

ORDINANCE NO. 288

AN ORDINANCE TO AMEND THE ZONING CODE OF THE  
VILLAGE OF OCONOMOWOC LAKE TO COMPLY WITH STATE PREEMPTIONS IN  
SHORELAND AREAS ANNEXED AFTER MAY 7, 1982

WHEREAS, on or about July 14, 2015 the State of Wisconsin adopted 2015 Wisconsin Act 55 which significantly limits municipal zoning authority over Village shorelands annexed after May 7, 1982; and

WHEREAS, the R-4 Low Density Residential District in the Village regulates shoreland areas annexed after May 7 1982; and

WHEREAS, Village staff have recommended that the R-4 Low Density Residential District regulations be amended to comply with 2015 Wisconsin Act 55; and

WHEREAS, the Village Plan Commission has initiated this Zoning Code Amendment pursuant to Section 17.62(2) of the Village of Oconomowoc Lake Zoning Code; and

WHEREAS, upon receipt of the Village Plan Commission's recommendation, the Village Board of Trustees held a public hearing on June 19, 2017, after providing all notice as required by Section 17.62(5)(a) of the Village of Oconomowoc Lake Zoning Code; and

WHEREAS, the Village Board for the Village of Oconomowoc Lake finds that the public necessity, convenience, general welfare and good zoning practice requires the Village Board to amend, change or supplement the regulations established by the Village of Oconomowoc Zoning Code as described herein.

NOW, THEREFORE, the Village Board of the Village of Oconomowoc Lake, Waukesha County, Wisconsin, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Section 17.385 of the Village of Oconomowoc Lake Zoning Code entitled, "R-4 Low Density Residential District," the introductory paragraph only, with no changes being made to the numbered paragraphs after the introductory paragraph, is hereby repealed and re-created as follows:

"All lands that were annexed by the Village after May 7, 1982 and prior to annexation were subject to a County shoreland zoning ordinance under the authority granted by Section 61.353 of the Wisconsin Statutes, are

subject to the following regulations, except as preempted as further described in Subsection (7):"

SECTION 2: Section 17.385 of the Village of Oconomowoc Lake Zoning Code entitled, "R-4 Low Density Residential District," Subsection (7) is hereby created as follows:

(7) PREEMPTION. In this R-4 District, the Village is preempted from adopting or enforcing zoning regulations that are more restrictive than State regulations adopted by the Department of Natural Resources within the Wisconsin Administrative Code Section NR115, as applicable to the Village by Wisconsin Statutes Sections 61.353(2) and (3) and 59.692(1d) including such amendments as may be made thereto from time to time. To the extent that any regulation within this Zoning Code is more restrictive than such applicable State regulations, the standards of this Zoning Code are reduced for property in this R-4 District to the extent necessary to comply with such State regulations. The State preemptions may affect the minimum lot size, shoreland setback, vegetation, impervious surface, height nonconforming structure and lighting standards of this Zoning Code.

SECTION 3: SEVERABILITY.


The several sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, and shall not affect the validity of any other provisions, sections or portions thereof of the ordinance. The remainder of the ordinance shall remain in full force and effect. Any other ordinances whose terms are in conflict with the provisions of this ordinance are hereby repealed as to those terms that conflict.

SECTION 3: EFFECTIVE DATE.

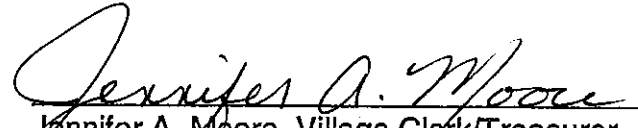
This ordinance shall take effect immediately upon passage and posting or publication as provided by law.

Dated this 19th day of June, 2017.

VILLAGE OF OCONOMOWOC LAKE

  
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Joe Birbaum, Village President

ATTEST:

  
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Jennifer A. Moore, Village Clerk/Treasurer  
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**NR 115.05 Minimum zoning standards for shorelands.** (1) **ESTABLISHMENT OF SHORELAND ZONING STANDARDS.** The shoreland zoning ordinance adopted by each county shall control use of shorelands to afford the protection of water quality as specified in chs. NR 102 and 103. At a minimum, the ordinance shall include all of the following provisions:

(a) *Minimum lot sizes.* Minimum lot sizes in the shoreland area shall be established to afford protection against danger to health, safety and welfare, and protection against pollution of the adjacent body of water.

1. 'Sewered lots.' Lots served by public sanitary sewer shall have a minimum average width of 65 feet and a minimum area of 10,000 square feet.

2. 'Unsewered lots.' Lots not served by public sanitary sewer shall have a minimum average width of 100 feet and a minimum area of 20,000 square feet.

3. 'Substandard lots.' 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 if all of the following apply:

Note: Effective April 17, 2012, 2011 Wisconsin Act 170 created s. 59.692 (2m), Stats., which prohibits a county from enacting, and a county, city, or village from enforcing, any provision in a county shoreland or subdivision ordinance that regulates the construction of a structure or building on a substandard lot if the provision is more restrictive than the standards for substandard lots under ch. NR 115.

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 property tax parcel.

b. The substandard lot or parcel has never been developed with one or more of its structures placed partly upon an adjacent lot or parcel.

c. The substandard lot or parcel is developed to comply with all other ordinance requirements.

4. 'Planned unit development.' A non-riparian lot may be created which does not meet the requirements of subd. 1. if the county has approved and recorded a plat or certified survey map including that lot within a planned unit development, if the planned unit development contains at least 2 acres or 200 feet of frontage, and if the reduced non-riparian lot sizes are allowed in exchange for larger shoreland buffers and setbacks on those lots adjacent to navigable waters that are proportional to and offset the impacts of the reduced lots on habitat, water quality and natural scenic beauty.

(b) *Building setbacks.* Permitted building setbacks shall be established to conform to health, safety and welfare requirements, preserve natural beauty, reduce flood hazards and avoid water pollution.

1. 'Shoreland setback.' Except where exempt under subd. 1m., a setback of 75 feet from the ordinary high-water mark of any navigable waters to the nearest part of a building or structure shall be required for all buildings and structures. Where an existing development pattern exists, the shoreland setback for a proposed principal structure may be reduced to the average shoreland setback of the principal structure on each adjacent lot, but the shoreland setback may not be reduced to less than 35 feet from the ordinary high-water mark of any navigable waters.

Note: A property owner may seek a variance to a dimensional standard of the county ordinance and a county board of adjustment may review the request pursuant to s. 59.694 (7) (c), Stats.

1m. 'Exempt structures.' All of the following structures are exempt from the shoreland setback standards in subd. 1.:

a. Boathouses located entirely above the ordinary high-water mark and entirely within the access and viewing corridor that do not contain plumbing and are not used for human habitation.

Note: This chapter does not prohibit repair and maintenance of boathouses located above the ordinary high-water mark.

b. Open sided and screened structures such as gazebos, decks, patios and screen houses in the shoreland setback area that satisfy the requirements in s. 59.692 (1v), Stats.

c. Fishing rafts that are authorized on the Wolf river and Mississippi river under s. 30.126, Stats.

d. Broadcast signal receivers, including satellite dishes or antennas that are one meter or less in diameter and satellite earth station antennas that are 2 meters or less in diameter.

e. Utility transmission and distribution lines, poles, towers, water towers, pumping stations, well pumphouse covers, private on-site wastewater treatment systems that comply with ch. SPS 383, and other utility structures that have no feasible alternative location outside of the minimum setback and that employ best management practices to infiltrate or otherwise control storm water runoff from the structure.

f. Walkways, stairways or rail systems that are necessary to provide pedestrian access to the shoreline and are a maximum of 60-inches in width.

2. 'Floodplain structures.' Buildings and structures to be constructed or placed in a flood plain shall be required to comply with any applicable flood plain zoning ordinance.

3. 'Boathouses.' The use of boathouses for human habitation and the construction or placing of boathouses beyond the ordinary high-water mark of any navigable waters shall be prohibited.

(c) *Vegetation.* To protect natural scenic beauty, fish and wildlife habitat, and water quality, a county shall regulate removal of vegetation in shoreland areas, consistent with the following:

1. The county shall establish ordinance standards that consider sound forestry and soil conservation practices and the effect of vegetation removal on water quality, including soil erosion, and the flow of effluents, sediments and nutrients.

Note: In developing and applying ordinances which apply to shoreland areas, local units of government must consider other applicable law and programs affecting the lands to be regulated, e.g., law and management practices that apply to state and county forests and lands entered under forest cropland and managed forest land programs, and ss. 59.692 (2) (a) and 59.69 (4) (a), Stats.

2. To protect water quality, fish and wildlife habitat and natural scenic beauty, and to promote preservation and restoration of native vegetation, the county ordinance shall designate land that extends from the ordinary high water mark to a minimum of 35 feet inland as a vegetative buffer zone and prohibit removal of vegetation in the vegetative buffer zone except as follows:

a. The county may allow routine maintenance of vegetation.

b. The county may allow removal of trees and shrubs in the vegetative buffer zone to create access and viewing corridors, provided that the combined width of all access and viewing corridors on a riparian lot or parcel may not exceed the lesser of 30 percent of the shoreline frontage or 200 feet.

c. The county may allow removal of trees and shrubs in the vegetative buffer zone on a parcel with 10 or more acres of forested land consistent with "generally accepted forestry management practices" as defined in s. NR 1.25 (2) (b), and described in Department publication "Wisconsin Forest Management Guidelines" (publication FR-226), provided that vegetation removal be consistent with these practices.

d. The county may allow removal of vegetation within the vegetative buffer zone to manage exotic or invasive species, damaged vegetation, vegetation that must be removed to control disease, or vegetation creating an imminent safety hazard, provided that any vegetation removed be replaced by replanting in the same area as soon as practicable.

Note: Information regarding native plants, shoreland and habitat management is available from the University of Wisconsin-Extension publications website: <http://clean-water.uwex.edu/pubs/index.htm>.

e. The county may authorize by permit additional vegetation management activities in the vegetative buffer zone. The permit issued under this subd. par. shall require that all management activities comply with detailed plans approved by the county and designed to control erosion by limiting sedimentation into the waterbody, to improve the plant community by replanting in the same area, and to maintain and monitor the newly restored area.

The permit also shall require an enforceable restriction to preserve the newly restored area.

(d) *Filling, grading, lagooning, dredging, ditching and excavating.* Filling, grading, lagooning, dredging, ditching and excavating may be permitted only in accordance with the provisions of s. NR 115.04, the requirements of ch. 30, Stats., and other state and federal laws where applicable, and only if done in a manner designed to minimize erosion, sedimentation and impairment of fish and wildlife habitat and natural scenic beauty.

(e) *Impervious surfaces.* Counties shall establish impervious surface standards to protect water quality and fish and wildlife habitat and protect against pollution of navigable waters. County impervious surface standards shall require all of the following:

1. 'Application.' Impervious surface standards shall apply to the construction, reconstruction, expansion, replacement or relocation of any impervious surface that is or will be located within 300 feet of the ordinary high water mark of any navigable waterway on any of the following:

a. A riparian lot or parcel.

b. A nonriparian lot or parcel that is located entirely within 300 feet of the ordinary high-water mark of any navigable waterway

1m. 'Calculation.' Percentage of impervious surface shall be calculated by dividing the surface area of the existing and proposed impervious surfaces on the lot or parcel by the total surface area of that lot or parcel, and multiplying by 100. For the purposes of this subdivision counties may exclude impervious surfaces described in subd. 3m. If an outlot lies between the ordinary high water mark and the developable lot or parcel described in subd. 1. and both are in common ownership, the lot or parcel and the outlot shall be considered one lot or parcel for the purposes of calculating the percentage of impervious surfaces.

2. 'General standard.' Except as allowed in subds. 2m. to 4., a county may allow up to 15% impervious surface as calculated under subd. 1m on a lot or parcel described in subd. 1.

2m. 'Standard for highly developed shorelines.' At its discretion, a county may adopt an ordinance for highly developed shorelines that allows impervious surface as calculated under subd. 1m on lots or parcels described in subd. 1 as follows: up to 30% for residential land uses or up to 40% for commercial, industrial or business land uses.

a. A "highly developed shoreline" means a shoreline within an area identified as an Urbanized Area or Urban Cluster in the 2010 US Census or a shoreline that has a commercial, industrial or business land use as of January 31, 2013.

b. A county may establish, after conducting a hearing and receiving approval by the department, a map of additional areas of highly developed shorelines not included in subd. 2m. a.

c. An additional area of highly developed shoreline under subd. 2m. b., shall include at least 500 feet of shoreline and as of February 1, 2010, have either a majority of its lots developed with more than 30% impervious surface area as calculated under subd. 1m. or be located on a lake and served by a sewerage system as defined in s. NR 110.03 (30). To obtain approval from the department for an additional area, the county shall provide data to the department that establishes that the additional area meets the criteria under this subd. 2m. c.

3. 'Maximum impervious surface.' A county may allow a property owner to exceed the impervious surface standard under subds. 2. and 2m. provided that all of the following requirements are met:

a. For lots or parcels described under subd. 1. that exceed the impervious surface standard under subd. 2. and are not located within a highly developed shoreline as defined in subd. 2m., a county may allow more than 15% impervious surface but not more than 30% impervious surface as calculated under subd. 1m on the lot or parcel.

b. For lots or parcels described under subd. 1. and located within an area defined by county ordinance as a highly developed shoreline under subd. 2m., a county may allow more than 30% impervious surface but not more than 40% impervious surface as calculated under subd. 1m on the lot or parcel for properties that have a residential land use, or more than 40% impervious surface but not more than 60% impervious surface as calculated under subd. 1m. for properties that have a commercial, industrial or business land use.

c. For lots or parcels described under subd. 1 that exceed the impervious surface standard under subds. 2. and 2m., but do not exceed the maximum impervious surface standard under subd. 3. a. or b., the county shall issue a permit that requires a mitigation plan approved by the county and implemented by the property owner by the date specified in the permit. The mitigation plan shall include enforceable obligations of the property owner to establish or maintain measures that the county determines adequate to offset the impacts of the impervious surface 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 impervious surface being permitted. The obligations of the property owner under the mitigation plan shall be evidenced by an instrument recorded in the office of the county register of deeds.

3m. 'Treated impervious surfaces.' A county may exclude from the calculation under subdivision 1m., any impervious surface where the property owner can show that runoff from the impervious surface is treated by devices such as stormwater ponds, constructed wetlands, infiltration basins, rain gardens, bioswales or other engineered systems, or that the runoff discharges to internally drained pervious area that retains the runoff on the parcel to allow infiltration into the soil.

Note: A property owner may seek a variance to a dimensional standard of the county ordinance, for areas that exceed the maximum impervious surface standard in subd. 3. and do not meet the provisions in subd. 3m. A county board of adjustment must review the request pursuant to s. 59.694 (7) (c), Stats., and applicable case law.

Note: Nothing in this paragraph shall be construed to supersede the setback provisions in par. (b). New structures must meet all setback provisions in the county shoreland ordinance unless the property owner obtains a variance from the County Board of Adjustment.

4. 'Existing impervious surfaces.' For existing impervious surfaces that were lawfully placed when constructed but that do not comply with the standards in subds. 2. and 3., the property owner may do any of the following as long as the property owner does not increase the percentage of impervious surface that existed on the effective date of the county shoreland ordinance:

a. Maintain and repair all impervious surfaces.

b. Replace existing impervious surfaces with similar surfaces within the existing building envelope.

c. Relocate or modify existing impervious surfaces with similar or different impervious surfaces, provided that the relocation or modification meets the applicable setback requirements in par. (b).

Note: For example this provision would allow an existing at-grade patio to be removed and replaced with a new building, if the new building meets the shoreland setback requirements.

Note: Nothing in this paragraph shall be construed to supersede other provisions in county shoreland ordinances.

(f) *Height.* To protect and preserve wildlife habitat and natural scenic beauty, on or after February 1, 2010, a county may not permit any construction that results in a structure taller than 35 feet within 75 feet of the ordinary high-water mark of any navigable waters.

(g) *Nonconforming structures and uses.* 1. 'General rule for nonconforming uses.' Pursuant to ss. 59.69 (10) and 59.692 (2) (a), Stats., an ordinance enacted under those provisions may not prohibit the continuation of the lawful use of a building, structure or property, that exists when an ordinance or ordinance amendment takes effect, which is not in conformity with the provisions of the ordinance or amendment.

2. 'Nonconforming use of temporary structure.' The continuance of the nonconforming use of a temporary structure may be prohibited.

3. 'Discontinued nonconforming use.' If a nonconforming use is discontinued for a period of 12 months, any future use of the building, structure or property shall conform to the ordinance.

4. 'Maintenance of nonconforming principal structure.' An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback under par. (b) 1. may be maintained and repaired within its existing building envelope. Maintenance and repair also includes such activities as interior remodeling, exterior remodeling, and the replacement or enhancement of plumbing or electrical systems, insulation, windows, doors, siding, or roof within the existing building envelope.

5. 'Expansion of nonconforming principal structure within the setback.' An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback under par. (b) 1. may be expanded laterally or vertically, provided that all of the following requirements are met:

a. The use of the structure has not been discontinued for a period of 12 months or more if a nonconforming use.

b. The existing principal structure is at least 35 feet from the ordinary high-water mark.

c. Vertical expansion is limited to the height allowed in s. NR 115.05 (1) (f) and lateral expansions are limited to a maximum of 200 square feet over the life of the structure. No portion of the expansion may be any closer to the ordinary high-water mark than the closest point of the existing principal structure.

d. The county shall issue a permit that requires a mitigation plan that shall be approved by the county and implemented by the property owner by the date specified in the permit. The mitigation plan shall include enforceable obligations of the property owner to establish or maintain measures that the county determines adequate to offset the impacts of the permitted expansion 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 expansion being permitted. The obligations of the property owner under the mitigation plan shall be evidenced by an instrument recorded in the office of the county register of deeds.

e. All other provisions of the shoreland ordinance shall be met.

Note: Other provisions include requirements such as impervious surface limitations.

5m. 'Expansion of nonconforming principal structure beyond setback'. An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback under par. (b) 1., may be expanded horizontally, landward or vertically provided that the expanded area meets the building setback requirements in par. (b) 1., and that all other provisions of the shoreland ordinance are met. A mitigation plan is not required solely for expansion under this paragraph, but may be required under par. (e) 3.

6. 'Replacement or relocation of nonconforming principal structure.' An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback under par. (b) 1. 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 12 months or more if a nonconforming use.

b. The existing principal structure is at least 35 feet 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 build a principal structure of a comparable size to the structure proposed for replacement or relocation that will result in compliance with the shoreland setback requirement in par. (b) 1.

e. The county shall issue a permit that requires a mitigation plan that shall be approved by the county and implemented by the property owner by the date specified in the permit. The mitigation 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 expansion 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 recorded in the office of the county register of deeds.

g. All other provisions of the shoreland ordinance shall be met.

Note: Other provisions include requirements such as height and impervious surface limitations.

Note: Effective April 17, 2012, 2011 Wisconsin Act 170 created s. 59.692 (2m), Stats., which prohibits a county from enacting, and a county, city, or village from enforcing, any provision in a county shoreland or subdivision ordinance that regulates the location, maintenance, expansion, replacement, repair, or relocation of a nonconforming building if the provision is more restrictive than the standards for nonconforming buildings under ch. NR 115.