

# Act 55 - Shoreland Zoning

Kay Lutze

Shoreland Zoning Policy  
Coordinator

[Kay.Lutze@wisconsin.gov](mailto:Kay.Lutze@wisconsin.gov)

# Act 55

- Changes the authority counties have in the development of a shoreland ordinance that is more restrictive than NR 115 and changed other shoreland zoning standards.
- Effective - July 14<sup>th</sup>, 2015

- Change is never easy.  
You fight to hold on and  
you fight to let go.

# Summary of Act 55 - no longer allowed by law

- A county may not impose on a conditional use permit a requirement that is preempted by federal or state law.
- A shoreland zoning ordinance (county, village or city) may not regulate a matter more restrictively than the matter is regulated by a shoreland zoning standard.
  - Act 55 allows counties to regulate “matters” that are not regulated by a shoreland zoning standard in NR 115. Address the purposes of s. 281.31 – to further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structure and land uses and reserve shore cover and natural beauty.

# No longer allowed by law cont.

- A shoreland zoning ordinance (county, village or city) may not require establishment of a vegetative buffer on previously developed land or expansion an existing vegetative buffer.
- The Dept. may not issue an opinion on whether or not a variance should be granted or denied without the request of a county BOA. (letter or minutes)
- The Dept. may not appeal a BOA decision.
- County shoreland zoning ordinances, construction site erosion control and stormwater management ordinances and city/village wetland zoning ordinances do not apply to lands adjacent to artificially constructed drainage ditches, ponds, or stormwater retention basins that are not hydrologically connected to a natural navigable water body.

- A shoreland zoning ordinance (county, village, or city) may not:
  - Regulate outdoor lighting for residential use.
  - Regulate the maintenance, repair, replacement, restoration, rebuilding or remodeling of a nonconforming structure if the activity does not expand the footprint. No approval, fee or mitigation required.
  - Require the inspection or upgrade of the structure before the sale/transfer of the structure may be made.
  - Regulate the vertical expansion of a nonconforming structure unless the expansion is greater than 35' above grade level. No approval, fee or mitigation required.

A shoreland zoning ordinance (county, village, or city) may not

- Establish standards for impervious surfaces unless the standards provide that a surface is considered pervious if the runoff from the surface is treated by a device or system, or is discharged to an internally drained pervious area that retains the runoff on or off the parcel to allow infiltration into the soil.
- Regulate the construction of a structure on a substandard lot in a manner that is more restrictive than the shoreland zoning standards.

# 59.692(5m)

- An ordinance provision that is inconsistent with the following may not be applied and enforced:
- (1d) regulates a matter more restrictively than a shoreland zoning standard ex. OHWM setback
- (1f) requires establishment of a vegetative buffer on developed land or expands existing veg. buffer
- (1k) regulates lighting, nonconforming structures, inspection/upgrade structure, establishes standards for impervious surfaces without providing the option of treating the runoff
- (2m) regulate substandard lots more restrictively  
NR115



# Act 55 – what is allowed by law

- Continued administration of NR 115 standards unaffected by Act 55.
- A county shoreland zoning ordinance may require a vegetative buffer to be maintained provided that a 35' viewing corridor for every 100' is allowed and the viewing corridor is allowed to run contiguously for the entire maximum width.
- The department can establish shoreland zoning standards for vertical and lateral expansion. A county can enact a shoreland ordinance that allows the vertical or lateral expansion of a nonconforming structure if the ordinance does not conflict with the shoreland standards of the department. Rules exist.

## What is allowed by law – cont.

- Broadens the exemption from county shoreland zoning, construction site erosion control and stormwater management and city/village wetland zoning to lands that are adjacent to farm drainage ditches by removing the requirement that the land be maintained in nonstructural agricultural use.

# Act 55 - added definitions

- “Shoreland setback area” means an area that is within a certain distance of the ordinary high-water mark in which the construction or placement of structures has been limited or prohibited under an ordinance enacted under this section.
- “Structure” means a principal structure or any accessory structure including a garage, shed, boathouse, sidewalk, stairway, walkway, patio, deck, retaining wall, porch or fire pit.



# Regulating Other Matters

- . 59.692(1d)(b) allows counties to regulate a matter that is not regulated by a shoreland zoning standard.
  - Minimum lot sizes
  - Building setbacks.
  - Vegetation.
  - Filling, grading, lagooning, dredging, ditching and excavating.
  - Impervious surfaces.
  - Height.
  - Nonconforming structures and uses.

# Need to further the purpose in 281.31

- to further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structure and land uses and reserve shore cover and natural beauty.
- Boathouses are exempt from the OHWM therefore the standard that is regulated is the building setback from the water.
- Example of boathouse regulations:
  - Roof pitch
  - Number of berths
  - Square footage – size
  - Number of boathouses

# More examples of other matters:

- Dune, escarpment, wetland regulations
- Density Requirements
- Land uses
- Land suitability

# Lot sizes – NR 115

- Shoreland zoning ordinance may not require lot sizes larger than the minimum lot size identified in NR 115.05(1)(a)
  - 20,000 square feet and 100' wide - unsewered
  - 10,000 square feet and 65' wide – sewer
  - Average lot width can continue to be defined by the counties

# Structure

- Definition Act 55
- Averaging now required consistent with NR 115.05(1)(b)1 (principal structures only)
- Exempt structures
  - Now required to exempt all of them
    - Boathouses, walkways, open-sided structures
  - Not considered nonconforming structures
  - Open sided structures (59.692(1v)) still requires the vegetative buffer to be restored



# Vegetative Buffers

- Viewing corridor 35' for every 100' and allowed to run contiguously
- Counties are prohibited from requiring a person to establish a vegetative buffer on previously developed land and from expanding an existing buffer
  - Establishment of veg. buffer can remain an OPTION for mitigation purposes
  - Open sided structure exemption requirement to establish the vegetative buffer remains in effect

# Impervious Surfaces

- Counties are required to adopt provisions within their impervious surface standards that allow an impervious surface to be considered pervious if the runoff from the impervious surface is treated by a device or system or is discharged to an internally drained pervious area on or off-site.
  - Exemptions narrowly construed – only entitled to the exemption when it can be demonstrated that the runoff is being treated or is internally drained.
  - Prudent to recognize, when necessary, that a maintenance plan and recorded agreement ensures the systems/area are fully operational and will continue to do so. Protects subsequent property owners.
  - Device/area receiving the runoff fails, the impervious surface is no longer exempt and compliant and is considered impervious.

- Counties that currently have impervious surface standards are required to administer the treated surfaces option now.
- Counties that do not have impervious surface standards still have until 10/1/2016 to have a complying ordinance

# Identification of a NC structure for shoreland zoning purposes?

- A lawfully placed structure that does not comply with the required setback from the ordinary high water mark as identified in NR 115.05(1)(b).
- Structure may also be nonconforming for general zoning, floodplain zoning, etc. but is not affected by the statutory changes

# Structures that do not meet the NC definition

- Exempt structures listed in NR 115.05(1)(b)1m
- Structures that meet the required or average setback from OHWM
- Structures that were granted a variance
  - A structure for which a variance was granted under the zoning provisions in effect is not considered non-conforming solely due to the fact that the structure for which the variance was granted fails to comply with the requirement for which the variance was granted. The existence of such a variance does not prevent the structure from being classified as non-conforming if some other characteristics of the use or structure fail to comply with the requirements.
- Structures that have been illegally constructed
  - Structures that were illegally constructed but exceed the ten year limitation for enforcement in 59.692(1t) do not become a legal structure or a nonconforming structure just because enforcement action has not been taken.

# Nonconforming Structures - activities now allowed

- Shoreland ordinance cannot regulate the maintenance, repair, replacement, restoration, rebuilding or remodeling of a nonconforming structure if the activity does not expand the footprint. No approval, fee or mitigation required.
  - Includes principal and accessory structures
  - No approval = can't prohibit the activity, no permit
  - Floodplain, sanitary, building permits, general zoning permits are all still required

# Nonconforming structures – activities allowed cont.

- Vertical expansion of a nonconforming structure without approval, a fee or any mitigation requirements.
  - New definition includes accessory structures therefore vertical expansion of accessory structures is now allowed.
    - 2<sup>nd</sup> story to a garage
    - Replace patio with an elevated deck
    - Changing roof pitch and side wall height on shed

# Nonconforming Principal Structure: activities that still require a permit

- Expansion beyond the setback
- Relocation of NC structure
  - Principal structure is 35' from OHWM
  - Mitigation required
  - All other ordinance provisions are met
  - No compliant location
- Lateral expansion of 200 square feet if:
  - Principal structure is 35' from OHWM
  - Mitigation required
  - All other ordinance provisions are met



# 200 sq. ft. expansion vs. 200 sq. ft. exemption

- Two different activities:
  - Allowing a lateral expansion of a NC structure if all provisions can be met.
  - Allowing an exempt open-sided structure of 200 square feet if all provisions can be met

# Interaction with other enabling statutes

- Question:

Does Act 55 prohibit counties from enforcing county general zoning or other overlay zoning that is inconsistent with NR 115?

- Answer:
- Act 55 only modified the provisions in s. 59.692, which relates to county shoreland zoning.
- Act 55 did not modify a county's authority to enact or enforce ordinances under other statutes
  - s. 59.69 (general zoning)
  - S. 236 (Land Division)
  - 30.27 (St. Croix Riverway Zoning)
  - 87.30 (floodplain)
  - 91.30 (farmland preservation).
- Standards created under one of these other statutory authorities must
  - Further the purposes of those statutes and
  - Cannot attempt to create shoreland zoning standards in those ordinances that are more restrictive than NR 115.

- Question:
- Does Act 55 prohibit counties from imposing minimum lots sizes in General Zoning that exceed the minimum standards in NR 115?

- Answer:
- Minimum lot size requirements that solely “relate to shorelands” would be superseded
  - In other words if it applies only to lands that lie in shorelands and applies only because the lands lie in shorelands it would be superseded
- General zoning district regulations, such as general agricultural zoning districts, that apply broadly within and outside of the shoreland boundaries, are not superseded.



- Q: Do you have to allow for multiple viewing corridors or can we require only one?
- A: NR 115 lists viewing corridors.....
- Q: Can the 35' vegetative buffer zone be larger in that the language states a minimum of 35'?
- A: No, this is similar to the lot size where is states a minimum lot size shall be established.

- Q: Will NR 115 be updated to reflect the Act 55 changes?
- A: Notes will be added to the code to reflect the statutory changes and there is currently not any indication that the rule will be re-opened.

# Moving Forward

- All counties have to allow averaging, implement the nonconforming structure standards established in 59.692(1k) and vegetative buffer standards in 59.692(1f).
  - If you currently do not have Impervious surface standards have until October 1, 2016
  - If you have impervious surface standards have to provide the option for the runoff to be treated



# Shoreland ordinance revisions

- Model ordinance has been updated to reflect Act 55
- Encourage stand alone shoreland ordinance or at least a separate chapter under 59.692
  - Submit draft revisions to shoreland specialist for review
  - P&Z Committee, County Board
  - Certification from Department
  - Message: Sooner rather than later 10/1/2016

# BOA requests to continue with opinions in dept. letters

- Letter with the request by the BOA chair or appropriate person
- Letter from the zoning administrator with a copy of the BOA minutes showing the motion

# Working sessions for county code administrators

- Northwest Dec. 2
- Northeast Dec. 3
- West Central
- Central
- East Central Dec. 16
- Southeast
- Southwest

# Questions? Comments?

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