



Door County Shoreland Zoning

Door County Land Use Services Department
August 15, 2017

Wisconsin Shoreland Zoning: Background

- ▶ June 12, 1968: State-mandated date for counties to begin administering shoreland zoning in unincorporated areas (i.e., towns), consistent with or exceeding standards in Wisconsin Administrative Code Natural Resources Chapter 115, or “NR115.”

Definition of “shorelands”:

“Lands within the following distances from the ordinary high-water mark of navigable waters: 1,000 feet from a lake, pond, or flowage; and 300 feet from a river or stream or the landward side of the floodplain, whichever distance is greater.”

Note: Below ordinary high water mark = DNR jurisdiction.

- ▶ Counties also could/can adopt “comprehensive” or “general” zoning, to be in effect in the interiors of towns which choose to have county zoning throughout.

Wisconsin Shoreland Zoning: Background, continued...

- ▶ 1980s: NR115 amended.
- ▶ 2010: NR115 amended significantly; counties given 2012 deadline to revise ordinances (then 2014, then 2016...).
- ▶ 2011 Act 170: Counties had to **match certain state standards** (existing in NR115 and new) for nonconforming lots & structures.
- ▶ 2013: *Hegwood* Wisconsin Court of Appeals decision stating towns cannot administer zoning in shoreland areas.
- ▶ 2015 Act 41: Towns can administer zoning in shoreland areas as long as not regulating shoreland zoning standards.
- ▶ 2015 Act 55 (2015-2017 biennial budget bill): Counties had to **immediately match all state shoreland zoning standards;** several standards also changed.
- ▶ 2016: Further legislation adopted related to budget bill and other shoreland issues.

2015 Act 55 (2015-2017 Budget Bill) Details

- ▶ Shoreland zoning policy items inserted in draft bill late May 2015.
- ▶ 2015 Act 55 signed/enacted by Governor Scott Walker July 12, 2015 and published July 13, 2015; shoreland-related provisions took effect July 14, 2015.
- ▶ Act 55 provisions specific to zoning included:
 - ▶ Cannot impose on a conditional use permit a condition preempted by state or federal law.
 - ▶ Shoreland ordinance cannot regulate “matters” more restrictively than they are regulated by shoreland zoning (NR115) standards.
 - ▶ Cannot require establishment or expansion of vegetative buffer on previously developed land.
 - ▶ Created definition of “structure.”

Act 55 zoning provision specifics, continued

- ▶ Shoreland ordinance may not “impair” landowner interest by:
 - ▶ Regulating outdoor lighting for residential use.
 - ▶ Regulating or requiring approvals, fees, or mitigation for repair, rebuild, etc. of nonconforming structures if footprint is not expanded.
 - ▶ Regulating or requiring approvals, fees, or mitigation for vertical expansion of nonconforming structures unless expanded structure is more than 35 feet in height.
 - ▶ Establishing standards for impervious surfaces unless the standards allow for exemption of treated surfaces.
 - ▶ Requiring inspection/upgrade of structure before sale/transfer.
- ▶ DNR cannot issue opinion to county Board of Adjustment (BOA) regarding variance applications unless county requests opinion.
- ▶ DNR cannot appeal county BOA decisions.
- ▶ Broadened exemptions from shoreland zoning, construction site erosion control, and storm water management ordinances.

Door County Shoreland Zoning Regulations

- ▶ 1968: Combined shoreland & comprehensive ordinance adopted
- ▶ 1995: New combined Door County Zoning Ordinance adopted
- ▶ May 27, 2014: Chapter 3A, Shoreland Zoning Regulations, created (nonconforming lot & structure provisions from Act 170 included)
- ▶ July 14, 2015: Began enforcing most 2015 Act 55 provisions
- ▶ December 22, 2015: Began enforcing all 2015 Act 55 provisions
- ▶ September 20, 2016: Stand-alone shoreland ordinance adopted
 - ▶ All shoreland standards removed from Door County Zoning Ordinance (1968 - 2016, standards in same ordinance)
 - ▶ Amended December 27, 2016 (DNR certified on February 3, 2017)

Note: Other ordinances still in effect in all 14 towns (land division, floodplain, communication tower, etc.).

Comprehensive Zoning: Background

- ▶ Three zoning options for towns in Wisconsin located in counties with comprehensive zoning:
 - ▶ Do nothing. Only county shoreland zoning will be in effect.
 - ▶ Adopt a town-level ordinance. Requires county board approval; county shoreland zoning also in effect.
 - ▶ Adopt comprehensive county zoning. County shoreland zoning also in effect.

Notes:

Per state statute, cities and villages generally do their own planning and zoning.

If a portion of a town incorporates or is annexed to an incorporated municipality, the incorporated municipality is thereafter responsible in perpetuity for enforcing shoreland zoning regulations.

Shoreland Zoning Ordinance Purpose & Intent

- ▶ Promote the public health, safety, convenience, and general welfare.
- ▶ Promote and protect the public trust in navigable waters.
- ▶ Limit the direct and cumulative impacts of shoreland development on water quality; near-shore aquatic, wetland, and upland wildlife habitat; and natural scenic beauty.
- ▶ For the efficient use, conservation, development, and protection of the state's and county's water resources.
- ▶ 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 structures, and land uses and reserve shore cover and natural beauty.
- ▶ Preserve and restore shoreland vegetation and natural scenic beauty.

See also <http://map.co.door.wi.us/planning/>, Quick Links.

Shoreland Zoning Ordinance Overview

- ▶ Wetland regulations (maps/boundaries, uses)
- ▶ Seven state-mandated “shoreland standards”
 1. Lot size and width, new and nonconforming (“grandfathered”) lots
 2. Building setback (ordinary high water mark)
 3. Impervious surface allowances within 300’ of ordinary high water mark
 4. Nonconforming structure allowances
 5. Building height within 75 feet of ordinary high water mark
 6. Vegetation removal
 7. Filling and grading

Shoreland Zoning Standards:

1. Minimum lot sizes, new lots

▶ Minimum Standards:

- ▶ Sewered lots = “minimum average width of 65 feet (including at least 65 feet of frontage at the ordinary high water mark) and a minimum area of 10,000 square feet”
- ▶ Unsewered lots = “minimum average width of 100 feet (including at least 100 feet of frontage at the ordinary high water mark) and a minimum area of 20,000 square feet”

Shoreland Zoning Standards:

Minimum lot sizes, 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:
 - ▶ 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.
 - ▶ The substandard lot or parcel has never been developed with one or more of its structures placed partly upon an adjacent lot or parcel.
 - ▶ The substandard lot or parcel is developed to comply with all other ordinance requirements.
- ▶ Otherwise, a substandard lot may not be used as a building site unless a variance is granted that would make the lot buildable.”

Shoreland Zoning Standards:

2. Building setbacks (ordinary high water mark)

Note: The setback from the ordinary high water mark (OHWM) is the only “building setback” in NR115.

- ▶ Shoreland setbacks for principal structures:
 - ▶ 75 feet from the ordinary high water mark (OHWM) of a navigable water body, unless a reduced setback due to averaging applies.
- ▶ Shoreland setbacks for accessory structures:
 - ▶ 75 feet from the OHWM of a navigable water body. Cannot use averaging for a reduced setback for accessory structures.

Shoreland Zoning Standards: Building setbacks (OHWM), continued...

- ▶ Two-sided averaging (principal structures only):
 - ▶ “If the closest principal structure in each direction along the shoreline to a proposed principal structure exists on an adjacent lot and within 250 feet of the proposed principal structure and both of the existing principal structures are set back less than 75 feet from the ordinary high water mark, the setback will be equal to the average of the distances that those structures are set back from the ordinary high water mark but no less than 35 feet.”

Example: Averaging, 2-sided

Lot 1

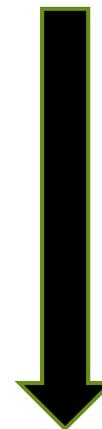


35 ft. to OHWM

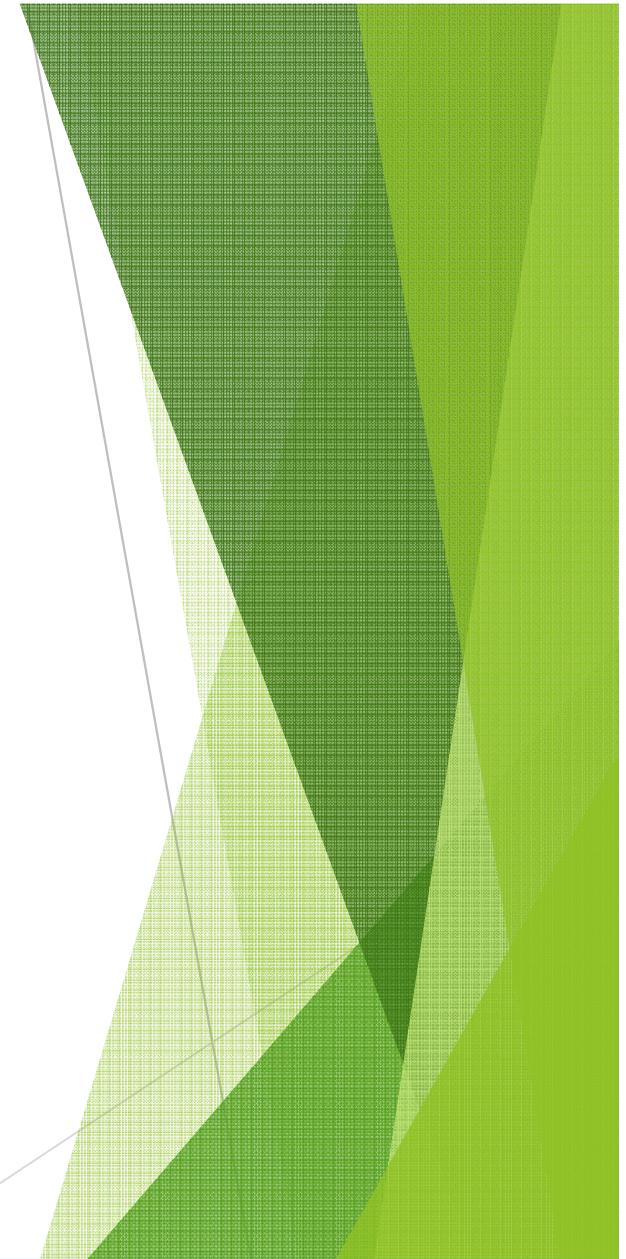
Lot 2

Required shoreland setback for Lot 2 is 45 feet to OHWM

$$35 + 55 = 90$$
$$90 / 2 = 45$$



55 ft. to OHWM



Shoreland Zoning Standards: Building setbacks (OHWM), continued...

- ▶ One-sided averaging (principal structures only):
 - ▶ “If a principal structure exists on an adjacent lot and within 250 feet of a proposed principal structure in only one direction along the shoreline, is the closest principal structure to the proposed principal structure, and is set back less than 75 feet from the ordinary high water mark, the setback is equal to the average of 75 feet and the distance that the existing structure is set back from the ordinary high-water mark but no less than 35 feet.”

Example: Averaging, 1-sided

Lot 1



25 ft. to OHWM

Lot 2

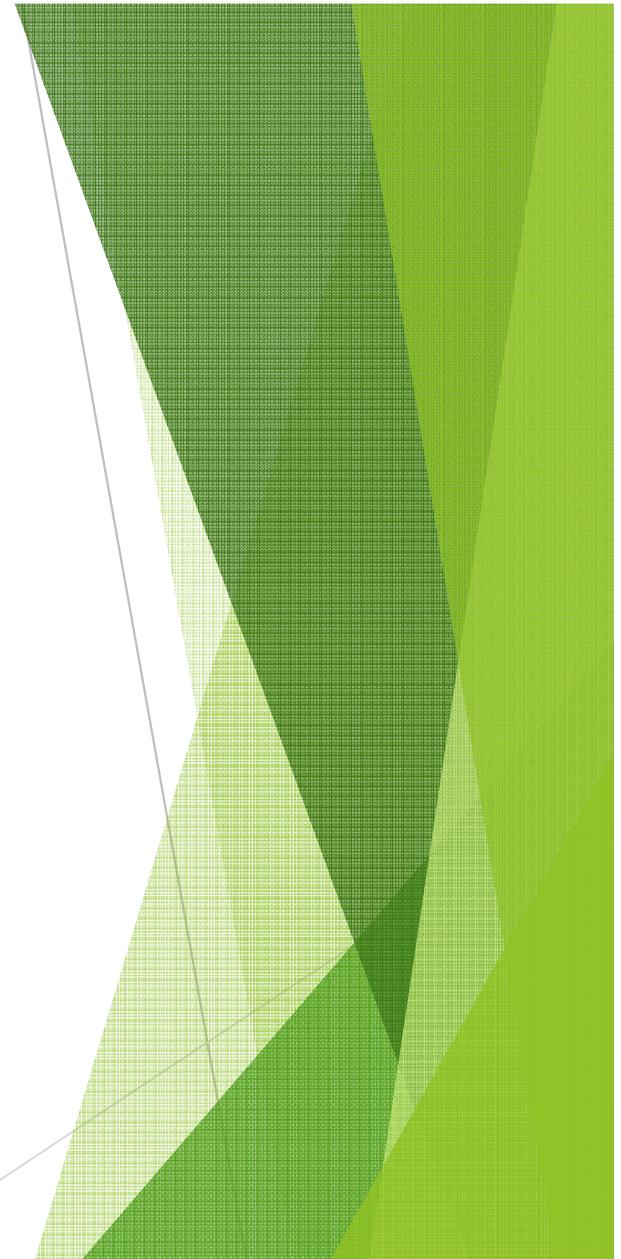
Required shoreland setback for Lot 2 is 50 feet to OHWM

$$25 + 75 = 100$$
$$100 / 2 = 50$$

Lot 3



80 ft. to OHWM



Shoreland Zoning Standards: Building setbacks (OHWM), continued...

- ▶ Structures exempt from the shoreland setback:
 - ▶ Boathouses
 - ▶ Open-sided and screened structures (“Gard Gazebo Law”)
 - ▶ Broadcast signal receivers
 - ▶ Utility lines, poles, towers, water towers, pumping stations, well pumphouse covers, POWTS, & other utility structures that have no feasible alternative location
 - ▶ Walkways, stairways, or rail systems for access to shoreline (60-inch maximum width)
 - ▶ Devices or systems designed to treat runoff

Shoreland Zoning Standards:

3. Impervious surfaces

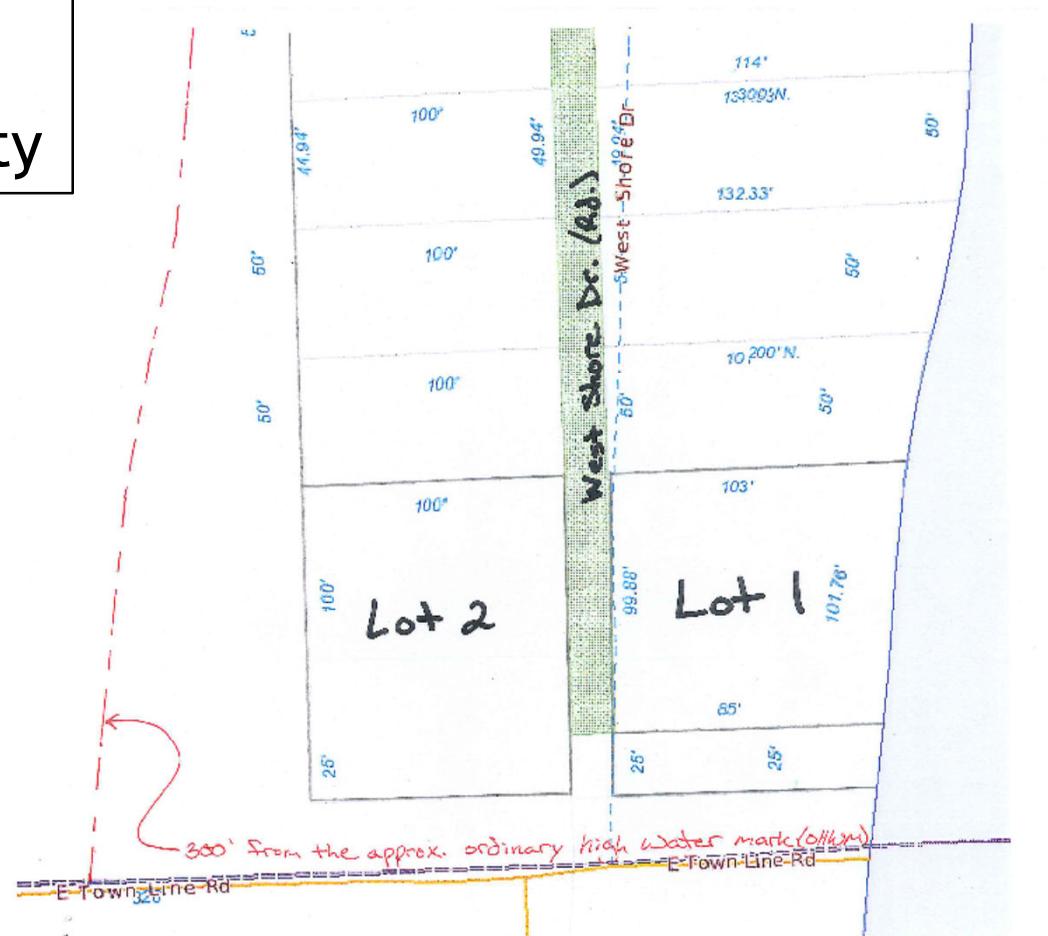
► Definition:

“An area that releases as runoff all or a majority of the precipitation that falls on it. ‘Impervious surface’ excludes frozen soil but includes rooftops, sidewalks, driveways, parking lots, and streets unless specifically designed, constructed, and maintained to be pervious. Roadways... or sidewalks... are not considered impervious surfaces.”

- ### ► Shoreland zoning impervious surface standards “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 water body on any of the following:
- A riparian lot or parcel.
 - A nonriparian lot or parcel that is located entirely within 300 feet of the ordinary high water mark of any navigable waterway.”

Example 1: Impervious surface regulation applicability

Lots 1 & 2 are entirely
subject to the shoreland
zoning impervious surface
regulations since both are
located entirely within
300 feet of the OHWM.

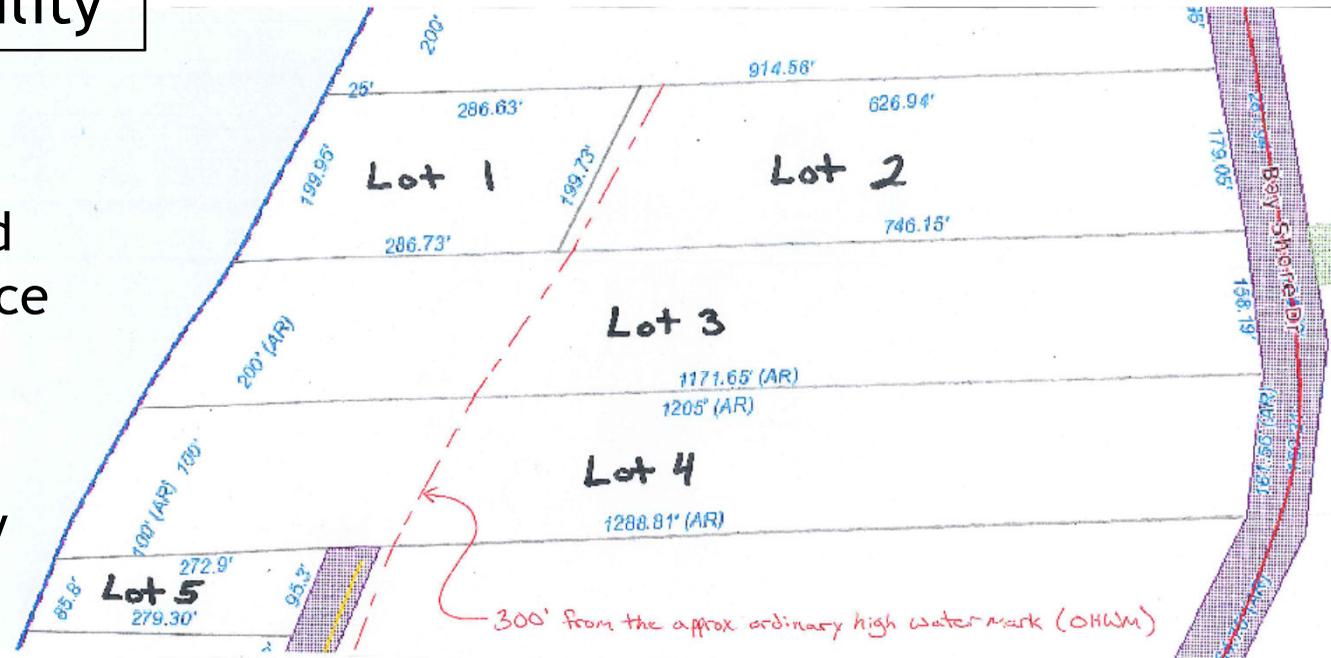


**Example 2:
Impervious surface
regulation applicability**

Lots 1 & 5: Entirely subject to the shoreland zoning impervious surface regulations.

Lots 3 & 4: Shoreland zoning regulations apply only within 300 feet of the OHWM.

Lot 2: Not subject to shoreland zoning impervious surface regulations.



Shoreland Zoning Standards: Impervious surfaces, continued...

- ▶ Impervious surface ratio allowances within 300 feet of the OHWM:
 - ▶ An area of impervious surfaces equal to 15% of the entire lot area is permitted within 300 feet of the OHWM.
 - ▶ An area of impervious surfaces equal to >15-30% of the entire lot area may be allowed within 300 feet of the OHWM with the issuance of a mitigation permit and the implementation of two (2) points of mitigation.
 - ▶ An area of impervious surfaces which equals greater than 30% of the entire lot area may be allowed within 300 feet of the OHWM with the issuance of an impervious surface authorization (ISA) and the implementation/installation of a stormwater treatment device that treats any impervious surfaces within 300 feet of the OHWM which equals greater than 30% of the entire lot area.
 - ▶ Still allowed to “keep what you have” and rearrange; no mitigation or impervious surface authorization permit required.

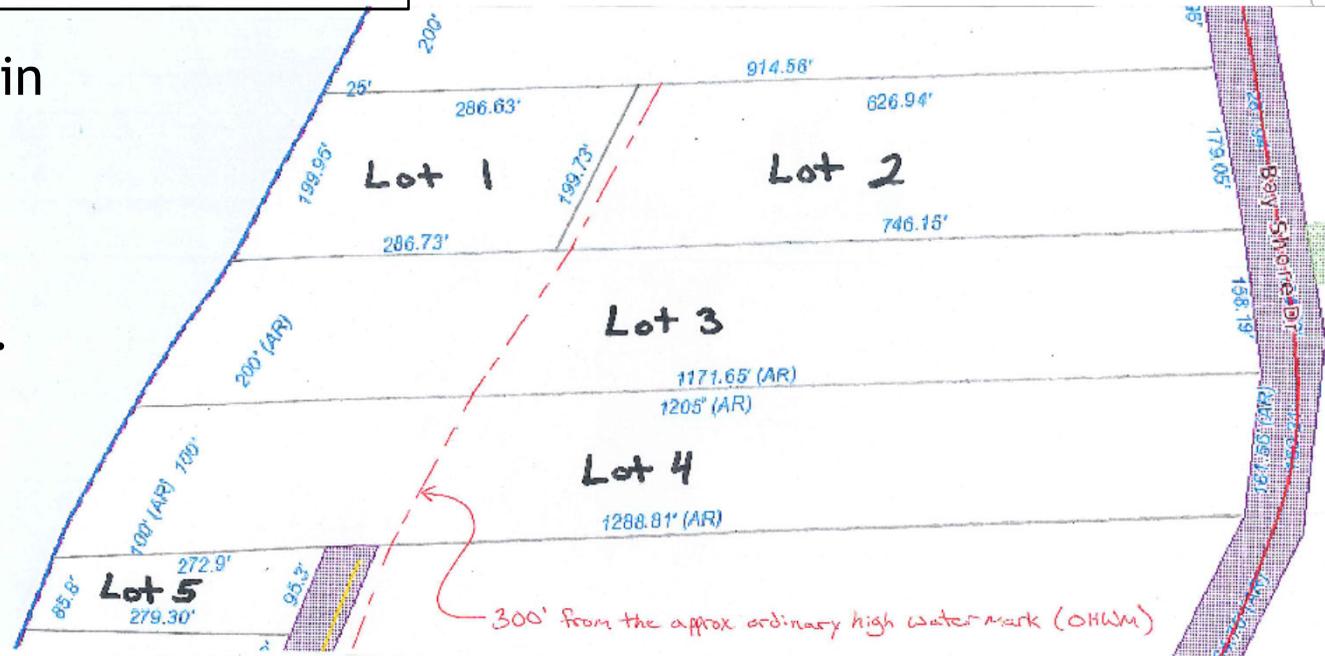
Shoreland Zoning Standards: Impervious surfaces, continued...

- ▶ Example: 100,000 sq. ft. lot (2.30 ac.+/-)
 - ▶ 15,000 sq. ft. (15%) of impervious surfaces is permitted within 300 feet of the OHWM
 - ▶ 15,0001-30,000 sq. ft. (>15% and up to 30%) of impervious surfaces may be allowed within 300 feet of the OHWM with the issuance of a mitigation permit and the implementation of two (2) points of mitigation
 - ▶ Greater than 30,000 sq. ft. (>30%) of impervious surfaces may be allowed within 300 feet of the OHWM with the issuance of an impervious surface authorization and the implementation/installation of a stormwater treatment device that treats any impervious surfaces in excess of 30,000 sq. ft.

**Example 2:
Impervious surface regulation
calculation, shoreland zoning only**

Lots 1 & 5: Entirely within 300 feet of the OHWM, so impervious surface calculations use and are applied to entire lot area.

Lots 3 & 4: Only portions within 300 feet of OHWM. Impervious surface calculations will use entire lot area to calculate what is allowed in the area within 300' of OHWM. Impervious surfaces on remainder of lot unregulated under shoreland zoning.



Lot 2: Not subject to the regulations.

Shoreland Zoning Standards:

4. Nonconforming structures & uses

- ▶ Nonconforming structure:

A structure that was lawfully placed when constructed, but does not comply with the required shoreland setback.

- ▶ Nonconforming structures, and/or structures that do not comply with the required shoreland setback due to issuance of a variance before July 13, 2015, may be:

- ▶ Reconstructed within the same building footprint, and/or
- ▶ Vertically expanded to 35 feet in height

No shoreland or mitigation permit required for these activities, although may be required due to other project components. Other permits may be required as well (floodplain, etc.). On-site visit recommended.

Shoreland Zoning Standards: Nonconforming structures & uses, continued...

- ▶ Nonconforming principal structures that do not comply with the required shoreland setback may be laterally expanded a maximum of 200 feet (footprint) over the lifetime of the structure, provided the following requirements are met:
 - ▶ The structure use has not been discontinued for a period of 12 months or more if a nonconforming use;
 - ▶ No portion of the expansion may be located closer to the OHWM than the existing structure;
 - ▶ The existing structure is at least 35 feet from the OHWM;
 - ▶ A Mitigation Permit is obtained and plan implemented; and
 - ▶ All other ordinance requirements met.

Note: Shoreland zoning permit also required.

Shoreland Zoning Standards: Nonconforming structures & uses, continued...

- ▶ Nonconforming principal structure may be relocated or replaced on the same property provided:
 - ▶ The use of the structure has not been discontinued for the previous 12 months if a nonconforming use;
 - ▶ The existing structure is at least 35 feet from the OHWM;
 - ▶ No portion of the relocated/replaced structure is closer to the OHWM than the closest point of the existing structure;
 - ▶ There is no other location on the property to build a structure of comparable size in compliance with the ordinance;
 - ▶ A Mitigation Permit is obtained and plan implemented; and
 - ▶ All other ordinance requirements met.

Note: Shoreland zoning permit required as well.

Example: Nonconforming structure allowances

*Red line represents 35' setback
from OHWM*

Options for structure on left lot:

- Vertical expansion
- Replacement
- Lateral expansion
- Relocation

Options for structure on right lot:

- Vertical expansion
- Replacement

*Reminder: Lateral expansion and
relocation are only options if the
structure is a principal structure.*

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... from the Web Map of ...
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Door County, Wisconsin
... for all seasons!

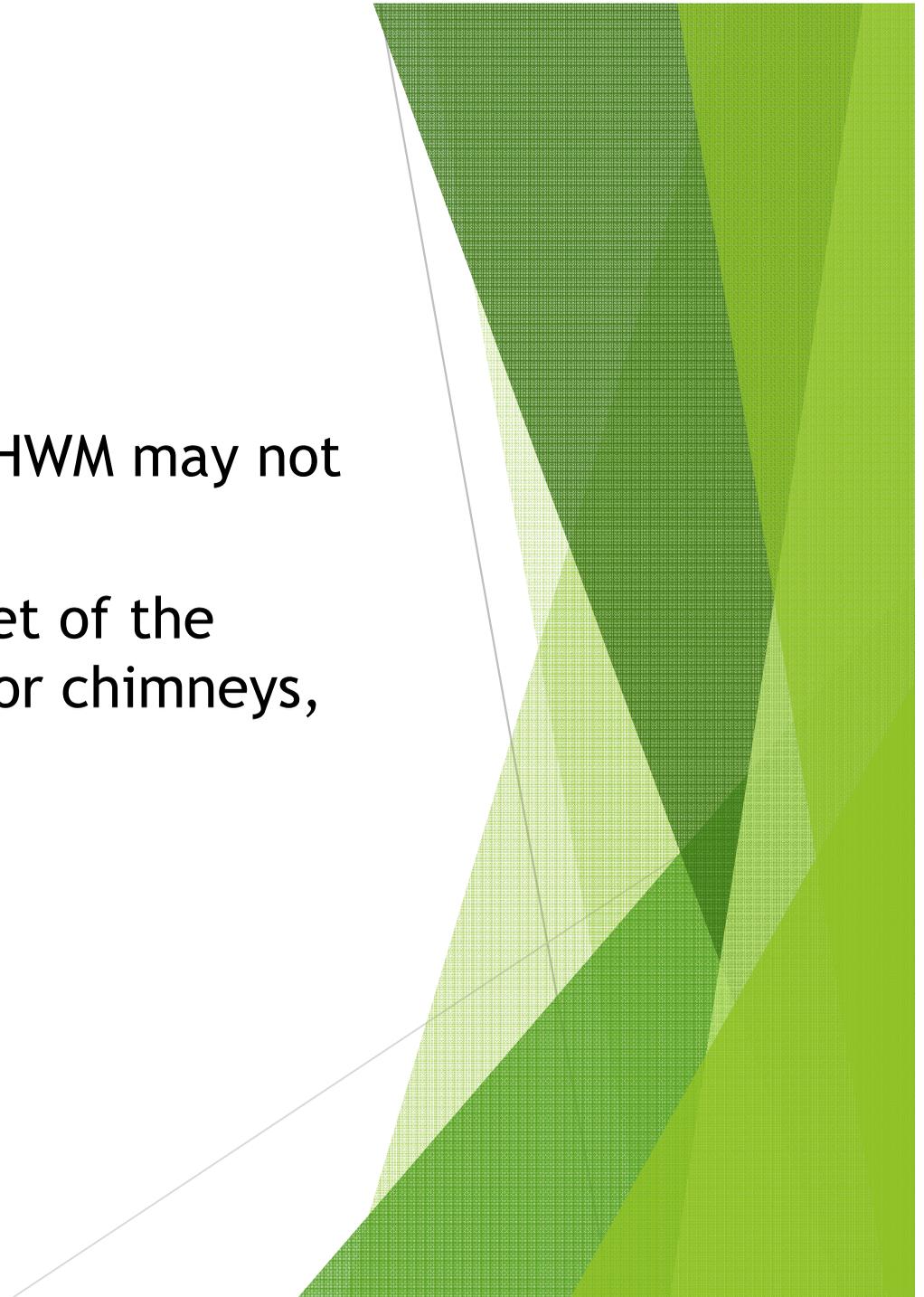


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Shoreland Zoning Standards:

5. Height

- ▶ Any structure located within 75 feet of the OHWM may not exceed 35 feet in height.
- ▶ Height regulations for structures within 75 feet of the OHWM do not have any exemptions, such as for chimneys, cupolas, etc.



Shoreland Zoning Standards:

6. Shoreland vegetation

- ▶ Shoreland vegetative buffer zone: the area of a lot within 35 feet of the OHWM of a navigable water body
- ▶ “Routine maintenance” is allowed, but “removal of vegetation in the vegetative buffer zone is prohibited except as follows”:
 - ▶ “Removal of trees and shrubs in the vegetative buffer zone, to create viewing corridors, is permissible provided that any viewing corridor on a riparian lot or parcel is not more than 35 feet wide for every 100 feet of shoreline frontage. Such a viewing corridor may run contiguously for the entire maximum width.”
 - ▶ “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.”

Example: Shoreland buffer and viewing corridor

Lot 1

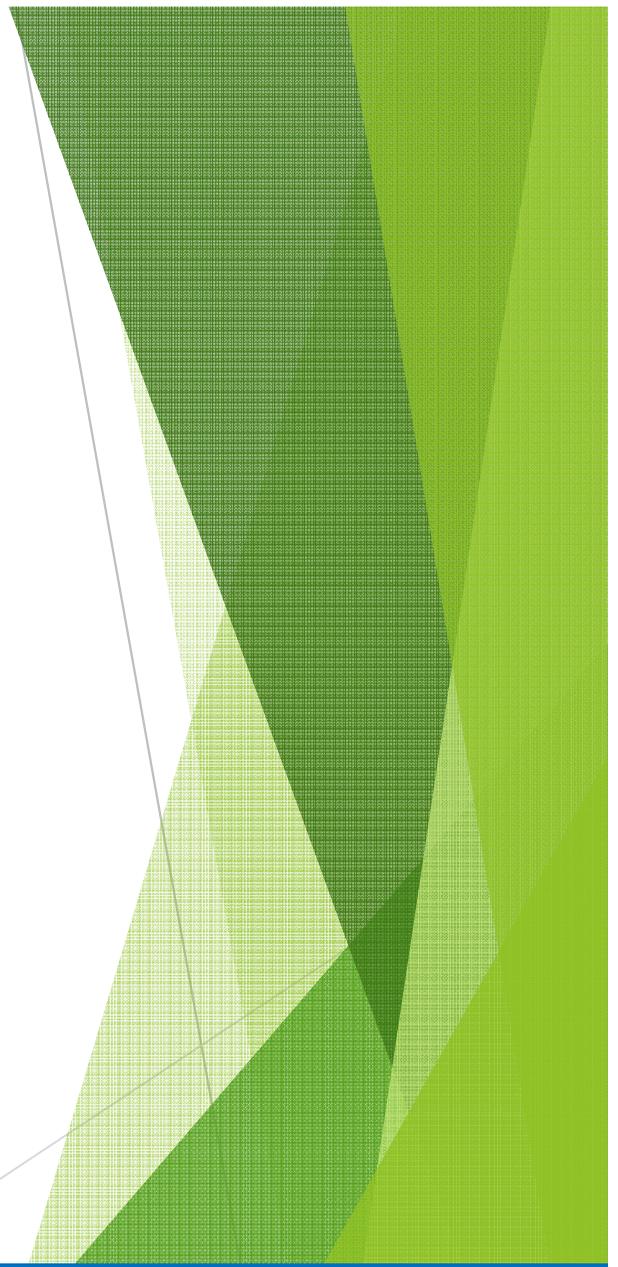
35-foot wide viewing & access corridor permitted



35-foot deep shoreland vegetative buffer zone



100 ft. at OHWM



Shoreland Zoning Standards:

7. Filling, grading, lagooning, dredging, ditching, & excavating

“A permit is required:

- ▶ For any filling or grading of any area which is within 300 feet horizontal distance landward of the ordinary high water mark of navigable water and which has either:
 - ▶ Any filling or grading on slopes of more than 20%;
 - ▶ Filling or grading of more than 1,000 sq. ft. on slopes of 12%-20%; or
 - ▶ Filling or grading of more than 2,000 sq. ft. on slopes less than 12%.
- ▶ For any construction or dredging commenced on any artificial waterway, canal, ditch, lagoon, pond, lake or similar waterway which is within 300 feet landward of the ordinary high water mark of a navigable body of water or where the purpose is the ultimate connection with a navigable body of water.
- ▶ For any filling, grading, or excavating of a site in excess of 10,000 square feet or in excess of 1,000 cubic yards of earth material. This section shall not apply to planting, growing, cultivating and harvesting agricultural crops, nor to installation of public utilities or sanitary waste disposal systems or construction of public roads and walkways.”

Shoreland Zoning Ordinance:

Other standards

- ▶ Nine comprehensively zoned towns: comprehensive ordinance also applies unless regulation conflicts with shoreland standard
- ▶ Five shoreland-only towns:
 - ▶ Height maximum of 35 feet for structures beyond 75 feet from ordinary high water mark (cupolas, etc. exempted)
 - ▶ 10-foot wetland boundary setback, principal and accessory structures
 - ▶ Principal and accessory structures may not be placed in rights-of-way or easements, or over property boundaries
- ▶ All towns: Shoreland ordinance incorporates many other county ordinance regulations and processes (applications, conservation subdivision, variances, zoning map changes, enforcement, land division, sanitary systems, etc.)

Shoreland Zoning Ordinance: Permits

County-level permits potentially required in shoreland areas:

- ▶ Shoreland zoning
- ▶ Mitigation
- ▶ Impervious surface authorization
- ▶ Variance
- ▶ Zoning map amendment
- ▶ Floodplain zoning

Note: In comprehensively zoned towns, regular zoning permits and/or conditional use permits may be required as well.

Shoreland Zoning Ordinance: Mitigation

Definition:

“Mitigation” (§ NR 115.03(4r), Wisconsin Administrative Code):
“Balancing measures that are designed, implemented, and function to restore natural functions and values that are otherwise lost through development and human activities.”

Shoreland Zoning Ordinance: Mitigation, continued...

- ▶ Mitigation permits are required for projects:
 - ▶ On lots subject to the shoreland impervious surface regulations where the project will place the shoreland-regulated impervious surface area total >15 and up to 30%.
 - ▶ Laterally expanding by up to 200 sq. ft. (footprint) a nonconforming principal structure.
 - ▶ Relocating nonconforming principal structure.
- ▶ Choose mitigation option(s) to obtain required number of points. May amend choice later with new permit.
- ▶ Deed restriction recorded referencing mitigation plan on file at Planning Department.

Shoreland Zoning Ordinance: Mitigation, continued...

- ▶ Mitigation point options:
 - ▶ Maintain existing “extra” vegetative buffer along OHWM
 - ▶ Restoration of OHWM buffer
 - ▶ Maintain/restore sideyard buffer
 - ▶ Decrease access and viewing corridor
 - ▶ Increase structure setback from OHWM
 - ▶ Use of earth-tone materials or colors
 - ▶ Removal of nonconforming structure
 - ▶ Removal of shore lighting or replacement with downcast lighting
 - ▶ Stormwater runoff control system
 - ▶ Other

County Zoning Jurisdiction: Shoreland-only

Only the Door County Shoreland Zoning Ordinance is in effect in the following towns:

- ▶ Brussels (*note: also has town-level zoning ordinance*)
- ▶ Egg Harbor
- ▶ Gardner
- ▶ Nasewaupsee
- ▶ Union (*note: also has town-level zoning ordinance*)

In these towns, Door County does not regulate any matters not specifically regulated by the Shoreland Zoning Ordinance (e.g., land use, density, road setbacks, side & rear yard setbacks, etc.).

Always check with towns regarding their codes and regulations, and with the county regarding other ordinances.

County Zoning Jurisdiction: Comprehensive and shoreland

The Door County Comprehensive Zoning Ordinance and Door County Shoreland Zoning Ordinance are in effect in the following towns:

- ▶ Baileys Harbor
- ▶ Clay Banks
- ▶ Forestville
- ▶ Gibraltar
- ▶ Jacksonport
- ▶ Liberty Grove
- ▶ Sevastopol
- ▶ Sturgeon Bay
- ▶ Washington

Always check with towns regarding their codes and regulations, and with the county regarding other ordinances.

Door County Comprehensive Zoning Ordinance: Amendments due to shoreland ordinance

- ▶ Nonconforming (“grandfathered”) lot size minimums: eliminated
- ▶ Increased ordinary high water mark setbacks: eliminated
- ▶ Additional height limitations for riparian lots: eliminated
- ▶ Impervious surface definition and regulations: amended, related permit type created (“impervious surface authorization”)
- ▶ Nonconforming structure allowance: may be able to replace structure in functional order within building envelope
- ▶ Various town “overlay” regulations: revised, removed, or relocated within ordinance

Note: Unrelated amendments:

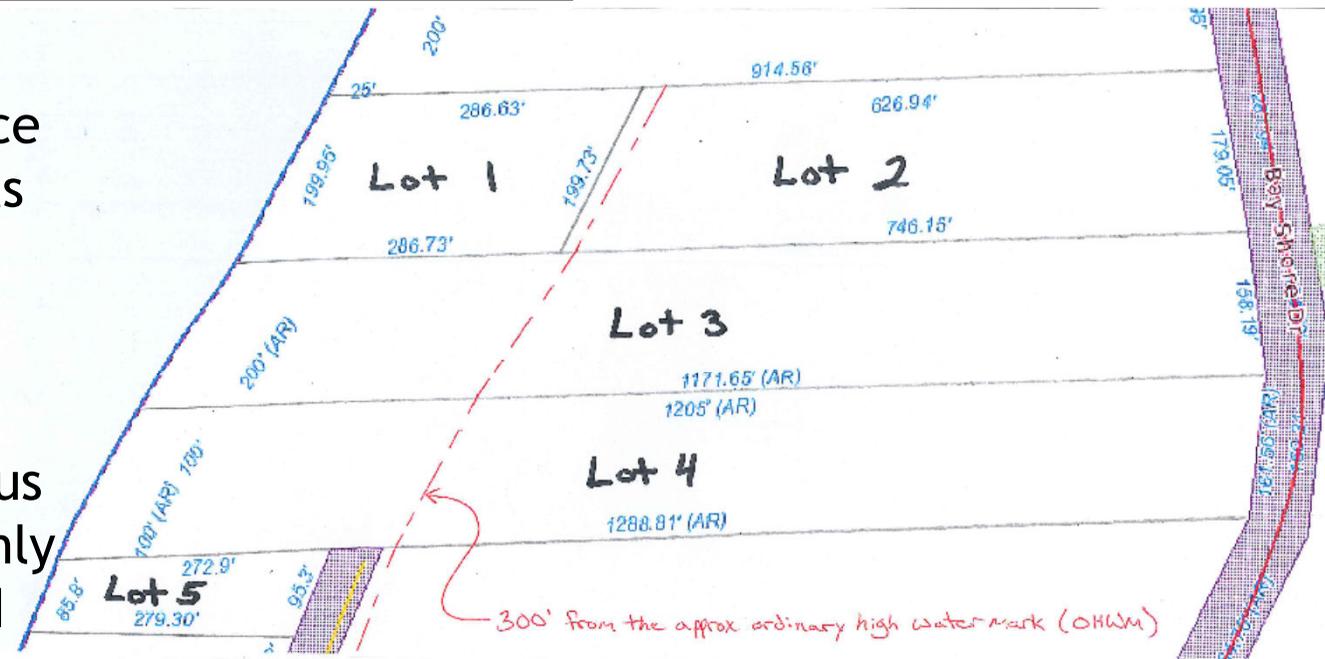
Road setback may be decreased if, in conjunction with OHWM setback, there is buildable area less than 30 feet in depth.

Living quarters (without kitchen or bathroom) may be allowed in accessory structures.

Example 2: Impervious surface regulation calculation, zoned town

Lots 1 & 5: Shoreland zoning impervious surface regulations only (same as example 1).

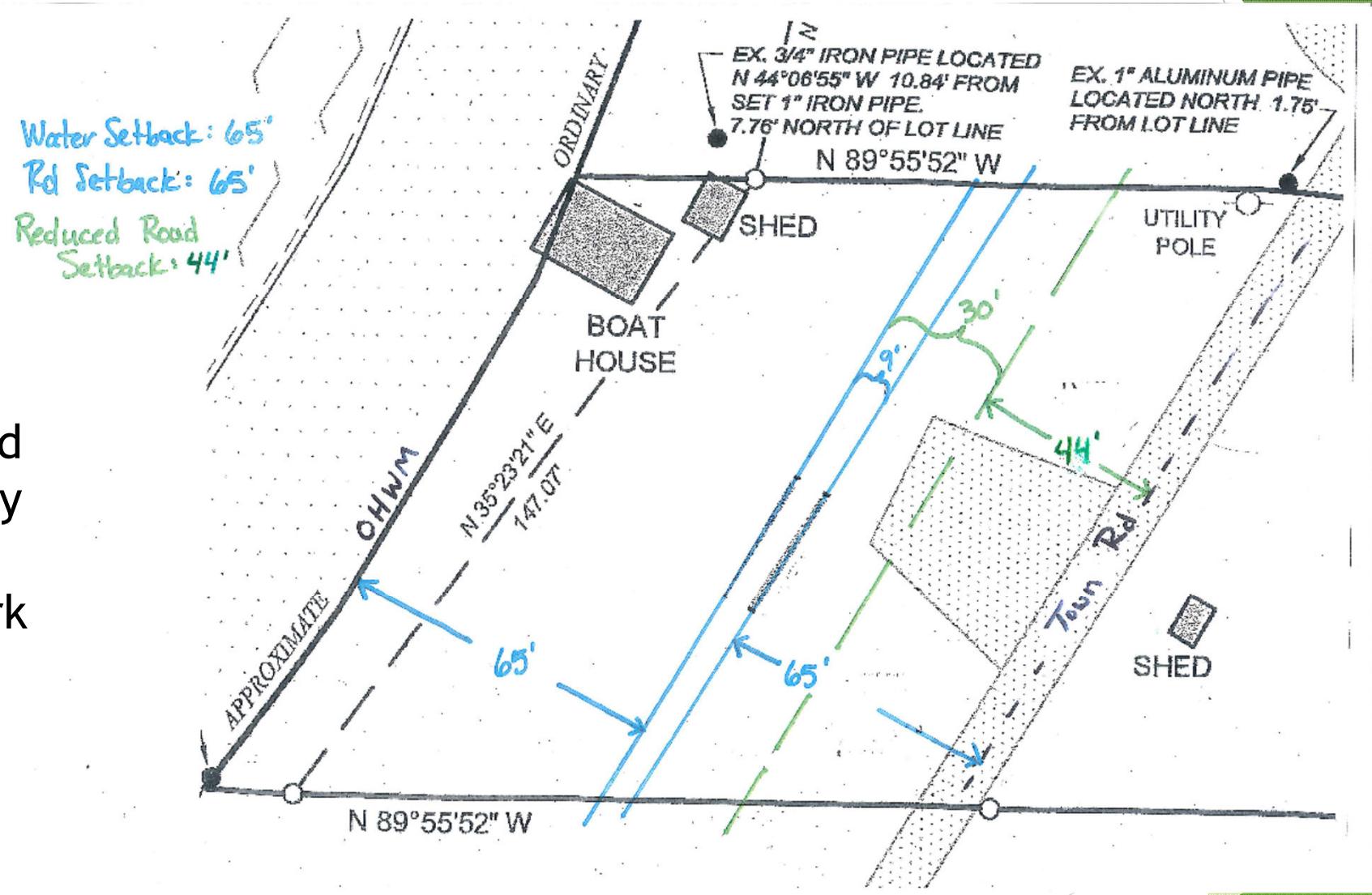
Lots 3 & 4: If in comprehensive district allowing $\leq 30\%$ impervious surfaces, entirely and only subject to the shoreland zoning impervious surface allowances. If in district allowing $>30\%$, shoreland regulations apply within 300' of OHWM but entire lot is bound by comprehensive allowance.



Lot 2: Subject only to comprehensive zoning impervious surface regulations, regardless of comprehensive district.

Example:

Reduced road setback allowed due to interplay with ordinary high water mark setback



Questions?

Door County Land Use Services Department
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Phone: (920) 746-2323
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Website: <http://map.co.door.wi.us/planning>