to < 35 ft. In addition to the above:
 - Allow vertical expansions that meet the height requirements.
 - Allow horizontal expansions (principal structures only) that do not exceed 200 sq. ft. in area over the life of the structure provided the expansion is no closer to the road than the existing structure.
 - Allow the replacement or relocation of a structure of equal or less size if no other conforming location is available as determined by the Zoning Administrator and provided the structure is no closer to the road than the existing structure
- 35 ft. and greater. In addition to the above:
 - Allow horizontal expansions (principal structures only) provided the expansion is no closer to the road than the existing structure.

Note: Structures that are permitted by right through road setback averaging are not subject to the above provisions.

Structures nonconforming to offset

- *Within 5 ft. of lot line*
 - Limit structures to interior and exterior remodeling and the replacement of less than 50% of the existing exterior structural members over the lifetime of the structure.
- *5-10 ft. In addition to the above:*
 - Expansions require a special exception, provided the expansion is no closer to the offset than the existing structure and provided the area of the expansion does not exceed 50% of the footprint of the existing structure, cumulatively over the lifetime of the structure from the effective date of the revised ordinance.
- *Greater than 10 ft. In addition to the above:*
 - Expansions are permitted by right, provided the expansion is no closer to the offset than the existing structure and provided the area of the expansion does not exceed 50% of the footprint of the existing structure, cumulatively over the lifetime of the structure from the effective date of the revised ordinance.
 - Expansions that exceed 50% of the footprint of the existing structure require a special exception provided the area of the expansion is no closer to the offset than the existing structure.

Nonconforming boathouses

- Per Act 55 and Act 167, if a boathouse is nonconforming to shore setback only, it can be replaced within the same footprint and is limited to the 3-D envelope of the existing boathouse.
- If a boathouse is nonconforming for any other reason (such as offset, max. footprint, # of stories, side-wall height) limit improvements to interior and exterior remodeling and the replacement of less than 50% of the existing exterior structural members over the lifetime of the structure.

Structures nonconforming to footprint standards

- Limit structures that exceed the footprint standards to interior and exterior remodeling and the replacement of less than 50% of the existing exterior structural members over the lifetime of the structure.
- No horizontal expansions are permitted.
- Vertical expansions are limited to the area of allowable footprint for the structure (i.e. if the structure currently has a 3,000 sq. ft. footprint and 2,000 sq. ft. is allowed, the proposed 2nd story shall not exceed 2,000 sq. ft).
- Existing structures that do not comply with the minimum floor area requirements shall not be reduced in size.

Flexibility provided for structures that cannot meet the above standards: Minimum Building Footprint

- The Zoning Administrator may administratively approve a building footprint not to exceed 1,100 sq. ft. when offsets and setbacks cannot otherwise provide a 1,100 sq. ft. building footprint. The Zoning Administrator is limited to providing road setback and floodplain and wetland setback relief only. The footprint shall not extend into the established road right-of-way or within the floodplain or wetland.

Structures nonconforming to height

- Any vertical expansion must comply with the height regulations. 50% provision does not apply.

Principal and accessory structures - nonconforming uses

- 50% value provision still applies to structures that contain nonconforming uses.

Miscellaneous Zoning Matters

The committee and staff discussed a broad range of other miscellaneous NR 115 required updates and zoning issues:

Shore Setback Averaging (within 75' of shore). Required no action by committee- County must adopt the following State requirements:

- If principal structures substandard to shore setback exist on both adjacent lots and within 250', a proposed principal structure may be located a distance equal to the average setback, **but no less than 35' from the OHWM.**
- If a principal structure exists on an adjacent lot and within 250 ft. of a proposed structure in only one direction; is the closest principal structure; and is setback less than 75 ft. from the OHWM, the shore setback shall be equal to the average of 75 ft. and the distance that the adjacent structure is set back from the OHWM, **but no less than 35 ft.**

Shore Setback Averaging (beyond 75' of shore- applicable in Delafield Shoreland Overlay District only)

- If the closest principal structure in each direction to a proposed structure exists on an adjacent lot and within 200 ft. of the proposed structure and both of the existing principal structures are set back more than 75 ft. from the OHWM (based on required setback at time of construction), the setback shall be equal to the average of the setbacks required for those structures.

This provision does not apply if the resulting setback limits the placement of the proposed principal structure to an area on which the structure cannot be built.

Wetland and Floodplain Setback

- Match the shore setback averaging provisions of NR 115 (as stated above) for consistency.
- Reduce floodplain setback to 35' if the natural grade adjacent to a proposed structure is at least 3 ft. above the floodplain elevation (existing reduction = 50').
- Remove the 50' setback relief provision relative to wetlands and instead allow relief via amended non-conforming structure provisions.

Boathouses

Staff advised that DNR has interpreted that the existing minimum lot width requirement (100') and minimum lot area requirement (15,000 square feet) for properties to be eligible for new boathouses are no longer enforceable. Staff advised that these requirements would be removed from the ordinance.

Existing Ordinance Language (black ink)/Proposed Ordinance Language (new language in red font and language proposed to be deleted shown with strikethrough)

Lots eligible for boathouses

- Dwelling must be present and limited to 1 boathouse per lot.
- ~~Not allowed on lots less than 15,000 sq. ft. in area or less than 100 ft. in width.~~

Boathouse Location standards

- 5 ft. OHWM setback and within ~~50 ft.~~ 35 ft. of OHWM
- Must be located outside of the wetland and floodplain.
- Must comply with offsets.
- **Must be located entirely within the access and viewing corridor.**

Boathouse Size requirements

- Minimum size = 200 sq. ft.
- **Maximum size = 450 sq. ft. Overhangs shall not exceed 2 ft. in width.** ~~Within DSO, max. size = 600 sq. ft.~~
- **The boathouse shall not exceed 15 ft. in width, measured parallel to the shore.** ~~Within DSO, max. width is 20'.~~
- Limited to 1-story **with a side wall height not to exceed 10 ft. and a pitch not to exceed 8:12 rise to run (equivalent to max. 15 overall height) unless slopes exceed certain % slopes, in which case side wall can increase to 15' provided that a flat roof is provided.** ~~and the height shall not exceed 15 ft.~~

Boathouse use and structure requirements

- Storage of marine and accessory items only. Human habitation prohibited.
- ~~Limited plumbing allowed, toilet or shower.~~ **No plumbing allowed (per NR 115).**
- Must have a garage type door facing the lake.
- Flat roofed boathouses may be used for recreation and ~~canopies~~, railings, and access stairs are considered ordinary appurtenances.

Minimum Lot Size

To comply with recent law changes, the lot size requirements of the Shoreland & Floodland Protection Ordinance (SFPO) are proposed to be inserted in the Shoreland & Floodland Subdivision Control Ordinance and said requirements will be cross referenced in the SFPO.

Substandard Lots

- Required NR 115 language will be inserted to indicate that adjacent lots substandard to NR 115 lot size requirements cannot be used as separate building sites if one or more buildings has ever extended onto individual lots. In addition, such a substandard lot cannot be built upon if the lot was ever formally combined by subdivision plat, certified survey map or plat of survey (with preparation of new deed).
- Remove existing code provision that prohibits sale of adjacent substandard parcels of record that are owned in common.

PUDs

- Incorporate NR 115 language that requires minimum PUD size of two acres or 200' of shoreline if lot sizes of off-lake lots are to be reduced below the NR 115 required minimum sizes.
- Add shore buffer requirements if off-lake lots size will be flexed below NR 115 limits.
- Delete references to open space and floor area ratio. Add building footprint and accessory building footprint to the list of standards that can be flexed through the PUD process.

Vegetative Cutting

- Increase access/viewing corridor width limits from 30% to 35% of shore frontage and make other minor amendments to incorporate required NR 115 language.
- Clarify that shore cutting is permissible to provide for boathouses, walkways, and view corridors between the lake and house on lots zoned E-C District.
- Add specific permit and plan requirements, including replacement densities. Require 1” dbh replacement trees for removal of dead, diseased, dying trees and 2” dbh for live, healthy trees with exceptions if it is demonstrated that soil conditions, crowding or other site specific conditions warrant the replacement standards impractical.
- Require that removed shrub and groundcover be replaced with native shrub and groundcover densities specified in Wisconsin Biology Technical Note 1: Shoreland Habitat unless site conditions prohibit strict compliance, in which case Staff shall make a determination as to whether the re-planting plan meets the spirit and intent of the ordinance.
- Require preservation of certain priority trees according to the following:
 - Qualifying trees are limited to those live, healthy trees of 12” or more dbh that are identified in the ordinance as priority tree species (species list presented at the 4/28/16 SZAC meeting).
 - Trees within a permissible view corridor or that present a safety hazard are exempt from the preservation requirements.
 - Trees within areas zoned EC Environmental Corridor District are not subject to these provisions, as unique code provisions address tree removal in said areas.
 - Priority trees may be cut to accommodate permissible structures, driveways, utilities, septic systems and an affiliated construction disturbance area extending 30’ beyond the proposed improvement. Site grading that complies with other ordinance requirements that necessitates tree removal will also be permitted.
 - Replacement trees must be a minimum of 2” dbh.
 - Area of applicability. The committee recommended that such standards should apply no further than 300’ from the shore.

Lot Area Regulations

- If a single legal lot of record exists and is split by a road, allow the acreage from both sides of the road to be used for calculating compliance with area regulations.
- If a property owner owns multiple lots of record that are located on opposite sides of the same road, the lots shall be considered separate lots and area regulations shall be administered based upon each individual lot- not the combined acreage of the lots.
- If a property owner owns multiple lots of record that are located on opposite sides of the same road, with the lots being directly opposite one another for at least one-half of road frontage of one of the lots, an accessory structure can be constructed without benefit of a principal residence being present on the same parcel subject to the following requirements:
 - A principal residence must be present on the opposite-side parcel.
 - A CSM that encompasses both parcels shall be recorded. The CSM shall state that the lots may not be sold separately unless the accessory building is removed in the future.
 - Maximum accessory building footprint calculations shall be solely based upon the acreage of the parcel upon which it will be built.

Accessory Building Footprint

- Replace accessory building floor area ratio with maximum accessory footprint:

Accessory Building Footprint

Lot Area	Max. Footprint
<14,000 sq. ft.	600 sq. ft.
14,000 sq. ft. or greater	750 sq. ft. or 2% of lot area, whichever is greater

*Exceptions available for farm consolidation parcels in farmland preservation areas.

**Compliance with overall maximum footprint also required.

Minimum Floor Area

- *Standardize minimum floor area ratio requirements across all zoning districts to match the existing R-3 District requirements:*

Minimum 1st floor area= 850 square feet

Total floor area= 1,100 square feet

- *Reduce minimum multi-family dwelling unit size requirements as follows:*

- 1 BR unit = 600 square feet
- 2BR unit = 700 square feet
- 3BR unit = 800 square feet
- Additional 100 square feet for each additional bedroom
- 2-family dwellings, 850 square feet per unit (1,700 square feet total)

Minimum Building Footprint

Provide provisions that allow Zoning Administrator to administratively approve a building footprint not to exceed 1,100 square feet when application of required offsets and setbacks does not provide an 1,100 s.f. footprint. The Zoning Administrator shall only administratively reduce road setback, floodplain setback and wetland setback in providing such an envelope.

Offset

- Include all structures, not just buildings, as being subject to the offset provisions.
- Reduce deck and patio side offset requirements to 50% of the distance of the required offset for a principal structure to a lot line, but no closer than 5 ft. Stairs and walkways may be permitted 5 ft. from a lot line.
- Replace the offset reduction formula with the following:

R-3 Residential District Offset (applies to principal and accessory structures)

20 ft. = unsewered

14 ft. = sewerred

If the lot width is substandard (less than 120 ft. (unsewered) or 84 ft. (sewered)), side offset shall be as specified in the following table:

Lot Width (ft.)	Required Offset (ft.)
35 ft. or less	5'
> 35 ft. - 50 ft.	7'
>50 ft. to < 84 ft.	10'
84 ft. to < 120 ft.	14'

*If a lot is in any of the other residential, agricultural, commercial, or industrial districts, and the lot does not comply with the district lot width standards, the offset requirements of the R-3 Residential District apply, unless the district offset is less restrictive.

Road Setback

- Modify road setback averaging so that averaging can only be used if similar type structures exist on adjacent properties within 250 ft. and on the same side of the road. The existing building on the subject property may be used for averaging.
- Reduce minimum road setback to 35' for lots within subdivisions platted after October 1, 2016.
- Amend the existing 35' road setback for sewerred lots so that it applies to local roads only.

Breezeway

In order for a breezeway to be considered an attachment between structures, the following criteria must be met:

- Enclosed on all sides.
- A min. of 8 ft. in width.
- A max. of 20 ft. in length.

Applicant

Expand definition to allow utility companies to apply for permits when they demonstrate that they hold valid easements or have established prescriptive rights.

Other amendments:

- Staff explained that proposed ordinance language would also incorporate a North Lake Overlay District to address building elevations relative to high floods of record
- Modify AD-10 and RRD-5 prime agricultural soils provisions.
- Add language to clarify that the full parcel acreage can be used to demonstrate compliance with area regulations on split jurisdictional parcels.